

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 3691

By: McDugle

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to energy efficiency; amending 61
9 O.S. 2021, Section 212, which relates to performance-
10 based efficiency contracts; modifying definition;
11 amending 70 O.S. 2021, Section 5-131.2, which relates
12 to energy conservation measures; modifying
13 definition; and providing an effective date.

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

15 SECTION 1. AMENDATORY 61 O.S. 2021, Section 212, is
16 amended to read as follows:

17 Section 212. A. For purposes of this section:

18 1. "Performance-based efficiency contract" means a contract for
19 the design, development, financing, installation, construction and
20 service of any improvement, repair, alteration or betterment of any
21 public building or facility; or any equipment, fixture or furnishing
22 to be added to or used in any such building or facility; or any
23 maintenance or operational strategy that is designed and implemented
24 that will reduce utility consumption or lower operating costs, and
may include, but is not limited to, one or more of the following:

- a. utility services,
- b. heating, ventilating or air conditioning system modifications or replacements and automated control systems,
- c. replacement or modifications of lighting fixtures,
- d. indoor air quality improvements to increase air quality that conform to the applicable state or local building code requirements when done in conjunction with other cost-saving measures,
- e. any additional building infrastructure improvement, cost saving, life safety or any other improvement that provides long-term operating cost reductions and is in compliance with state and local codes, ~~or~~
- f. any facility operation and support programs that reduce operating cost, or
- g. alternative energy production infrastructure; and

2. "Qualified provider" means a person or business experienced or trained in the design, analysis, construction and/or installation of energy conservation and facility management measures. A qualified provider must employ a professional engineer registered in the State of Oklahoma.

B. In addition to any other legally permissible alternatives of entering into contracts, the Office of Management and Enterprise Services Construction and Properties Division may enter into

1 performance-based efficiency contracts on behalf of all state
2 agencies with a qualified provider pursuant to the provisions of
3 this section.

4 A qualified provider to whom the contract is awarded shall be
5 required to provide to the Division a sufficient bond for its
6 faithful performance of the contract. In addition, the Division may
7 require performance bonds covering the annual amount of guaranteed
8 savings over the contract term. The Office of Management and
9 Enterprise Services may enter into an installment contract, lease
10 purchase agreement or other contractual obligation for the purpose
11 of financing performance-based efficiency projects for a term not to
12 exceed the greater of twenty (20) years or the useful life of the
13 project.

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

1 The contracts authorized by this section shall include
2 procedures for modifying the contract should the Division determine
3 it necessary.

4 This section shall constitute the sole authority necessary to
5 enter into performance-based efficiency contracts, without regard to
6 compliance with other laws which may specify additional procedural
7 requirements for execution of contracts.

8 SECTION 2. AMENDATORY 70 O.S. 2021, Section 5-131.2, is
9 amended to read as follows:

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

12 1. Insulation of the building structure or systems within the
13 building;

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

19 3. Automatic or computerized energy control systems;

20 4. Heating, ventilating or air conditioning system
21 modifications or replacements;

22 5. Replacement or modification of lighting fixtures to increase
23 the energy efficiency of the lighting system, but not for the sole
24 purpose of increasing the overall illumination of a facility, unless

1 an increase in illumination is necessary to conform to the
2 applicable state or local building codes for the lighting system
3 after the proposed modifications are made;

4 6. Indoor air quality improvements;

5 7. Energy recovery systems;

6 8. Energy awareness education programs; ~~and~~

7 9. Water-metering devices that increase efficiency or accuracy
8 of water measurement and reduce energy consumption; and

9 10. Alternative energy production infrastructure.

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

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

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

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

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

20 D. 1. The board of education may enter into an energy
21 conservation contract for a period of more than one (1) year for the
22 implementation of energy conservation measures with a person or
23 business entity if the board of education finds that the amount the
24 school district would spend on the energy conservation measures,

1 excluding any initial partial payment, will not exceed the total
2 savings over the repayment period of the energy conservation
3 contract from the date of installation.

4 2. The term of the energy conservation contract and the lease-
5 purchase agreement shall include the installation period and the
6 lease repayment period.

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

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

18 5. Maintenance for energy conservation measures may be a part
19 of the energy conservation contract.

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

1 E. In addition to any other provisions, the energy conservation
2 contract shall:

3 1. Provide that all savings should be tracked and audited by
4 the contractor with an annual report provided to the board of
5 education along with a payment by the provider for reimbursement of
6 savings not realized;

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

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

11 4. Contain a nonappropriation clause; and

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

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

21 2. The repayment period of the lease-purchase agreement shall
22 not exceed the greater of twenty (20) years or the weighted average
23 equipment life of any equipment to be installed under the energy
24 conservation contract.

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

4 G. 1. Prior to entering into an energy conservation contract,
5 the board of education shall solicit a request for qualification
6 from one or more energy service company providers. Requests for
7 qualification must solicit quotations and must specify the relative
8 importance of guaranteed savings, price, financial performance and
9 stability, quality, technical ability, experience and other
10 evaluation factors.

11 2. In order to determine the energy savings measures to be
12 considered by proposers, the board of education may hire an
13 independent energy consultant.

14 3. Fees assessed by the consultant will be paid from proceeds
15 of any financing associated with the energy conservation contract.

16 H. Proposals shall be opened in a manner that avoids disclosure
17 of the contents to competing offerors and keeps the proposals
18 confidential during negotiations.

19 I. The board of education and the offeror selected through the
20 request for qualification procedures shall enter into a memorandum
21 of understanding which shall require the provider to perform
22 preliminary analysis regarding the physical features and operating
23 history of the facilities under consideration. There shall be no
24 financial obligation to the school district for this analysis.

1 J. After completion of the preliminary analysis, the energy
2 service provider shall perform a detailed energy performance audit
3 on the specific buildings or facilities as agreed to by the
4 political subdivision. This audit shall provide a cost basis for
5 operating the existing building or facilities and the detailed
6 information necessary to make a financial decision regarding a long-
7 term performance-based efficiency contract. The cost of this audit
8 may be rolled into the terms of a performance-based efficiency
9 contract. If the school district decides not to enter into a long-
10 term performance-based efficiency contract with the provider, the
11 school district must pay the sum stipulated in the performance audit
12 contract.

13 K. Trade secrets and proprietary information clearly identified
14 in the proposals shall not be open for public inspection.

15 SECTION 3. This act shall become effective November 1, 2022.

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