

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
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As Engrossed: S3/5/13
A Bill

SENATE BILL 340

By: Senator D. Johnson
By: Representative Leding

For An Act To Be Entitled

AN ACT TO AMEND THE GUARANTEED ENERGY COST SAVINGS ACT; TO ALLOW STATE AGENCIES TO USE MAINTENANCE AND OPERATIONS APPROPRIATIONS FOR DEBT SERVICE RELATED TO A GUARANTEED ENERGY COST SAVINGS CONTRACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE GUARANTEED ENERGY COST SAVINGS ACT AND TO ALLOW STATE AGENCIES TO USE MAINTENANCE AND OPERATIONS APPROPRIATIONS FOR DEBT SERVICE RELATED TO A GUARANTEED ENERGY COST SAVINGS CONTRACT.

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

SECTION 1. Arkansas Code § 19-4-522(d)(1), concerning maintenance and operations subclassifications and expenses, is amended to add an additional subdivision to read as follows:

(S) Debt service on equipment or measures required by a guaranteed energy cost savings contract executed under the Guaranteed Energy Cost Savings Act, § 19-11-1201 et seq.;

SECTION 2. Arkansas Code § 19-11-1202(1)(A), concerning the definition of "energy cost savings measure" under the Guaranteed Energy Cost Savings Act, is amended to read as follows:



(1)(A) "Energy cost savings measure" means:

(i) A new facility that is designed to reduce the consumption of energy or natural resources or operating costs as a result of changes that:

(a) Do not degrade the level of service or working conditions;

(b) Are measurable and verifiable under the International Performance Measurement and Verification Protocol, as ~~it~~ existed on January 1, 2005 adopted by the Arkansas Energy Office in the rules required under § 19-11-1207; and

(c) Are measured and verified by an ~~independent~~ audit performed by a qualified provider; or

(ii) An existing facility alteration that is designed to reduce the consumption of energy or natural resources or operating costs as a result of changes that conform with subdivisions (1)(A)(i)(a) and (b) of this section.

SECTION 3. Arkansas Code § 19-11-1202(2)(A), concerning the definition of "guaranteed energy cost savings contract" under the Guaranteed Energy Cost Savings Act, is amended to read as follows:

(2)(A) "Guaranteed energy cost savings contract" means a contract for the implementation of one (1) or more energy cost savings measures and services provided by ~~qualified energy service companies~~ a qualified provider in which the energy and cost savings achieved by the installed energy project cover all project costs, including financing, over a specified contract term.

SECTION 4. Arkansas Code § 19-11-1202(5), concerning the definition of "qualified provider" under the Guaranteed Energy Cost Savings Act, is amended to read as follows:

(5) "Qualified provider" means a person or business, including all subcontractors and employees of that person or business and third-party financing companies, that:

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

(B) Has been reviewed and certified by the Arkansas Energy Office as a qualified provider under this subchapter;

(C) Is experienced in the design, implementation, financing, measurement, verification, and installation of energy cost savings measures; and

~~(C)~~ (D) Has demonstrated at least five (5) years of experience in the analysis, design, implementation, and installation, measurement, and verification of energy efficiency and facility improvements; and

(E) Has the ability to arrange or provide the necessary financing to support a guaranteed energy cost savings contract; and

(F) Has the ability to perform under a contract that requires the person or business to guarantee the work performed by one (1) or more subcontractors; and

SECTION 5. Arkansas Code § 19-11-1205 is amended to read as follows:

19-11-1205. Evaluation of ~~proposals~~ responses to solicitations.

(a) A In a state agency's evaluation of each qualified provider's proposal response to a solicitation under § 19-11-1204, the state agency shall include an analysis of:

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

~~(2) A determination whether there will be a (1) Whether the qualified provider meets the objectives of the solicitation, including without limitation a reduction in the state agency's energy consumption or operating costs resulting from the proposal a guaranteed energy cost savings contract with the qualified provider;~~

~~(3) (2) The qualifications and experience of the properly state-licensed qualified provider;~~

~~(4) The relative importance of price, return of investment, financial performance, stability, quality, technical ability, experience, or any other relevant evaluation factor;~~

~~(5) Tasks to be performed under the proposal; and~~

~~(6) Timeframes within which the work will be completed.~~

(3) The technical approach to the energy cost savings measures;

(4) The financial aspects of the energy cost savings measures;

(5) The overall benefit to the state agency; and

(6) Any other relevant factors.

(b) After evaluating ~~the proposals~~ a response to a solicitation as required under subsection (a) of this section, a state agency may:

(1) ~~The state agency may reject any proposal~~ Reject the response; or

(2) Award a contract to a qualified provider to conduct an energy audit to be used in developing the guaranteed energy cost savings contract ~~in a manner consistent with the Arkansas Procurement Law, § 19-11-201 et seq.~~

SECTION 6. Arkansas Code § 19-11-1206 is amended to read as follows:

19-11-1206. ~~Contract~~ Guaranteed energy cost savings contract requirements.

(a) ~~A~~ The following provisions are required in a guaranteed energy cost savings contract ~~shall include the properly state-licensed-qualified provider's guarantee that:~~

(1) A statement that the state agency shall maintain and operate the energy cost savings measures as defined in the guaranteed energy cost savings contract; and

(2) A guarantee by the qualified provider that:

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

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

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

(b) The maximum term for a guaranteed energy cost savings contract ~~may not have a term beyond~~ is twenty (20) years after the implementation of the

energy cost savings measures.

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

SECTION 7. Arkansas Code Title 19, Chapter 11, Subchapter 12 is amended to add two additional sections to read as follows:

19-11-1207. Administration of subchapter – Fees.

The Arkansas Energy Office:

(1) Shall:

(A) Administer this subchapter; and

(B) Promulgate rules for the administration of this subchapter within nine (9) months of the effective date of this subchapter, including without limitation the following:

(i) Standards for measuring and verifying the performance of energy cost savings measures;

(ii) A standard contract form for use by a state agency in entering into a guaranteed energy cost savings contract; and

(iii) The adoption of the International Performance Measurement and Verification Protocol as it existed on a specific date; and

(2) May establish and collect a reasonable fee to cover the costs of administering this subchapter.

19-11-1208. Use of maintenance and operation appropriations.

Notwithstanding any law to the contrary, a state agency may utilize maintenance and operations appropriations for the payment of equipment and energy cost savings measures required by a guaranteed energy cost savings contract.

/s/D. Johnson