

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.

Act 2156 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: S3/17/05

A Bill

SENATE BILL 1095

5 By: Senators Altes, *Broadway, Horn*
6 By: Representatives *Walters, Glidewell*
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For An Act To Be Entitled

10 AN ACT CONCERNING ENERGY SAVINGS CONTRACTS FOR
11 SCHOOL DISTRICTS; AND FOR OTHER PURPOSES.
12

Subtitle

14 AN ACT CONCERNING ENERGY SAVINGS
15 CONTRACTS FOR SCHOOL DISTRICTS.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 6-20-401(2), concerning the definition of
21 energy conservation measure, is amended to read as follows:

22 (2) "Energy conservation measure" means any improvement, repair,
23 alteration, or betterment of any new building design or any existing building
24 or facility owned or operated by a school district or any equipment, fixture,
25 or furnishing to be added to or used in any building or facility that is
26 designed to reduce energy consumption or operating costs and may include,
27 without limitation, one (1) or more of the following:

28 (A) Insulation of the building structure or systems within
29 the building;

30 (B) Storm windows or doors, caulking or weather stripping,
31 multi-glazed windows or doors, heat absorbing or heat reflective glazed and
32 coated window or door systems, additional glazing, reductions in glass area,
33 or other window and door system modifications that reduce energy consumption;

34 (C) Automated or computerized energy control systems;

35 (D) Heating, ventilating, or air conditioning system



1 modifications or replacements;

2 (E) Replacements or modifications of lighting fixtures to
3 increase the energy efficiency of the lighting system;

4 (F) Indoor air quality improvements to increase air
5 quality that conform to the applicable state or local building code
6 requirements even in lieu of an increase in energy usage;

7 (G) Any additional building infrastructure improvements,
8 cost savings, and life safety or other safety or conservation measures that
9 provide long-term operating cost reductions and are in compliance with state
10 and local codes; and

11 (H) Building operation programs that reduce operating
12 costs;

13

14 SECTION 2. Arkansas Code § 6-20-402(b)(1)(B), concerning the financing
15 of energy conservation measures, is amended to read as follows:

16 (B)(i) A school district's acquisition of energy
17 conservation measures under § 6-20-405 may be financed by the school district
18 over a ~~fifteen-year~~ twenty-year period after the execution by the school
19 district of the postdated warrant, lease-purchase agreement, or installment
20 contract.

21 (ii) However, no financing shall exceed the
22 reasonably expected useful life of the energy facilities or equipment subject
23 to the energy savings contract in favor of either a qualified provider or a
24 third party financing company designated by a qualified provider.

25

26 SECTION 3. Arkansas Code § 6-20-405 is amended to read as follows:
27 6-20-405. Energy savings contract.

28 (a) As used in this section:

29 (1)(A) "Energy savings contract" means a contract for the
30 implementation of one (1) or more energy conservation measures as defined in
31 § 6-20-401 and shall include a preinstallation energy audit or analysis.

32 (B) The contract may provide that all payments except
33 obligations on termination of the contract before its expiration are to be
34 made over time and that the energy cost savings are guaranteed to the extent
35 necessary to pay the costs of the energy conservation measures.

36 (C) The energy conservation measures to be performed under

1 the contract may be paid for with either revenue or nonrevenue receipts of a
 2 school district or, alternatively, financed by the issuance of postdated
 3 warrants or entering into installment contracts or lease-purchase agreements.

4 (D) Obligations incurred pursuant to a guaranteed energy
 5 savings contract are not included in computing a district's debt ratio.

6 (E) In the event that an energy savings contract is to be
 7 executed concurrently with one or more conventional construction contracts
 8 for a common structure, the energy savings contract shall be separate and
 9 distinct from the other contract;

10 (2)(A) "Qualified provider" means a business that:

11 (i) Possesses a valid Arkansas contractor's license;

12 (ii) ~~Is experienced~~ Has a minimum of five (5) years'
 13 experience in the analysis, design, implementation, and installation of
 14 energy efficiency and facility improvement measures; ~~and~~

15 (iii) ~~Has demonstrated the ability to secure~~
 16 ~~necessary financial measures to support energy savings guarantees,~~ the
 17 technical capabilities to ensure that ~~such~~ the measures generate energy cost
 18 savings, and the ability to provide maintenance and ongoing measurement of
 19 these measures to ensure and verify energy savings; and

20 (iv) Is pre-approved by the Division of Public
 21 School Academic Facilities and Transportation.

