



SPONSOR: Sen. McDowell;
Sens. Blevins, Cloutier, Copeland, Henry, Marshall,
Peterson; Reps. B. Ennis, D. Ennis, George, Keeley,
Lavelle, Mulrooney, Roy, Van Sant, Viola

DELAWARE STATE SENATE

142nd GENERAL ASSEMBLY

SENATE BILL NO. 322

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE ENERGY PERFORMANCE CONTRACTING ACT.

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

1 Section 1. Amend Title 29 of the Delaware Code by inserting therein a new Chapter as follows:

2 "Chapter 106. The Delaware Energy Performance Contracting Act.

3 § 10601. Short title; Declaration of Policy.

4 (a) This subchapter shall be known and may be cited as the Energy Performance Contracting Act.

5 (b) The General Assembly finds that investment in energy conservation measures in agency facilities can
6 reduce the amount of energy consumed and produce immediate and long-term savings. It is the policy of
7 this state to encourage agencies to invest in energy conservation measures that reduce energy
8 consumption, produce a cost savings for the agency, and improve the quality of indoor air in public
9 facilities and to operate, maintain, and when economically feasible, build or renovate existing agency
10 facilities in such a manner as to minimize energy consumption and maximize energy savings. It is
11 further the policy of this state to encourage agencies to reinvest any energy savings resulting from
12 energy conservation measures in additional energy conservation efforts.

13 § 10602. Definitions.

14 As used in this subchapter:

15 (1) "Agency" means any state agency, authority, or any political subdivision of state or local
16 government, including, but not limited to, county, city, township, village or municipal government,
17 local school districts, and institutions of higher education, any state-supported institution, or a joint
18 action agency composed of political subdivisions.

- 19 (2) “Energy conservation measure” means a training program, facility alteration, facility improvement,
20 or equipment purchase to be added or used in any facility that is designed to reduce energy or
21 operating costs and includes, but it not limited to:
- 22 a. Insulation of the facility structure and systems within the facility.
 - 23 b. Storm windows and doors, caulking and weatherstripping, multiglazed windows and doors, heat-
24 absorbing, or heat-reflective, glazed and coated window and door systems, additional glazing,
25 reductions in glass area, and other window and door system modifications that reduce energy
26 consumption.
 - 27 c. Automatic energy control systems.
 - 28 d. Heating, ventilating, or air-conditioning system modifications or replacements.
 - 29 e. Replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting
30 system
 - 31 f. Day-lighting systems.
 - 32 g. Energy recovery systems.
 - 33 h. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity,
34 for use primarily within a facility or complex of facilities.
 - 35 i. Renewable energy systems, such as solar, biomass or wind systems.
 - 36 j. Devices that reduce water consumption or sewer charges.
 - 37 k. Storage systems, such as fuel cells and thermal storage.
 - 38 l. Generating technologies, such as micro turbines.
 - 39 m. Any other repair, replacement or upgrade of existing equipment that produces energy and
40 operational cost savings, improves safety, significantly reduces energy consumption or increases
41 the operating efficiency of the facilities and which must conform to the applicable state or local
42 building code.
- 43 (3) “Energy and operational cost savings” means a measured reduction in the cost of fuel, energy
44 consumption, and stipulated operation and maintenance created from the implementation of one or
45 more energy conservation measures when compared with an established baseline for the previous
46 cost of fuel, energy consumption, and stipulated operation and maintenance.

47 (4) “Guaranteed energy performance contract” means a contract between the agency and a qualified
48 provider for the evaluation, recommendation, and implementation of energy conservation measures,
49 which, at minimum, shall include:

- 50 a. The design and installation of equipment to implement one or more of such measures and, if
51 applicable, operation and maintenance of such measures
- 52 b. The amount of any actual annual savings that meet or exceed total annual contract payments
53 made by the agency for the contract
- 54 c. The finance charges incurred by the agency over the life of the contract

55 (5) “Qualified provider” means a person or business with a record of established projects that is
56 experienced in the analysis, design, implementation, or installation of energy conservation measures
57 through guaranteed energy performance contracts.

