

HOUSE BILL No. 6584

December 1, 2010, Introduced by Reps. Gonzales, Spade, Polidori, Huckleberry and Ball and referred to the Committee on Energy and Technology.

A bill to require state and local governmental entities to undertake energy audits of their facilities and implement energy conservation measures; to provide for energy service contracts and the financing thereof; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Cost-effective" means that the present value to a
3 governmental unit of the energy reasonably expected to be saved or
4 produced by a facility, activity, measure, or equipment over its
5 useful life, including any compensation received from a utility, is
6 greater than the net present value of the costs of implementing,
7 maintaining, and operating such facility, activity, measure, or
8 equipment over its useful life, if discounted at the cost of public

1 borrowing.

2 (b) "Cost-savings measure" means any facility improvement,
3 repair, or alteration of, or any equipment, fixture, or furnishing
4 to be added or used in, any facility that is designed to reduce
5 energy consumption and operating costs or increase the operating
6 efficiency of the facility for its appointed functions and that is
7 cost-effective. Cost-savings measure includes, but is not limited
8 to, all of the following:

9 (i) Replacement or modification of lighting components,
10 fixtures, or systems.

11 (ii) Renewable energy and alternate energy systems.

12 (iii) Cogeneration systems that produce steam or forms of
13 energy, such as heat or electricity, for use primarily within a
14 building or complex of buildings.

15 (iv) Devices that reduce water consumption or sewer charges,
16 including all of the following:

17 (A) Water-conserving fixtures, appliances, and equipment,
18 including water-conserving landscape irrigation equipment, or the
19 substitution of non-water-using fixtures, appliances, and
20 equipment.

21 (B) Landscaping measures that reduce watering demands and
22 capture and hold applied water and rainfall, including landscape
23 contouring, such as the use of berms, swales, and terraces, the use
24 of soil amendments, such as compost, that increase the water-
25 holding capacity of the soil, rainwater harvesting equipment, and
26 equipment to make use of water collected as part of a storm water
27 system installed for water quality control.

1 (C) Equipment for recycling or reuse of water originating on
2 the premises or from other sources, including treated municipal
3 effluent.

4 (D) Equipment to capture water from nonconventional, alternate
5 sources, including air conditioning condensate or graywater, for
6 nonpotable uses.

7 (E) Metering equipment to segregate water use in order to
8 identify water conservation opportunities or verify water savings.

9 (v) Changes in operation and maintenance practices.

10 (vi) Indoor air quality improvements that conform to applicable
11 building code requirements.

12 (vii) Daylighting systems.

13 (viii) Insulating the building structure or systems in the
14 building.

15 (ix) Storm windows or doors, caulking or weather stripping,
16 multiglazed windows or door systems, heat-absorbing or heat-
17 reflective glazed and coated window and door systems, additional
18 glazing, reductions in glass area, or other window and door system
19 modifications that reduce energy consumption.

20 (x) Automated or computerized energy control systems.

21 (xi) Heating, ventilation, or air conditioning system
22 modifications or replacements.

23 (xii) Energy recovery systems.

24 (xiii) Steam trap improvement programs that reduce operating
25 costs.

26 (xiv) Building operation programs that reduce utility and
27 operating costs including, but not limited to, computerized energy

1 management and consumption tracking programs, staff and occupant
2 training, and other similar activities.

3 (xv) Any life safety measures that provide long-term operating
4 cost reductions and are in compliance with state and local codes.

5 (xvi) Any life safety measures related to compliance with the
6 Americans with disabilities act, Public Law 101-336, that provide
7 long-term operating cost reductions and are in compliance with
8 state and local codes.

9 (xvii) A program to reduce energy costs through rate
10 adjustments, load shifting to reduce peak demand, or use of
11 alternative energy suppliers, such as, but not limited to:

12 (A) Changes to more favorable rate schedules.

13 (B) Negotiation of lower rates, with the same supplier or a
14 new supplier, if applicable.

15 (C) Auditing of energy service billing and meters.

16 (xviii) Services to reduce utility costs by identifying utility
17 errors and optimizing existing rate schedules under which service
18 is provided.

19 (xix) Any other installation, modification of installation, or
20 remodeling of building infrastructure improvements that produce
21 utility or operational cost savings for their appointed functions
22 in compliance with applicable state and local building codes.

23 (c) "DELEG" means the department of energy, labor, and
24 economic growth.

25 (d) "Energy performance contract" means a contract between a
26 governmental unit and a qualified energy service provider for
27 evaluation, recommendation, and implementation of 1 or more cost-

1 savings measures. A performance contract may be structured as
2 either a guaranteed energy savings contract or a shared energy
3 savings contract.

