

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5727

A bill to provide that governmental units implement cost-effective energy conservation improvements to minimize energy consumption and reduce operating costs; to provide for energy audits; to specify procedures for obtaining contracts to reduce energy consumption; to prescribe payment methods for energy conservation contracts; and to prescribe duties for certain state governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1. (1) This act shall be known and may be cited as the
2 "cost-effective governmental energy use act".
3 (2) For purposes of this act, the words and phrases defined in
4 sections 2 to 5 have the meanings ascribed to them in those
5 sections.

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

11 Sec. 3. (1) "Cost-savings measure" may include any facility
12 improvement, repair, or alteration of, or any equipment, fixture,
13 or furnishing to be added or used in, any facility that is designed
14 to reduce energy consumption, utility costs, capital avoidance
15 costs, capital improvement costs, maintenance costs, and operating
16 costs or increase revenue or the operating efficiency of the
17 facility for its appointed functions and that is cost-effective.
18 Cost-savings measure may include, but is not limited to, all of the
19 following:

20 (a) Replacement or modification of lighting components,
21 fixtures, or systems.

22 (b) Renewable energy and alternate energy systems.

23 (c) Cogeneration systems that produce steam or forms of
24 energy, such as heat or electricity, for use primarily within a
25 building or complex of buildings.

26 (d) Devices that reduce water consumption or sewer charges,
27 including all of the following:

1 (i) Water-conserving fixtures, appliances, and equipment,
2 including water-conserving landscape irrigation equipment, or the
3 substitution of non-water-using fixtures, appliances, and
4 equipment.

5 (ii) Landscaping measures that reduce watering demands and
6 capture and hold applied water and rainfall, including landscape
7 contouring, such as the use of berms, swales, and terraces, the use
8 of soil amendments, such as compost, that increase the water-
9 holding capacity of the soil, rainwater harvesting equipment, and
10 equipment to make use of water collected as part of a storm water
11 system installed for water quality control.

12 (iii) Equipment for recycling or reuse of water originating on
13 the premises or from other sources, including treated municipal
14 effluent.

15 (iv) Equipment to capture water from nonconventional, alternate
16 sources, including air conditioning condensate or graywater, for
17 nonpotable uses.

18 (v) Metering equipment to segregate water use in order to
19 identify water conservation opportunities or verify water savings.

20 (e) Changes in operation and maintenance practices.

21 (f) Indoor air quality improvements that conform to applicable
22 building code requirements.

23 (g) Daylighting systems.

24 (h) Insulating the building structure or systems in the
25 building.

26 (i) Storm windows or doors, caulking or weather stripping,
27 multiglazed windows or door systems, heat-absorbing or heat

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

4 (j) Automated or computerized energy control systems.

5 (k) Heating, ventilation, or air conditioning system
6 modifications or replacements.

7 (l) Energy recovery systems.

8 (m) Steam trap improvement programs that reduce operating
9 costs.

10 (n) Building operation programs that reduce utility and
11 operating costs including, but not limited to, computerized energy
12 management and consumption tracking programs, advanced metering,
13 metering and sub-metering, staff and occupant training, and other
14 similar activities.

15 (o) Any life safety measures that provide long-term operating
16 cost reductions and are in compliance with state and local codes.

17 (p) Any life safety measures related to compliance with the
18 Americans with disabilities act that provide long-term operating
19 cost reductions and are in compliance with state and local codes.

20 (q) A program to reduce energy costs through rate adjustments
21 and load shifting to reduce peak demand, including, but not limited
22 to, 1 or more of the following:

23 (i) Changes to more favorable rate schedules.

24 (ii) Auditing of energy service billing and meters.

25 (r) Services to reduce utility costs by identifying utility
26 errors and optimizing existing rate schedules under which service
27 is provided.

1 (s) Any other installation, modification of installation, or
2 remodeling of building infrastructure improvements that produce
3 utility or operational cost savings for their appointed functions
4 in compliance with applicable state and local building codes.

5 (t) Recommissioning.

6 (u) Retro-commissioning.

7 (v) Continuous commission.

8 (w) Behavior modification and energy policies.

9 (x) Measurement and verification.

10 (y) Reporting tools.

11 (z) Geothermal.

12 (aa) Carbon footprint monitoring.

13 (2) "Department" means the department of technology,
14 management, and budget.

15 Sec. 4. (1) "Energy performance contract" means a contract
16 between a governmental unit and a qualified energy service provider
17 for evaluation, recommendation, and implementation of 1 or more
18 cost-savings measures. An energy performance contract may be
19 structured as either a guaranteed energy savings contract or an
20 energy savings performance contract.

21 (2) "Energy savings performance contract" means a contract
22 under which the rate of payments is based upon energy and
23 operational cost savings and a stipulated maximum energy
24 consumption level over the life of the contract.

25 (3) "Governmental unit" means a department, state agency, or
26 state authority.

27 (4) "Guaranteed energy savings contract" means a contract that

1 includes all of the following:

2 (a) The design and installation of equipment.

