

## FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3691 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by  
inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Kevin McDugle

\_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

FLOOR SUBSTITUTE  
FOR

HOUSE BILL NO. 3691

By: McDugle

FLOOR SUBSTITUTE

An Act relating to energy efficiency; amending 61 O.S. 2021, Section 212, which relates to performance-based efficiency contracts; modifying definition; modifying state entity that may enter in to certain contracts; amending 70 O.S. 2021, Section 5-131.2, which relates to energy conservation measures; modifying definition; and providing an effective date.

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

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

Section 212. A. For purposes of this section:

1. "Performance-based efficiency contract" means a contract for the design, development, financing, installation, construction and service of any improvement, repair, alteration or betterment of any public building or facility; or any equipment, fixture or furnishing to be added to or used in any such building or facility; or any maintenance or operational strategy that is designed and implemented

1 that will reduce utility consumption or lower operating costs, and  
2 may include, but is not limited to, one or more of 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. any facility operation and support programs that  
17 reduce operating cost, or
- 18 g. alternative energy production infrastructure; and

19 2. "Qualified provider" means a person or business experienced  
20 or trained in the design, analysis, construction and/or installation  
21 of energy conservation and facility management measures as  
22 determined by the Office of Management and Enterprise Services. A  
23 qualified provider must employ a professional engineer registered in  
24 the State of Oklahoma.

1 B. In addition to any other legally permissible alternatives of  
2 entering into contracts, ~~the Office of Management and Enterprise~~  
3 ~~Services Construction and Properties Division~~ a state agency may  
4 enter into performance-based efficiency contracts ~~on behalf of all~~  
5 ~~state agencies~~ with a qualified provider pursuant to the provisions  
6 of this section.

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

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

1 must be measured, verified and documented each year of the term and  
2 may be utilized to meet the annual debt service.

3 The contracts authorized by this section shall include  
4 procedures for modifying the contract should the ~~Division~~ state  
5 agency determine it necessary.

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

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

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

14 1. Insulation of the building structure or systems within the  
15 building;

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

21 3. Automatic or computerized energy control systems;

22 4. Heating, ventilating or air conditioning system  
23 modifications or replacements;

1        5. Replacement or modification of lighting fixtures to increase  
2 the energy efficiency of the lighting system, but not for the sole  
3 purpose of increasing the overall illumination of a facility, unless  
4 an increase in illumination is necessary to conform to the  
5 applicable state or local building codes for the lighting system  
6 after the proposed modifications are made;

7        6. Indoor air quality improvements;

8        7. Energy recovery systems;

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

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

12       10. Alternative energy production infrastructure.

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

18       C. 1. The board of education shall require the provider of the  
19 energy conservation measures to file with the board of education a  
20 performance bond that is in an amount the board finds reasonable and  
21 necessary to protect the interests of the board and that covers the  
22 value of the guaranteed savings on the contract and is conditioned  
23 on the faithful execution of the 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 term. At the completion of the bond term, a  
7 new bond may be executed which covers guaranteed  
8 savings for an additional period of years. This  
9 process may be continued in like manner for the  
10 duration of the lease-purchase agreement as specified  
11 by 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 board of education 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.

1 D. 1. The board of education 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 the board of education finds that the amount the  
5 school district would spend on the energy conservation measures,  
6 excluding any initial partial payment, will not exceed the total  
7 savings over the repayment period of the energy conservation  
8 contract from the date of installation.

9 2. The term of the energy conservation contract and the lease-  
10 purchase agreement shall include the installation period and the  
11 lease repayment period.

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

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

23 5. Maintenance for energy conservation measures may be a part  
24 of the energy conservation contract.



1       6. The board of education shall consider all costs of the  
2 energy conservation measures, including costs of design,  
3 engineering, installation, maintenance, maintenance tools and  
4 equipment, spare parts, repairs, and debt service.

5       E. In addition to any other provisions, the energy conservation  
6 contract shall:

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

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

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

15       4. Contain a nonappropriation clause; and

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

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

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

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

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

15        2. In order to determine the energy savings measures to be  
16 considered by proposers, the board of education may hire an  
17 independent energy consultant.

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

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

23        I. The board of education and the offeror selected through the  
24 request for qualification procedures shall enter into a memorandum

1 of understanding which shall require the provider to perform  
2 preliminary analysis regarding the physical features and operating  
3 history of the facilities under consideration. There shall be no  
4 financial obligation to the school district for this analysis.

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

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

19 SECTION 3. This act shall become effective November 1, 2022.  
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21 58-2-11069 JBH 03/09/22  
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