4 (e) "Governmental unit" means any agency, authority, or
5 political subdivision of this state or a local unit of government,
6 including, but not limited to, county, city, township, village,
7 local school district, and institution of higher education, state-
8 supported institution, or any combination of these.

9 (f) "Guaranteed energy savings contract" means a contract that
10 includes all of the following:

11 (i) The design and installation of equipment.

12 (ii) If applicable, operation and maintenance of any of the
13 measures implemented.

14 (iii) Guaranteed annual savings from reduced energy consumption
15 and operating costs or increased operating efficiency that meet or
16 exceed the total annual contract payments made by the governmental
17 unit for the contract, including financing charges to be incurred
18 by the governmental unit over the life of the contract.

19 (g) "Investment grade audit" means a study by the qualified
20 energy services provider selected for a particular energy
21 performance contract project which includes detailed descriptions
22 of the improvements recommended for the project, the estimated
23 costs of the improvements, and the operations and maintenance cost
24 savings and utility cost savings projected to result from the
25 recommended improvements.

26 (h) "Operation and maintenance cost savings" means a
27 measurable decrease in operation and maintenance costs or future

1 replacement expenditures that is a direct result of the
2 implementation of 1 or more utility cost-savings measures.
3 Operation and maintenance cost savings shall be calculated in
4 comparison with an established baseline of operation and
5 maintenance costs.

6 (i) "Person" means an individual, partnership, corporation,
7 association, governmental entity, or other legal entity.

8 (j) "Public building" means any structure, building, or
9 facility, including its equipment, furnishings, or appliances, that
10 is owned or operated by a governmental unit.

11 (k) "Qualified energy service provider" means a person with a
12 record of successful energy performance contract projects or a
13 person who is experienced in the design, implementation, and
14 installation of energy efficiency and facility improvement
15 measures, the technical capabilities to ensure such measures
16 generate energy and operational cost savings and the ability to
17 secure the financing necessary to support energy savings
18 guarantees.

19 (l) "Shared energy savings contract" means a contract under
20 which the rate of payments is based upon energy and operational
21 cost savings and a stipulated maximum energy consumption level over
22 the life of the contract.

23 (m) "Utility cost savings" means any utility expenses that are
24 eliminated or avoided on a long-term basis as a result of equipment
25 installed or modified, or services performed by a qualified energy
26 service provider. Utility cost savings do not include merely
27 shifting personnel costs or similar short-term cost savings.

1 Sec. 3. (1) Each governmental unit shall implement cost-
2 effective energy conservation improvements and maintain efficient
3 operation of its facilities to minimize energy consumption and
4 related environmental impacts and reduce operating costs. Each
5 governmental unit shall undertake an energy audits and implement
6 cost-savings measures by January 1, 2011, January 1, 2012, and
7 January 1, 2013.

8 (2) Energy performance contracts shall be the preferred method
9 for completing energy audits and implementing cost-savings
10 measures. Any governmental unit may enter into an energy
11 performance contract with a qualified energy services provider to
12 produce utility cost savings or operation and maintenance cost
13 savings. Cost-savings measures implemented under an energy
14 performance contract shall comply with state or local building
15 codes. Any governmental unit may implement other capital
16 improvements in conjunction with an energy performance contract if
17 the measures that are being implemented to achieve energy and
18 operation and maintenance cost savings are a significant portion of
19 an overall project. A governmental unit shall not enter into an
20 energy savings performance contract for a period of more than 1
21 year unless the governmental unit finds that the amount the
22 governmental unit would spend on the cost-savings measures will not
23 exceed the amount to be saved in energy, water, wastewater, and
24 operating costs over 20 years from the date of installation.

25 Sec. 5. (1) The department shall be the lead agency for the
26 development and promotion of a program of energy performance
27 contracts in governmental units. DELEG shall coordinate its

1 activities for this program with the department of technology,
2 management, and budget. DELEG shall do all of the following with
3 respect to this program:

4 (a) Assist the department of technology, management, and
5 budget to assemble a list of qualified energy service providers and
6 to negotiate with such qualified energy service providers master
7 service contracts and pricing schedules.

8 (b) Develop a standardized energy performance contract process
9 and standard energy performance contract documents, including all
10 of the following:

11 (i) A request for qualifications.

12 (ii) A request for proposals.

13 (iii) An investment grade audit contract.

14 (iv) An energy services agreement, including the form of the
15 project savings guarantee, and project financing agreement.

16 (c) Promote the energy performance contract program to all
17 governmental units.

