

Chapter 163

(House Bill 1310)

AN ACT concerning

Tax Supported Debt – Energy Performance Contracts

FOR the purpose of providing that tax supported debt does not include certain capital leases used to finance energy performance contracts; excluding certain capital leases from the requirement that the Treasurer capitalize certain capital lease payments; restating the authority of the Treasurer to finance certain energy performance contracts as capital leases; requiring that certain capital lease payments or certain contractor payments may not exceed certain energy savings; and generally relating to capital leases used to finance energy performance contracts.

BY repealing and reenacting, with amendments,
Article – State Finance and Procurement
Section 8–104, 8–405, and 12–301
Annotated Code of Maryland
(2009 Replacement Volume and 2010 Supplement)

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

Article – State Finance and Procurement

8–104.

- (a) In this Part II of this subtitle the following words have the meanings indicated.
- (b) “Committee” means the Capital Debt Affordability Committee.
- (c) (1) “Tax supported debt” means:
 - (i) State debt; and
 - (ii) other forms of debt, including State agency capital leases supported in whole or part by State tax revenues and debt of the Department of Transportation, the Maryland Stadium Authority, and other units of State government which, in the opinion of the Committee, are supported directly or indirectly by State tax revenues.

(2) “Tax supported debt” includes debt issued by the Department of Transportation under Title 3, Subtitle 6 of the Transportation Article or by the Maryland Transportation Authority under Title 4, Subtitle 3 of the Transportation Article that is secured by a pledge of future federal aid from any source.

(3) “TAX SUPPORTED DEBT” DOES NOT INCLUDE CAPITAL LEASES USED TO FINANCE ENERGY PERFORMANCE CONTRACTS ENTERED INTO UNDER § 12-301 OF THIS ARTICLE, IF, AS DETERMINED BY THE COMMITTEE, ENERGY SAVINGS THAT ARE GUARANTEED BY THE CONTRACTOR:

(I) EQUAL OR EXCEED THE CAPITAL LEASE PAYMENTS ON AN ANNUAL BASIS; AND

(II) ARE MONITORED IN ACCORDANCE WITH REPORTING REQUIREMENTS ADOPTED BY THE COMMITTEE.

8-405.

(a) [The] **EXCEPT FOR CAPITAL LEASES USED TO FINANCE ENERGY PERFORMANCE CONTRACTS EXCLUDED FROM TAX SUPPORTED DEBT UNDER § 8-104 OF THIS TITLE,** THE Treasurer shall, at a reasonable market rate, capitalize the payments on a capital lease authorized under this subtitle on an annual basis for each fiscal year the lease is in effect.

(b) The greater of the amount determined for a given fiscal year under subsection (a) of this section or the amount of any purchase value at the termination of a capital lease authorized under this subtitle shall be included in the tax supported debt considered by the Capital Debt Affordability Committee in its annual estimate for that fiscal year under Subtitle 1 of this title.

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.

(2) The Maryland Energy Administration 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.

[(3)](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, 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 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2011.

Approved by the Governor, April 12, 2011.