

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL****No. 1083** Session of  
1995

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INTRODUCED BY SALVATORE, JUNE 8, 1995

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SENATOR BRIGHTBILL, ENVIRONMENTAL RESOURCES AND ENERGY, AS  
AMENDED, DECEMBER 12, 1995

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## AN ACT

1 Authorizing Commonwealth and municipal government entities to  
2 enter into guaranteed energy savings contracts.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Guaranteed  
7 Energy Savings Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall  
10 have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:

12 "Energy conservation measure." A training program or  
13 facility alteration designed to reduce energy consumption or  
14 operating costs. The term may include, without limitation:

15 (1) Insulation of the building structure or systems  
16 within the building.

17 (2) 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.

(3) Automated or computerized energy control systems.

(4) Heating, ventilating or air-conditioning system modifications or replacements.

(5) 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 applicable State or local building codes for the lighting system after the proposed modifications are made.

(6) Energy recovery systems.

(7) Systems that produce steam or forms of energy such as heat, as well as electricity, for use within a building or complex of buildings.

(8) Energy conservation measures that provide ~~long term~~ <—  
~~operating cost reductions.~~ OPERATING COST REDUCTIONS BASED ON <—  
LIFE-CYCLE COST ANALYSIS.

"Governmental unit." Any contracting body as defined in section 2 of the act of December 20, 1967 (P.L.869, No.385), known as the Public Works Contractors' Bond Law of 1967.

"Guaranteed energy savings contract." A contract for the evaluation and recommendation of energy conservation measures and for implementation of one or more such measures.

"Qualified provider." A person or business ~~experienced in~~ <—  
~~the design, implementation and installation of energy~~  
~~conservation measures.~~ WHICH IS RESPONSIBLE AND CAPABLE OF <—  
EVALUATING, RECOMMENDING, DESIGNING, IMPLEMENTING AND INSTALLING

1 ENERGY CONSERVATION MEASURES AS DETERMINED BY THE GOVERNMENTAL  
2 UNIT.

3 "Request for proposals (RFP)." A ~~negotiated~~ TYPE OF  
4 COMPETITIVE procurement.

5 Section 3. Contracting procedures.

6 (a) General rule.--Notwithstanding any other contrary or  
7 inconsistent provision of law, a governmental unit may enter  
8 into a guaranteed energy savings contract with a qualified  
9 provider in accordance with the provisions of this act OR IN  
10 ACCORDANCE WITH ANOTHER STATUTORILY AUTHORIZED COMPETITIVE  
11 PROCESS.

12 (b) Guaranteed contract.--If, in accordance with applicable  
13 law, the award of a contract by a governmental unit requires  
14 action at a public meeting, a governmental unit may award a  
15 guaranteed energy savings contract at a public meeting if it has  
16 provided public notice in the manner prescribed by the act of  
17 July 3, 1986 (P.L.388, No.84), known as the Sunshine Act, the  
18 notice including the names of the parties to the contract and  
19 the purpose of the contract.

20 (c) Request for proposals.--Before entering into a  
21 guaranteed energy savings contract under this section, a  
22 governmental unit shall issue a request for proposals. The  
23 governmental unit shall evaluate any proposal THAT MEETS THE  
24 REQUIREMENTS OF THE GOVERNMENTAL UNIT AND IS timely submitted by  
25 a qualified provider. The RFP shall be announced through a  
26 public notice from the governmental unit which will administer  
27 the program., ~~requesting innovative solutions and proposals for~~  
28 ~~energy conservation measures.~~ The request for proposal shall  
29 include all of the following:

30 (1) The name and address of the governmental unit.

1           (2) The name, address, title and phone number of a  
2       contact person.

3           (3) Notice indicating that the governmental unit is  
4       requesting qualified providers to propose energy conservation  
5       measures through a guaranteed energy savings contract.

6           (4) The date, time and place where proposals must be  
7       received.

8           (5) The ~~evaluation criteria for assessing the proposals.~~ <—  
9       INFORMATION TO BE INCLUDED IN THE PROPOSAL. <—

10          (6) Any other stipulations and clarifications the  
11       governmental unit may require.

