An Act

ENROLLED HOUSE
BILL NO. 2472

By: Archer and Hill of the House

and

Paxton of the Senate

An Act relating to public finance; amending 62 O.S. 2021, Section 318, which relates to performance-based efficiency contracts; providing authorized method for initial payments; requiring certain savings amount; and declaring an emergency.

SUBJECT: Public finance

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

SECTION 1. AMENDATORY 62 O.S. 2021, Section 318, is amended to read as follows:

Section 318. A. For purposes of this section:

1. "Public entity" means any political subdivision of this state, or a public trust which has as a beneficiary a political subdivision of this state, or any institution of higher education which is part of The Oklahoma State System of Higher Education;

2. "Performance-based efficiency contract" means a contract for the design, development, financing, installation and service of any improvement, repair, alteration or betterment of any building or facility owned, operated or planned by a public entity; 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, result in annual operating cost savings, generate additional revenues or avoid capital cost

incurrence 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,

f. water-metering devices that increase efficiency or accuracy of water measurement and energy reduction, or

g. any facility operation and support programs that reduce operating cost;

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

4. "State governmental entity" means the State of Oklahoma or any agency, board, commission, authority, department, public trust of which the state is the beneficiary or other instrumentality of state government, other than a public trust with the state as beneficiary whose jurisdiction is limited to one county, including, but not limited to, the following:

a. Oklahoma Municipal Power Authority,

b. Oklahoma Development Finance Authority,

c. Oklahoma Industrial Finance Authority,

d. Grand River Dam Authority,

e. Oklahoma Water Resources Board,

f. Northeast Oklahoma Public Facilities Authority,

g. Oklahoma Turnpike Authority,

h. Oklahoma Housing Finance Authority, and

i. Oklahoma Public, Industrial and Cultural Facilities Authority.

B. In addition to any other legally permissible alternatives of entering into contracts, any public entity may enter into performance-based efficiency contracts with a qualified provider pursuant to the provisions of this section. The public entity may make an initial payment from any funds available. Further, any public entity 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. A qualified provider to whom the contract is awarded shall be required to give a sufficient bond to the public entity for its faithful performance of the contract. In addition, the public entity may require performance bonds covering the annual amount of guaranteed savings over the contract term.

The contract's cost savings to the public entity must be guaranteed each year during the term of the agreement. The savings must be sufficient to offset the annual costs of the contract. Any initial payment from funds other than an installment agreement must also be offset by savings, as described herein, over 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 contract shall provide for reimbursement to the public entity annually for any shortfall of guaranteed savings. Savings must be measured, verified and documented during each year of the term and may be utilized to meet the annual debt service. 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. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 20th day of March, 2023

Presiding Officer of the House
of Representatives

Passed the Senate the 19th day of April, 2023.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 20th

day of April, 20 23, at 3:15 o'clock p. M.

By: Summer Curry

Approved by the Governor of the State of Oklahoma this 26th

day of April, 20 23, at 1:42 o'clock p. M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 26th

day of April, 20 23, at 2:41 o'clock P. M.

By: Brian Bingman