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P.L.2012, CHAPTER 55, *approved September 19, 2012*
Assembly Committee Substitute for
Assembly, Nos. 2313 and 2564

1 AN ACT concerning energy savings improvement programs,
2 amending various parts of the statutory law, and supplementing
3 Title 52 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.2009, c.4 (C.18A:18A-4.6) is amended to
9 read as follows:

10 1. a. (1) A board of education, as defined in N.J.S.18A:18A-2,
11 may implement an energy savings improvement program in the
12 manner provided by this section whenever it determines that the
13 savings generated from reduced energy use from the program will
14 be sufficient to cover the cost of the program's energy conservation
15 measures as set forth in an energy savings plan. Under such a
16 program, a board of education may enter into an energy savings
17 services contract with an energy services company to implement the
18 program or the board may authorize separate contracts to implement
19 the program. The provisions of N.J.S.18A:18A-1 et seq. shall apply
20 to any contracts awarded pursuant to this section to the extent that
21 the provisions of such law are not inconsistent with any provision
22 of this section.

23 (2) A board of education facility alteration required to properly
24 implement other energy efficiency or energy conservation
25 measures, or both, may be included as part of an energy savings
26 services contract, in which case, notwithstanding any other
27 provision of law, rule, regulation, or order to the contrary, the
28 facility alteration may be undertaken or supervised by the energy
29 services company performing the energy savings services contract
30 if:

31 (a) the total cost of the improvement does not exceed 15 percent
32 of the total cost of the work to be performed under the energy
33 savings services contract; and

34 (b) (i) the improvement is necessary to conform to a law, rule,
35 or regulation, or order, or (ii) an analysis within an approved
36 proposal, or the board of education, at the time of the award of the
37 proposal, demonstrates that there is an economic advantage to the
38 board of education implementing the improvement as part of the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 energy savings services contract, and the savings rationale for the
2 improvement is documented and supported by reasonable
3 justification.

4 b. (1) To be eligible to enter into an energy savings services
5 contract, an energy services company shall be a commercial entity
6 that is qualified to provide energy savings services in accordance
7 with the provisions of this section. A board of education may
8 determine to enter into an energy savings services contract either
9 through public advertising for bids and the receipt of bids therefor
10 or through competitive contracting in lieu of public bidding in the
11 manner provided by sections 45 through 49 of P.L.1999, c.440
12 (C.18A:18A-4.1 et seq.).

13 (2) (a) Public works activities performed under an energy
14 savings improvement program shall be subject to all requirements
15 regarding public bidding, bid security, performance guarantees,
16 insurance and other public contracting requirements that are
17 applicable to public works contracts, to the extent not inconsistent
18 with this section. A general contractor, energy services company
19 serving as general contractor, or any subcontractor hired for the
20 furnishing of plumbing and gas fitting and all kindred work, and of
21 steam and hot water heating and ventilating apparatus, steam power
22 plants and kindred work, and electrical work, structural steel and
23 ornamental iron work, shall be classified by the Division of
24 Property Management and Construction in the Department of the
25 Treasury in order to perform public works activities under an
26 energy savings improvement program.

27 (b) Individuals or organizations performing energy audits,
28 acting as commissioning agents, or conducting verification of
29 energy savings plans, implementation of energy conservation
30 measures, or verifying guarantees shall be prequalified by the
31 Division of Property Management and Construction in the
32 Department of the Treasury to perform their work under an energy
33 savings improvement program.

34 (3) (a) An energy services company may be designated as the
35 general contractor for improvements to be made pursuant to an
36 energy savings plan, provided that the hiring of subcontractors that
37 are required to be classified pursuant to subparagraph (a) of
38 paragraph (2) of this subsection shall be performed in accordance
39 with the procedures and requirements set forth pursuant to the
40 public bidding requirements of the board of education. A contract
41 with an energy savings company shall include, but not be limited to:
42 preparation of an energy savings plan; the responsibilities of the
43 parties for project schedules, installations, performance and quality,
44 payment of subcontractors, project completion, commissioning,
45 savings implementation; a requirement that the savings to be
46 achieved by energy conservation measures be verified upon
47 commissioning of the improvements; allocation of State and federal

1 rebates and tax credits; and any other provisions deemed necessary
2 by the parties.