58 § 10603. Authorization

- 59 (a) An agency may enter into an energy performance contract with a qualified provider to reduce energy or
60 operational costs of an agency facility through one or more energy conservation measures. Cost savings
61 measures shall comply with state or local building codes. Any governmental unit may implement other
62 capital improvements in conjunction with a performance contract so long as the measures which are
63 being implemented to achieve energy and operational cost-savings are a significant portion of an overall
64 project.
- 65 (b) An agency may enter into a performance contract structured as an installment payment contract or lease-
66 purchase agreement for the purchase and installation of cost-saving measures. Financing, including tax
67 exempt financing, implemented through an entity other than the qualified provider is authorized.
- 68 (c) The agency may enter into an energy performance contract with a qualified provider if the agency finds
69 that the amount the agency would spend on the energy conservation measures will not exceed the
70 amount to be saved in both energy and operational costs for up to 20 years from the date of installation.
- 71 (d) The qualified provider shall be selected through competitive sealed bidding or competitive negotiation.
72 The evaluation of the request for proposal shall analyze the estimates of all costs of installation,
73 maintenance, repairs, debt service, post-installation project monitoring and reporting, though the selected
74 provider need not be the lowest cost provider.

- 75 (e) The selected qualified provider shall prepare a financial grade energy audit which, upon acceptance,
76 shall be part of the final performance contract which shall be executed with the agency. Notwithstanding
77 the foregoing, if after preparation of the financial grade energy audit the governmental unit decides not
78 to execute a performance contract, then the costs incurred in preparing such financial grade energy audit
79 shall be paid to the qualified provider by the agency, otherwise the costs of the financial grade energy
80 audit shall be deemed part of the costs of the performance contract.
- 81 (f) Before entering into a contract for energy conservation measures, the agency shall require the qualified
82 provider to provide a payment and performance bond relating to the installation of energy conservation
83 measures in the amount the agency finds reasonable and necessary to protect its interests.
- 84 (g) Where appropriate, agencies shall determine cost-effectiveness based on the life-cycle costs of
85 combinations of conservation measures, particularly to encourage bundling of energy efficiency projects
86 with onsite generation and renewable energy projects.

87 § 10604. Allocation of Obligations, Use of Moneys & Payment Schedule

- 88 (a) Each governmental unit shall allocate sufficient moneys for each fiscal year to make payment of any
89 amounts payable by the governmental unit under performance contracts during that fiscal year.
- 90 (b) The agency engaging in the performance contract shall retain the savings realized by entering into the
91 performance contract. In no event shall the agency utilize such savings to supplant otherwise
92 appropriated funds for the agency.
- 93 (c) A governmental unit may use funds designated for operating, utilities, or capital expenditures for any
94 performance contract, including, without limitation, for purchases on an installment payment or lease
95 purchase basis.
- 96 (d) Grants, subsidies, or other payments from the State to an agency shall not be reduced as a result of
97 energy savings obtained as a result of a performance contract during the life of the contract.
- 98 (e) A performance contract, and payments provided there under, may extend beyond the fiscal year in which
99 the performance contract became effective, subject to appropriation of moneys, if required by law, for
100 costs incurred in future fiscal years. The performance contract may extend for a term not to exceed 20
101 years.

102 § 10605. Monitoring and Reporting

- 103 (a) During the term of each performance contract, the qualified provider shall monitor the reductions in
104 energy consumption and cost-savings attributable to the cost-savings measures installed through the
105 performance contract, and shall, no less than annually, prepare and provide a report to the governmental
106 unit documenting the performance of the cost-savings measures to the governmental unit.
- 107 (b) The agency and qualified provider may agree to base the measurement and verification of the
108 performance contract on the practices outlined by the International Performance Measurement and
109 Verification Protocol when appropriate.”

SYNOPSIS

This Act gives State agencies the authority to enter into performance contracts to finance energy efficiency upgrades based upon the projected savings those upgrades will generate.

Author: Senator McDowell