

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

A Bill

HOUSE BILL 2179

5 By: Representative Hutchinson
6
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For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE § 19-4-1414
10 PERTAINING TO PERFORMANCE BASED EFFICIENCY
11 CONTRACTS.
12

Subtitle

13 TO AMEND ARKANSAS CODE § 19-4-1414
14 PERTAINING TO PERFORMANCE BASED
15 EFFICIENCY CONTRACTS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 19-4-1414 is amended to read as follows:
22 19-4-1414. Performance-based efficiency contracts.

23 (a) For purposes of this section:

24 (1) "Agency" means any state board, commission, agency,
25 department, ~~and~~ institution of higher education, city, county, school
26 district, or other political subdivision of the State of Arkansas;

27 (2) "Bond" means any surety company bond, corporate guarantee of
28 performance, or other financial assurance that the agency may deem
29 appropriate from time to time;

30 ~~(2)(3)~~ (3) "Efficiency savings" means cost savings which result from
31 operational, cost avoidance, and other energy related savings and changes
32 that do not degrade the level of service or working conditions ~~and which are~~
33 ~~verifiable by comparing expenditures that occur after the improvements with~~
34 ~~the same type or expenditures occurring before the improvements are made;~~

35 (4) "Energy conservation measures" means:

36 (A) The design and implementation of any improvement,



1 repair, or alteration;

2 (B) The betterment of any building or facility owned or
3 operated by an agency; and

4 (C) Any equipment, fixture, or furnishing to be added to
5 or used in any building or facility, or any maintenance or operational
6 strategy that is designed to reduce utility consumption or lower operating
7 costs, and may include, but is not limited to:

8 (i) Insulation of the building structure or system
9 within the building;

10 (ii) Windows or doors, caulking or weather
11 stripping, multi-glazed windows or doors, heat absorbing or heat reflective
12 glazed and coated window or door systems, additional glazing, reductions in
13 glass area, or other window and door system modifications that reduce energy
14 consumption;

15 (iii) Automated or computerized energy control
16 systems;

17 (iv) Heating, ventilating, or air conditioning
18 system modifications or replacements, including the conversion or
19 retrofitting of existing heating, ventilating, or air conditioning systems to
20 geothermal based or ground looped heating, ventilation, or air conditioning
21 systems;

22 (v) Replacements, retrofits, or modifications of
23 lighting fixtures to increase the energy efficiency of the lighting system;

24 (vi) Indoor air quality improvements to increase air
25 quality that conforms to the applicable state building code requirements;

26 (vii) Any additional building infrastructure
27 improvement, cost saving, life safety, or any other improvement that provides
28 long term operating cost reductions and are in compliance with the state
29 building code; and

30 (viii) Any facility operation, administration, or
31 management program that reduces operating costs;

32 ~~(3)~~(5) "Performance-based efficiency contract" means a contract
33 with a qualified provider for+ the construction, installation, and
34 implementation of energy conservation measures that may or may not include
35 provisions in the contract, or in an accompanying agreement, under which the
36 costs associated with the construction, installation, and implementation of

1 energy conservation measures may be financed and paid over a specified period
2 of time with interest;

3 ~~(A) The design and implementation of any improvement,~~
4 ~~repair, or alteration;~~

5 ~~(B) The betterment of any building or facility owned or~~
6 ~~operated by an agency; and~~

7 ~~(C) Any equipment, fixture, or furnishing to be added to~~
8 ~~or used in any building or facility, or any maintenance or operational~~
9 ~~strategy that is designed to reduce utility consumption or lower operating~~
10 ~~costs, and may include, but is not limited to:~~

11 ~~(i) Automated or computerized energy control~~
12 ~~systems;~~

13 ~~(ii) Heating, ventilating, or air conditioning~~
14 ~~system modifications or replacements;~~

15 ~~(iii) Replacements or modifications of lighting~~
16 ~~fixtures to increase the energy efficiency of the lighting system;~~