3 (b) All workers performing public works activities for
4 subcontractors awarded contracts by an energy services company
5 pursuant to this section shall be paid prevailing wages in
6 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,
7 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with
8 the provisions of "The Public Works Contractor Registration Act,"
9 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately
10 classified as contractors by the Division of Property Management
11 and Construction shall be eligible to be awarded a contract as a
12 subcontractor of an energy services company under this section for
13 performing public works activities pursuant to regulations adopted
14 by the Division of Property Management and Construction.

15 (c) In order to expedite communications with an energy services
16 company and facilitate the implementation of an energy savings
17 improvement program, a board of education may designate or
18 appoint an employee of the board of education with decision-
19 making authority to coordinate with the energy services company
20 and to address issues associated with the implementation of an
21 energy savings improvement program as they arise, provided that
22 any decision requiring a change order shall be made only upon the
23 approval of the board of education.

24 (4) Except as provided in paragraph (5) of this subsection, a
25 subsidiary or wholly-owned or partially-owned affiliate of the
26 energy services company shall not be an eligible contractor or
27 subcontractor under an energy savings services contract.

28 (5) When the energy services company is the manufacturer of
29 direct digital control systems and contracts with the board of
30 education to provide a guaranteed energy savings option pursuant to
31 subsection f. of this section, the specification of such direct digital
32 control systems may be treated as proprietary goods and if so
33 treated, the bid specification shall set forth an allowance price for
34 its supply by the energy services company which shall be used by
35 all bidders in the public bidding process. Direct digital controls
36 shall be open protocol format and shall meet the interoperability
37 guidelines established by the American Society of Heating,
38 Refrigerating and Air-Conditioning Engineers. Each contract to be
39 entered into pursuant to this section between a board of education
40 and an energy services company that is the manufacturer of direct
41 digital control systems where such direct digital control systems are
42 treated as proprietary goods as part of the contract, shall first be
43 reviewed and approved by the Board of Public Utilities for the
44 purpose of affirming the reasonableness of such allowance price. If
45 the board does not disapprove of the contract within 14 days of
46 receipt thereof, the contract shall be deemed approved.

1 c. An energy savings improvement program may be financed
2 through a lease-purchase agreement or through the issuance of
3 energy savings obligations pursuant to this subsection.

4 (1) An energy savings improvement program may be financed
5 through a lease-purchase agreement between a board of education
6 and an energy services company or other public or private entity.
7 Under a lease-purchase agreement, ownership of the energy savings
8 equipment or improved facilities shall pass to the board of
9 education when all lease payments have been made.
10 Notwithstanding the provisions of section 46 of P.L.1999, c.440
11 (C.18A:18A-4.2) or any other law to the contrary, the duration of
12 such a lease-purchase agreement shall not exceed 15 years, except
13 that the duration of a lease purchase agreement for a combined heat
14 and power or cogeneration project shall not exceed 20 years. For
15 the purposes of this paragraph, the duration of the repayment term
16 of a lease-purchase agreement shall commence on the date upon
17 which construction and installation of the energy savings
18 equipment, “combined heat and power facility” or “cogeneration
19 facility,” as those terms are defined pursuant to section 3 of
20 P.L.1999, c.23 (C.48:3-51), or other energy conservation measures
21 undertaken pursuant to the energy savings plan, have been
22 completed.

23 (2) Any lease-purchase agreement entered into pursuant to this
24 subsection may contain: a clause making it subject to the
25 availability and appropriation annually of sufficient funds as may
26 be required to meet the extended obligation; and a non-substitution
27 clause maintaining that if the agreement is terminated for non-
28 appropriation, the board of education may not replace the leased
29 equipment or facilities with equipment or facilities that perform the
30 same or similar functions.