12       (d) Selection and notice.--The governmental unit shall  
13       select the qualified provider that best meets the needs of the  
14       governmental unit. ~~The governmental unit shall provide public~~ <—  
15       ~~notice of the meeting at which it proposes to award a guaranteed~~  
16       ~~energy savings contract of the names of the parties to the~~  
17       ~~proposed contract and of the purpose of the contract. The public~~

18       IN ACCORDANCE WITH CRITERIA ESTABLISHED BY THE GOVERNMENTAL <—  
19       UNIT. FOR GOVERNMENTAL UNITS THAT ARE NOT REQUIRED TO TAKE

20       ACTIONS ON CONTRACTS AT PUBLIC MEETINGS, THE GOVERNMENTAL UNIT

21       SHALL PROVIDE PUBLIC NOTICE OF THE AWARD OF THE GUARANTEED

22       ENERGY SAVINGS CONTRACT WITHIN 30 DAYS IN THE PENNSYLVANIA

23       BULLETIN. FOR GOVERNMENTAL UNITS THAT ARE REQUIRED TO TAKE

24       ACTIONS ON CONTRACTS AT PUBLIC MEETINGS, THE PUBLIC notice shall

25       be made at least ten days prior to the meeting. After reviewing

26       the proposals pursuant to subsection (e), a governmental unit

27       may enter into a guaranteed energy savings contract with a

28       qualified provider if it finds that the amount it would spend on

29       the energy conservation measures recommended in the proposal

30       would not exceed the amount to be saved in both energy and

1 operational costs within a ten-year period from the date of  
2 installation, if the recommendations in the proposal were  
3 followed and the qualified provider provides a written guarantee  
4 that the energy or operating cost savings will meet or exceed  
5 the cost of the contract.

6 (e) Report.--

7 (1) Before the award of a guaranteed energy savings  
8 contract, the qualified provider shall ~~issue~~ PROVIDE a report <—  
9 AS PART OF ITS PROPOSAL which shall be available for public <—  
10 inspection summarizing estimates of all costs of  
11 installation, maintenance, repairs and debt service, and  
12 estimates of the amounts by which energy or operating costs  
13 will be reduced.

14 (2) The report shall contain a listing of contractors  
15 and subcontractors to be used by the qualified provider with  
16 respect to the energy conservation measures.

17 (f) Bond.--A qualified provider to whom a contract is  
18 awarded shall give a sufficient bond to the governmental unit  
19 for its faithful performance in accordance with the act of  
20 December 20, 1967 (P.L.869, No.385), known as the Public Works  
21 Contractors' Bond Law of 1967.

22 (g) Award of contract.--~~The award of a contract to a~~ <—  
23 ~~qualified provider under this section shall be made on the basis~~  
24 ~~of the best interest of the governmental unit.~~ Notwithstanding  
25 any other provision of law governing the letting of public  
26 contracts, a governmental unit may ~~engage in direct or sole~~ <—  
27 ~~source negotiations with any qualified provider concerning a~~  
28 ~~potential guaranteed energy savings contract to be offered to a~~  
29 ~~governmental unit and awarded in accordance with the provisions~~  
30 ~~of this act.~~ ENTER INTO A SINGLE GUARANTEED ENERGY SAVINGS <—

1 CONTRACT WITH EACH RESPONSIBLE PROVIDER SELECTED THROUGH THE  
2 REQUEST FOR PROPOSALS PROCESS IN ACCORDANCE WITH THE PROVISIONS  
3 OF THIS ACT.

4 Section 4. Contract provisions.

5 (a) General rule.--A guaranteed energy savings contract may  
6 provide that all payments, except obligations on termination of  
7 the contract before its scheduled expiration, shall be made over  
8 a period of time. Every guaranteed energy savings contract shall  
9 provide that the savings in any year are guaranteed to the  
10 extent necessary to make payments under the contract during that  
11 year.

12 (b) Written guarantee.--A guaranteed energy savings contract  
13 shall include a written guarantee that savings will meet or  
14 exceed the cost of the energy conservation measures to be  
15 EVALUATED, RECOMMENDED, DESIGNED, IMPLEMENTED OR installed under <—  
16 the contract.