22 (B) A qualified provider to whom the contract is awarded:

23 (i) may ~~shall~~ be required to ~~give a sufficient~~
 24 provide a payment and performance bond to the school district for its
 25 faithful performance of the equipment installation ~~or accomplishment of the~~
 26 ~~guaranteed savings;~~ and

27 (ii) May be required to provide a letter of credit,
 28 surety bond, escrowed funds, or a corporate guarantee from a company with an
 29 investment grade credit rating in an amount necessary to ensure the effective
 30 performance of the contract; and

31 (3)(A) "Request for ~~proposals~~ qualifications" means a negotiated
 32 procurement.

33 (B)(i) Notice of the request for ~~proposals~~ qualifications
 34 shall be published one (1) time each week for no fewer than two (2)
 35 consecutive weeks in a newspaper of ~~the school district's choosing and having~~
 36 ~~a circulation in the county or city where the contract is to be performed~~

1 statewide circulation.

2 (ii) ~~Proposals Responses~~ shall be sealed and opened
3 in a public forum at a date within ~~ten (10)~~ twenty (20) days from the last
4 publication, at which point the district shall evaluate the ~~proposals~~
5 qualifications.

6 (b) ~~A school district may utilize a request for proposals to negotiate~~
7 ~~an energy savings contract or may enter into an energy savings contract with~~
8 ~~a qualified provider after evaluating any proposal received from a qualified~~
9 ~~provider through a method other than a request for proposal. The district may~~
10 select the qualified provider or providers best qualified and capable of
11 performing the desired work and negotiate an energy savings contract for the
12 project.

13 (c)(1) A school district may enter into a guaranteed energy savings
14 contract with a qualified provider if it finds that the amount it would spend
15 on the energy conservation measures recommended in the proposal would not
16 exceed the amount to be saved in ~~either~~ any combination of energy costs or
17 operational costs, or ~~both,~~ future capital expenditures avoided within a
18 ~~fifteen-year~~ twenty-year period from the date of installation if the
19 recommendations in the proposal are followed.

20 (2) The qualified provider's proposal shall include:

21 (A) The estimates of all costs of installation,
22 modifications, or remodeling, including, without limitation, costs of a
23 preinstallation energy audit or analysis, design, engineering, installation,
24 maintenance, repairs, debt service, postinstallation project monitoring, and
25 data collection and reporting, as well as whether energy consumed or the
26 operating costs, or both, will be reduced;

27 (B) The qualifications of the provider; ~~and~~

28 (C) Certification that all energy-consuming products
29 utilized in the projects will be certified with the appropriate standards by
30 the Air Conditioning and Refrigeration Institute;

31 (D) A statement from an Arkansas licensed professional
32 engineer that he or she was a member of the qualified provider's project team
33 that completed a comprehensive energy audit and analysis of the school
34 district's facilities; and

35 (E) The reasonably expected useful life of each
36 recommended energy conservation measure.

1 (3)(A) ~~The district may select the qualified provider or~~
 2 ~~providers best qualified and capable of performing the desired work and~~
 3 ~~negotiate an energy savings contract for the project. Except as provided in~~
 4 subdivision (c)(3)(B) of this section, before entering into any energy
 5 savings contract, the contract shall be reviewed as follows:

6 (i) The contract shall be reviewed by an engineer
 7 who is:

8 (a) Licensed in the State of Arkansas; and

9 (b) Designated by the Division of Public
 10 School Academic Facilities and Transportation as qualified to review energy
 11 savings contracts; and

12 (c)(1) The engineer conducting the contract
 13 review shall report to the district any comments or issues that he or she
 14 believes merit consideration by the district before the district executes the
 15 energy savings contract.

16 (2) The engineer shall bear no liability
 17 for any estimation of energy savings generated as part of a contract review
 18 under subdivision (c)(3)(B) of this section.

19 (B) Third party review as provided in subdivision (3)(B)
 20 of this section shall not be required if the qualified provider demonstrates
 21 the provider is a current member in good standing of the National Association
 22 of Energy Service Companies, Energy Service Company category.

23 (d)(1) The qualified provider shall provide to the school district an
 24 annual reconciliation report of the guaranteed energy use savings.

25 (2) The qualified provider shall reimburse the school district
 26 for any annual shortfall of guaranteed energy use savings projected in the
 27 project.

28 (e) This section shall constitute the sole authority necessary to
 29 accomplish the purposes of this section without regard to compliance with
 30 other laws which may specify procedural requirements for execution of
 31 contracts.

32
 33 /s/ Altes

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 36 APPROVED: 4/13/2005

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