

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

*As Engrossed: S3/5/13*

# A Bill

SENATE BILL 340

5 By: Senator D. Johnson  
6 By: Representative Leding  
7

## For An Act To Be Entitled

9 AN ACT TO AMEND THE GUARANTEED ENERGY COST SAVINGS  
10 ACT; TO ALLOW STATE AGENCIES TO USE MAINTENANCE AND  
11 OPERATIONS APPROPRIATIONS FOR DEBT SERVICE RELATED TO  
12 A GUARANTEED ENERGY COST SAVINGS CONTRACT; AND FOR  
13 OTHER PURPOSES.  
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## Subtitle

16 TO AMEND THE GUARANTEED ENERGY COST  
17 SAVINGS ACT AND TO ALLOW STATE AGENCIES  
18 TO USE MAINTENANCE AND OPERATIONS  
19 APPROPRIATIONS FOR DEBT SERVICE RELATED  
20 TO A GUARANTEED ENERGY COST SAVINGS  
21 CONTRACT.  
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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27 SECTION 1. Arkansas Code § 19-4-522(d)(1), concerning maintenance and  
28 operations subclassifications and expenses, is amended to add an additional  
29 subdivision to read as follows:

30 (S) Debt service on equipment or measures required by a  
31 guaranteed energy cost savings contract executed under the Guaranteed Energy  
32 Cost Savings Act, § 19-11-1201 et seq.;  
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34 SECTION 2. Arkansas Code § 19-11-1202(1)(A), concerning the definition  
35 of "energy cost savings measure" under the Guaranteed Energy Cost Savings  
36 Act, is amended to read as follows:



1 (1)(A) "Energy cost savings measure" means:

2 (i) A new facility that is designed to reduce the  
3 consumption of energy or natural resources or operating costs as a result of  
4 changes that:

5 (a) Do not degrade the level of service or  
6 working conditions;

7 (b) Are measurable and verifiable under the  
8 International Performance Measurement and Verification Protocol, as ~~it~~  
9 ~~existed on January 1, 2005~~ adopted by the Arkansas Energy Office in the rules  
10 required under § 19-11-1207; and

11 (c) Are measured and verified by an  
12 ~~independent~~ audit performed by a qualified provider; or

13 (ii) An existing facility alteration that is  
14 designed to reduce the consumption of energy or natural resources or  
15 operating costs as a result of changes that conform with subdivisions  
16 (1)(A)(i)(a) and (b) of this section.

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18 SECTION 3. Arkansas Code § 19-11-1202(2)(A), concerning the definition  
19 of "guaranteed energy cost savings contract" under the Guaranteed Energy Cost  
20 Savings Act, is amended to read as follows:

21 (2)(A) "Guaranteed energy cost savings contract" means a  
22 contract for the implementation of one (1) or more energy cost savings  
23 measures and services provided by ~~qualified energy service companies~~ a  
24 qualified provider in which the energy and cost savings achieved by the  
25 installed energy project cover all project costs, including financing, over a  
26 specified contract term.

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28 SECTION 4. Arkansas Code § 19-11-1202(5), concerning the definition of  
29 "qualified provider" under the Guaranteed Energy Cost Savings Act, is amended  
30 to read as follows:

31 (5) "Qualified provider" means a person or business, including  
32 all subcontractors and employees of that person or business and third-party  
33 financing companies, that:

34 (A) Is properly licensed in the State of Arkansas;

35 (B) Has been reviewed and certified by the Arkansas Energy  
36 Office as a qualified provider under this subchapter;

1                   (C) Is experienced in the design, implementation,  
2 ~~financing, measurement, verification,~~ and installation of energy cost savings  
3 measures; ~~and~~

4                   ~~(C)~~ (D) Has ~~demonstrated~~ at least five (5) years of  
5 experience in the analysis, design, implementation, ~~and~~ installation,  
6 measurement, and verification of energy efficiency and facility improvements;  
7 ~~and~~

8                   (E) Has the ability to arrange or provide the necessary  
9 financing to support a guaranteed energy cost savings contract; and

10                   (F) Has the ability to perform under a contract that  
11 requires the person or business to guarantee the work performed by one (1) or  
12 more subcontractors; and

13  
14           SECTION 5. Arkansas Code § 19-11-1205 is amended to read as follows:

15           19-11-1205. Evaluation of ~~proposals~~ responses to solicitations.

