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STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 3536 By: Caldwell of the House

By: Caldwell of the House

and

McCortney of the Senate

AS INTRODUCED

An Act relating to energy conservation; amending 19 O.S. 2011, Sections 457 and 458, which relate to the Oklahoma County and City Energy Conservation Act; modifying term; revising requirements for repayment period of certain agreement; deleting provisions for complying with competitive proposal procedures; providing for requests for qualification; removing provision for mandatory contract award; striking public inspection of proposals after contract execution; amending 62 O.S. 2011, Section 318, as amended by Section 1, Chapter 267, O.S.L. 2015 (62 O.S. Supp. 2017, Section 318), which relates to performance-based efficiency contracts; modifying term; updating agency name; revising requirements for term of certain agreements; deleting requirement to consult with State Bond Advisor in specified instances; authorizing certain considerations in calculating cost savings; amending 70 O.S. 2011, Section 5-131.2, which relates to energy conservation measures; modifying term; revising requirements for repayment period of certain agreement; removing provisions for complying with competitive proposal procedures; providing for requests for qualification; deleting review and negotiation process; striking provision for mandatory contract award; eliminating public inspection of proposals after contract execution; and providing an effective date.

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 1. AMENDATORY 19 O.S. 2011, Section 457, is
3 amended to read as follows:

4 Section 457. As used in the Oklahoma County and City Energy
5 Conservation Act, "energy conservation measures" means one or more
6 of the following items:

7 1. Insulation of the building structure or systems within the
8 building;

9 2. Storm windows or doors, caulking or weather-stripping,
10 multiglazed windows or doors, heat-absorbing or heat-reflective,
11 glazed, and coated window or door systems, additional glazing,
12 reductions in glass area, or other window and door system
13 modifications that reduce energy consumption;

14 3. Automatic or computerized energy control systems;

15 4. Heating, ventilating or air conditioning system
16 modifications or replacements;

17 5. Replacement or modification of lighting fixtures to increase
18 the energy efficiency of the lighting system, but not for the sole
19 purpose of increasing the overall illumination of a facility, unless
20 an increase in illumination is necessary to conform to the
21 applicable state or local building codes for the lighting system
22 after the proposed modifications are made;

23 6. Indoor air quality improvements;

24 7. Energy recovery systems;

1 8. Co-generation systems that produce steam or forms of energy
2 such as heat, as well as electricity, for use primarily within a
3 building or complex of buildings;

4 9. Any life safety measures that provide long-term operating
5 cost reductions; ~~and~~

6 10. Water-metering devices that increase efficiency or accuracy
7 of water measurement and energy reduction; and

8 11. Building operation programs that reduce the operating
9 costs.

10 SECTION 2. AMENDATORY 19 O.S. 2011, Section 458, is
11 amended to read as follows:

12 Section 458. A. The governing board of a political subdivision
13 of this state, in compliance with the provisions of this section,
14 may enter into an energy conservation contract for the purpose of
15 implementing energy conservation measures designed to reduce the
16 energy consumption of facilities of the political subdivision.

17 B. 1. The governing board shall require the provider of the
18 energy conservation measures to file with the governing board a
19 performance bond that is in an amount the governing board finds
20 reasonable and necessary to protect the interests of the political
21 subdivision and that covers the value of the guaranteed savings on
22 the contract and is conditioned on the faithful execution of the
23 terms of the contract.

1 2. If bonding industry limitations prevent execution of a
2 performance bond which covers guaranteed savings for the entire term
3 of the lease-purchase agreement the contract may allow an option
4 for:

5 a. a performance bond which covers guaranteed savings for
6 a shorter bond term. At the completion of the bond
7 term, a new bond may be executed which covers
8 guaranteed savings for an additional period of years.
9 This process may be continued in like manner for the
10 duration of the lease-purchase agreement as specified
11 in subsection D of this section, or

12 b. a performance bond which covers guaranteed savings for
13 a shorter term. At the completion of the bond term,
14 if the bond cannot be renewed as provided in
15 subparagraph a of this paragraph and if there has been
16 a guaranteed savings shortfall during the last twelve
17 (12) months, the governing board may assume a
18 continued annual shortfall of the same amount and
19 request repayment from the contractor of the net
20 present value of the shortfall through the end of the
21 lease repayment period. The discount factor to
22 calculate the net present value shall be the annual
23 percentage rate of the lease-purchase agreement.
24

