
By: **Senator Klausmeier**

Introduced and read first time: February 3, 2006

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **State Agencies - Energy Performance Contracting - Water and Wastewater**
3 **Conservation Projects**

4 FOR the purpose of including water and wastewater conservation projects in the
5 provisions of law relating to energy performance contracting by altering a
6 certain definition; and generally relating to energy performance contracting.

7 BY repealing and reenacting, with amendments,
8 Article - State Finance and Procurement
9 Section 11-101(h)
10 Annotated Code of Maryland
11 (2001 Replacement Volume and 2005 Supplement)

12 BY repealing and reenacting, without amendments,
13 Article - State Finance and Procurement
14 Section 12-301, 12-302, and 12-303
15 Annotated Code of Maryland
16 (2001 Replacement Volume and 2005 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 11-101.

21 (h) "Energy performance contract" means an agreement for the provision of:

22 (1) energy services, including electricity, heating, ventilation, cooling,
23 steam, or hot water, in which a person agrees to design, install, finance, maintain, or
24 manage energy systems or equipment to improve the energy efficiency of a building or
25 facility in exchange for a portion of the energy savings; OR

26 (2) WATER AND WASTEWATER CONSERVATION PROJECTS, IN WHICH A
27 PERSON AGREES TO DESIGN, INSTALL, FINANCE, MAINTAIN, OR MANAGE WATER AND

1 WASTEWATER SYSTEMS OR EQUIPMENT TO IMPROVE THE ENERGY OR OPERATING
2 EFFICIENCIES OF A BUILDING OR FACILITY IN EXCHANGE FOR A PORTION OF THE
3 ENERGY SAVINGS; OR

4 (3) WATER AND WASTEWATER CONSERVATION PROJECTS IN WHICH A
5 PERSON AGREES TO UPGRADE EQUIPMENT THAT IMPROVES THE ACCURACY OF
6 BILLABLE REVENUE GENERATING AUTOMATED, ELECTRONIC, OR REMOTELY
7 CONTROLLED SYSTEMS, IN EXCHANGE FOR A FIXED FEE FOR SERVICES.

8 12-301.

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

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

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

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

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

25 1. shall ensure that the projected annual energy savings
26 attributable to the project will exceed the projected annual payments to the contractor
27 under the contract; and

28 2. based on the review of the Maryland Energy
29 Administration, shall determine whether the proposed energy technology is
30 appropriate for the time period provided in the contract.

31 (ii) The Board may:

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

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

36 (iii) Any guarantees required under subparagraph (ii) of this
37 paragraph may include a requirement that the contractor furnish a bond or other

1 assurance to the State in an appropriate amount to guarantee projected performance
2 and that the bond or other assurance be structured so that a failure to meet
3 guaranteed performance savings will forfeit a portion of the bond or other assurance
4 to match the shortfall in energy savings.

5 12-302.

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

9 12-303.

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

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

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

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2006.