

State of Arkansas
85th General Assembly
Regular Session, 2005

A Bill

SENATE BILL 3

By: Senator Altes

For An Act To Be Entitled

AN ACT TO AUTHORIZE GOVERNMENTAL UNITS TO ENTER
INTO GUARANTEED ENERGY COST SAVINGS CONTRACTS; TO
PROVIDE PROCEDURES FOR BID PROPOSALS,
EVALUATIONS, AND CONTRACT AWARDS; AND FOR OTHER
PURPOSES.

Subtitle

THE GUARANTEED ENERGY COST SAVINGS ACT.

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

SECTION 1. Arkansas Code Title 19, Chapter 11, is amended to add an additional subchapter to read as follows:

19-11-1201. Title.

This subchapter shall be known and may be cited as the "Guaranteed Energy Cost Savings Act".

19-11-1202. Definitions.

As used in this subchapter:

(1) "Energy cost savings measure" means:

(A) A training program or new or existing facility alteration designed to reduce the consumption of energy or natural resources or operating costs;

(B) An "energy cost savings measure" may include:

(i) Insulation and reduced air infiltration of the building structure including walls, ceilings, and roofs or systems within the building;



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

(iii) Automated or computerized energy control systems, including computer software and technical data licenses;

(iv) Heating, ventilating, or air conditioning system modifications or replacements;

(v) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;

(vi) Indoor air quality improvements;

(vii) Energy recovery systems;

(viii) Electric systems improvements;

(ix) Life safety measures that provide long-term operating cost reductions;

(x) Building operation programs that reduce operating costs;

(xi) Other energy-conservation-related improvements or equipment, including improvements or equipment related to renewable energy; or

(xii) Water and other natural resources conservation;

(2) "Governmental unit" means:

(A) A state government agency, board, commission, department, institution, college, university, technical school, legislative body, or other establishment or official of the executive, judicial, or legislative branches of the state authorized by law to enter into contracts; and

(B) Local political subdivisions, including counties, municipalities, or public school districts;

(3) "Guaranteed energy cost savings contract" means:

(A) A contract for the implementation of one (1) or more

1 energy cost savings measures;

2 (B) A "guaranteed energy cost savings contract" does not
3 include improvements or equipment that allow or cause water from any
4 condensing, cooling, or industrial process or any system of nonpotable usage
5 over which public water supply system officials do not have sanitary control
6 to be returned to the potable water supply;

7 (4) "Operational cost savings" means expenses eliminated and
8 future replacement expenditures avoided as a result of new equipment
9 installed or services performed;

10 (5) "Qualified provider" means a person or business experienced
11 in the design, implementation, and installation of energy cost savings
12 measures; and

13 (6) "Request for proposals" means a negotiated procurement that
14 is announced through a public notice requesting innovative solutions and
15 proposals for energy conservation measures from a governmental unit that will
16 administer the guaranteed energy cost savings contract.

17
18 19-11-1203. Energy cost savings measures authorized.

19 (a) A governmental unit may enter into a guaranteed energy cost
20 savings contract in order to reduce energy consumption or operating costs of
21 government facilities in accordance with this subchapter.

22 (b) A governmental unit, or several governmental units together, may
23 enter into an installment payment contract or lease purchase agreement with a
24 qualified provider for the purchase and installation of energy cost savings
25 measures in accordance with this subchapter.

26 (c) All energy cost savings measures shall comply with current local,
27 state, and federal construction and environmental codes and regulations.

28
29 19-11-1204. Requests for proposals.

30 (a) Before entering into a guaranteed energy cost savings contract,
31 the governmental unit shall announce by public notice its request for
32 proposals.

33 (b) The request for proposals shall include:

34 (1) The name and address of the governmental unit;

35 (2) The name, address, title, and phone number of a
36 contact person;

1 (3) The date, time, and place where requests must be received;
2 (4) The evaluation criteria for evaluating the requests; and
3 (5) Any stipulations and clarifications the
4 governmental unit may require.

5
6 19-11-1205. Evaluation of proposals.

7 (a) The governmental unit's evaluation of each qualified provider's
8 proposal shall include an analysis of:

9 (1) The estimates of all costs of installation, modifications,
10 or remodeling, including costs of a preinstallation energy audit or analysis,
11 design, engineering, installation, maintenance, repairs, debt service, and
12 postinstallation project monitoring, data collection, and reporting, as well
13 as a determination whether energy consumed or the operating costs, or both,
14 will be reduced; and

15 (2) The qualifications of the provider.

16 (b) After reviewing the proposals, the governmental unit shall select
17 the qualified provider that best meets the needs of the unit if it finds that
18 the amount that unit would spend on the energy cost savings measures
19 recommended in the proposal would not exceed the amount of energy or
20 operational cost savings, or both, within a ten-year period from the date
21 installation is completed, if the recommendations in the proposal are
22 followed.

23 (c) No less than ten (10) days before the meeting at which it proposes
24 to award a guaranteed energy cost savings contract, the governmental unit
25 shall provide public notice of the meeting, the names of the parties to the
26 contract, and the purpose of the contract.

27
28 19-11-1206. Contract requirements.

29 (a) The guaranteed energy cost savings contract shall include the
30 qualified provider's guarantee that:

31 (1) Either the energy or operational cost savings, or both, will
32 meet or exceed the costs of the energy cost savings measures within ten (10)
33 years; or

34 (2) The qualified provider shall reimburse the governmental unit
35 for any shortfall of guaranteed energy cost savings on an annual basis.

36 (b) The guaranteed energy cost savings contract may provide for

1 payments over a period of time, not to exceed ten (10) years.

2 (c) Notwithstanding any law to the contrary, before entering into a
3 guaranteed energy cost savings contract, the governmental unit may require
4 the qualified provider to file with the unit a payment and performance bond
5 relating to the installation of energy cost savings measures that is:

6 (1) In an amount the governmental unit finds reasonable and
7 necessary to protect its interests;

8 (2) Covers the value of the guaranteed savings on the contract;
9 and

10 (3) Conditioned on the faithful execution of the terms of the
11 contract.

12 (d) A guaranteed energy cost savings contract may extend beyond the
13 fiscal year in which it becomes effective.

14
15 19-11-1207. No savings reduction allowed on state appropriation.

16 State aid and other amounts appropriated for distribution or
17 reimbursement to a governmental unit may not be reduced as a result of energy
18 cost savings realized from a guaranteed energy cost savings contract or a
19 lease purchase agreement for the purchase and installation of energy cost
20 savings measures.