17 (c) Payments.--A guaranteed energy savings contract may  
18 provide for payments over a period of time, not to exceed ten  
19 years, and for the ~~purchase~~ EVALUATION, RECOMMENDATION, DESIGN, <—  
20 IMPLEMENTATION and installation of energy conservation measures  
21 on an installment payment or lease purchase basis.

22 Section 5. Funding.

23 (a) General rule.--~~A guaranteed energy savings contract may~~ <—  
24 ~~extend beyond the fiscal year of the governmental unit during~~  
25 ~~which it becomes effective. If in any later fiscal year during~~  
26 ~~the term of the contract the governmental unit terminates the~~  
27 ~~contract because of its failure to receive in its annual~~  
28 ~~appropriations amounts payable under the contract during that~~  
29 ~~year, the governmental unit, upon termination of the contract~~  
30 ~~for failure to receive sufficient appropriations, shall~~

1 ~~reimburse the contractor for the unamortized portion of the~~  
2 ~~costs of energy savings measures undertaken pursuant to the~~  
3 ~~contract.~~ GUARANTEED ENERGY SAVINGS CONTRACTS WHICH HAVE TERMS <—  
4 WHICH EXTEND BEYOND ONE FISCAL YEAR OF THE GOVERNMENTAL UNIT  
5 MUST INCLUDE A PROVISION WHICH ALLOWS THE GOVERNMENTAL UNIT TO  
6 TERMINATE THE CONTRACT IF, IN ANY FISCAL YEAR DURING THE TERM OF  
7 THE CONTRACT, THE GOVERNMENTAL UNIT DOES NOT RECEIVE SUFFICIENT  
8 FUNDS IN ITS ANNUAL APPROPRIATIONS TO MAKE THE PAYMENTS REQUIRED  
9 UNDER THE CONTRACT.

10 (b) Funds.--A ~~political subdivision or public~~ <—  
11 ~~instrumentality~~ GOVERNMENTAL UNIT may use funds designated for <—  
12 operating, UTILITIES or capital expenditures for any guaranteed <—  
13 energy savings contract, including, without limitation, for  
14 purchases on an installment payment or lease purchase basis.

15 (c) Grants, subsidies or other payments.--Grants, subsidies  
16 or other payments from the Commonwealth to a governmental unit  
17 shall not be reduced as a result of energy savings obtained as a  
18 result of a guaranteed energy savings contract during the life  
19 of the contract.

20 Section 6. Commonwealth contracts.

21 In connection with the letting of any guaranteed energy  
22 savings contract for the Commonwealth under this act, the  
23 Department of General Services shall have the power to waive the  
24 process for selection of architects or engineers otherwise  
25 prescribed under section ~~2402.1(19)~~ 2401.1(19) of the act of <—  
26 April 9, 1929 (P.L.177, No.175), known as The Administrative  
27 Code of 1929. In exercising its discretion under this section,  
28 the Department of General Services shall consider the best  
29 interests of this Commonwealth and any relevant circumstances  
30 peculiar to the proposed contract.

1 Section 7. Reporting.

2 All contracts awarded by a governmental unit under this act  
3 shall be reported to the ~~Pennsylvania Energy Office~~ DEPARTMENT <—  
4 OF ENVIRONMENTAL PROTECTION. The ~~Pennsylvania Energy Office~~ <—  
5 DEPARTMENT OF ENVIRONMENTAL PROTECTION shall provide timely <—  
6 advice and assistance to any governmental unit seeking to  
7 evaluate any estimate of the amount by which energy costs of the  
8 governmental unit will be reduced by a guaranteed energy savings  
9 contract proposed by a qualified provider.

10 Section 8. Construction.

11 This act shall not be construed to abrogate any duty to  
12 comply with prevailing wage or residency requirements contained  
13 in any other act or part thereof.

14 Section 9. Repeals.

15 All acts and parts of acts are repealed insofar as they are  
16 inconsistent with this act.

17 Section 10. Effective date.

18 This act shall take effect immediately.