17 ~~(iv) Indoor air quality improvements to increase air~~
18 ~~quality that conforms to the applicable state building code requirements in~~
19 ~~lieu of an increase in energy usage;~~

20 ~~(v) Any additional building infrastructure~~
21 ~~improvement, cost saving, life safety, or any other improvement that provides~~
22 ~~long term operating cost reductions and are in compliance with the state~~
23 ~~building code; and~~

24 ~~(vi) Any facility operation program that reduces~~
25 ~~operating costs;~~

26 ~~(4)(6)~~ "Qualified provider" means a person or business
27 experienced and trained in the design, analysis, and installation of energy
28 conservation ~~and facility management~~ measures; and

29 ~~(5)(7)~~ "Request for proposals" means a negotiated procurement.

30 (b)(1) Any agency may enter into performance-based efficiency
31 contracts for professional services contracts and may finance the costs
32 associated with the purchase of equipment, labor, and services associated
33 with the implementation of the energy conservation measures provided for in
34 the performance based efficiency contracts or otherwise through the agency's
35 execution either in favor of a qualified provider or third party financing
36 source of any installment contract or lease purchase agreement possessing a

1 financing term not to exceed twenty (20) years, provided that all energy
2 cost, operation, cost avoidance, and other savings associated with the
3 installation of the energy conservation measures provided in the performance
4 based efficiency contract along with any other available and lawful funds
5 that the agency might designate shall be sufficient to offset the annual debt
6 service and other costs of the performance based efficiency contract.

7 ~~(2) Performance based efficiency contracts shall contain a~~
8 ~~guarantee of cost savings.~~

9 (2) Recognizing that Amendment 65 to the Arkansas Constitution and the
10 Revenue Bond Act of 1987, Arkansas Code § 19-9-601 et seq., authorize
11 agencies to issue installment contracts or lease purchase agreements, it is
12 the intent of the General Assembly that energy savings realized through the
13 implementation of energy conservation measures shall be deemed and considered
14 to constitute special revenues that are derived from a source other than
15 assessments for local improvements and taxes, and that the savings can be
16 pledged in support of the repayment of financial obligations incurred under
17 this section to finance energy conservation measures.

18 ~~(3) Any agency may enter into an installment contract or lease~~
19 ~~purchase agreement for the purpose of financing performance based efficiency~~
20 ~~projects for a term not to exceed twenty (20) years.~~

21 ~~(4) The contract shall provide that all payments, except~~
22 ~~obligations on termination of the contract before its expiration, are to be~~
23 ~~made in installments.~~

24 ~~(5) The contract's cost savings shall be guaranteed each year~~
25 ~~during the term of the agreement to the agency on a first party basis.~~

26 ~~(6) The savings shall be sufficient to offset the annual costs~~
27 ~~of the contract.~~

28 (c)(1) A qualified provider to whom ~~the~~ a performance based efficiency
29 contract is awarded shall provide a ~~sufficient~~ bond to the agency for its
30 faithful performance of the equipment installation and the accomplishment of
31 the guaranteed savings.

32 ~~(2) One (1) multiyear performance bond covering the aggregate~~
33 ~~amount of the guaranteed savings over the contract term shall be required and~~
34 ~~shall remain in full force and effect until the termination of the agreement.~~

35 ~~(3)(A)(2)(A)~~ (2)(A) All work performed by ~~or for~~ a qualified provider
36 related to the ~~improvements or modifications~~ energy conservation measures

1 which are intended to result in the efficiency savings ~~guaranteed under the~~
2 ~~contract~~ shall be performed in accordance with drawings and specifications
3 prepared by a professional engineer licensed to practice in Arkansas and
4 drawings and specifications shall be sealed by the professional engineer
5 responsible for their preparation.

6 ~~(B) All drawings and specifications shall be sealed by the~~
7 ~~professional engineer responsible for their preparation.~~

8 (B) All air conditioning products used to accomplish an
9 energy conservation measure shall have capacity and efficiency certified in
10 accordance with the appropriate certification program of the Air Conditioning
11 and Refrigeration Institute or its successor organization and shall display
12 the seal of the certifying agency.