31 (3) A board of education may arrange for incurring energy
32 savings obligations to finance an energy savings improvement
33 program. Energy savings obligations may be funded through
34 appropriations for utility services in the annual budget of the board
35 and may be issued as refunding bonds pursuant to P.L.1969, c.130
36 (C.18A:24-61.1 et seq.), including the issuance of bond anticipation
37 notes as may be necessary, provided that all such bonds and notes
38 mature within the periods authorized for such energy savings
39 obligations. Energy savings obligations may be issued either
40 through the board of education or another public agency authorized
41 to undertake financing on behalf of the board.

42 (4) Lease-purchase agreements and energy savings obligations
43 shall not be used to finance maintenance, guarantees, or verification
44 of guarantees of energy conservation measures. Lease-purchase
45 agreements and energy savings obligations may be used to finance
46 the cost of an energy audit or the cost of verification of energy
47 savings as part of adopting an energy savings plan.

1 Notwithstanding any law to the contrary, lease-purchase agreements
2 and energy savings certificates shall not be excepted from any
3 budget or tax levy limitation otherwise provided by law. Maturity
4 schedules of lease-purchase agreements or energy savings
5 obligations **【must】 shall not** exceed the estimated average useful
6 life of the **【individual】** energy conservation measures.

7 d. (1) The energy audit component of an energy savings
8 improvement program shall be conducted either by the board of
9 education or by a qualified third party retained by the board for that
10 purpose. It shall not be conducted by an energy services company
11 subsequently hired to develop an energy savings improvement
12 program. The energy audit shall identify the current energy use of
13 any or all facilities and energy conservation measures that can be
14 implemented in which the energy savings and energy efficiency
15 could be realized and maximized.

16 (2) To implement an energy savings improvement program, a
17 board of education shall develop an energy savings plan that
18 consists of one or more energy conservation measures. The plan
19 shall:

20 (a) contain the results of an energy audit;

21 (b) describe the energy conservation measures that will
22 comprise the program;

23 (c) estimate greenhouse gas reductions resulting from those
24 energy savings;

25 (d) identify all design and compliance issues that require the
26 professional services of an architect or engineer and identify who
27 will provide these services;

28 (e) include an assessment of risks involved in the successful
29 implementation of the plan;

30 (f) identify the eligibility for, and costs and revenues associated
31 with the PJM Independent System Operator for demand response
32 and curtailable service activities;

33 (g) include schedules showing calculations of all costs of
34 implementing the proposed energy conservation measures and the
35 projected energy savings;

36 (h) identify maintenance requirements necessary to ensure
37 continued energy savings, and describe how they will be fulfilled;
38 and

39 (i) if developed by an energy services company, a description
40 of, and cost estimates of an energy savings guarantee.

41 All professionals providing engineering services under the plan
42 shall have errors and omissions insurance.

43 (3) Prior to the adoption of the plan by the governing body, the
44 board of education shall contract with a qualified third party to
45 verify the projected energy savings to be realized from the proposed
46 program have been calculated as required by subsection e. of this
47 section.

1 (4) Upon adoption, the plan shall be submitted to the Board of
2 Public Utilities, which shall post it on the Internet on a public
3 webpage maintained for such purpose. If the board of education
4 maintains its own website, it shall also post the plan on that site.
5 The Board of Public Utilities may require periodic reporting
6 concerning the implementation of the plan.

7 (5) Verification by a qualified third party shall be required when
8 energy conservation measures are placed in service or
9 commissioned, to ensure the savings projected in the energy savings
10 plan shall be achieved.

11 (6) Energy-related capital improvements that do not reduce
12 energy usage may be included in an energy savings improvement
13 program but the cost of such improvements shall not be financed as
14 a lease-purchase or through energy savings obligations authorized
15 by subsection c. of this section. Nothing herein is intended to
16 prevent financing of such capital improvements through otherwise
17 authorized means.