1 C. 1. The governing board may enter into an energy
2 conservation contract for a period of more than one (1) year for the
3 implementation of energy conservation measures with a person or
4 business entity if:

5 a. the governing board finds that the amount the
6 political subdivision would spend on the energy
7 conservation measures, excluding any initial partial
8 payment, will not exceed the total savings in energy
9 costs over the repayment period from the date of
10 installation, and

11 b. the contract contains a provision that such contract
12 will continue for the next fiscal year of the
13 political subdivision only if the governing board
14 appropriates adequate and sufficient funds for the
15 contract for the next fiscal year.

16 2. The term of the energy conservation contract and the lease-
17 purchase agreement shall include the installation period and the
18 lease repayment period.

19 3. If the term of an energy conservation contract exceeds one
20 (1) year, the contractual obligation of the political subdivision,
21 excluding any initial partial payment, in any year during the term
22 of the energy conservation contract may not exceed the total
23 savings, including, but not limited to, electrical, gas, or other
24

1 utility cost savings and savings from lowered maintenance as
2 determined by the governing board.

3 4. Maintenance for energy conservation measures may be a part
4 of the energy conservation contract.

5 5. The governing board shall consider all costs of the energy
6 conservation measures, including, but not limited to, costs of
7 design, engineering, installation, maintenance, maintenance tools
8 and equipment, spare parts, repairs, and debt service.

9 D. 1. An energy conservation contract, with respect to
10 existing buildings or facilities, may be funded through a lease-
11 purchase agreement that meets federal tax requirements for tax-free
12 municipal leasing or long-term financing.

13 2. The repayment period of the lease-purchase agreement shall
14 not exceed the ~~lesser~~ greater of ~~fifteen (15)~~ twenty (20) years or
15 the weighted average equipment life of equipment to be installed
16 under the energy conservation contract.

17 ~~E. 1. Energy conservation contracts and lease purchase~~
18 ~~agreements executed pursuant to this section shall be let under~~
19 ~~competitive proposal procedures.~~

20 ~~2. Notice of the request for proposals shall be published in~~
21 ~~the manner provided for competitive bidding. Requests for proposals~~
22 qualification must solicit quotations and must specify the relative
23 importance of guaranteed savings, price, financial performance and
24

1 stability, quality, technical ability, experience and other
2 evaluation factors.

3 ~~3. The contract shall be awarded to the responsible offeror~~
4 ~~whose proposal, following negotiations, is determined to be the most~~
5 ~~advantageous to the political subdivision considering the guaranteed~~
6 ~~savings and other evaluation factors set forth in the request for~~
7 ~~proposals.~~

8 F. In accordance with the terms of a request for ~~proposals~~
9 qualification under subsection E of this section and with rules
10 promulgated by the governing board, the governing board may conduct
11 discussions with offerors who submit proposals and who are
12 determined to be reasonably qualified for the award of the contract.
13 Offerors shall be treated fairly and equally with respect to any
14 opportunity for discussion and revision of proposals. To obtain the
15 best final offers, the governing board may allow proposal revisions
16 after submissions and before the award of the contract.

17 G. ~~If provided in a request for proposals under subsection E of~~
18 ~~this section, proposals~~ Proposals shall be opened in a manner that
19 avoids disclosure of the contents to competing offerors and keeps
20 the proposals confidential during negotiations.

21 H. ~~All proposals shall be open for public inspection after the~~
22 ~~contract with the selected provider has been executed, but trade~~
23 Trade secrets and proprietary information clearly identified in the
24 proposals shall not be open for public inspection.

1 I. Energy conservation contracts shall contain a baseline
2 calculation and energy savings calculation methodology. The
3 calculations shall be performed in accordance with the procedures
4 used by the International Protocol for Measurement and Verification
5 Procedures (IPMVP) or succeeding standard of the United States
6 Department of Energy.

