

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3691

By: McDugle

7
8 COMMITTEE SUBSTITUTE

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

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

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

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

19 1. "Performance-based efficiency contract" means a contract for
20 the design, development, financing, installation, construction and
21 service of any improvement, repair, alteration or betterment of any
22 public building or facility; or any equipment, fixture or furnishing
23 to be added to or used in any such building or facility; or any
24 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. A
22 qualified provider must employ a professional engineer registered in
23 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 may enter into
4 performance-based efficiency contracts on behalf of all state
5 agencies with a qualified provider pursuant to the provisions of
6 this section.

7 A qualified provider to whom the contract is awarded shall be
8 required to provide to the Division a sufficient bond for its
9 faithful performance of the contract. In addition, the Division may
10 require performance bonds covering the annual amount of guaranteed
11 savings over the contract term. The Office of Management and
12 Enterprise Services may enter into an installment contract, lease
13 purchase agreement or other contractual obligation for the purpose
14 of financing performance-based efficiency projects for a term not to
15 exceed the greater of twenty (20) years or the useful life of the
16 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 determine
5 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.
24

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 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
22 03/02/2022 - DO PASS, As Amended.
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