18 (d) Establish guidelines and an approval process for awarding
19 energy performance contracts. The guidelines shall require that the
20 cost savings projected by a qualified provider be reviewed by a
21 licensed professional engineer who has at least 3 years of
22 experience in energy calculation and review, is not an officer or
23 employee of a qualified provider for the contract under review, and
24 is not otherwise associated with the contract. In conducting the
25 review, the engineer shall focus primarily on the proposed
26 improvements from an engineering perspective, the methodology and
27 calculations related to cost savings, increases in revenue, and, if

1 applicable, efficiency or accuracy of metering equipment. An
2 engineer who reviews a contract under this subdivision shall
3 maintain the confidentiality of any proprietary information the
4 engineer acquires while reviewing the contract.

5 (2) The governor is encouraged to develop and submit to the
6 legislature a regular or supplemental budget request for the
7 additional funds and staffing required by DELEG to fulfill these
8 duties.

9 (3) DELEG shall assist governmental units in identifying,
10 evaluating, and implementing at their facilities cost-savings
11 measures. The assistance shall include notifying governmental units
12 of their responsibilities under this act; apprising governmental
13 units of opportunities to develop and finance energy performance
14 contract projects; providing technical and analytical support,
15 including procuring energy performance contract services; reviewing
16 verification procedures for energy savings; and assisting in the
17 structuring and arranging of financing for energy performance
18 contract projects.

19 (4) DELEG may charge reasonable fees, not to exceed 2% of the
20 total cost of the energy performance contract project, for any
21 administrative support and resources or other services provided by
22 DELEG under this section from the governmental units that use its
23 technical support services. A governmental unit may add the costs
24 of these fees to the total cost of an energy performance contract.

25 Sec. 7. (1) The state process of implementing energy
26 performance contracts for governmental units shall include a
27 request for qualifications and a request for proposals.

1 (2) The department of technology, management, and budget may
2 compile a list of qualified energy service providers. The
3 department of technology, management, and budget shall attempt to
4 use objective criteria in the selection process. The criteria for
5 evaluation shall include the following substantive factors to
6 assess the capability of the qualified energy service provider in
7 the areas of design, engineering, installation, maintenance, and
8 repairs associated with energy performance contracts:

9 (a) Experience in conversions to a different energy or fuel
10 source associated with a comprehensive energy efficiency retrofit.

11 (b) Postinstallation project monitoring, data collection, and
12 reporting of savings.

13 (c) Overall project experience and qualifications.

14 (d) Management capability.

15 (e) Ability to access long-term financing.

16 (f) Experience with projects of similar size and scope.

17 (g) Other factors determined by the governmental unit to be
18 relevant and appropriate and relate to the ability to perform the
19 project.

20 (3) Before entering into an energy performance contract under
21 this section, a governmental unit shall issue a request for
22 proposals from not more than 3 selected qualified energy service
23 providers. A governmental unit may thereafter award the energy
24 performance contract to the qualified energy service provider that
25 best meets the needs of the governmental unit, which need not be
26 the lowest cost provided. Each response to the request for
27 proposals shall include a cost-effective feasibility analysis. The

1 feasibility analysis shall serve as the selection document for
2 purposes of selecting a qualified energy service provider to engage
3 in final contract negotiations. The governmental agency shall
4 consider at least all of the following factors in choosing 1 of the
5 selected energy service providers with which to negotiate an energy
6 performance contract:

7 (a) Contract terms.

8 (b) Comprehensiveness of the proposal.

9 (c) Comprehensiveness of cost-savings measures.

10 (d) Experience.

11 (e) Quality of technical approach.

12 (f) Overall benefits to the governmental unit.

13 Sec. 9. (1) The qualified energy service provider chosen as a
14 result of the process set forth in section 7(3) shall prepare an
15 investment grade energy audit, which, upon acceptance, shall be
16 part of the final energy performance contract. The investment grade
17 energy audit shall include estimates of the amounts by which
18 utility cost savings and operation and maintenance cost savings
19 would increase and itemized estimates of all costs of such utility
20 cost-savings measures or energy-savings measures, including, but
21 not limited to, all of the following:

22 (a) Design.

23 (b) Engineering.

24 (c) Equipment.

25 (d) Materials.

26 (e) Installation.

27 (f) Maintenance.

1 (g) Repairs.

2 (h) Debt service.

3 (2) If, after preparation of the investment grade energy
4 audit, the governmental unit decides not to execute an energy
5 services agreement, and the costs and benefits described in the
6 investment grade energy audit are not materially different from
7 those described in the feasibility study submitted in response to
8 the request for proposals, then the costs incurred in preparing the
9 investment grade energy audit shall be paid to the qualified energy
10 service provider by the governmental unit. Otherwise the costs of
11 the investment grade energy audit shall be considered part of the
12 costs of the energy performance contract.

