

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1996

Session of  
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AS REPORTED FROM COMMITTEE ON ENVIRONMENTAL RESOURCES AND  
ENERGY, HOUSE OF REPRESENTATIVES, AS AMENDED,  
NOVEMBER 18, 2003

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## AN ACT

1 Amending Title 62 (Procurement) of the Pennsylvania Consolidated  
2 Statutes, further providing for guaranteed energy savings and  
3 contracts.

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

6 Section 1. Sections 3752, 3753 and 3754 of Title 62 of the  
7 Pennsylvania Consolidated Statutes are amended to read:

8 § 3752. Definitions.

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

12 "Allowable ~~capital~~ costs." Capital EQUIPMENT AND PROJECT <—  
13 costs that:

14 (1) the governmental unit reasonably believes will be  
15 incurred during the term of the guaranteed energy savings

1 contract; and

2 (2) are documented by industry engineering standards.

3 "Energy conservation measure." A [training] program or  
4 facility alteration designed to reduce energy consumption or  
5 operating costs. The term may include, without limitation:

6 (1) Insulation of the building structure or systems  
7 within the building.

8 (2) Storm windows or doors, caulking or weather  
9 stripping, multiglazed windows or doors, heat-absorbing or  
10 heat-reflective glazed and coated window or door systems,  
11 additional glazing, reductions in glass area or other window  
12 and door system modifications that reduce energy consumption.

13 (3) Automated or computerized energy control systems.

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

16 (5) Replacement or modification of lighting fixtures to  
17 increase the energy efficiency of the lighting system without  
18 increasing the overall illumination of a facility, unless an  
19 increase in illumination is necessary to conform to  
20 applicable State or local building codes for the lighting  
21 system after the proposed modifications are made.

22 (6) Energy recovery systems.

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

26 (8) Energy conservation measures that provide operating  
27 cost reductions based on life cycle cost analysis.

28 (9) A training program or facility alteration that  
29 reduces energy consumption or reduces operating costs,

30 including allowable capital costs, based on future reductions <—

1 in labor costs or costs for contracted services.

2 (10) A facility alteration which includes capital <—  
3 expenditures that are required to properly implement other  
4 energy conservation measures.

5 (11) A program to reduce energy costs through rate  
6 adjustments, load shifting to reduce peak demand, and/or use  
7 of alternative energy suppliers, such as, but not limited to:

8 (i) changes to more favorable rate schedules;

9 (ii) negotiation of lower rates, same supplier or  
10 new suppliers, where applicable; and

11 (iii) auditing of energy service billing and meters.

12 (12) The installation of energy information and control  
13 systems that monitor consumption, redirect systems to optimal  
14 energy sources, and manage energy-using equipment.

15 (13) Indoor air quality improvements.

16 (14) Daylighting systems.

17 (15) Renewable and/or on-site distributed power  
18 generation systems.

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

22 "Governmental unit." Any officer, employee, authority,  
23 board, bureau, commission, department, agency or institution of  
24 a government agency, including, but not limited to, any  
25 Commonwealth agency, State-aided institution or any county,  
26 city, district, municipal corporation, municipality, municipal  
27 authority, political subdivision, school district, educational  
28 institution, borough, incorporated town, township, poor  
29 district, county institution district, other incorporated  
30 district or other public instrumentality which has the authority

1 to contract for the construction, reconstruction, alteration or  
2 repair of any public building or other public work or public  
3 improvement, including, but not limited to, highway work.

4 "Industry engineering standards." Industry engineering  
5 standards may include the following:

6 (1) Life cycle costing.

7 (2) The R.S. Means estimated method developed by the  
8 R.S. Means Company.

9 (3) Historical data.

10 (4) Manufacturer's data.

11 (5) American Standard Heating Refrigeration Air  
12 Conditioning Engineers (ASHRAE) standards.

13 "Qualified provider." A person or business which is  
14 responsible and capable of evaluating, recommending, designing,  
15 implementing and installing energy conservation measures as  
16 determined by the governmental unit.

17 § 3753. Contracting procedures.

18 (a) General rule.--Notwithstanding any other contrary or  
19 inconsistent provision of law, a governmental unit may enter  
20 into a guaranteed energy savings contract with a qualified  
21 provider in accordance with the provisions of this subchapter or  
22 in accordance with another statutorily authorized procurement  
23 process.

24 (b) Guaranteed energy savings contract.--If in accordance  
25 with applicable law the award of a contract by a governmental  
26 unit requires action at a public meeting, a governmental unit  
27 may award a guaranteed energy savings contract at a public  
28 meeting if it has provided public notice in the manner  
29 prescribed [by the act of July 3, 1986 (P.L.388, No.84), known  
30 as the Sunshine Act,] under 65 Pa.C.S. Ch. 7 (relating to open

1 meetings) the notice including the names of the parties to the  
2 contract and the purpose of the contract. For governmental units  
3 that are not required to take actions on contracts at public  
4 meetings, the governmental unit may award a guaranteed energy  
5 savings contract in accordance with the procedures adopted by  
6 the governmental unit and the requirements of all applicable  
7 laws.

