

1 **SENATE FLOOR VERSION**

2 April 3, 2023

3 ENGROSSED HOUSE  
4 BILL NO. 2472

By: Archer and Hill of the  
House

5 and

6 Paxton of the Senate

7  
8  
9 An Act relating to public finance; amending 62 O.S.  
10 2021, Section 318, which relates to performance-based  
11 efficiency contracts; providing authorized method for  
initial payments; requiring certain savings amount;  
and declaring an emergency.

12  
13  
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 62 O.S. 2021, Section 318, is  
16 amended to read as follows:

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

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

22 2. "Performance-based efficiency contract" means a contract for  
23 the design, development, financing, installation and service of any  
24 improvement, repair, alteration or betterment of any building or

1 facility owned, operated or planned by a public entity; or any  
2 equipment, fixture or furnishing to be added to or used in any such  
3 building or facility; or any maintenance or operational strategy  
4 that is designed and implemented that will reduce utility  
5 consumption or lower operating costs, result in annual operating  
6 cost savings, generate additional revenues or avoid capital cost  
7 incurrence and may include, but is not limited to, one or more of  
8 the following:

- 9 a. utility services,
- 10 b. heating, ventilating or air conditioning system  
11 modifications or replacements and automated control  
12 systems,
- 13 c. replacement or modifications of lighting fixtures,
- 14 d. indoor air quality improvements to increase air  
15 quality that conform to the applicable state or local  
16 building code requirements when done in conjunction  
17 with other cost-saving measures,
- 18 e. any additional building infrastructure improvement,  
19 cost saving, life safety or any other improvement that  
20 provides long-term operating cost reductions and is in  
21 compliance with state and local codes,
- 22 f. water-metering devices that increase efficiency or  
23 accuracy of water measurement and energy reduction, or  
24

1           g. any facility operation and support programs that  
2           reduce operating cost;

3           3. "Qualified provider" means a person or business experienced  
4 or trained in the design, analysis and installation of energy  
5 conservation and facility management measures. A qualified provider  
6 must employ a professional engineer registered in the State of  
7 Oklahoma; and

8           4. "State governmental entity" means the State of Oklahoma or  
9 any agency, board, commission, authority, department, public trust  
10 of which the state is the beneficiary or other instrumentality of  
11 state government, other than a public trust with the state as  
12 beneficiary whose jurisdiction is limited to one county, including,  
13 but not limited to, the following:

- 14           a. Oklahoma Municipal Power Authority,
- 15           b. Oklahoma Development Finance Authority,
- 16           c. Oklahoma Industrial Finance Authority,
- 17           d. Grand River Dam Authority,
- 18           e. Oklahoma Water Resources Board,
- 19           f. Northeast Oklahoma Public Facilities Authority,
- 20           g. Oklahoma Turnpike Authority,
- 21           h. Oklahoma Housing Finance Authority, and
- 22           i. Oklahoma Public, Industrial and Cultural Facilities  
23           Authority.

1 B. In addition to any other legally permissible alternatives of  
2 entering into contracts, any public entity may enter into  
3 performance-based efficiency contracts with a qualified provider  
4 pursuant to the provisions of this section. The public entity may  
5 make an initial payment from any funds available. Further, any  
6 public entity may enter into an installment contract, lease purchase  
7 agreement or other contractual obligation for the purpose of  
8 financing performance-based efficiency projects for a term not to  
9 exceed the greater of twenty (20) years or the useful life of the  
10 project. A qualified provider to whom the contract is awarded shall  
11 be required to give a sufficient bond to the public entity for its  
12 faithful performance of the contract. In addition, the public  
13 entity may require performance bonds covering the annual amount of  
14 guaranteed 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. Any  
18 initial payment from funds other than an installment agreement must  
19 also be offset by savings, as described herein, over the term of the  
20 agreement. In calculating cost savings, the public entity may  
21 consider capital cost avoidance and include additional revenue that  
22 is directly attributed to the performance-based efficiency contract.  
23 The contract shall provide for reimbursement to the public entity  
24 annually for any shortfall of guaranteed savings. Savings must be

1 measured, verified and documented during each year of the term and  
2 may be utilized to meet the annual debt service. This section shall  
3 constitute the sole authority necessary to enter into performance-  
4 based efficiency contracts, without regard to compliance with other  
5 laws which may specify additional procedural requirements for  
6 execution of contracts.

7 SECTION 2. It being immediately necessary for the preservation  
8 of the public peace, health or safety, an emergency is hereby  
9 declared to exist, by reason whereof this act shall take effect and  
10 be in full force from and after its passage and approval.

11 COMMITTEE REPORT BY: COMMITTEE ON FINANCE  
12 April 3, 2023 - DO PASS  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24