

SECOND REGULAR SESSION

HOUSE BILL NO. 2854

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GRAGG.

6373H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 8.231, RSMo, and to enact in lieu thereof one new section relating to guaranteed energy cost savings contracts.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 8.231, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 8.231, to read as follows:

8.231. 1. For purposes of this section, the following terms shall mean:

(1) "Energy cost savings measure", a training program or facility alteration designed to reduce energy consumption or operating costs, and may include one 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 system;

(d) Heating, ventilating or air conditioning system modifications or replacements;

(e) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;

(f) Indoor air quality improvements to increase air quality that conforms to the applicable state or local building code requirements;

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (g) Energy recovery systems;

19 (h) Cogeneration systems that produce steam or forms of energy such as heat, as well
20 as electricity, for use primarily within a building or complex of buildings;

21 (i) Any life safety measures that provide long-term operating cost reductions and are
22 in compliance with state and local codes;

23 (j) Building operation programs that reduce the operating costs; or

24 (k) Any life safety measures related to compliance with the Americans With
25 Disabilities Act, 42 U.S.C. Section 12101, et seq., that provide long-term operating cost
26 reductions and are in compliance with state and local codes;

27 (2) "Governmental unit", a state government agency, department, institution, college,
28 university, technical school, legislative body or other establishment or official of the
29 executive, judicial or legislative branches of this state authorized by law to enter into
30 contracts, including all local political subdivisions such as counties, municipalities, public
31 school districts or public service or special purpose districts;

32 (3) "Guaranteed energy cost savings contract", a contract for the implementation of
33 one or more such measures. The contract shall provide that all payments, except obligations
34 on termination of the contract before its expiration, are to be made over time and the energy
35 cost savings are guaranteed to the extent necessary to make payments for the systems.
36 Guaranteed energy cost savings contracts shall be considered public works contracts to the
37 extent that they provide for capital improvements to existing facilities;

38 (4) "Operational savings", expenses eliminated and future replacement expenditures
39 avoided as a result of new equipment installed or services performed;

40 (5) "Qualified provider", a person or business experienced in the design,
41 implementation and installation of energy cost savings measures;

42 (6) "Request for proposals" or "RFP", a negotiated procurement.

43 2. No governmental unit shall enter into a guaranteed energy cost savings contract
44 until competitive proposals therefor have been solicited by the means most likely to reach
45 those contractors interested in offering the required services, including but not limited to
46 direct mail solicitation, electronic mail and public announcement on bulletin boards, physical
47 or electronic. The request for proposal shall include the following:

48 (1) The name and address of the governmental unit;

49 (2) The name, address, title and phone number of a contact person;

50 (3) The date, time and place where proposals shall be received;

51 (4) The evaluation criteria for assessing the proposals; and

52 (5) Any other stipulations and clarifications the governmental unit may require.

53 3. The governmental unit shall award a contract to the qualified provider that
54 provides the lowest and best proposal which meets the needs of the unit if it finds that the

55 amount it would spend on the energy cost savings measures recommended in the proposal
56 would not exceed the amount of energy or operational savings, or both, within a fifteen-year
57 period from the date installation is complete, if the recommendations in the proposal are
58 followed. The governmental unit shall have the right to reject any and all bids.

59 4. The guaranteed energy cost savings contract shall include a written guarantee of
60 the qualified provider that either the energy or operational cost savings, or both, will meet or
61 exceed the costs of the energy cost savings measures, adjusted for inflation, within fifteen
62 years. The qualified provider shall reimburse the governmental unit for any shortfall of
63 guaranteed energy cost savings on an annual basis. The guaranteed energy cost savings
64 contract may provide for payments over a period of time, not to exceed fifteen years, subject
65 to appropriation of funds therefor.

66 5. The governmental unit shall include in its annual budget and appropriations
67 measures for each fiscal year any amounts payable under guaranteed energy savings contracts
68 during that fiscal year.

69 6. A governmental unit may use designated funds for any guaranteed energy cost
70 savings contract including purchases using installment payment contracts or lease purchase
71 agreements, so long as that use is consistent with the purpose of the appropriation.

72 7. Notwithstanding any provision of this section to the contrary, a not-for-profit
73 corporation incorporated pursuant to chapter 355 and operating primarily for educational
74 purposes in cooperation with public or private schools shall be exempt from the provisions of
75 this section.

76 **8. The provisions of this section shall not replace, modify, or otherwise supersede**
77 **any statutory, constitutional, or regulatory bidding requirements applicable to**
78 **construction, construction manager-at-risk under section 67.5050, or design-build**
79 **contracts under sections 67.5060 to 67.5070 by any governmental unit.**

80 **9. This section shall not authorize any governmental unit to undertake new**
81 **construction, substantial renovation, or remodeling outside the defined scope of energy**
82 **cost savings measures, as defined in subdivision (1) of subsection 1 of this section.**

83 **10. A contract awarded under this section shall not be construed to waive,**
84 **circumvent, or otherwise exempt the governmental unit from compliance with any other**
85 **applicable procurement procedures, including competitive sealed building, construction**
86 **manager-at-risk under section 67.5050, or design-build contracts under sections**
87 **673.5060 to 67.5070.**

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