

Title 6. Education

Chapter III. Division of Public School Academic Facilities and Transportation, Department of Education

Subchapter A. Generally

Part 329. Acquisition of Energy Conservation Measures for Public Schools

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows: "Authority. The Commission for Arkansas Public School Academic Facilities and Transportation promulgates this part pursuant to Arkansas Code. §§ 6-20-401, 6-20-402, 6-20-405, 6-21-114, 25-15-201 et seq., and Acts 2019, No. 507."

Subpart 1. Generally

6 CAR § 329-101. Purpose.

The purpose of this part is to establish procedures for school districts to acquire energy conservation measures using:

- (1) Energy savings contracts; and
- (2) Short-term debt instruments.

Authority. Arkansas Code § 6-21-109.

6 CAR § 329-102. Definitions.

As used in this part:

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

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

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

(C) Automated or computerized energy control systems;

(D) Heating, ventilation, or air conditioning system modifications or replacements;

(E) Replacements or modifications of lighting fixtures to increase the energy efficiency of the lighting system;

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

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

(H) Building operation programs that reduce operating costs;

(2)(A) "Energy savings contract" means a contract for the implementation of one (1) or more energy conservation measures as defined in Arkansas Code § 6-20-401 and shall include an investment grade preinstallation energy audit and analysis.

(B) The contract may provide that:

(i) All payments except obligations on termination of the contract before its expiration date are to be made over time; and

(ii) The energy cost savings are guaranteed by the qualified provider to the extent necessary to pay all of the costs of the energy conservation measures, including all costs of:

(a) Financing; and

(b) Annual services that may include the measurement and verification of the guaranteed savings.

(C) The energy conservation measures to be performed under the contract may be:

(i) Paid for with any combination of revenue or nonrevenue receipts of a school district; or

(ii) Alternatively financed by:

(a) The issuance of postdated warrants; or

(b) Entering into installment contracts or a lease-purchase agreement;

(3) "Equipment warranty period" means the time following the execution of a guaranteed energy cost savings contract in which a material defect in an installed energy conservation measure is required to be replaced or corrected by the manufacturer or an energy service company;

(4)(A) "Qualified provider" has the same definition as in Arkansas Code § 19-11-1202.

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

(i) Shall be required to provide a payment and performance bond to the school district for its faithful performance of the equipment installation; and

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

(5)(A) "Request for qualifications" means a negotiated procurement.

(B) Notice of the request for qualifications shall be published one (1) time each week for no less than two (2) consecutive weeks in a newspaper of statewide circulation.

(C) Responses shall be sealed and opened in a public forum within a date thirty (30) days from the last publication, at which point the school district shall evaluate the qualifications; and

(6) "Useful life" means the rated service life of an individual energy conservation measure as defined by the:

(A) American Society of Heating, Refrigerating and Air-Conditioning Engineers;

- (B) Illuminating Engineering Society; or
- (C) Solar Energy Industries Association.

Authority. Arkansas Code § 6-21-109.

6 CAR § 329-103. Process and procedures for acquiring energy conservation measures.

(a) A school district may enter into a guaranteed energy savings contract with a qualified provider if it finds that the amount it would spend on the energy conservation measures detailed in the contract would not exceed the amount to be saved in any combination of energy or operational costs, or future capital expenditures avoided within a twenty-year period from the date of the installation, if the recommendations in the proposal are followed.

(b) A school district may provide by resolution that the school district shall comply with the rules promulgated by the Arkansas Pollution Control and Ecology Commission under the Guaranteed Energy Cost Savings Act, Arkansas Code § 19-11-1201 et seq.

(c)(1) A school district's purchase or installation or both of energy conservation measures under Arkansas Code § 6-20-405 may be financed by the school district over a twenty-year period after the execution by the school district of the:

- (A) Postdated warrants;
- (B) Lease-purchase agreement; or
- (C) Installment contract.

(2) However, no financing shall exceed the reasonably expected useful life of the energy facilities or equipment subject to the energy savings contract in favor of either a:

- (A) Qualified provider; or
- (B) Third party financing company designated by a qualified provider.

(d) If a guaranteed energy cost savings contract includes energy cost savings measures that possess either an active equipment warranty period or a combined

useful life in excess of twenty (20) years, a guaranteed energy cost savings contract may be extended to the length of the:

- (1) Equipment warranty period; or
- (2) Weighted useful life of the relevant energy savings measures.

(e) A guaranteed energy cost savings contract shall not exceed twenty (20) years without the approval of the Division of Environmental Quality.

(f) The energy conservation measure to be performed under the contract may be:

- (1) Paid for with either revenue or nonrevenue receipts of a school district; or
- (2) Alternatively financed by:
 - (A) The issuance of postdated warrants; or
 - (B) Entering into installment contracts or lease-purchase agreements.

(g) Postdated warrants, lease-purchase agreements, and installment contracts must be registered on forms provided by the State Board of Education with the:

- (1) Treasurer of the district; and
- (2) Board.

(h) A copy of any guaranteed energy savings contract that is executed in connection with the acquisition, installation, or construction of energy conservation measures under this section shall be filed with the Division of Elementary and Secondary Education.

(i)(1) Obligations incurred pursuant to a guaranteed energy savings contract are not included in computing a school district's debt ratio.

(2) In the event that an energy savings contract is to be executed concurrently with one (1) or more conventional construction contracts for a common structure, the energy savings contract shall be separate and distinct from the other contract.

(j) The district may:

- (1) Select the qualified provider or providers best qualified and capable of performing the desired work; and
- (2) Negotiate an energy savings contract for the project.

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

(l) The qualified provider's proposal shall include:

(1) The estimates of all costs of installation, modifications, or remodeling, including without limitation, costs of an investment grade preinstallation energy audit and analysis, design, engineering, installation, commissioning, maintenance, repairs, debt service, postinstallation project monitoring, savings measurement and verification, and data collection and reporting, as well as whether energy consumed or the operating costs, or both, will be reduced;

(2) The qualifications of the provider; and

(3) The amount and specific sources of operational savings and capital cost avoidance that the school district acknowledges will occur without future measurement and verification;

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

(5) The reasonably expected useful life of each recommended energy conservation measure.

(m) Except as provided in subdivision (m)(2) of this section, before entering into any energy savings contract, the contract shall be reviewed as follows.

(1)(A) The contract shall be reviewed by an engineer who is:

(i) Licensed in the State of Arkansas;

(ii) Designated by the Division of Public School Academic Facilities and Transportation as qualified to review energy savings contracts; and

(B)(i) The engineer conducting the contract review shall report to the district any comments or issues that he or she believes merit consideration by the district before the district executes the energy savings contract.

(ii) The engineer shall bear no liability for any estimation of energy savings generated as part of a contract review under subdivision (m)(2) of this section.

(2) Third party review as provided in subdivision (m)(1) of this section shall not be required if the qualified provider demonstrates the provider is a current member

in good standing of the energy service company or energy service provider category of the National Association of Energy Service Companies.

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

Authority. Arkansas Code § 6-21-109.