

# SENATE BILL 53

P2, M5

9lr0123

(PRE-FILED)

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By: **Chair, Finance Committee (By Request – Departmental – Maryland Energy Administration)**

Requested: November 8, 2018

Introduced and read first time: January 9, 2019

Assigned to: Finance

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Committee Report: Favorable

Senate action: Adopted

Read second time: March 5, 2019

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **State Finance and Procurement – Energy Performance Contracts**

3 FOR the purpose of providing that the Department of General Services is responsible for  
4 monitoring the status of certain energy performance contracts and reporting on that  
5 status to the Board of Public Works annually; requiring a primary procurement unit  
6 to consult with the Department before issuing a request for proposals for an energy  
7 performance contract; requiring the Department to review certain proposed requests  
8 for proposals for energy performance contracts; providing for the effective dates of  
9 certain provisions of this Act; providing for the termination of certain provisions of  
10 this Act; and generally relating to energy performance contracts.

11 BY repealing and reenacting, with amendments,  
12 Article – State Finance and Procurement  
13 Section 12–301 and 12–302  
14 Annotated Code of Maryland  
15 (2015 Replacement Volume and 2018 Supplement)

16 BY repealing and reenacting, with amendments,  
17 Article – State Finance and Procurement  
18 Section 12–301  
19 Annotated Code of Maryland  
20 (2015 Replacement Volume and 2018 Supplement)  
21 (As enacted by Chapter 590 of the Acts of the General Assembly of 2017)

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
2 That the Laws of Maryland read as follows:

3 **Article – State Finance and Procurement**

4 12–302.

5 The [Maryland Energy Administration] **DEPARTMENT OF GENERAL SERVICES**  
6 shall be responsible for monitoring the status of active energy performance contracts and  
7 reporting that status to the Board annually.

8 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read  
9 as follows:

10 **Article – State Finance and Procurement**

11 12–301.

12 (a) (1) Before issuing a request for proposals for an energy performance  
13 contract, a primary procurement unit shall consult with the [Maryland Energy  
14 Administration] **DEPARTMENT OF GENERAL SERVICES**.

15 (2) The [Maryland Energy Administration] **DEPARTMENT OF GENERAL**  
16 **SERVICES** shall review the proposed request to ensure that it meets with the State energy  
17 standards, preserves the State’s flexibility to investigate and use economically justifiable  
18 new technologies, and is in conformance with the unit’s energy conservation plan that has  
19 been developed in accordance with § 4–806 of this article.

20 (b) (1) Notwithstanding any other provision of law and subject to the approval  
21 and control of the Board of Public Works, a primary procurement unit of State government  
22 is authorized to enter into energy performance contracts of up to 15 years’ duration.

23 (2) The Treasurer may enter into a capital lease to finance energy  
24 performance contracts as provided in Title 8, Subtitle 4 of this article.

25 (3) The payments and the total contract amount due under an energy  
26 performance contract or, in the case of a capital lease used to finance energy performance  
27 contracts, the capital lease payments may not exceed the actual energy savings realized as  
28 a result of the contract’s performance.

29 (4) (i) Before approval of an energy performance contract, the Board:

30 1. shall ensure that the projected annual energy savings  
31 attributable to the project will exceed the projected annual capital lease payments or  
32 payments to the contractor under the contract; and

1                                   2.     based on the review of the [Maryland Energy  
2 Administration] **DEPARTMENT OF GENERAL SERVICES**, shall determine whether the  
3 proposed energy technology is appropriate for the time period provided in the contract.

4                                   (ii)    The Board may:

5                                   1.     authorize the use of incentive contracts, including  
6 contracts that guarantee energy savings performance; and

7                                   2.     require prospective contractors to furnish appropriate  
8 guarantees to ensure that projected savings are realized.

9                                   (iii)  Any guarantees required under subparagraph (ii) of this  
10 paragraph may include a requirement that the contractor furnish a bond or other assurance  
11 to the State in an appropriate amount to guarantee projected performance and that the  
12 bond or other assurance be structured so that a failure to meet guaranteed performance  
13 savings will forfeit a portion of the bond or other assurance to match the shortfall in energy  
14 savings.

15                   SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read  
16 as follows:

17                                   **Article – State Finance and Procurement**

18     12–301.

19                   (a)    (1)    Before issuing a request for proposals for an energy performance  
20 contract, a unit shall consult with the [Maryland Energy Administration] **DEPARTMENT**  
21 **OF GENERAL SERVICES** and the Chief Procurement Officer.

22                                   (2)    The [Maryland Energy Administration] **DEPARTMENT OF GENERAL**  
23 **SERVICES** shall review the proposed request to ensure that it meets with the State energy  
24 standards, preserves the State’s flexibility to investigate and use economically justifiable  
25 new technologies, and is in conformance with the unit’s energy conservation plan that has  
26 been developed in accordance with § 4–806 of this article.

27                   (b)    (1)    Notwithstanding any other provision of law and subject to the approval  
28 and control of the Board of Public Works and the Chief Procurement Officer, a unit of State  
29 government is authorized to enter into energy performance contracts of up to 15 years’  
30 duration.

31                                   (2)    The Treasurer may enter into a capital lease to finance energy  
32 performance contracts as provided in Title 8, Subtitle 4 of this article.

33                                   (3)    The payments and the total contract amount due under an energy  
34 performance contract or, in the case of a capital lease used to finance energy performance

1 contracts, the capital lease payments may not exceed the actual energy savings realized as  
2 a result of the contract's performance.

3 (4) (i) Before approval of an energy performance contract, the Board:

4 1. shall ensure that the projected annual energy savings  
5 attributable to the project will exceed the projected annual capital lease payments or  
6 payments to the contractor under the contract; and

7 2. based on the review of the [Maryland Energy  
8 Administration] **DEPARTMENT OF GENERAL SERVICES**, shall determine whether the  
9 proposed energy technology is appropriate for the time period provided in the contract.

10 (ii) The Board may:

11 1. authorize the use of incentive contracts, including  
12 contracts that guarantee energy savings performance; and

13 2. require prospective contractors to furnish appropriate  
14 guarantees to ensure that projected savings are realized.

15 (iii) Any guarantees required under subparagraph (ii) of this  
16 paragraph may include a requirement that the contractor furnish a bond or other assurance  
17 to the State in an appropriate amount to guarantee projected performance and that the  
18 bond or other assurance be structured so that a failure to meet guaranteed performance  
19 savings will forfeit a portion of the bond or other assurance to match the shortfall in energy  
20 savings.

21 **SECTION 4. AND BE IT FURTHER ENACTED**, That Section 2 of this Act shall take  
22 effect July 1, 2019. It shall remain effective until the taking effect of Section 3 of this Act.  
23 If Section 3 of this Act takes effect, Section 2 of this Act, with no further action required by  
24 the General Assembly, shall be abrogated and of no further force and effect.

25 **SECTION 5. AND BE IT FURTHER ENACTED**, That Section 3 of this Act shall take  
26 effect October 1, 2019, the effective date of Section 1 of Chapter 590 of the Acts of the  
27 General Assembly of 2017. If the effective date of Section 1 of Chapter 590 is amended,  
28 Section 3 of this Act shall take effect on the taking effect of Section 1 of Chapter 590.

29 **SECTION 6. AND BE IT FURTHER ENACTED**, That, subject to the provisions of  
30 Sections 4 and 5 of this Act, this Act shall take effect July 1, 2019.