

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1920

By: Standridge

4
5
6 AS INTRODUCED

7 An Act relating to energy; 70 O.S. 2011, Section 5-
8 131.2, as amended by Section 4, Chapter 296, O.S.L.
9 2018 (70 O.S. Supp. 2019, Section 5-131.2), which
10 relates to energy conservation contracts; authorizing
11 districts to enter into contracts with entities
12 meeting certain conditions; and providing an
13 effective date.

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

15 SECTION 1. AMENDATORY 70 O.S. 2011, Section 5-131.2, as
16 amended by Section 4, Chapter 296, O.S.L. 2018 (70 O.S. Supp. 2019,
17 Section 5-131.2), is amended to read as follows:

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

20 1. Insulation of the building structure or systems within the
21 building;

22 2. Storm windows or doors, caulking or weather-stripping,
23 multiglazed windows or doors, heat-absorbing or heat-reflective,
24 glazed, and coated window or door systems, additional glazing,

1 reductions in glass area, or other window and door system
2 modifications that reduce energy consumption;

3 3. Automatic or computerized energy control systems;

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

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

12 6. Indoor air quality improvements;

13 7. Energy recovery systems;

14 8. Energy awareness education programs; and

15 9. Water-metering devices that increase efficiency or accuracy
16 of water measurement and reduce energy consumption.

17 B. The board of education of any school district in compliance
18 with the provisions of this section, may enter into an energy
19 conservation contract for the purpose of implementing energy
20 conservation measures designed to reduce the energy consumption of
21 school facilities. The districts shall be authorized to enter into
22 agreements with entities whose power supply source is based solely
23 on renewables and demonstrate cost savings advantages through the
24 pooling of public entity customers.

1 C. 1. The board of education shall require the provider of the
2 energy conservation measures to file with the board of education a
3 performance bond that is in an amount the board finds reasonable and
4 necessary to protect the interests of the board and that covers the
5 value of the guaranteed savings on the contract and is conditioned
6 on the faithful execution of the terms of the contract.

7 2. If bonding industry limitations prevent execution of a
8 performance bond which covers guaranteed savings for the entire term
9 of the lease-purchase agreement the contract may allow an option
10 for:

11 a. a performance bond which covers guaranteed savings for
12 a shorter term. At the completion of the bond term, a
13 new bond may be executed which covers guaranteed
14 savings for an additional period of years. This
15 process may be continued in like manner for the
16 duration of the lease-purchase agreement as specified
17 by subsection D of this section, or

18 b. a performance bond which covers guaranteed savings for
19 a shorter term. At the completion of the bond term,
20 if the bond cannot be renewed as provided in
21 subparagraph a of this paragraph and if there has been
22 a guaranteed savings shortfall during the last twelve
23 (12) months, the board of education may assume a
24 continued annual shortfall of the same amount and

1 request repayment from the contractor of the net
2 present value of the shortfall through the end of the
3 lease repayment period. The discount factor to
4 calculate the net present value shall be the annual
5 percentage rate of the lease-purchase agreement.

6 D. 1. The board of education may enter into an energy
7 conservation contract for a period of more than one (1) year for the
8 implementation of energy conservation measures with a person or
9 business entity if the board of education finds that the amount the
10 school district would spend on the energy conservation measures,
11 excluding any initial partial payment, will not exceed the total
12 savings over the repayment period of the energy conservation
13 contract from the date of installation.

14 2. The term of the energy conservation contract and the lease-
15 purchase agreement shall include the installation period and the
16 lease repayment period.

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

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

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

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

10 E. In addition to any other provisions, the energy conservation
11 contract shall:

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

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

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

20 4. Contain a nonappropriation clause; and

21 5. Contain a baseline calculation and an energy savings
22 calculation. The calculations shall be performed in accordance with
23 the procedures used by the International Protocol for Measurement
24

1 and Verification Procedures (IPMVP) or succeeding standard of the
2 United States Department of Energy.

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

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

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

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

21 2. In order to determine the energy savings measures to be
22 considered by proposers, the board of education may hire an
23 independent energy consultant.

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

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

6 I. The board of education and the offeror selected through the
7 request for qualification procedures shall enter into a memorandum
8 of understanding which shall require the provider to perform
9 preliminary analysis regarding the physical features and operating
10 history of the facilities under consideration. There shall be no
11 financial obligation to the school district for this analysis.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

SECTION 2. This act shall become effective November 1, 2020.

57-2-2439 CB 1/16/2020 11:05:41 PM