7 SECTION 3. AMENDATORY 62 O.S. 2011, Section 318, as
8 amended by Section 1, Chapter 267, O.S.L. 2015 (62 O.S. Supp. 2017,
9 Section 318), is amended to read as follows:

10 Section 318. A. For purposes of this section:

11 1. "Public entity" means any political subdivision of this
12 state, or a public trust which has as a beneficiary a political
13 subdivision of this state, or any institution of higher education
14 which is part of The Oklahoma State System of Higher Education;

15 2. "Performance-based efficiency contract" means a contract for
16 the design, development, financing, installation and service of any
17 improvement, repair, alteration or betterment of any building or
18 facility owned, operated or planned by a public entity; or any
19 equipment, fixture or furnishing to be added to or used in any such
20 building or facility; or any maintenance or operational strategy
21 that is designed and implemented that will reduce utility
22 consumption or lower operating costs, result in annual operating
23 cost savings, generate additional revenues or avoid capital cost

1 incurrence and may include, but is not limited to, one or more of
2 the following:

- 3 a. utility services,
- 4 b. heating, ventilating or air conditioning system
5 modifications or replacements and automated control
6 systems,
- 7 c. replacement or modifications of lighting fixtures,
- 8 d. indoor air quality improvements to increase air
9 quality that conform to the applicable state or local
10 building code requirements when done in conjunction
11 with other cost-saving measures,
- 12 e. any additional building infrastructure improvement,
13 cost saving, life safety or any other improvement that
14 provides long-term operating cost reductions and is in
15 compliance with state and local codes, ~~or~~
- 16 f. water-metering devices that increase efficiency or
17 accuracy of water measurement and energy reduction, or
- 18 g. any facility operation and support programs that
19 reduce operating cost;

20 3. "Qualified provider" means a person or business experienced
21 or trained in the design, analysis and installation of energy
22 conservation and facility management measures. A qualified provider
23 must employ a professional engineer registered in the State of
24 Oklahoma; and

1 4. "State governmental entity" means the State of Oklahoma or
2 any agency, board, commission, authority, department, public trust
3 of which the state is the beneficiary or other instrumentality of
4 state government, other than a public trust with the state as
5 beneficiary whose jurisdiction is limited to one county, including,
6 but not limited to, the following:

- 7 a. Oklahoma Municipal Power Authority,
- 8 b. Oklahoma Development Finance Authority,
- 9 c. Oklahoma Industrial Finance Authority,
- 10 d. Grand River Dam Authority,
- 11 e. Oklahoma Water Resources Board,
- 12 f. Northeast Oklahoma Public Facilities Authority,
- 13 g. Oklahoma Turnpike Authority,
- 14 h. Oklahoma Housing Finance Authority, and
- 15 i. Oklahoma Public, Industrial and Cultural Facilities
16 Authority.

17 B. In addition to any other legally permissible alternatives of
18 entering into contracts, any public entity may enter into
19 performance-based efficiency contracts with a qualified provider
20 pursuant to the provisions of this section. Further, any public
21 entity may enter into an installment contract, lease purchase
22 agreement or other contractual obligation for the purpose of
23 financing performance-based efficiency projects for a term not to
24 exceed the greater of twenty (20) years or the useful life of the

1 project. ~~Any state governmental entity proposing to enter into an~~
2 ~~agreement under this section shall consult with the State Bond~~
3 ~~Advisor to determine the most cost-effective financing, including~~
4 ~~publicly offered or privately placed bonds, notes, or other~~
5 ~~obligations secured by the efficiency contracts. Any state~~
6 ~~governmental entity entering into a financing secured by an~~
7 ~~efficiency contract shall report the amount of outstanding leases or~~
8 ~~contracts issued under this section each year for inclusion in the~~
9 ~~State Bond Advisor's annual report on state obligations. A~~
10 qualified provider to whom the contract is awarded shall be required
11 to give a sufficient bond to the public entity for its faithful
12 performance of the contract. In addition, the public entity may
13 require performance bonds covering the annual amount of guaranteed
14 savings over the contract term.

15 The contract's cost savings to the public entity must be
16 guaranteed each year during the term of the agreement. The savings
17 must be sufficient to offset the annual costs of the contract. In
18 calculating cost savings, the public entity may consider capital
19 cost avoidance and include additional revenue that is directly
20 attributed to the performance-based efficiency contract. The
21 contract shall provide for reimbursement to the public entity
22 annually for any shortfall of guaranteed savings. Savings must be
23 measured, verified and documented during each year of the term and
24 may be utilized to meet the annual debt service. This section shall

1 constitute the sole authority necessary to enter into performance-
2 based efficiency contracts, without regard to compliance with other
3 laws which may specify additional procedural requirements for
4 execution of contracts.