13 Sec. 11. (1) A governmental unit may use designated funds,
14 bonds, or master lease for any energy performance contract
15 including purchases using installment payment contracts or lease
16 purchase agreements, if that use is consistent with the purpose of
17 the appropriation.

18 (2) Unless otherwise provided by law or ordinance, a
19 governmental unit may use funds designated for operating and
20 capital expenditures or utilities for any energy performance
21 contract.

22 (3) A guaranteed energy savings contract may provide for
23 financing, including tax-exempt financing, by a third party. The
24 contract for third-party financing may be separate from the
25 guaranteed energy savings contract. A separate contract for third-
26 party financing shall include a provision that the third-party
27 financier will not be granted rights or privileges that exceed the

1 rights and privileges available to the contractor under the
2 guaranteed energy savings contract.

3 Sec. 13. Each energy performance contract shall provide both
4 of the following:

5 (a) That all payments between parties, except obligations on
6 termination of the contract before its expiration, shall be made
7 over time.

8 (b) The objective of the energy performance contract is
9 implementation of cost-savings measures and achievement of utility
10 cost savings and operation and maintenance cost savings.

11 Sec. 15. (1) An energy performance contract, and payments
12 provided thereunder, may extend beyond the fiscal year in which the
13 energy performance contract became effective, subject to
14 appropriation of money, if required by law, for costs incurred in
15 future fiscal years.

16 (2) The term of an energy performance contract shall not
17 exceed 25 years. The term of an energy performance contract may
18 also reflect the useful life of the cost-savings measures.

19 (3) An energy performance contract may provide for payments
20 over a period of time not to exceed deadlines specified in the
21 energy performance contract from the date of the final installation
22 of the cost-savings measures.

23 Sec. 17. Subject to appropriations under sections 9 and 11,
24 each governmental unit shall allocate sufficient money for each
25 fiscal year to make payment of any amounts payable by the
26 governmental unit under performance contracts during that fiscal
27 year.

1 Sec. 19. (1) A governmental unit that enters an energy
2 performance contract shall retain the savings achieved as a result
3 of the energy performance contract. The governmental unit shall not
4 utilize the savings to supplant otherwise appropriated funds for
5 the governmental unit.

6 (2) Subject to subsection (3), an energy performance contract
7 shall require the qualified energy service provider to provide to
8 the governmental unit an annual reconciliation of the guaranteed
9 energy cost savings. If the reconciliation reveals a shortfall in
10 annual energy cost savings, the qualified provider is liable for
11 such shortfall. If the reconciliation reveals an excess in annual
12 energy cost savings, the excess savings may be used to cover
13 potential energy cost-savings shortages in subsequent contract
14 years.

15 (3) An energy performance contract may provide that
16 reconciliation of the amounts owed under an energy performance
17 contract shall occur less frequently than annually, with final
18 reconciliation occurring within the term of the energy performance
19 contract.

20 Sec. 21. (1) During the term of each energy performance
21 contract, the qualified energy service provider shall monitor the
22 reductions in energy consumption and the cost savings attributable
23 to the cost-savings measures installed pursuant to the performance
24 contract, and shall, at least annually, provide a report to the
25 governmental unit documenting the performance of the cost-savings
26 measures to the governmental unit.

27 (2) The qualified energy service provider and governmental

1 unit may agree to make modifications in calculating savings based
2 on any of the following occurrences:

3 (a) Subsequent material change to the baseline energy
4 consumption identified at the beginning of the energy performance
5 contract.

6 (b) Changes in utility rates.

7 (c) Changes in the number of days in the utility billing
8 cycle.

9 (d) Changes in the total square footage of a building.

10 (e) Changes in the operational schedule of a facility.

11 (f) Changes in facility temperature.

12 (g) Material change in the weather.

13 (h) Material changes in the amount of equipment or lighting
14 used at a facility.

15 (i) Any other change which reasonably would be expected to
16 modify energy use or energy costs.

17 (3) For all projects carried out under this act, the
18 governmental unit shall identify the project, the investment on the
19 project, and the expected energy savings to DELEG and shall file
20 with DELEG a copy of all reports delivered pursuant to subsection
21 (1). DELEG may report energy savings from these projects to the
22 United States department of energy, energy information
23 administration under section 1605(b) of the energy policy act of
24 1992, 42 USC 13385(b).

25 Sec. 23. An energy performance contract shall include
26 contingency provisions in the event that actual savings do not meet
27 predicted savings.

1 Sec. 25. Governmental units may direct savings realized under
2 an energy performance contract to contract payment and other
3 expenses. Governmental units are encouraged to reinvest savings
4 whenever practical into cost-savings measures, if the governmental
5 unit is satisfying all obligations under the performance contract.