

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 85th General Assembly  
3 Regular Session, 2005

# A Bill

SENATE BILL 1091

4  
5 By: Senators Altes, Broadway

## For An Act To Be Entitled

6  
7  
8 TO AUTHORIZE STATE AGENCIES TO ENTER INTO  
9 GUARANTEED ENERGY COST SAVINGS CONTRACTS; TO  
10 PROVIDE PROCEDURES FOR BID PROPOSALS,  
11 EVALUATIONS, AND CONTRACT AWARDS; AND TO REPEAL §  
12 19-4-1414; AND FOR OTHER PURPOSES.  
13

## Subtitle

14  
15 THE GUARANTEED ENERGY COST SAVINGS ACT  
16 AND THE REPEAL OF 19-4-1414.  
17

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

21  
22 SECTION 1. Arkansas Code Title 19, Chapter 11, is amended to add an  
23 additional subchapter to read as follows:

24 19-11-1201. Title.

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

27  
28 19-11-1202. Definitions.

29 As used in this subchapter:

30 (1)(A) "Energy cost savings measure" means a new or existing  
31 facility alteration that is designed to reduce the consumption of energy or  
32 natural resources or operating costs as a result of changes that:

33 (i) Do not degrade the level of service or working  
34 conditions; and

35 (ii) Are measurable and verifiable under the  
36 International Performance Measurement and Verification Protocol, as it



1 existed on January 1, 2005.

2 (B) "Energy cost savings measure" includes:

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

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

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

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

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

20 (vi) Indoor air quality improvements;

21 (vii) Energy recovery systems;

22 (viii) Electric system improvements;

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

25 (x) Building operation programs that reduce  
26 operating costs;

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

30 (xii) Water and other natural resources  
31 conservation; or

32 (xiii) An alteration or measure identified through a  
33 comprehensive audit or assessment of new or existing facilities;

34 (2)(A) "Guaranteed energy cost savings contract" means a  
35 contract for the implementation of one (1) or more energy cost savings  
36 measures and services provided by qualified energy service companies in which

1 the energy and cost savings achieved by the installed energy project cover  
 2 all project costs, including financing, over a specified contract term.

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

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

11 (4) "Qualified provider" means a person or business, including  
 12 all subcontractors and employees of that person or business and third party  
 13 financing companies, that:

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

15 (B) Is experienced in the design, implementation,  
 16 financing, and installation of energy cost savings measures; and

17 (C) Has demonstrated at least five (5) years of experience  
 18 in the analysis, design, implementation, and installation of energy  
 19 efficiency and facility improvements;

20 (5) "Public notice" means the same as the definition of public  
 21 notice under § 19-11-203; and

22 (6) "State agency" means the same as the definition of state  
 23 agency under § 19-11-203.

24  
 25 19-11-1203. Energy cost savings measures authorized.

26 (a)(1) A state agency may enter into a guaranteed energy cost savings  
 27 contract in order to reduce energy consumption or operating costs of  
 28 government facilities in accordance with this subchapter.

29 (2) A state agency, or several state agencies together, may  
 30 enter into an installment payment contract or lease purchase agreement with a  
 31 qualified provider for the purchase and installation of energy cost savings  
 32 measures in accordance with this subchapter.

33 (b) All energy cost savings measures shall comply with current local,  
 34 state, and federal construction and environmental codes and regulations.

35 (c) The provisions of the Arkansas Procurement Law, § 19-11-201 et  
 36 seq., shall control if there is any conflict with that law and the provisions

1 of this subchapter.

2  
3 19-11-1204. Method of solicitation.

4 Any solicitation of a guaranteed energy cost savings contract by a  
5 state agency shall be consistent with the Arkansas Procurement Law, § 19-11-  
6 201 et seq.

7  
8 19-11-1205. Evaluation of proposals.

9 (a) The state agency's evaluation of each qualified provider's  
10 proposal shall include an analysis of:

11 (1)(A) The estimates of all costs, including but not limited to,  
12 modifications, remodeling, a preinstallation energy audit or analysis,  
13 design, engineering, installation, maintenance, repairs, debt service, and  
14 postinstallation project monitoring, data collection, and reporting.

15 (B) A determination whether there will be a reduction in  
16 energy consumption or operating costs resulting from the proposal;

17 (2) The qualifications of the properly state-licensed provider;

18 (3) The relative importance of price, return of investment,  
19 financial performance, stability, quality, technical ability, experience, or  
20 any other relevant evaluation factor;

21 (4) Tasks to be performed under the proposal; and

22 (5) Timeframes within which the work will be completed.

23 (b) After evaluating the proposals:

24 (1) The state agency may reject any proposal; or

25 (2) Award the contract in a manner consistent with the Arkansas  
26 Procurement Law, § 19-11-201 et seq.

27  
28 19-11-1206. Contract requirements.

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

31 (1) The energy and operational cost savings to be realized over  
32 the term of the contract shall meet or exceed the costs of the energy cost  
33 savings measures;

34 (2) The payback period for heating, ventilation, and air  
35 conditioning systems shall be based on the equipment capacity and efficiency  
36 as certified by the American Refrigeration Institute; and

1           (3) If the annual energy or operational cost savings fail to  
 2 meet or exceed the annual costs of the energy cost savings measure as  
 3 required by the contract, the qualified provider shall reimburse the state  
 4 agency for any shortfall of guaranteed energy cost savings on an annual  
 5 basis.

