

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1083 Session of
1995

INTRODUCED BY SALVATORE, JUNE 8, 1995

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, JUNE 8, 1995

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
18 stripping, multiglazed windows or doors, heat-absorbing or

1 heat-reflective glazed and coated window or door systems,
2 additional glazing, reductions in glass area or other window
3 and door system modifications that reduce energy consumption.

4 (3) Automated or computerized energy control systems.

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

7 (5) Replacement or modification of lighting fixtures to
8 increase the energy efficiency of the lighting system without
9 increasing the overall illumination of a facility, unless an
10 increase in illumination is necessary to conform to
11 applicable State or local building codes for the lighting
12 system after the proposed modifications are made.

13 (6) Energy recovery systems.

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

17 (8) Energy conservation measures that provide long-term
18 operating cost reductions.

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

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

25 "Qualified provider." A person or business experienced in
26 the design, implementation and installation of energy
27 conservation measures.

28 "Request for proposals (RFP)." A negotiated procurement.
29 Section 3. Contracting procedures.

30 (a) General rule.--Notwithstanding any other contrary or

1 inconsistent provision of law, a governmental unit may enter
2 into a guaranteed energy savings contract with a qualified
3 provider in accordance with the provisions of this act.

4 (b) Guaranteed contract.--If, in accordance with applicable
5 law, the award of a contract by a governmental unit requires
6 action at a public meeting, a governmental unit may award a
7 guaranteed energy savings contract at a public meeting if it has
8 provided public notice in the manner prescribed by the act of
9 July 3, 1986 (P.L.388, No.84), known as the Sunshine Act, the
10 notice including the names of the parties to the contract and
11 the purpose of the contract.

12 (c) Request for proposals.--Before entering into a
13 guaranteed energy savings contract under this section, a
14 governmental unit shall issue a request for proposals. The
15 governmental unit shall evaluate any proposal timely submitted
16 by a qualified provider. The RFP shall be announced through a
17 public notice from the governmental unit which will administer
18 the program, requesting innovative solutions and proposals for
19 energy conservation measures. The request for proposal shall
20 include all of the following:

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

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

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

27 (4) The date, time and place where proposals must be
28 received.

29 (5) The evaluation criteria for assessing the proposals.

30 (6) Any other stipulations and clarifications the

1 governmental unit may require.

2 (d) Selection and notice.--The governmental unit shall
3 select the qualified provider that best meets the needs of the
4 governmental unit. The governmental unit shall provide public
5 notice of the meeting at which it proposes to award a guaranteed
6 energy savings contract of the names of the parties to the
7 proposed contract and of the purpose of the contract. The public
8 notice shall be made at least ten days prior to the meeting.
9 After reviewing the proposals pursuant to subsection (e), a
10 governmental unit may enter into a guaranteed energy savings
11 contract with a qualified provider if it finds that the amount
12 it would spend on the energy conservation measures recommended
13 in the proposal would not exceed the amount to be saved in both
14 energy and operational costs within a ten-year period from the
15 date of installation, if the recommendations in the proposal
16 were followed and the qualified provider provides a written
17 guarantee that the energy or operating cost savings will meet or
18 exceed the cost of the contract.

19 (e) Report.--

20 (1) Before the award of a guaranteed energy savings
21 contract, the qualified provider shall issue a report which
22 shall be available for public inspection summarizing
23 estimates of all costs of installation, maintenance, repairs
24 and debt service, and estimates of the amounts by which
25 energy or operating costs will be reduced.

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

29 (f) Bond.--A qualified provider to whom a contract is
30 awarded shall give a sufficient bond to the governmental unit

1 for its faithful performance in accordance with the act of
2 December 20, 1967 (P.L.869, No.385), known as the Public Works
3 Contractors' Bond Law of 1967.

4 (g) Award of contract.--The award of a contract to a
5 qualified provider under this section shall be made on the basis
6 of the best interest of the governmental unit. Notwithstanding
7 any other provision of law governing the letting of public
8 contracts, a governmental unit may engage in direct or sole
9 source negotiations with any qualified provider concerning a
10 potential guaranteed energy savings contract to be offered to a
11 governmental unit and awarded in accordance with the provisions
12 of this act.

13 Section 4. Contract provisions.

14 (a) General rule.--A guaranteed energy savings contract may
15 provide that all payments, except obligations on termination of
16 the contract before its scheduled expiration, shall be made over
17 a period of time. Every guaranteed energy savings contract shall
18 provide that the savings in any year are guaranteed to the
19 extent necessary to make payments under the contract during that
20 year.

21 (b) Written guarantee.--A guaranteed energy savings contract
22 shall include a written guarantee that savings will meet or
23 exceed the cost of the energy conservation measures to be
24 installed under the contract.

25 (c) Payments.--A guaranteed energy savings contract may
26 provide for payments over a period of time, not to exceed ten
27 years, and for the purchase and installation of energy
28 conservation measures on an installment payment or lease
29 purchase basis.

30 Section 5. Funding.

1 (a) General rule.--A guaranteed energy savings contract may
2 extend beyond the fiscal year of the governmental unit during
3 which it becomes effective. If in any later fiscal year during
4 the term of the contract the governmental unit terminates the
5 contract because of its failure to receive in its annual
6 appropriations amounts payable under the contract during that
7 year, the governmental unit, upon termination of the contract
8 for failure to receive sufficient appropriations, shall
9 reimburse the contractor for the unamortized portion of the
10 costs of energy savings measures undertaken pursuant to the
11 contract.

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

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

22 Section 6. Commonwealth contracts.

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

1 Commonwealth and any relevant circumstances peculiar to the
2 proposed contract.

3 Section 7. Reporting.

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

11 Section 8. Construction.

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

15 Section 9. Repeals.

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

18 Section 10. Effective date.

19 This act shall take effect immediately.