

An Act

ENROLLED SENATE
BILL NO. 91

By: Hall of the Senate

and

Boles of the House

An Act relating to public buildings and public works; amending 61 O.S. 2011, Section 212, as amended by Section 330, Chapter 304, O.S.L. 2012 (61 O.S. Supp. 2020, Section 212), which relates to performance-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.

SUBJECT: Performance-based efficiency contracts

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

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

Section 212. A. For purposes of this section:

1. "Performance-based efficiency contract" means a contract for the design, development, financing, installation, construction, and service of any improvement, repair, alteration or betterment of any public building or facility; or any equipment, fixture or furnishing to be added to or used in any such building or facility; or any maintenance or operational strategy that is designed and implemented that will reduce utility consumption or lower operating costs, and may include, but is not limited to, one or more of the following:

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

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

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

A qualified provider to whom the contract is awarded shall be required to provide to the Division a sufficient bond for its faithful performance of the contract. In addition, the Division may require performance bonds covering the annual amount of guaranteed savings over the contract term. The Office of Management and Enterprise Services may enter into an installment contract, lease purchase agreement or other contractual obligation for the purpose

of financing performance-based efficiency projects for a term not to exceed the greater of twenty (20) years or the useful life of the project.

The qualified provider must guarantee the contract's cost savings each year during the term of the agreement. In calculating cost savings, the public entity may consider capital cost avoidance and include additional revenue that is directly attributed to the performance-based efficiency contract. The savings must be sufficient to offset the annual costs of the contract. The contract shall provide for reimbursement to the state agency undertaking the project annually for any shortfall of guaranteed savings. Savings must be measured, verified and documented each year of the term and may be utilized to meet the annual debt service.

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

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

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

Passed the Senate the 11th day of February, 2021.

Presiding Officer of the Senate

Passed the House of Representatives the 14th day of April, 2021.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____