

1 ENGROSSED SENATE
BILL NO. 91

By: Hall of the Senate

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3 and

4 Boles of the House
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6 An Act relating to public buildings and public works;
7 amending 61 O.S. 2011, Section 212, as amended by
8 Section 330, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
9 2020, Section 212), which relates to performance-
10 based efficiency contracts; modifying maximum length
of certain financing contracts; providing method for
calculating cost savings attributable to performance-
based efficiency contracts; and providing an
effective date.

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

14 SECTION 1. AMENDATORY 61 O.S. 2011, Section 212, as
15 amended by Section 330, Chapter 304, O.S.L. 2012 (61 O.S. Supp.
16 2020, Section 212), is amended to read as follows:

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

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

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

23 B. In addition to any other legally permissible alternatives of
24 entering into contracts, the Office of Management and Enterprise

1 Services Construction and Properties Division may enter into
2 performance-based efficiency contracts on behalf of all state
3 agencies with a qualified provider pursuant to the provisions of
4 this section.

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

15 The qualified provider must guarantee the contract's cost
16 savings each year during the term of the agreement. In calculating
17 cost savings, the public entity may consider capital cost avoidance
18 and include additional revenue that is directly attributed to the
19 performance-based efficiency contract. The savings must be
20 sufficient to offset the annual costs of the contract. The contract
21 shall provide for reimbursement to the state agency undertaking the
22 project annually for any shortfall of guaranteed savings. Savings
23 must be measured, verified and documented each year of the term and
24 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 determine
3 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. This act shall become effective November 1, 2021.

9 Passed the Senate the 11th day of February, 2021.

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Presiding Officer of the Senate

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13 Passed the House of Representatives the ____ day of _____,
14 2021.

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Presiding Officer of the House
of Representatives

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