16           (a) A In a state agency's evaluation of each qualified provider's  
17 proposal response to a solicitation under § 19-11-1204, the state agency  
18 shall include an analysis of:

19                   ~~(1) The estimates of all costs, including, but not limited to,~~  
20 ~~modifications, remodeling, a preinstallation energy audit or analysis,~~  
21 ~~design, engineering, installation, maintenance, repairs, debt service, and~~  
22 ~~postinstallation project monitoring, data collection, and reporting;~~

23                   ~~(2) A determination whether there will be a (1) Whether the~~  
24 qualified provider meets the objectives of the solicitation, including  
25 without limitation a reduction in the state agency's energy consumption or  
26 operating costs resulting from the proposal a guaranteed energy cost savings  
27 contract with the qualified provider;

28                   ~~(3) (2) The qualifications and experience of the properly state-~~  
29 licensed qualified provider;

30                   ~~(4) The relative importance of price, return of investment,~~  
31 ~~financial performance, stability, quality, technical ability, experience, or~~  
32 ~~any other relevant evaluation factor;~~

33                   ~~(5) Tasks to be performed under the proposal; and~~

34                   ~~(6) Timeframes within which the work will be completed.~~

35                   (3) The technical approach to the energy cost savings measures;

36                   (4) The financial aspects of the energy cost savings measures;

1           (5) The overall benefit to the state agency; and

2           (6) Any other relevant factors.

3           (b) After evaluating ~~the proposals~~ a response to a solicitation as  
4 required under subsection (a) of this section, a state agency may:

5           (1) ~~The state agency may reject any proposal~~ Reject the  
6 response; or

7           (2) Award a contract to a qualified provider to conduct an  
8 energy audit to be used in developing the guaranteed energy cost savings  
9 contract in a manner consistent with the Arkansas Procurement Law, § 19-11-  
10 201 et seq.

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12           SECTION 6. Arkansas Code § 19-11-1206 is amended to read as follows:

13           19-11-1206. ~~Contract~~ Guaranteed energy cost savings contract  
14 requirements.

15           (a) ~~A~~ The following provisions are required in a guaranteed energy  
16 cost savings contract shall include the properly state-licensed-qualified  
17 provider's guarantee that:

18           (1) A statement that the state agency shall maintain and operate  
19 the energy cost savings measures as defined in the guaranteed energy cost  
20 savings contract; and

21           (2) A guarantee by the qualified provider that:

22           ~~(1)~~ (A) The energy cost savings and operational cost  
23 savings to be realized over the term of the guaranteed energy cost savings  
24 contract ~~shall~~ meet or exceed the costs of the energy cost savings measures;  
25 and

26           ~~(2)~~ The payback period for heating, ventilation, and air  
27 conditioning systems shall be based on the equipment capacity and efficiency  
28 as certified by the Air Conditioning and Refrigeration Institute; and

29           ~~(3)~~ (B) If the annual energy or operational cost savings  
30 fail to meet or exceed the annual costs of the energy cost savings measure as  
31 required by the guaranteed energy cost savings contract, the qualified  
32 provider shall reimburse the state agency for any shortfall of guaranteed  
33 energy cost savings ~~on an annual basis~~ over the term of the guaranteed energy  
34 cost savings contract.

35           (b) The maximum term for a guaranteed energy cost savings contract ~~may~~  
36 ~~not have a term beyond~~ is twenty (20) years after the implementation of the

1 energy cost savings measures.

2 (c) Before entering into a guaranteed energy cost savings contract,  
3 the state agency shall require the qualified provider to file with the state  
4 agency a ~~bid bond, payment and performance bond~~, or similar assurance as  
5 provided under § 19-11-235.

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7 SECTION 7. Arkansas Code Title 19, Chapter 11, Subchapter 12 is  
8 amended to add two additional sections to read as follows:

9 19-11-1207. Administration of subchapter – Fees.

10 The Arkansas Energy Office:

11 (1) Shall:

12 (A) Administer this subchapter; and

13 (B) Promulgate rules for the administration of this  
14 subchapter within nine (9) months of the effective date of this subchapter,  
15 including without limitation the following:

16 (i) Standards for measuring and verifying the  
17 performance of energy cost savings measures;

18 (ii) A standard contract form for use by a state  
19 agency in entering into a guaranteed energy cost savings contract; and

20 (iii) The adoption of the International Performance  
21 Measurement and Verification Protocol as it existed on a specific date; and

22 (2) May establish and collect a reasonable fee to cover the  
23 costs of administering this subchapter.

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25 19-11-1208. Use of maintenance and operation appropriations.

26 Notwithstanding any law to the contrary, a state agency may utilize  
27 maintenance and operations appropriations for the payment of equipment and  
28 energy cost savings measures required by a guaranteed energy cost savings  
29 contract.

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31 */s/D. Johnson*  
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