13 ~~(d)(1) State agencies~~ Agencies shall ~~may~~ give a notice of the request
14 for proposals.

15 (2) Notice of the request for proposals shall be published one
16 (1) time each week for no fewer than two (2) consecutive weeks in a newspaper
17 having circulation in the county or city where the contract is to be
18 performed.

19 (3) Proposals shall be sealed and opened in a public forum at
20 least thirty (30) calendar days after the last publication, and the agency
21 shall evaluate the proposals.

22 (e)(1) The request for proposal shall state the:

23 (A) Relative importance of price and other evaluation
24 factors;

25 (B) Tasks to be performed under the contract;

26 (C) Criteria to be used in evaluating the proposals; and

27 (D) Time frames within which the work shall be completed.

28 (2) Requests for proposals shall solicit quotations and shall
29 specify the relative importance of guaranteed savings, price, return on
30 investment, financial performance, stability, quality, technical ability,
31 experience, or other evaluation factors.

32 (f)(1) Negotiations shall be entered into with the person or firm
33 whose proposal is determined in writing by the agency's chief financial
34 officer to be the most advantageous to the state, taking into consideration
35 price and the evaluation factors set forth in the request for proposals.

36 (2) Discussions shall not disclose any information derived from

1 proposals submitted by competing offerers.

2 (3) The contract shall be awarded to the responsible offerer
 3 whose proposal, following negotiations, is determined to be the most
 4 advantageous to the state considering the guaranteed savings and other
 5 evaluation factors set forth in the request for proposals.

6 (g)(1) To obtain the best final offers, the agency may allow proposal
 7 revisions after submissions and before the award of the contract.

8 (2) State agencies shall select the provider deemed best
 9 qualified and capable of performing the desired work and negotiate a contract
 10 for the project.

11 (h)(1) State agencies may enter into a performance-based efficiency
 12 contract with a qualified provider if the agency finds that the amount it
 13 would spend on the measures recommended in the proposal would not exceed the
 14 amount to be saved in either utility, ~~or~~ operational, or other related costs,
 15 ~~or both~~, within a twenty-year period after the date of installation if the
 16 recommendations in the proposal are followed.

17 (2) The qualified provider shall guarantee the annual energy use
 18 savings to the agency every year during the term of the contract and shall
 19 reconcile the guaranteed energy use savings on an annual basis.

20 (3) The qualified provider shall reimburse the agency for any
 21 shortfall of guaranteed savings.

22 (i)(1) The provisions of other sections of this subchapter and of all
 23 other provisions of law governing construction of public facilities and the
 24 purchasing of commodities, including, but not limited to, the provisions of
 25 §§ 22-9-201 - 22-9-212, 19-11-101 - 19-11-118, 19-11-201 - 19-11-210, 19-11-
 26 301 - 19-11-306, 19-11-501 - ~~19-11-504 [repealed]~~ 19-11-503, 19-11-601 - 19-
 27 11-604, and 19-11-802 - 19-11-805 shall not be applicable to performance-
 28 based efficiency contracts.

29 (2) Notwithstanding anything in this subsection to the contrary,
 30 the provisions of §§ 19-11-801, 22-9-101, 22-9-103, 22-9-104, 22-9-213, 19-
 31 11-701 et seq., 22-9-301 et seq., and 22-9-401 et seq. shall remain in full
 32 force and effect and not be affected hereby.

33 (j)(1) The financial obligations of agencies that might be incurred
 34 under this section shall be solely and exclusively evidenced by a resolution
 35 or ordinance that is adopted at a properly convened meeting of that entity
 36 that is responsible for overseeing the daily policies and operations of the

1 agency.

2 (2) Nothing in this section shall require an agency to seek the
3 approval of the State Building Services or any other third party prior to
4 incurring financial obligations under this section.

5 (k) This section is the sole and exclusive means by which energy
6 conservation measures shall be acquired, purchased, installed, constructed,
7 and financed, and the compliance with no other statutes or acts is otherwise
8 required.

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