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**By: Delegate Curran**

Introduced and read first time: February 10, 1997  
Assigned to: Commerce and Government Matters

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 11, 1997

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CHAPTER \_\_\_\_

1 AN ACT concerning

2 **State Procurement - Energy Performance Contracts**

3 FOR the purpose of increasing the authorized duration of certain energy performance  
4 contracts; requiring the Board of Public Works and the Maryland Energy  
5 Administration to make certain determinations; and generally relating to the review  
6 and approval and maximum duration of energy performance contracts.

7 BY repealing and reenacting, with amendments,  
8 Article - State Finance and Procurement  
9 Section 12-301  
10 Annotated Code of Maryland  
11 (1995 Replacement Volume and 1996 Supplement)

12 BY repealing and reenacting, without amendments,  
13 Article - State Finance and Procurement  
14 Section 12-302 and 12-303  
15 Annotated Code of Maryland  
16 (1995 Replacement Volume and 1996 Supplement)

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

19 **Article - State Finance and Procurement**

20 12-301.

21 (a) (1) Before issuing a request for proposals for an energy performance  
22 contract, a primary procurement unit shall consult with the Maryland Energy  
23 Administration.

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1 (2) The Maryland Energy Administration shall review the proposed request  
2 to ensure that it meets with the State energy standards, PRESERVES THE STATE'S  
3 FLEXIBILITY TO INVESTIGATE AND USE ECONOMICALLY JUSTIFIABLE NEW  
4 TECHNOLOGIES, and is in conformance with the unit's energy conservation plan that has  
5 been developed in accordance with § 4-806 of this article.

6 (b) (1) Notwithstanding any other provision of law and subject to the approval  
7 and control of the Board of Public Works, a primary procurement unit of State  
8 government is authorized to enter into energy performance contracts of up to [12] ~~25~~ 15  
9 years duration.

10 (2) The payments and the total contract amount due under an energy  
11 performance contract may not exceed the actual energy savings realized as a result of the  
12 contract's performance.

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

14 1. shall ensure that the projected annual energy savings  
15 attributable to the project will exceed the projected annual payments to the contractor  
16 under the contract; AND

17 2. BASED ON THE REVIEW OF THE MARYLAND ENERGY  
18 ADMINISTRATION, SHALL DETERMINE WHETHER THE PROPOSED ENERGY  
19 TECHNOLOGY IS APPROPRIATE FOR THE TIME PERIOD PROVIDED IN THE  
20 CONTRACT.

21 (ii) The Board may:

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

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

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

32 12-302.

33 The Maryland Energy Administration shall be responsible for monitoring the status  
34 of active energy performance contracts and reporting that status to the Board annually.

35 12-303.

36 The Board may modify or waive any authorization, source selection, solicitation, or  
37 contract requirement under this Division II for an energy performance contract or a class  
38 of energy performance contracts to the extent that:

39 (1) the purposes stated in § 11-201(a) of this article are fostered; and

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1                   (2) the circumstances of energy performance contracting require the  
2 modification or waiver.

3                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 October 1, 1997.