5 SECTION 4. AMENDATORY 70 O.S. 2011, Section 5-131.2, is
6 amended to read as follows:

7 Section 5-131.2 A. As used in this section, "energy
8 conservation measures" means one or more of the following items:

9 1. Insulation of the building structure or systems within the
10 building;

11 2. Storm windows or doors, caulking or weather-stripping,
12 multiglazed windows or doors, heat-absorbing or heat-reflective,
13 glazed, and coated window or door systems, additional glazing,
14 reductions in glass area, or other window and door system
15 modifications that reduce energy consumption;

16 3. Automatic or computerized energy control systems;

17 4. Heating, ventilating or air conditioning system
18 modifications or replacements;

19 5. Replacement or modification of lighting fixtures to increase
20 the energy efficiency of the lighting system, but not for the sole
21 purpose of increasing the overall illumination of a facility, unless
22 an increase in illumination is necessary to conform to the
23 applicable state or local building codes for the lighting system
24 after the proposed modifications are made;

1 6. Indoor air quality improvements;

2 7. Energy recovery systems; ~~and~~

3 8. Energy awareness education programs; and

4 9. Water-metering devices that increase efficiency or accuracy

5 of water measurement and reduce energy consumption.

6 B. The board of education of any school district in compliance
7 with the provisions of this section, may enter into an energy
8 conservation contract for the purpose of implementing energy
9 conservation measures designed to reduce the energy consumption of
10 school facilities.

11 C. 1. The board of education shall require the provider of the
12 energy conservation measures to file with the board of education a
13 performance bond that is in an amount the board finds reasonable and
14 necessary to protect the interests of the board and that covers the
15 value of the guaranteed savings on the contract and is conditioned
16 on the faithful execution of the terms of the contract.

17 2. If bonding industry limitations prevent execution of a
18 performance bond which covers guaranteed savings for the entire term
19 of the lease-purchase agreement the contract may allow an option
20 for:

21 a. a performance bond which covers guaranteed savings for
22 a shorter term. At the completion of the bond term, a
23 new bond may be executed which covers guaranteed
24 savings for an additional period of years. This

1 process may be continued in like manner for the
2 duration of the lease-purchase agreement as specified
3 by subsection D of this section, or

4 b. a performance bond which covers guaranteed savings for
5 a shorter term. At the completion of the bond term,
6 if the bond cannot be renewed as provided in
7 subparagraph a of this paragraph and if there has been
8 a guaranteed savings shortfall during the last twelve
9 (12) months, the board of education may assume a
10 continued annual shortfall of the same amount and
11 request repayment from the contractor of the net
12 present value of the shortfall through the end of the
13 lease repayment period. The discount factor to
14 calculate the net present value shall be the annual
15 percentage rate of the lease-purchase agreement.

16 D. 1. The board of education may enter into an energy
17 conservation contract for a period of more than one (1) year for the
18 implementation of energy conservation measures with a person or
19 business entity if the board of education finds that the amount the
20 school district would spend on the energy conservation measures,
21 excluding any initial partial payment, will not exceed the total
22 savings over the repayment period of the energy conservation
23 contract from the date of installation.

1 2. The term of the energy conservation contract and the lease-
2 purchase agreement shall include the installation period and the
3 lease repayment period.

4 3. If the term of an energy conservation contract exceeds one
5 (1) year, the contractual obligation of the school district,
6 excluding any initial partial payment, in any year during the term
7 of the energy conservation contract may not exceed the total savings
8 including, but not limited to, electrical, gas, or other utility
9 cost savings and savings from lowered maintenance, as determined by
10 the board of education. Savings shall be guaranteed by the entity
11 providing the energy conservation measures.

12 4. Energy conservation contracts shall not permit the carry-
13 forward of savings above the guaranteed amount from one year to a
14 future year shortfall.

15 5. Maintenance for energy conservation measures may be a part
16 of the energy conservation contract.

17 6. The board of education shall consider all costs of the
18 energy conservation measures, including costs of design,
19 engineering, installation, maintenance, maintenance tools and
20 equipment, spare parts, repairs, and debt service.

