

~~THE COMMISSION FOR~~ ARKANSAS ~~COMMISSION ON FOR~~ PUBLIC  
SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION  
RULES GOVERNING THE ACQUISITION OF ENERGY  
CONSERVATION MEASURES FOR PUBLIC SCHOOLS  
November 2005

**1.0 Authority**

- 1.1—The ~~Arkansas~~ Commission ~~on for~~ ~~Arkansas~~ Public School Academic Facilities and Transportation's authority for promulgating this rule is promulgates these Rules pursuant to Ark. Code Ann. §§ ~~6-21-113, Ark. Code Ann. §§ 6-20-401, 6-20-402, and 6-20-405, 6-21-114, and 25-15-201 et seq., and Act 2156 of the 85th General Assembly of 2005. Act 507 of 2019.~~
- 1.2—This rule shall be known as the ~~Arkansas Commission on Public School Academic Facilities and Transportation Rule Governing the Acquisition of Energy Conservation Measures for Public Schools.~~

**2.0 Purpose**

- 2.1—The purpose of ~~this rule~~ these Rules is to establish procedures for school districts to acquire energy conservation measures using energy savings contracts and short-term debt instruments.

**3.0 Definitions** —~~For purposes of this rule, the following terms mean:~~

- 3.1 "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:
- 3.1.1 Insulation of the building structure or systems within the building;
  - 3.1.2 Storm windows or doors, caulking or weather-stripping, multi-glazed 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;
  - 3.1.3 Automated or computerized energy control systems;
  - 3.1.4 Heating, ventilation, or air conditioning system modifications or replacements;
  - 3.1.5 Replacements or modifications of lighting fixtures to increase the

energy efficiency of the lighting system;

- 3.1.6 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;
- 3.1.7 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
- 3.1.8 Building operation programs that reduce operating costs.
- 3.2 “Energy savings contract” means a contract for the implementation of one ~~(1)~~ or more energy conservation measures as defined in Ark. Code Ann. § 6-20-401 and shall include ~~a~~ an investment grade pre-installation energy audit ~~or~~ and analysis.
- 3.2.1 The contract may provide that all payments except obligations on termination of the contract before its expiration date are to be made over time and that 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 financing and annual services that may include the measurement and verification of the guaranteed savings.
- 3.2.2 The energy conservation measures to be performed under the contract may be paid for with ~~either~~ any combination of revenue or non-revenue receipts of a school district or, alternatively, financed by the issuance of postdated warrants or entering into installment contracts or a lease-purchase agreement.
- 3.3 “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.
- ~~3.3-3.4~~ “Qualified provider” has the same definition as in Ark. Code Ann. § 19-11-1202. —business that possesses a valid Arkansas contractor’s license and that has a minimum of five (5) years experience in the analysis, design, implementation, and installation of energy efficiency and facility improvement measures, and the technical capabilities to ensure the measures generate energy cost savings, and the ability to provide maintenance and ongoing measurement of these measures to ensure and verify energy savings; and is pre-approved by the Division of Public School Academic Facilities and Transportation. 3.3.1 A qualified provider to whom the contract is awarded:
- ~~3.303.1(a)~~ 3.4.1 Shall be required to provide a payment

and performance bond to the school district for its faithful performance of the equipment installation; and

~~3.03.01(b)~~ 3.4.2 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; and

~~3.4~~ 3.5 “Request for Qualifications” means ~~–means~~ a negotiated procurement.

~~3.4.1~~ 3.5.1 Notice of the request for qualifications shall be published one ~~(1)~~ time each week for no ~~fewer~~ less than two ~~(2)~~ consecutive weeks in a newspaper of statewide circulation.

~~3.4.2~~ 3.5.2 Responses shall be sealed and opened in a public forum within ~~at a date twenty (20)~~ thirty (30) days from the last publication, at which point the school district shall evaluate the qualifications.

3.6 “Useful Life” means the rated service life of an individual energy conservation measure as defined by the:

3.6.1 American Society of Heating, Refrigerating and Air-Conditioning Engineers;

3.6.2 Illuminating Engineering Society; or

3.6.3 Solar Energy Industries Association.

#### **4.0 Process And Procedures for Acquiring Energy Conservation Measures**

4.1 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 ~~recommended in the proposal~~ 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.

4.2 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, Ark. Code Ann. § 19-11-1201 et seq.

4.3 A school district’s purchase or installation or both of energy conservation measures under Ark. Code Ann. § 6-20-405 may be financed by the school district over a twenty-year period after the execution by the school district of the postdated warrants, lease-purchase agreement, or installment contract.