8 (c) Competitive sealed proposals.--For the purpose of  
9 entering into a guaranteed energy savings contract, all  
10 governmental units are authorized to utilize the competitive  
11 sealed proposal method of procurement. The governmental unit  
12 shall evaluate any proposal that meets the requirements of the  
13 governmental unit and is timely submitted by a qualified  
14 provider. The request for proposals shall be announced through a  
15 public notice from the governmental unit which will administer  
16 the program. The request for proposals shall provide all  
17 interested parties with sufficient information necessary to  
18 submit a timely and responsive proposal.

19 (d) Selection and notice.--The governmental unit shall  
20 select the qualified provider that best meets the needs of the  
21 governmental unit in accordance with criteria established by the  
22 governmental unit. For governmental units that are not required  
23 to take actions on contracts at public meetings, the  
24 governmental unit shall provide public notice of the award of  
25 the guaranteed energy savings contract within 30 days in the  
26 Pennsylvania Bulletin. The notice shall include the names of the  
27 parties to the contract and the purpose of the contract. For  
28 governmental units that are required to take actions on  
29 contracts at public meetings, the public notice shall be made at  
30 least ten days prior to the meeting. After reviewing the

1 proposals pursuant to subsection (e), a governmental unit may  
2 enter into a guaranteed energy savings contract with a qualified  
3 provider if it finds that the amount it would spend on the  
4 energy conservation measures recommended in the proposal would  
5 not exceed the amount to be saved in both energy and operational  
6 costs within a [ten-year] 15-year period from the date of  
7 installation if the recommendations in the proposal were  
8 followed and the qualified provider provides a written guarantee  
9 that the energy or operating cost savings will meet or exceed  
10 the cost of the contract.

11 (e) Report.--

12 (1) Before the award of a guaranteed energy savings  
13 contract, the qualified provider shall provide a report as  
14 part of its proposal which shall be available for public  
15 inspection, summarizing estimates of all costs of  
16 installation, maintenance, repairs and debt service and  
17 estimates of the amounts by which energy or operating costs  
18 will be reduced.

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

22 (f) Bond.--A qualified provider to whom a contract is  
23 awarded shall give a sufficient bond to the governmental unit  
24 for its faithful performance. Commonwealth agencies shall obtain  
25 such bonds in accordance with the provisions of section 533  
26 (relating to security and performance bonds). All other  
27 governmental units shall obtain such bonds in accordance with  
28 the act of December 20, 1967 (P.L.869, No.385), known as the  
29 Public Works Contractors' Bond Law of 1967.

30 (g) Award of contract.--Notwithstanding any other provision

1 of law governing the letting of public contracts, a governmental  
2 unit may enter into a single guaranteed energy savings contract  
3 with each responsible provider selected in accordance with the  
4 provisions of this subchapter.

5 § 3754. Contract provisions.

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

13 (b) Written guarantee.--A guaranteed energy savings contract  
14 shall include a written guarantee that savings will meet or  
15 exceed the cost of the energy conservation measures to be  
16 evaluated, recommended, designed, implemented or installed under  
17 the contract.

18 (c) Payments.--A guaranteed energy savings contract may  
19 provide for payments over a period of time not to exceed [ten]  
20 15 years and for the evaluation, recommendation, design,  
21 implementation and installation of energy conservation measures  
22 on an installment payment or lease purchase basis.

23 (d) Improvements not causally connected to an energy  
24 conservation measure.--An improvement that is not causally  
25 connected to an energy conservation measure may be included in a  
26 guaranteed energy savings contract if:

27 (1) the total value of the improvement does not exceed  
28 15% of the total value of the guaranteed energy savings  
29 contract; and

30 (2) either:

1           (i) the improvement is necessary to conform to a  
2           law, a rule or an ordinance; or

3           ~~(B)~~ (II) an analysis within the guaranteed energy      <—  
4           savings contract demonstrates that there is an economic  
5           advantage to the governmental unit implementing an  
6           improvement as part of the guaranteed energy savings  
7           contract;

8           and the savings justification for the improvement is documented  
9           by industry engineering standards.

10          (e) Other ~~capital~~ expenditures.--A facility alteration which      <—  
11          includes ~~capital~~ expenditures that are required to properly      <—  
12          implement other energy conservation measures may be included as  
13          part of a guaranteed energy savings contract. In such case,  
14          notwithstanding any other provision of law, the installation of  
15          these additional measures may be supervised by the contractor  
16          performing the guaranteed energy savings contract.

17          Section 2. Title 62 is amended by adding a section to read:  
18          § 3758. Review of proposed capital improvement projects.

19          Prior to entering into a guaranteed energy savings contract  
20          every governmental unit shall review all proposed capital  
21          improvement projects for potential applicability of this  
22          subchapter, and shall consider proceeding with a guaranteed  
23          energy savings contract under this subchapter where appropriate.

24          Section 3. This act shall take effect in 60 days.