

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 1095

4  
5 By: Senator Altes  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT CONCERNING ENERGY SAVINGS CONTRACTS FOR  
10 SCHOOL DISTRICTS; AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 AN ACT CONCERNING ENERGY SAVINGS  
14 CONTRACTS FOR SCHOOL DISTRICTS.  
15  
16

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

19 SECTION 1. Arkansas Code § 6-20-401(2), concerning the definition of  
20 energy conservation measure, is amended to read as follows:

21 (2) "Energy conservation measure" means any improvement, repair,  
22 alteration, or betterment of any new building design or any existing building  
23 or facility owned or operated by a school district or any equipment, fixture,  
24 or furnishing to be added to or used in any building or facility that is  
25 designed to reduce energy consumption or operating costs and may include,  
26 without limitation, one (1) or more of the following:

27 (A) Insulation of the building structure or systems within  
28 the building;

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

33 (C) Automated or computerized energy control systems;

34 (D) Heating, ventilating, or air conditioning system  
35 modifications or replacements;

36 (E) Replacements or modifications of lighting fixtures to



1 increase the energy efficiency of the lighting system;

2 (F) Indoor air quality improvements to increase air  
 3 quality that conform to the applicable state or local building code  
 4 requirements even in lieu of an increase in energy usage;

5 (G) Any additional building infrastructure improvements,  
 6 cost savings, and life safety or other safety or conservation measures that  
 7 provide long-term operating cost reductions and are in compliance with state  
 8 and local codes; and

9 (H) Building operation programs that reduce operating  
 10 costs;

11  
 12 SECTION 2. Arkansas Code § 6-20-402(b)(1)(B), concerning the financing  
 13 of energy conservation measures, is amended to read as follows:

14 (B)(i) A school district's acquisition of energy  
 15 conservation measures under § 6-20-405 may be financed by the school district  
 16 over a ~~fifteen-year~~ twenty-year period after the execution by the school  
 17 district of the postdated warrant, lease-purchase agreement, or installment  
 18 contract.

19 (ii) However, no financing shall exceed the  
 20 reasonably expected useful life of the energy facilities or equipment subject  
 21 to the energy savings contract in favor of either a qualified provider or a  
 22 third party financing company designated by a qualified provider.

23  
 24 SECTION 3. Arkansas Code § 6-20-405 is amended to read as follows:  
 25 6-20-405. Energy savings contract.

26 (a) As used in this section:

27 (1)(A) "Energy savings contract" means a contract for the  
 28 implementation of one (1) or more energy conservation measures as defined in  
 29 § 6-20-401 and shall include a preinstallation energy audit or analysis.

30 (B) The contract may provide that all payments except  
 31 obligations on termination of the contract before its expiration are to be  
 32 made over time and that the energy cost savings are guaranteed to the extent  
 33 necessary to pay the costs of the energy conservation measures.

34 (C) The energy conservation measures to be performed under  
 35 the contract may be paid for with either revenue or nonrevenue receipts of a  
 36 school district or, alternatively, financed by the issuance of postdated

1 warrants or entering into installment contracts or lease-purchase agreements.

2 (D) Obligations incurred pursuant to a guaranteed energy  
3 savings contract are not included in computing a district's debt ratio.

4 (E) In the event that an energy savings contract is to be  
5 executed concurrently with one or more conventional construction contracts  
6 for a common structure, the energy savings contract shall be separate and  
7 distinct from the other contract;

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

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

10 (ii) ~~Is experienced~~ Has a minimum of five (5) years'  
11 experience in the analysis, design, implementation, and installation of  
12 energy efficiency and facility improvement measures; ~~and~~

13 (iii) ~~Has demonstrated the ability to secure~~  
14 ~~necessary financial measures to support energy savings guarantees,~~ the  
15 technical capabilities to ensure that ~~such~~ the measures generate energy cost  
16 savings, and the ability to provide maintenance and ongoing measurement of  
17 these measures to ensure and verify energy savings; and

18 (iv) Is pre-approved by the Division of Public  
19 School Academic Facilities.

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

21 (i) may ~~shall~~ be required to ~~give a sufficient~~  
22 provide a payment and performance bond to the school district for its  
23 faithful performance of the equipment installation ~~or accomplishment of the~~  
24 ~~guaranteed savings;~~ and

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

29 (3)(A) "Request for ~~proposals~~ qualifications" means a negotiated  
30 procurement.

31 (B)(i) Notice of the request for ~~proposals~~ qualifications  
32 shall be published one (1) time each week for no fewer than two (2)  
33 consecutive weeks in a newspaper of ~~the school district's choosing and having~~  
34 ~~a circulation in the county or city where the contract is to be performed~~  
35 statewide circulation.

36 (ii) ~~Proposals~~ Responses shall be sealed and opened

1 in a public forum at a date within ~~ten (10)~~ twenty (20) days from the last  
 2 publication, at which point the district shall evaluate the ~~proposals~~  
 3 qualifications.

4 (b) ~~A school district may utilize a request for proposals to negotiate~~  
 5 ~~an energy savings contract or may enter into an energy savings contract with~~  
 6 ~~a qualified provider after evaluating any proposal received from a qualified~~  
 7 ~~provider through a method other than a request for proposal. The district may~~  
 8 ~~select the qualified provider or providers best qualified and capable of~~  
 9 ~~performing the desired work and negotiate an energy savings contract for the~~  
 10 ~~project.~~

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

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

19 (A) The estimates of all costs of installation,  
 20 modifications, or remodeling, including, without limitation, costs of a  
 21 preinstallation energy audit or analysis, design, engineering, installation,  
 22 maintenance, repairs, debt service, postinstallation project monitoring, and  
 23 data collection and reporting, as well as whether energy consumed or the  
 24 operating costs, or both, will be reduced;

25 (B) The qualifications of the provider; ~~and~~

26 (C) Certification that all energy-consuming products  
 27 utilized in the projects will be certified with the appropriate standards by  
 28 the Air Conditioning and Refrigeration Institute;

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

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

35 (3)(A) ~~The district may select the qualified provider or~~  
 36 ~~providers best qualified and capable of performing the desired work and~~

1 ~~negotiate an energy savings contract for the project.~~ Except as provided in  
2 subdivision (c)(3)(B) of this section, before entering into any energy  
3 savings contract, the contract shall be reviewed as follows:

4 (i) The contract shall be reviewed by an engineer  
5 who is:

6 (a) Licensed in the State of Arkansas; and

7 (b) Designated by the Division of Public  
8 School Academic Facilities as qualified to review energy savings contracts;  
9 and

10 (c)(1) The engineer conducting the contract  
11 review shall report to the district any comments or issues that he or she  
12 believes merit consideration by the district before the district executes the  
13 energy savings contract.

14 (2) The engineer shall bear no liability  
15 for any estimation of energy savings generated as part of a contract review  
16 under subdivision (c)(3)(B) of this section.

17 (B) Third party review as provided in subdivision (3)(B)  
18 of this section shall not be required if the qualified provider demonstrates  
19 the provider is a current member in good standing of the National Association  
20 of Energy Service Companies, Energy Service Company category.

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

23 (2) The qualified provider shall reimburse the school district  
24 for any annual shortfall of guaranteed energy use savings projected in the  
25 project.

26 (e) This section shall constitute the sole authority necessary to  
27 accomplish the purposes of this section without regard to compliance with  
28 other laws which may specify procedural requirements for execution of  
29 contracts.