

1 ENGROSSED HOUSE  
2 BILL NO. 3691

By: McDugle of the House

3 and

4 Leewright of the Senate

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7  
8 [ energy efficiency - modifying state entity that may  
9 enter into certain contracts - effective date ]  
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12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

24 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 as determined by the Office of Management and Enterprise Services. 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~~ a state agency may

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

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

16 Passed the House of Representatives the 22nd day of March, 2022.

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Presiding Officer of the House  
of Representatives

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Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2022.

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Presiding Officer of the Senate

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