18 (7) A qualified third party when required by this subsection may
19 include an employee of the board of education who is properly
20 trained and qualified to perform such work.

21 e. (1) (a) The calculation of energy savings for the purposes of
22 determining that the energy savings resulting from the program will
23 be sufficient to cover the cost of the program's energy conservation
24 measures, as provided in subsection a. of this section, shall involve
25 determination of the dollar amount saved through implementation
26 of an energy savings improvement program using the guidelines of
27 the International Performance Measurement and Verification
28 Protocol or other protocols approved by the Board of Public
29 Utilities and standards adopted by the Board of Public Utilities
30 pursuant to this section. The calculation shall include all applicable
31 State and federal rebates and tax credits, but shall not include the
32 cost of an energy audit and the cost of verifying energy savings.
33 The calculation shall state which party has made application for
34 rebates and credits and how these applications translate into energy
35 savings.

36 (b) During the procurement phase of an energy savings
37 improvement program, an energy service company's proposal
38 submitted in response to a request for proposal shall not include a
39 savings calculation that assumes, includes, or references capital cost
40 avoidance savings, the current or projected value of a "solar
41 renewable energy certificate," as defined pursuant to section 3 of
42 P.L.1999, c.23 (C.48:3-51), or other environmental or similar
43 attributes or benefits of whatever nature that derive from the
44 generation of renewable energy, and any costs or discounts
45 associated with maintenance services, an energy savings guarantee,
46 or third party verification of energy conservation measures and
47 energy savings. The calculation of energy savings shall utilize and

1 specifically reference as a benchmark the actual demand and energy
2 components of the public utility tariff rate applicable to the board of
3 education then in effect, and not a blended rate that aggregates,
4 combines, or restates in any manner the distinct demand and energy
5 components of the public utility tariff rate into a single combined or
6 restated tariff rate. If an energy services company submits a
7 proposal to a board of education that does not calculate projected
8 energy savings in the manner required by this subsection, such
9 proposal shall be rejected by the board of education.

10 (2) For the purposes of this section, the Board of Public Utilities
11 shall adopt standards and uniform values for interest rates and
12 escalation of labor, electricity, oil, and gas, as well as standards for
13 presenting these costs in a life cycle and net present value format,
14 standards for the presentation of obligations for carbon reductions,
15 and other standards that the board may determine necessary.

16 f. (1) When an energy services company is awarded an energy
17 savings services contract, it shall offer the board of education the
18 option to purchase, for an additional amount, an energy savings
19 guarantee. The guarantee, if accepted by a separate vote of the
20 board of education, shall insure that the energy savings resulting
21 from the energy savings improvement program, determined
22 periodically over the duration of the guarantee, will be sufficient to
23 defray all payments required to be made pursuant to the lease-
24 purchase agreement or energy savings obligation, and if the savings
25 are not sufficient, the energy services company will reimburse the
26 board for any additional amounts. Annual costs of a guarantee shall
27 not be financed or included as costs in an energy savings plan but
28 shall be fully disclosed in an energy savings plan.

29 (2) When a guaranteed energy savings option is purchased, the
30 contract shall require a qualified third party to verify the energy
31 savings at intervals established by the parties.

32 (3) When an energy services company is awarded an energy
33 savings services contract to provide or perform goods or services
34 for the purpose of enabling a board of education to conserve energy
35 through energy efficiency equipment, including a “combined heat
36 and power facility” as that term is defined pursuant to section 3 of
37 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
38 shall extend for a term of up to 15 years for energy efficiency
39 projects, and for up to 20 years for a combined heat and power
40 facility after construction completion. If a board of education shall
41 elect to contract with an energy services company for an energy
42 savings guarantee in connection with a contract awarded pursuant to
43 this section, such guarantee may extend for a term of up to 15 years
44 for energy efficiency projects, or up to 20 years for a combined heat
45 and power facility after construction completion.

