



Ohio Revised Code

Section 3313.372 Installment payment contract for purchase and installation of energy conservation measures.

Effective: September 29, 2017

Legislation: House Bill 49 - 132nd General Assembly

(A) As used in this section, "energy conservation measure" means an installation or modification of an installation in, or remodeling of, a building, to reduce energy consumption. It includes:

- (1) Insulation of the building structure and systems within the building;
- (2) Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;
- (3) Automatic energy control systems;
- (4) Heating, ventilating, or air conditioning system modifications or replacements;
- (5) Caulking and weatherstripping;
- (6) Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a facility, unless such increase in illumination is necessary to conform to the applicable state or local building code for the proposed lighting system;
- (7) Energy recovery systems;
- (8) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
- (9) Any other modification, installation, or remodeling approved by the Ohio facilities construction commission as an energy conservation measure.



(B) A board of education of a city, exempted village, local, or joint vocational school district may enter into an installment payment contract for the purchase and installation of energy conservation measures. The provisions of such installment payment contracts dealing with interest charges and financing terms shall not be subject to the competitive bidding requirements of section 3313.46 of the Revised Code, and shall be on the following terms:

(1) Not less than one-fifteenth of the costs thereof shall be paid within two years from the date of purchase.

(2) The remaining balance of the costs thereof shall be paid within fifteen years from the date of purchase.

The provisions of any installment payment contract entered into pursuant to this section shall provide that all payments, except payments for repairs and obligations on termination of the contract prior to its expiration, shall not exceed the calculated energy, water, or waste water cost savings, avoided operating costs, and avoided capital costs attributable to the one or more measures over a defined period of time. Those payments shall be made only to the extent that the savings described in this division actually occur. The energy services company shall warrant and guarantee that the energy conservation measures shall realize guaranteed savings and shall be responsible to pay an amount equal to any savings shortfall.

An installment payment contract entered into by a board of education under this section shall require the board to contract in accordance with division (A) of section 3313.46 of the Revised Code for the installation, modification, or remodeling of energy conservation measures unless division (A) of section 3313.46 of the Revised Code does not apply pursuant to division (B)(3) of that section, in which case the contract shall be awarded through a competitive selection process pursuant to rules adopted by the facilities construction commission.

An installment payment contract entered into by a board of education under this section may include services for measurement and verification of energy savings associated with the guarantee. The annual cost of measurement and verification services shall not exceed ten per cent of the guaranteed savings in any year of the installment payment contract.



(C) If a board of education determines that a surety bond is necessary to secure energy, water, or waste water cost savings guaranteed in a contract entered into by the board of education under this section, the energy services company shall provide a surety bond that satisfies all of the following requirements:

(1) The penal sum of the surety bond for the first guarantee year shall equal the amount of savings included in the annual guaranteed savings amount that is measured and calculated in accordance with the measurement and verification plan included in the contract, but may not include guaranteed savings that are not measured or that are stipulated in the contract. The annual guaranteed savings amount shall include only the savings guaranteed in the contract for the one-year term that begins on the first day of the first savings guarantee year and may not include amounts from subsequent years.

(2) The surety bond shall have a term of not more than one year unless renewed. At the option of the board of education, the surety bond may be renewed for one or two additional terms, each term not to exceed one year. The surety bond may not be renewed or extended so that it is in effect for more than three consecutive years.

In the event of a renewal, the penal sum of the surety bond for each renewed year shall be revised so that the penal sum equals the annual guaranteed savings amount for such renewal year that is measured and calculated in accordance with the measurement and verification plan included in the contract, but may not include guaranteed savings that are not measured or that are stipulated in the contract. Regardless of the number of renewals of the bond, the aggregate liability under each renewed bond may not exceed the penal sum stated in the renewal certificate for the applicable renewal year.

(3) The surety bond for the first year shall be issued within thirty days of the commencement of the first savings guarantee year under the contract.

In the event of renewal, the surety shall deliver to the board of education a renewal certificate reflecting the revised penal sum within thirty days of the board of education's request. The board of education shall deliver the request for renewal not less than thirty days prior to the expiration date of the surety bond then in existence. A surety bond furnished pursuant to section 153.54 of the Revised Code shall not secure obligations related to energy, water, or waste water cost savings as referenced



in division (C) of this section.

(D) The board may issue the notes of the school district signed by the president and the treasurer of the board and specifying the terms of the purchase and securing the deferred payments provided in this section, payable at the times provided and bearing interest at a rate not exceeding the rate determined as provided in section 9.95 of the Revised Code. The notes may contain an option for prepayment and shall not be subject to Chapter 133. of the Revised Code. In the resolution authorizing the notes, the board may provide, without the vote of the electors of the district, for annually levying and collecting taxes in amounts sufficient to pay the interest on and retire the notes, except that the total net indebtedness of the district without a vote of the electors incurred under this and all other sections of the Revised Code, except section 3318.052 of the Revised Code, shall not exceed one per cent of the district's tax valuation. Revenues derived from local taxes or otherwise, for the purpose of conserving energy or for defraying the current operating expenses of the district, may be applied to the payment of interest and the retirement of such notes. The notes may be sold at private sale or given to the energy services company under the installment payment contract authorized by division (B) of this section.

(E) Debt incurred under this section shall not be included in the calculation of the net indebtedness of a school district under section 133.06 of the Revised Code.

(F) No school district board shall enter into an installment payment contract under division (B) of this section unless it first obtains a report of the costs of the energy conservation measures and the savings thereof as described under division (G)(1) of section 133.06 of the Revised Code as a requirement for issuing energy securities, makes a finding that the amount spent on such measures is not likely to exceed the amount of money it would save in energy costs and resultant operational and maintenance costs as described in that division, except that that finding shall cover the ensuing fifteen years, and the facilities construction commission determines that the district board's findings are reasonable and approves the contract as described in that division.

The district board shall monitor the savings and maintain a report of those savings, which shall be submitted to the commission in the same manner as required by division (G) of section 133.06 of the Revised Code in the case of energy securities.