

CHAPTER 222
FORMERLY
SENATE BILL NO. 189

AN ACT TO AMEND CHAPTERS 69 AND 80 TITLE 29 OF THE DELAWARE CODE RELATING TO THE ENERGY PERFORMANCE CONTRACTING ACT AND THE DELAWARE ENERGY ACT, RESPECTIVELY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §6972(4)b, Title 29 of the Delaware Code by striking the following language: “and that the contracting agency shall not be required to pay the qualified provider more than the savings that accrue during any defined period in the contract”.

Section 2. Amend §6974, Title 29 of the Delaware Code by adding thereto a new subsection “(f)” to read as follows:

“No obligation of the State or an Agency under an installment payment agreement, a guaranteed energy performance contract or any other agreement entered into in connection with a project under this Chapter 69 or Chapter 80 of Title 29 shall constitute or create a debt of the State or Agency. No such obligation of the State or an Agency shall constitute a tax supported obligation or a bond or a note of the State as provided in Chapter 74 of Title 29.”

Section 3. Amend §8059(a), Title 29 of the Delaware Code by re-designating paragraphs (1) through (5) as paragraphs (2) through (6) and by adding a new paragraph (1) as follows:

“(1) ‘Agency’ means any state agency, authority, or any political subdivision of the State or local government, including, but not limited to, county, city, township, village or municipal government, local school districts, and institutions of higher education, any state-supported institution, or a joint action agency composed of political subdivisions.”

Section 4. Amend §8059(k), Title 29 of the Delaware Code by striking it in its entirety and substituting in lieu thereof the following:

“(k) Contracts with the State or Agencies. – The State or any Agency may enter into contracts with the SEU or a qualified provider (as defined in §6972(5) of Title 29) for the purpose of acquiring, constructing, operating, or providing a project undertaken by an implementation contractor or qualified provider, including arrangements for paying the costs of such project, which costs may include debt service requirements of the SEU relating to that project. If the SEU procures an implementation contract in accordance with subsection (g) of this section, a contract between the SEU and the State or an Agency that provides the benefit of the implementation contract to the State or Agency may be entered into by the State or Agency without additional competitive procurement.

No obligation of the State or an Agency under an installment payment agreement, a guaranteed energy performance contract or any other agreement entered into in connection with a project under this Chapter 80 or Chapter 69 of Title 29 shall constitute or create a debt of the State or Agency. No such obligation of the State or an Agency shall constitute a tax supported obligation or a bond or a note of the State as provided in Chapter 74 of Title 29.”

Approved February 01, 2010