46 g. As used in this section:

1 "direct digital control systems" means the devices and
2 computerized control equipment that contain software and computer
3 interfaces that perform the logic that control a building's heating,
4 ventilating, and air conditioning system. Direct digital controls
5 shall be open protocol format and shall meet the interoperability
6 guidelines established by the American Society of Heating,
7 Refrigerating and Air-Conditioning Engineers;

8 "energy conservation measure" means an improvement that
9 results in reduced energy use, including, but not limited to,
10 installation of energy efficient equipment; demand response
11 equipment; combined heat and power systems; facilities for the
12 production of renewable energy; water conservation measures,
13 fixtures or facilities; building envelope improvements that are part
14 of an energy savings improvement program; and related control
15 systems for each of the foregoing;

16 "energy related capital improvement" means a capital
17 improvement that uses energy but does not result in a reduction of
18 energy use;

19 "energy saving obligation" means a bond, note or other
20 agreement evidencing the obligation to repay borrowed funds
21 incurred in order to finance energy saving improvements;

22 "energy savings" means a measured reduction in fuel, energy,
23 operating or maintenance costs resulting from the implementation
24 of one or more energy conservation measures services when
25 compared with an established baseline of previous fuel, energy,
26 operating or maintenance costs, including, but not limited to, future
27 capital replacement expenditures avoided as a result of equipment
28 installed or services performed as part of an energy savings plan;

29 "energy savings improvement program" means an initiative of a
30 board of education to implement energy conservation measures in
31 existing facilities, provided that the value of the energy savings
32 resulting from the program will be sufficient to cover the cost of the
33 program's energy conservation measures;

34 "energy savings plan" means the document that describes the
35 actions to be taken to implement the energy savings improvement
36 program;

37 "energy savings services contract" means a contract with an
38 energy savings company to develop an energy savings plan, prepare
39 bid specifications, manage the performance, provision,
40 construction, and installation of energy conservation measures by
41 subcontractors, to offer a guarantee of energy savings derived from
42 the implementation of an energy savings plan, and may include a
43 provision to manage the bidding process;

44 "energy services company" means a commercial entity that is
45 qualified to develop and implement an energy savings plan in
46 accordance with the provisions of this section;

1 "public works activities" means any work subject to the
2 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

3 "water conservation measure" means an alteration to a facility or
4 equipment that reduces water consumption, maximizes the
5 efficiency of water use, or reduces water loss.

6 h. (1) The Director of the Division of Local Government
7 Services in the Department of Community Affairs, the State
8 Treasurer, and the Board of Public Utilities may take such action as
9 is deemed necessary and consistent with the intent of this section to
10 implement its provisions.

11 (2) The Director of the Division of Local Government Services
12 in the Department of Community Affairs, the State Treasurer and
13 the Board of Public Utilities may adopt implementation guidelines
14 or directives, and adopt such administrative rules, pursuant to the
15 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
16 seq.), as are necessary for the implementation of those agencies'
17 respective responsibilities under this section, except that
18 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et
19 seq.) to the contrary, the Director of the Division of Local
20 Government Services in the Department of Community Affairs, the
21 State Treasurer, and the Board of Public Utilities may adopt,
22 immediately upon filing with the Office of Administrative Law,
23 such rules and regulations as deemed necessary to implement the
24 provisions of this act which shall be effective for a period not to
25 exceed 12 months and shall thereafter be amended, adopted or re-
26 adopted in accordance with the provisions of P.L.1968, c.410
27 (C.52:14B-1 et seq.).

