

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 659 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: H3/21/07

A Bill

HOUSE BILL 2715

5 By: Representatives Harris, Cook
6 By: Senators Miller, Bookout
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9 **For An Act To Be Entitled**

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

13 **Subtitle**

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

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

20 *SECTION 1. Arkansas Code § 6-20-405 is amended to read as follows:*

21 *6-20-405. Energy savings contract.*

22 *(a) As used in this section:*

23 *(1)(A) "Energy savings contract" means a contract for the*
24 *implementation of one (1) or more energy conservation measures as defined in*
25 *§ 6-20-401 and shall include ~~a~~ an investment grade preinstallation energy*
26 *audit ~~or~~ and analysis.*

27 *(B) The contract may provide that all payments except*
28 *obligations on termination of the contract before its expiration are to be*
29 *made over time and that the energy cost savings are guaranteed by the*
30 *qualified provider to the extent necessary to pay all of the costs of the*
31 *energy conservation measures, including all costs of financing and annual*
32 *services that may include the measurement and verification of the guaranteed*
33 *savings.*

34 *(C) The energy conservation measures to be performed under*
35 *the contract may be paid for with ~~either~~ any combination of revenue or*



1 nonrevenue receipts of a school district or, alternatively, financed by the
2 issuance of postdated warrants or entering into installment contracts, or
3 lease-purchase agreements.

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

7 (E) If an energy savings contract is to be executed
8 concurrently with one (1) or more conventional construction contracts for a
9 common structure, the energy savings contract shall be separate and distinct
10 from the other contract;

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

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

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

16 (iii) Has the technical and financial capabilities
17 to ensure that the measures generate energy cost savings and the ability to
18 provide maintenance and ongoing measurement of these measures to ensure and
19 verify energy savings; and

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

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

23 (i) Shall be required to provide a payment and
24 performance bond to the school district for its faithful performance of the
25 equipment installation; and

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

30 (3)(A) "Request for qualifications" means a negotiated
31 procurement.

32 (B)(i) Notice of the request for qualifications shall be
33 published one (1) time each week for no ~~fewer~~ less than two (2) consecutive
34 weeks in a newspaper of statewide circulation.

35 (ii) Responses shall be sealed and opened in a
36 public forum at a date within ~~twenty (20)~~ thirty (30) days from the last

1 publication, at which point the school district shall evaluate the
2 qualifications.

3 (b) The school district may select the qualified provider or providers
4 best qualified and capable of performing the desired work and negotiate an
5 energy savings contract for the project.

6 (c)(1) A school district may enter into a guaranteed energy savings
7 contract with a qualified provider if it finds that the amount it would spend
8 on the energy conservation measures ~~recommended in the proposal~~ detailed in
9 the contract would not exceed the amount to be saved in any combination of
10 energy costs or operational costs, or future capital expenditures avoided
11 within a twenty-year period from the date of installation if the
12 recommendations in the proposal are followed.

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

14 (A) The estimates of all costs of installation,
15 modifications, or remodeling, including, without limitation, costs of ~~a~~ an
16 investment grade preinstallation energy audit ~~or~~ and analysis, design,
17 engineering, installation, commissioning, maintenance, repairs, debt service,
18 postinstallation project monitoring, savings measurement and verification,
19 and data collection and reporting, as well as whether energy consumed or the
20 operating costs, or both, will be reduced;

21 (B) The qualifications of the provider;

22 (C) ~~Certification that all energy-consuming products~~
23 ~~utilized in the projects will be certified with the appropriate standards by~~
24 ~~the Air Conditioning and Refrigeration Institute~~ The amount and specific
25 sources of operational savings and capital cost avoidance that the school
26 district acknowledges will occur without future measurement and verification;
27 and

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

32 (E) The reasonably expected useful life of each
33 recommended energy conservation measure.

34 (3)(A) Except as provided in subdivision (c)(3)(C) of this
35 section, before entering into any energy savings contract, the contract shall
36 be reviewed by an engineer who is:

1 (i) Licensed in the State of Arkansas; and
2 (ii) Designated by the division as qualified to
3 review energy savings contracts.

4 (B)(i) The engineer conducting the contract review shall
5 report to the district any comments or issues that he or she believes merit
6 consideration by the district before the district executes the energy savings
7 contract.

8 (ii) The engineer shall bear no liability for any
9 estimation of energy savings generated as part of a contract review under
10 this subdivision (c)(3).

11 (C) Third-party review as provided in this subdivision
12 (c)(3) shall not be required if the qualified provider demonstrates that the
13 provider is a current member in good standing of the Energy Service Company
14 or Energy Service Provider category of the National Association of Energy
15 Service Companies.

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

18 (2) The qualified provider shall reimburse the school district
19 for any annual shortfall of guaranteed energy-use savings ~~projected in the~~
20 project as stated in the contract.

21 (e) This section shall constitute the sole authority necessary to
22 accomplish the purposes of this section without regard to compliance with
23 other laws which may specify procedural requirements for execution of
24 contracts.

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26 /s/ Harris, et al

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APPROVED: 3/28/2007

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