

Chapter 134

(Senate Bill 53)

AN ACT concerning

State Finance and Procurement – Energy Performance Contracts

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

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

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

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

Article – State Finance and Procurement

12–302.

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

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

Article – State Finance and Procurement

12–301.

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

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

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

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

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

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

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

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

(ii) The Board may:

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

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

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

savings.

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

Article – State Finance and Procurement

12–301.

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

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

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

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

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

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

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

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

(ii) The Board may:

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

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

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

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

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

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

Approved by the Governor, April 18, 2019.