6           (b) The guaranteed energy cost savings contract may not have a term  
 7 beyond twenty (20) years.

8           (c) Before entering into a guaranteed energy cost savings contract,  
 9 the state agency shall require the qualified provider to file with the agency  
 10 a bid bond, performance bond, or similar assurance as provided under § 19-11-  
 11 235.

12  
 13           SECTION 2. Arkansas Code Annotated Section 19-4-1414 is repealed.

14           ~~19-4-1414. Performance based efficiency contracts.~~

15           ~~(a) For purposes of this section:~~

16                   ~~(1) "Agency" means any state board, commission, agency,~~  
 17 ~~department, and institution of higher education;~~

18                   ~~(2) "Efficiency savings" means cost savings which result from~~  
 19 ~~changes that do not degrade the level of service or working conditions and~~  
 20 ~~which are verifiable by comparing expenditures that occur after the~~  
 21 ~~improvements with the same type or expenditures occurring before the~~  
 22 ~~improvements are made;~~

23                   ~~(3) "Performance based efficiency contract" means a contract~~  
 24 ~~with a qualified provider for:~~

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

27                           ~~(B) The betterment of any building or facility owned or~~  
 28 ~~operated by an agency; and~~

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

33                                   ~~(i) Automated or computerized energy control~~  
 34 ~~systems;~~

35                                   ~~(ii) Heating, ventilating, or air conditioning~~  
 36 ~~system modifications or replacements;~~

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

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

6                   ~~(v) Any additional building infrastructure~~  
7 ~~improvement, cost saving, life safety, or any other improvement that provides~~  
8 ~~long-term operating cost reductions and are in compliance with the state~~  
9 ~~building code; and~~

10                   ~~(vi) Any facility operation program that reduces~~  
11 ~~operating costs;~~

12                   ~~(4) "Qualified provider" means a person or business~~  
13 ~~experienced and trained in the design, analysis, and installation of energy~~  
14 ~~conservation and facility management measures; and~~

15                   ~~(5) "Request for proposals" means a negotiated~~  
16 ~~procurement.~~

17           ~~(b)(1) Any agency may enter into performance based efficiency~~  
18 ~~contracts for professional services contracts.~~

19                   ~~(2) Performance based efficiency contracts shall contain a~~  
20 ~~guarantee of cost savings.~~

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

24                   ~~(4) The contract shall provide that all payments, except~~  
25 ~~obligations on termination of the contract before its expiration, are to be~~  
26 ~~made in installments.~~

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

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

31           ~~(c)(1) A qualified provider to whom the contract is awarded shall~~  
32 ~~provide a sufficient bond to the agency for its faithful performance of the~~  
33 ~~equipment installation and the accomplishment of the guaranteed savings.~~

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

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

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

8           ~~(d)(1) State agencies shall give a notice of the request for~~  
9 ~~proposals.~~

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

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

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

18           ~~(A) Relative importance of price and other evaluation~~  
19 ~~factors;~~

20           ~~(B) Tasks to be performed under the contract;~~

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

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

23           ~~(2) Requests for proposals shall solicit quotations and shall~~  
24 ~~specify the relative importance of guaranteed savings, price, return on~~  
25 ~~investment, financial performance, stability, quality, technical ability,~~  
26 ~~experience, or other evaluation factors.~~

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

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

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

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

3           ~~(2) State agencies shall select the provider deemed best~~  
 4 ~~qualified and capable of performing the desired work and negotiate a contract~~  
 5 ~~for the project.~~

6           ~~(h)(1) State agencies may enter into a performance based efficiency~~  
 7 ~~contract with a qualified provider if the agency finds that the amount it~~  
 8 ~~would spend on the measures recommended in the proposal would not exceed the~~  
 9 ~~amount to be~~

10 ~~saved in either utility or operational costs, or both, within a twenty year~~  
 11 ~~period after the date of installation if the recommendations in the proposal~~  
 12 ~~are followed.~~

13           ~~(2) The qualified provider shall guarantee the annual savings to~~  
 14 ~~the agency every year during the term of the contract and shall reconcile the~~  
 15 ~~guaranteed savings on an annual basis.~~

16           ~~(3) The qualified provider shall reimburse the agency for any~~  
 17 ~~shortfall of guaranteed savings.~~

18                           ~~(i)(1) The provisions of other sections of this~~  
 19 ~~subchapter and of all other provisions of law governing construction of~~  
 20 ~~public facilities and the purchasing of commodities, including, but not~~  
 21 ~~limited to, the provisions of §§ 22-9-201—22-9-212, 19-11-101—19-11-118,~~  
 22 ~~19-11-201—19-11-210, 19-11-301—19-11-306, 19-11-501—19-11-504~~  
 23 ~~{repealed}, 19-11-601—19-11-604, and 19-11-802—19-11-805 shall not be~~  
 24 ~~applicable to performance based efficiency contracts.~~

25                           ~~(2) Notwithstanding anything in this~~  
 26 ~~subsection to the contrary, the provisions of §§ 19-11-801, 22-9-101, 22-9-~~  
 27 ~~103, 22-9-104, 22-9-213, 19-11-701 et seq., 22-9-301 et seq., and 22-9-401 et~~  
 28 ~~seq. shall remain in full force and effect and not be affected hereby.~~

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