

# SENATE BILL 939

P2, B2

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CF HB 835

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By: **Senator Jones (Chair, Joint Committee on the Management of Public Funds) and Senators Forehand and Haines**  
Introduced and read first time: February 17, 2010  
Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Energy Performance Contracts – Financing – State Energy Performance**  
3 **Contract Loan of 2010**

4 FOR the purpose of authorizing the financing of energy performance contracts by  
5 capital lease or general or special obligation bonds authorized by the General  
6 Assembly; providing for the timely payment of principal and interest on bonds  
7 and capital leases used to finance energy performance contracts; authorizing the  
8 issuance of \$200,000,000 in general obligation bonds to finance State energy  
9 performance contracts; and generally relating to the financing of energy  
10 performance contracts.

11 BY repealing and reenacting, with amendments,  
12 Article – State Finance and Procurement  
13 Section 12–301  
14 Annotated Code of Maryland  
15 (2009 Replacement Volume)

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

18 **Article – State Finance and Procurement**

19 12–301.

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

23 (2) The Maryland Energy Administration shall review the proposed  
24 request to ensure that it meets with the State energy standards, preserves the State's

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



1 flexibility to investigate and use economically justifiable new technologies, and is in  
2 conformance with the unit's energy conservation plan that has been developed in  
3 accordance with § 4-806 of this article.

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

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

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

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

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

19 (ii) The Board may:

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

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

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

30 (C) (1) **THE COSTS OF ENERGY PERFORMANCE CONTRACTS MAY BE**  
31 **FINANCED BY:**

32 (I) **CAPITAL LEASES UNDER TITLE 8, SUBTITLE 4 OF THIS**  
33 **ARTICLE; OR**

34 (II) **GENERAL OR SPECIAL OBLIGATION BONDS AUTHORIZED**  
35 **BY THE GENERAL ASSEMBLY FOR ENERGY PERFORMANCE CONTRACTS.**

1           **(2) IN ORDER TO PROVIDE FOR THE TIMELY PAYMENT OF**  
2 **PRINCIPAL, INTEREST, AND OTHER OBLIGATIONS ON BONDS OR CAPITAL**  
3 **LEASES USED TO FINANCE ENERGY PERFORMANCE CONTRACTS, ON JULY 1 OF**  
4 **EACH FISCAL YEAR, FUNDS SUFFICIENT TO PAY THE OBLIGATIONS SHALL BE**  
5 **TRANSFERRED FROM THE OPERATING BUDGET OF THE USING AGENCY FOR**  
6 **EACH FINANCED PROJECT TO:**

7                   **(I) THE ANNUITY BOND FUND FOR PROJECTS FINANCED**  
8 **WITH BONDS; OR**

9                   **(II) A LEASE PURCHASE ACCOUNT ESTABLISHED BY THE**  
10 **STATE TREASURER FOR PROJECTS FINANCED WITH CAPITAL LEASES.**

11           SECTION 2. AND BE IT FURTHER ENACTED, That:

12           (1) The Board of Public Works may borrow money and incur  
13 indebtedness on behalf of the State of Maryland through a State loan to be known as  
14 the State Energy Performance Contract Loan of 2010 in the total principal amount of  
15 \$200,000,000. This loan shall be evidenced by the issuance, sale, and delivery of State  
16 general obligation bonds authorized by a resolution of the Board of Public Works and  
17 issued, sold, and delivered in accordance with §§ 8–117 through 8–124 of the State  
18 Finance and Procurement Article and Article 31, § 22 of the Code.

19           (2) The bonds to evidence this loan or installments of this loan may be  
20 sold as a single issue or may be consolidated and sold as part of a single issue of bonds  
21 under § 8–122 of the State Finance and Procurement Article.

22           (3) The cash proceeds of the sale of the bonds shall be paid to the  
23 Treasurer and first shall be applied to the payment of the expenses of issuing, selling,  
24 and delivering the bonds, unless funds for this purpose are otherwise provided, and  
25 then shall be credited on the books of the Comptroller and expended, on approval by  
26 the Board of Public Works, for the following public purposes, including any applicable  
27 architects' and engineers' fees: the financing of energy performance contracts under  
28 Title 12, Subtitle 3 of the State Finance and Procurement Article.

29           (4) An annual State tax is imposed on all assessable property in the  
30 State in rate and amount sufficient to pay the principal of and interest on the bonds,  
31 as and when due and until paid in full. The principal shall be discharged within 15  
32 years after the date of issuance of the bonds.

33           (5) The proceeds of the loan must be expended or encumbered by the  
34 Board of Public Works for the purposes provided in this Act no later than June 1,  
35 2017. If any funds authorized by this Act remain unexpended or unencumbered after  
36 June 1, 2017, the amount of the unencumbered or unexpended authorization shall be  
37 canceled and be of no further effect. If bonds have been issued for the loan, the amount

1 of unexpended or unencumbered bond proceeds shall be disposed of as provided in §  
2 8–129 of the State Finance and Procurement Article.

3           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 June 1, 2010.