3 (b) If applicable, operation and maintenance of any of the
4 measures implemented.

5 (c) Guaranteed annual savings from reduced energy consumption
6 and operating costs or increased operating efficiency that meet or
7 exceed the total annual contract payments made by the governmental
8 unit for the contract, including financing charges to be incurred
9 by the governmental unit over the life of the contract.

10 (5) "Investment grade audit" means a study by the qualified
11 energy service provider selected for a particular energy
12 performance contract project that includes detailed descriptions of
13 the improvements recommended for the project, the estimated costs
14 of the improvements, and the operations and maintenance cost
15 savings and utility cost savings projected to result from the
16 recommended improvements.

17 (6) "Operation and maintenance cost savings" means a
18 quantifiable and governmental unit approved decrease in operation
19 and maintenance costs or future replacement expenditures that is a
20 direct result of the implementation of 1 or more utility cost-
21 savings measures. Operation and maintenance cost savings shall be
22 calculated in comparison with an established baseline of operation
23 and maintenance costs.

24 Sec. 5. (1) "Person" means an individual, partnership,
25 corporation, association, governmental entity, or other legal
26 entity.

27 (2) "Public building" means any structure, building, or

1 facility, including its equipment, furnishings, or appliances, that
2 is owned or operated by a governmental unit.

3 (3) "Qualified energy service provider" means a person with a
4 record of successful energy performance contract projects or a
5 person who is experienced in the design, implementation, and
6 installation of energy efficiency and facility improvement
7 measures, the technical capabilities to ensure such measures
8 generate energy and operational cost savings, and accredited by the
9 national association of energy service companies (NAESCO),
10 prequalified for work through the United States department of
11 energy for federal facilities or any other national energy service
12 company accreditation program.

13 (4) "Utility cost savings" means any utility expenses that are
14 eliminated or avoided on a long-term basis as a result of equipment
15 installed or modified, or services performed by a qualified energy
16 service provider. Utility cost savings do not include merely
17 shifting personnel costs or similar short-term cost savings.

18 Sec. 6. Any governmental unit may enter into an energy
19 performance contract with a qualified energy service provider to
20 produce utility cost savings or operation and maintenance cost
21 savings, except as otherwise provided in section 237 of the
22 management and budget act, 1984 PA 431, MCL 18.1237. Cost-savings
23 measures implemented under an energy performance contract shall
24 comply with state or local building codes. Any governmental unit
25 may implement other capital improvements in conjunction with an
26 energy performance contract if the measures that are being
27 implemented to achieve energy and operation and maintenance cost

1 savings are a significant portion of an overall project. A
2 governmental unit shall not enter into an energy savings
3 performance contract for a period of more than 1 year unless the
4 governmental unit finds that the amount the governmental unit would
5 spend on the cost-savings measures will not exceed the amount to be
6 saved in energy, water, wastewater, and operating costs over 15
7 years or the average useful life of the measures from the date of
8 installation.

9 Sec. 7. (1) The department is the lead agency for the
10 development and promotion of a program of energy performance
11 contracts in governmental units. The department shall do all of the
12 following with respect to this program:

13 (a) Assemble a list of qualified energy service providers
14 through a request for qualifications process and a list of
15 standardized tools and contract templates.

16 (b) Develop a standardized energy performance contract process
17 and standard energy performance contract documents, including all
18 of the following:

19 (i) A request for qualifications.

20 (ii) An investment grade audit and energy services contract.

21 (iii) Guidelines and an approval process for awarding energy
22 performance contracts that allow the governmental unit to contract
23 with a qualified energy service provider for an investment grade
24 audit to be performed at any building, structure, or facility.
25 Under the contract, the energy service company shall prepare a
26 report containing a description of the physical modifications to be
27 performed to the building, structure, or facility that are required

1 to effect specific future energy savings within a specified period
2 and a determination of the minimum savings in energy usage that
3 will be realized by the governmental unit from making these
4 modifications within that period. After review of the investment
5 grade audit report and subject to approval, the governmental unit
6 may contract with the qualified energy service provider for
7 construction work to be performed at the building, structure, or
8 facility for the purpose of realizing potential savings of future
9 energy costs identified in the audit if the department determines
10 that the anticipated savings to the governmental unit after
11 completion of the work will enable recovery of the costs of the
12 work within a maximum of 15 years or the average useful life of the
13 measures.

14 (c) Promote the energy performance contract program to all
15 governmental units.

16 (d) The department shall make the qualified list of qualified
17 energy service providers, standardized tools, and contract
18 templates available to local units of government and public
19 entities.

20 (2) The criteria used by the department for the evaluation of
21 qualified energy service providers may include, but not be limited
22 to, all of the following substantive factors to assess the
23 capability of the qualified energy service provider in the areas of
24 design, engineering, installation, maintenance, and repairs
25 associated with energy performance contracts:

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

1 (b) Experience and capabilities in post-installation project
2 monitoring, data collection, and reporting of savings.