21 E. In addition to any other provisions, the energy conservation
22 contract shall:

23 1. Provide that all savings should be tracked and audited by
24 the contractor with an annual report provided to the board of

1 education along with a payment by the provider for reimbursement of
2 savings not realized;

3 2. Be for a term of years that is not less than the term of
4 years of any associated lease-purchase agreement;

5 3. Provide that the board of education may terminate the
6 agreement for nonperformance by the contractor;

7 4. Contain a nonappropriation clause; and

8 5. Contain a baseline calculation and an energy savings
9 calculation. The calculations shall be performed in accordance with
10 the procedures used by the International Protocol for Measurement
11 and Verification Procedures (IPMVP) or succeeding standard of the
12 United States Department of Energy.

13 F. 1. An energy conservation contract, with respect to
14 existing buildings or facilities, may be funded through a lease-
15 purchase agreement that meets federal tax requirements for tax-free
16 municipal leasing or long-term financing.

17 2. The repayment period of the lease-purchase agreement shall
18 not exceed the ~~lesser~~ greater of ~~fifteen (15)~~ twenty (20) years or
19 the weighted average equipment life to be installed under the energy
20 conservation contract.

21 3. Lease-purchase agreements for energy conservation measures
22 shall be considered separate from the energy conservation contract
23 and shall contain a nonappropriation clause.

1 G. 1. ~~Energy conservation contracts and lease purchase~~
2 ~~agreements executed pursuant to this section shall be let under~~
3 ~~competitive proposal procedures.~~

4 2. ~~Notice of the request for proposals shall be published in~~
5 ~~the manner provided for competitive bidding. Requests for proposals~~
6 qualification must solicit quotations and must specify the relative
7 importance of guaranteed savings, price, financial performance and
8 stability, quality, technical ability, experience and other
9 evaluation factors.

10 3. ~~The board of education shall review the proposals it~~
11 ~~receives, and shall select at least two for more detailed~~
12 ~~consideration. The initial screening should consider the ability of~~
13 ~~the offeror to provide energy conservation measures as well as the~~
14 ~~following factors:~~

15 a. ~~specialized experience in the type of work~~
16 ~~contemplated,~~

17 b. ~~capacity to accomplish the work in the required time,~~

18 c. ~~past performance, and~~

19 d. ~~estimated savings.~~

20 4. ~~The board of education shall negotiate the contract with the~~
21 ~~selected offeror. The negotiated scope and contract rate shall be~~
22 ~~reported to the board of education for the approval of the award of~~
23 ~~the contract.~~

1 5. a. ~~If the board of education and the first choice offeror~~
2 ~~cannot reach an agreement, their negotiations shall be~~
3 ~~terminated and negotiations with the second choice~~
4 ~~offeror shall commence.~~

5 b. ~~If the board of education and the second choice~~
6 ~~offeror cannot reach an agreement, then all~~
7 ~~negotiations shall be terminated.~~

8 c. ~~Should the board of education be unable to negotiate a~~
9 ~~satisfactory contract with any of the two selected~~
10 ~~offerors, the board of education shall select~~
11 ~~additional offerors in order of their competency and~~
12 ~~qualifications and shall continue negotiations in~~
13 ~~accordance with the provisions of this subsection~~
14 ~~until an agreement is reached.~~

15 6. ~~The energy conservation contract and lease purchase~~
16 ~~agreement shall be awarded to the responsible offeror whose~~
17 ~~proposal, following negotiations, is determined to be the most~~
18 ~~advantageous to the school district considering the guaranteed~~
19 ~~savings and other evaluation factors set forth in the request for~~
20 ~~proposals.~~

21 2. In order to determine the energy savings measures to be
22 considered by proposers, the board of education may hire an
23 independent energy consultant.

1 ~~7.~~ 3. Fees assessed by the consultant will be paid from
2 proceeds of any financing associated with the energy conservation
3 contract.

4 H. ~~If provided in a request for proposals under subsection C of~~
5 ~~this section, proposals~~ Proposals shall be opened in a manner that
6 avoids disclosure of the contents to competing offerors and keeps
7 the proposals confidential during negotiations.

8 I. ~~All proposals shall be open for public inspection after the~~
9 ~~contract with the selected provider has been executed, but trade~~
10 Trade secrets and proprietary information clearly identified in the
11 proposals shall not be open for public inspection.

12 SECTION 5. This act shall become effective November 1, 2018.

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14 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND NATURAL RESOURCES,
15 dated 03/01/2018 - DO PASS, As Coauthored.
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