

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

As Engrossed: H3/14/03 H4/8/03

A Bill

HOUSE BILL 2179

5 By: Representative Hutchinson
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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 issued by a surety*
28 *company that is licensed to do business in the State of Arkansas;*

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

35 *(4) "Energy conservation measures" means the improvement,*
36 *installation, repair, or alteration of any equipment, fixture, furnishing, or*



1 other improvement to be added to or used in any building or facility, or any
 2 maintenance or operational strategy that is designed to reduce utility
 3 consumption or lower operating costs, and may include, but is not limited to:

4 (A) Insulation of the building structure or system
 5 within the building;

6 (B) Windows or doors, caulking or weather stripping,
 7 multi-glazed windows or doors, heat absorbing or heat reflective glazed and
 8 coated window or door systems, additional glazing, reductions in glass area,
 9 or other window and door system modifications that reduce energy consumption;

10 (C) Automated or computerized energy control
 11 systems;

12 (D) Heating, ventilating, or air conditioning system
 13 modifications, replacements, or conversions;

14 (E) Replacements, retrofits, or modifications of
 15 lighting fixtures to increase the energy efficiency of the lighting system
 16 that conform to the Illuminating Engineers Society standards, or comparable
 17 successors thereto;

18 (F) Indoor air quality improvements to increase air
 19 quality that conforms to the applicable state building code requirements;

20 (G) 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;

24 (H) Equipment used to produce electricity; and

25 (I) Any facility operation, administration, or
 26 management program that reduces operating costs.

27 ~~(3)~~(5) "Performance-based efficiency contract" means a contract
 28 with a qualified provider for+ the construction, installation, and
 29 implementation of energy conservation measures that may or may not include
 30 provisions in the contract, or in an accompanying agreement, under which the
 31 costs associated with the construction, installation, and implementation of
 32 energy conservation measures may be financed and paid over a specified period
 33 of time with interest;

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

36 ~~(B) The betterment of any building or facility owned or~~

1 ~~operated by an agency; and~~

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

6 ~~(i) Automated or computerized energy control~~
 7 ~~systems;~~

8 ~~(ii) Heating, ventilating, or air conditioning~~
 9 ~~system modifications or replacements;~~

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

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

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

19 ~~(vi) Any facility operation program that reduces~~
 20 ~~operating costs;~~

21 ~~(4)(6)~~ "Qualified provider" means a person or business
 22 experienced and trained in the design, analysis, ~~and~~ installation,
 23 verification and efficiency measurement of energy conservation ~~and facility~~
 24 management measures who is properly licensed as a contractor in the State of
 25 Arkansas; and

26 ~~(5)(7)~~ "Request for proposals" means a negotiated procurement
 27 for a qualified provider to provide services.

28 (b)(1) Any agency may enter into performance-based efficiency
 29 contracts for professional services contracts with a qualified provider and
 30 may finance the costs associated with the purchase of equipment, labor, and
 31 services associated with the implementation of the energy conservation
 32 measures provided for in the performance based efficiency contracts or
 33 otherwise through the agency's execution either in favor of a qualified
 34 provider or third party financing source of any installment contract or lease
 35 purchase agreement possessing a financing term not to exceed twenty (20)
 36 years, provided that all utility costs, operational costs, cost avoidance,

1 and other savings associated with the installation of the energy conservation
2 measures provided in the performance based efficiency contract along with any
3 other available and lawful funds that the agency might designate shall be
4 sufficient to offset the annual debt service and other costs of the
5 performance based efficiency contract.

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

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

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

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.~~ All cost savings identified in performance based
24 efficiency contracts shall be guaranteed to the agency by a qualified
25 provider each year during the term of the contract.

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

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

30 ~~(c)(1) A qualified provider to whom the contract is awarded shall~~
31 ~~provide a sufficient bond to the agency for its faithful performance of the~~
32 ~~equipment installation and the accomplishment of the guaranteed savings. A~~
33 qualified provider to whom a performance based efficiency contract is awarded
34 shall provide a bond assuring the faithful and full construction and
35 installation of the equipment that is the subject of the performance based
36 efficiency contract and may be required to provide, at the request of the

1 agency, an annually renewable bond or other assurance that is acceptable to
2 the agency that guarantees the agency's realization of those cost savings
3 that are identified in the performance based efficiency contract.

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

7 ~~(3)(A) All work by or for a qualified provider related to the~~
8 ~~improvements or modifications which are intended to result in the savings~~
9 ~~guaranteed under the contract shall be performed in accordance with drawings~~
10 ~~and specifications prepared by a professional engineer licensed to practice~~
11 ~~in Arkansas.~~

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

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

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

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

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

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

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

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

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

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

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

1 (2) Discussions shall not disclose any information derived from
2 proposals submitted by competing offerers.

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

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

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

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

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

21 (3)(A) ~~The qualified provider shall reimburse the agency for any~~
22 ~~shortfall of guaranteed savings~~ The qualified provider shall guarantee the
23 annual dollar or cost savings, when compared with an established baseline for
24 previous fuel and utility costs, to the agency every year during the term of
25 the performance based efficiency contract and shall reconcile the guaranteed
26 savings on an annual basis.

27 (B) All calculations of cost savings shall be conducted in
28 accordance with Federal Energy Management Policy or the International
29 Performance, Measurement and Verification Protocol, or successor comparables
30 thereto.

31 (i)(1) The provisions of other sections of this subchapter and of all
32 other provisions of law governing construction of public facilities and the
33 purchasing of commodities, including, but not limited to, the provisions of
34 §§ 22-9-201 - 22-9-212, 19-11-101 - 19-11-118, 19-11-201 - 19-11-210, 19-11-
35 301 - 19-11-306, 19-11-501 - ~~19-11-504~~ ~~[repealed]~~ 19-11-503, 19-11-601 - 19-
36 11-604, and 19-11-802 - 19-11-805 shall not be applicable to performance-

1 based efficiency contracts.

2 (2) Notwithstanding anything in this subsection to the contrary,
3 the provisions of §§ 19-11-801, 22-9-101, 22-9-103, 22-9-104, 22-9-213, 19-
4 11-701 et seq., 22-9-301 et seq., and 22-9-401 et seq. shall remain in full
5 force and effect and not be affected hereby.

6 (j)(1) The financial obligations of agencies that might be incurred
7 under this section shall be solely and exclusively evidenced by a resolution
8 or ordinance that is adopted at a properly convened meeting of that entity
9 that is responsible for overseeing the daily policies and operations of the
10 agency.

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

14 (k) Title to all energy conservation measures that are constructed or
15 installed under this section shall pass to the agency upon installation or
16 implementation, and the agency is authorized and empowered to grant a
17 security interest and pledge its rights in and to the energy conservation
18 measures to the qualified provider of its assignees to secure those financial
19 obligations incurred by the agency under this section.

20 (l) All plans and specifications associated with the construction and
21 installation of energy conservation measures shall be submitted to State
22 Building Services for review, except for institutions of higher education
23 that are exempt from review and approval of State Building Services which
24 shall follow those procedures otherwise established by their governing
25 boards.

26 /s/ Hutchinson
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