3 (c) Overall project experience and qualifications.

4 (d) Management capability.

5 (e) Experience with projects of similar size and scope.

6 (f) The financial ability to cover energy guarantees, the
7 procurement of bonds or insurance, and the financial ability to
8 cover energy guarantees as demonstrated by audited financial
9 statements.

10 (g) Other factors proposed by a governmental unit and
11 determined by the department to be relevant, appropriate, and
12 related to the ability to perform the project.

13 Sec. 8. The department shall develop an annual report of total
14 facility capital liability and total dollar amount of completed and
15 substantially completed energy performance contract work. Prior to
16 December 31 of each calendar year, the department shall present
17 this report to the members of the house appropriations committee
18 and the senate appropriations committee.

19 Sec. 9. The department shall assist governmental units in
20 identifying, evaluating, and implementing cost-savings measures at
21 their facilities. The assistance may include 1 or more of the
22 following:

23 (a) Apprising governmental units of opportunities to develop
24 and finance energy performance contract projects.

25 (b) Providing technical and analytical support, including
26 procuring energy performance contract services.

27 (c) Reviewing verification procedures for energy savings.

1 (d) Assisting in the structuring and arranging of financing
2 for energy performance contract projects.

3 Sec. 10. The department may charge fees, not to exceed the
4 lesser of \$500,000.00 adjusted annually, beginning after calendar
5 year 2014, by the consumer price index or up to 2% of the total
6 cost of the energy performance contract project, for any
7 administrative support and resources or other services provided by
8 the department under this section from the governmental units that
9 use its technical support services. A governmental unit may add the
10 costs of these fees to the total cost of an energy performance
11 contract.

12 Sec. 11. The qualified energy service provider chosen as a
13 result of the process set forth in this section shall prepare an
14 investment grade energy audit, which, upon acceptance, shall be
15 part of the final energy performance contract. The investment grade
16 energy audit shall include estimates of the amounts by which
17 utility cost savings and operation and maintenance cost savings
18 would increase and itemized estimates of all costs of such utility
19 cost-savings measures or energy-savings measures, including, but
20 not limited to, all of the following:

21 (a) Design.

22 (b) Engineering

23 (c) Equipment.

24 (d) Materials.

25 (e) Installation.

26 (f) Maintenance.

27 (g) Repairs.

1 (h) Debt service.

2 Sec. 12. (1) A governmental unit may use designated funds,
3 bonds, or master lease for any energy performance contract,
4 including purchases using installment payment contracts or lease
5 purchase agreements, if that use is consistent with the purpose of
6 the appropriation.

7 (2) Unless otherwise provided by law or ordinance, a
8 governmental unit may use funds designated for operating and
9 capital expenditures or utilities for any energy performance
10 contract.

11 (3) A guaranteed energy savings contract may provide for
12 financing, including tax-exempt financing, by a third party. The
13 contract for third-party financing may be separate from the
14 guaranteed energy savings contract.

15 Sec. 13. (1) Each energy performance contract shall provide
16 both of the following:

17 (a) All payments between the parties, except obligations on
18 termination of the contract before its expiration, shall be made
19 over time.

20 (b) The objective of the energy performance contract is
21 implementation of cost-savings measures and achievement of both
22 utility cost savings and operation and maintenance cost savings.

23 (2) An energy performance contract and payments under that
24 contract may extend beyond the fiscal year in which the energy
25 performance contract becomes effective, subject to appropriation of
26 money, if required by law, for costs incurred in future fiscal
27 years.

1 (3) The term of an energy performance contract shall not
2 exceed 15 years or the average useful life of the measures. The
3 term of an energy performance contract may also reflect the useful
4 life of the cost-savings measures.

5 (4) An energy performance contract may provide for payments
6 over a period of time not to exceed deadlines specified in the
7 energy performance contract from the date of the final installation
8 of the cost-savings measures.

9 Sec. 14. (1) An energy performance contract shall require the
10 qualified energy service provider to provide to the governmental
11 unit an annual reconciliation of the guaranteed energy savings
12 based on industry standards. The contract shall provide that the
13 qualified provider is liable for any shortfall if the
14 reconciliation reveals a shortfall in annual energy cost savings.

15 (2) During the term of each energy performance contract, at
16 the discretion of the governmental unit, either the governmental
17 unit, the qualified energy service provider, or an independent
18 third party shall monitor the reductions in energy consumption and
19 the cost savings attributable to the cost-savings measures
20 installed pursuant to the performance contract, and shall, at least
21 annually, provide a report to the governmental unit documenting the
22 performance of the cost-savings measures to the governmental unit.
23 The report shall comply with adopted industry standards as
24 published at the date of the contract.

25 Sec. 15. Nothing in this act mandates or shall be construed to
26 mandate any of the following:

27 (a) That government units join or pay membership dues to

1 organizations involved in energy efficiency, sustainable
2 development, or similar practices.

3 (b) That government units abide by or otherwise follow
4 international standards related to performance measurement and
5 verification protocol.