- 4.3.1 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 qualified provider or a third party financing company designated by a qualified provider.
- 4.4 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 equipment warranty *period* or weighted useful life of the relevant energy cost *saving measures*.
- 4.5 A guaranteed energy cost savings contract shall not exceed twenty (20) years without the approval of the Arkansas Energy Office of the ~~Arkansas Department of Environmental Quality~~ *Division of Environmental Quality*.
- ~~4.3~~ 4.6 The energy conservation measure to be performed under the contract may be paid for with either revenue or non-revenue receipts of a school district, or, alternatively, financed by the issuance of postdated warrants or entering into installment contracts or lease-purchase agreements.
- 4.4 4.7 Postdated warrants, lease-purchase agreements, and installment contracts must be registered on forms provided by the State Board of Education with the treasurer of the district and the board.
- 4.5 4.8 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 ~~Department of Education~~. Arkansas Division of Elementary and Secondary Education.
- ~~4.6~~ 4.9 Obligations incurred pursuant to a guaranteed energy savings contract are not included in computing a school district's debt ratio.
- ~~4.6.1~~ 4.9.1 In the event that an energy savings contract is to be executed concurrently with one or more conventional construction contracts for a common structure, the energy savings contract shall be separate and distinct from the other contract.
- ~~4.7~~ 4.10 The district may select the qualified provider or providers best qualified and capable of performing the desired work and negotiate an energy savings contract for the project. as stated in the contract.
- 4.8 4.11 The qualified provider shall reimburse the school district for any annual shortfall of guaranteed energy use savings projected in the project.
- 4.9 4.12 The qualified provider's proposal shall include:
- ~~4.9.1~~ 4.12.1 The estimates of all costs of installation, modifications, or remodeling, including, without limitation, costs of a an investment

grade pre-installation energy audit or and analysis, design, engineering, installation, commissioning, maintenance, repairs, debt service, post-installation 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;

~~4.9.2~~ 4.12.2 The qualifications of the provider; and

~~4.9.3~~ ~~Certification that all energy-consuming products utilized in the projects will be certified with the appropriate standards by the Air Conditioning and Refrigeration Institute; and~~

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

~~4.9.4~~ 4.12.4 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

~~4.9.5~~ 4.12.5 The reasonably expected useful life of each recommended energy conservation measure.

~~4.10~~ 4.13 Except as provided in ~~4.10.02~~ 4.13.2 of ~~this section~~ these Rules, before entering into any energy savings contract, the contract shall be reviewed as follows:

~~4.10.1~~ 4.13.1 The contract shall be reviewed by an engineer who is:

~~4.10.1(a)~~ 4.13.1.1 Licensed in the State of Arkansas; ~~and~~

~~4.10.1(b)~~ 4.13.1.2 Designated by the Division of Public School Academic Facilities and Transportation as qualified to review energy savings contracts; and

~~4.10.1(c)~~ 4.13.1.3 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. The engineer shall bear no liability for any estimation of energy savings generated as part of a contract review under Section ~~4.10.02~~ 4.13.2 of ~~these rules~~ Rules.

~~4.10.2~~ 4.13.2 Third party review as provided in ~~4.10.01~~ 4.13.1 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 Companies, Energy Service

~~Company category:~~ Companies.

~~4.10.3~~ 4.13.3 The qualified provider shall provide to the school district an annual reconciliation report of the guaranteed energy use savings.

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## SUMMARY OF AMENDMENTS

### COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION RULES GOVERNING THE ACQUISITION OF ENERGY CONSERVATION MEASURES FOR PUBLIC SCHOOLS

These proposed rules incorporate provisions of Act 507 of 2019, which addressed energy cost saving measures in governmental facilities (including school districts) designed to reduce the consumption of energy, natural resources, or operating costs. Act 507 authorizes a school district to comply with rules promulgated pursuant to the Guaranteed Energy Cost Savings Act (promulgated by the Arkansas Pollution Control and Ecology Commission) if the district's board of directors chooses to do so. If a district chooses to opt in, the Arkansas Energy Office of the Arkansas Department of Environmental Quality will provide the district with assistance, support, and oversight throughout the process of planning, contracting for, and completing energy conservation projects. The proposed rules also change the definition of "qualified provider" (i.e., contractor) to make the definition in Title 6 (Education) consistent with the Guaranteed Energy Cost Savings Act, which requires pre-approval of providers by the Arkansas Energy Office. The amendments also incorporate Act 507 provisions concerning equipment warranty periods, and allows an energy savings contract to exceed twenty years with the approval of the Arkansas Energy Office. The proposed rules also contain edits and update the rules to mirror current law.

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#### **Post-Public Comment Changes**

Following public comment, non-substantive technical corrections were made to the rules.