

1 **SENATE FLOOR VERSION**

2 February 4, 2021

3 SENATE BILL NO. 91

By: Hall of the Senate

4 and

5 Boles of the House

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8 An Act relating to public buildings and public works;  
9 amending 61 O.S. 2011, Section 212, as amended by  
10 Section 330, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
11 2020, Section 212), which relates to performance-  
12 based efficiency contracts; modifying maximum length  
of certain financing contracts; providing method for  
calculating cost savings attributable to performance-  
based efficiency contracts; and providing an  
effective date.

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15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 61 O.S. 2011, Section 212, as  
17 amended by Section 330, Chapter 304, O.S.L. 2012 (61 O.S. Supp.  
18 2020, Section 212), is amended to read as follows:

19 Section 212. A. For purposes of this section:

20 1. "Performance-based efficiency contract" means a contract for  
21 the design, development, financing, installation, construction, and  
22 service of any improvement, repair, alteration or betterment of any  
23 public building or facility; or any equipment, fixture or furnishing  
24 to be added to or used in any such building or facility; or any

1 maintenance or operational strategy that is designed and implemented  
2 that will reduce utility consumption or lower operating costs, and  
3 may include, but is not limited to, one or more of the following:

- 4 a. utility services,
- 5 b. heating, ventilating or air conditioning system  
6 modifications or replacements and automated control  
7 systems,
- 8 c. replacement or modifications of lighting fixtures,
- 9 d. indoor air quality improvements to increase air  
10 quality that conform to the applicable state or local  
11 building code requirements when done in conjunction  
12 with other cost-saving measures,
- 13 e. any additional building infrastructure improvement,  
14 cost saving, life safety or any other improvement that  
15 provides long-term operating cost reductions and is in  
16 compliance with state and local codes, or
- 17 f. any facility operation and support programs that  
18 reduce operating cost; and

19 2. "Qualified provider" means a person or business experienced  
20 or trained in the design, analysis, construction and/or installation  
21 of energy conservation and facility management measures. A  
22 qualified provider must employ a professional engineer registered in  
23 the State of Oklahoma.

1 B. In addition to any other legally permissible alternatives of  
2 entering into contracts, the Office of Management and Enterprise  
3 Services Construction and Properties Division may enter into  
4 performance-based efficiency contracts on behalf of all state  
5 agencies with a qualified provider pursuant to the provisions of  
6 this section.

7 A qualified provider to whom the contract is awarded shall be  
8 required to provide to the Division a sufficient bond for its  
9 faithful performance of the contract. In addition, the Division may  
10 require performance bonds covering the annual amount of guaranteed  
11 savings over the contract term. The Office of Management and  
12 Enterprise Services may enter into an installment contract, lease  
13 purchase agreement or other contractual obligation for the purpose  
14 of financing performance-based efficiency projects for a term not to  
15 exceed the greater of twenty (20) years or the useful life of the  
16 project.

17 The qualified provider must guarantee the contract's cost  
18 savings each year during the term of the agreement. In calculating  
19 cost savings, the public entity may consider capital cost avoidance  
20 and include additional revenue that is directly attributed to the  
21 performance-based efficiency contract. The savings must be  
22 sufficient to offset the annual costs of the contract. The contract  
23 shall provide for reimbursement to the state agency undertaking the  
24 project annually for any shortfall of guaranteed savings. Savings

1 must be measured, verified and documented each year of the term and  
2 may be utilized to meet the annual debt service.

3 The contracts authorized by this section shall include  
4 procedures for modifying the contract should the Division determine  
5 it necessary.

6 This section shall constitute the sole authority necessary to  
7 enter into performance-based efficiency contracts, without regard to  
8 compliance with other laws which may specify additional procedural  
9 requirements for execution of contracts.

10 SECTION 2. This act shall become effective November 1, 2021.

11 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT  
12 February 4, 2021 - DO PASS

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