28 (cf: P.L.2009, c.4, s.1)

29
30 2. Section 4 of P.L.2009, c.4 (C.18A:65A-1) is amended to
31 read as follows:

32 4. a. (1) The board of trustees of a public institution of higher
33 education may implement an energy savings improvement program
34 in the manner provided by this section whenever it determines that
35 the savings generated from reduced energy use from the program
36 will be sufficient to cover the cost of the program's energy
37 conservation measures as set forth in an energy savings plan. Under
38 such a program, a board of trustees may enter into an energy
39 savings services contract with an energy services company to
40 implement the program or the board may authorize separate
41 contracts to implement the program. The provisions of:
42 N.J.S.18A:64-1 et seq., in the case of any State college; P.L.1995,
43 c.400 (C.18A:64E-12 et seq.), in the case of the New Jersey
44 Institute of Technology; N.J.S.18A:65-1 et seq., in the case of
45 Rutgers, the State University; P.L.1970, c.102 (C.18A:64G-1 et al.),
46 in the case of the University of Medicine and Dentistry of New
47 Jersey; and N.J.S.18A:64A-1 et seq., in the case of the county

1 colleges; shall apply to any contracts awarded pursuant to this
2 section to the extent that the provisions of such law are not
3 inconsistent with any provision of this section.

4 In the case of Rutgers, the State University, references in this
5 section to the board of trustees shall mean the Rutgers board of
6 governors.

7 (2) An educational facility alteration required to properly
8 implement other energy efficiency or energy conservation
9 measures, or both, may be included as part of an energy savings
10 services contract, in which case, notwithstanding any other
11 provision of law, rule, regulation, or order to the contrary, the
12 facility alteration may be undertaken or supervised by the energy
13 services company performing the energy savings services contract
14 if:

15 (a) the total cost of the improvement does not exceed 15 percent
16 of the total cost of the work to be performed under the energy
17 savings services contract; and

18 (b) (i) the improvement is necessary to conform to a law, rule,
19 or regulation, or order, or (ii) an analysis within an approved
20 proposal, or the board of trustees, at the time of the award of the
21 proposal, demonstrates that there is an economic advantage to the
22 board of trustees implementing the improvement as part of the
23 energy savings services contract, and the savings rationale for the
24 improvement is documented and supported by reasonable
25 justification.

26 b. (1) To be eligible to enter into an energy savings services
27 contract, an energy services company shall be a commercial entity
28 that is qualified to provide energy savings services in accordance
29 with the provisions of this section. A public institution of higher
30 education may enter into an energy savings services contract
31 through public advertising for bids and the receipt of bids therefor.

32 (2) (a) Public works activities performed under an energy
33 savings improvement program shall be subject to all requirements
34 regarding public bidding, bid security, performance guarantees,
35 insurance and other public contracting requirements that are
36 applicable to public works contracts, to the extent not inconsistent
37 with this section. A general contractor, energy services company
38 serving as general contractor, or any subcontractor hired for the
39 furnishing of plumbing and gas fitting and all kindred work, and of
40 steam and hot water heating and ventilating apparatus, steam power
41 plants and kindred work, and electrical work, structural steel and
42 ornamental iron work, shall be classified by the Division of
43 Property Management and Construction in the Department of the
44 Treasury in order to perform public works activities under an
45 energy savings improvement program.

46 (b) Individuals or organizations performing energy audits,
47 acting as commissioning agents, or conducting verification of

1 energy savings plans, implementation of energy conservation
2 measures, or verifying guarantees shall be prequalified by the
3 Division of Property Management and Construction in the
4 Department of the Treasury to perform their work under an energy
5 savings improvement program.

6 (c) Where there is a need for compatibility of a direct digital
7 control system with previously installed control systems and
8 equipment, the bid specifications may include a requirement for
9 proprietary goods, and if so included, the bid specification shall set
10 forth an allowance price for its supply which shall be used by all
11 bidders in the public bidding process.

12 (3) (a) An energy services company may be designated as the
13 general contractor for improvements to be made pursuant to an
14 energy savings plan, provided that the hiring of subcontractors that
15 are required to be classified pursuant to subparagraph (a) of
16 paragraph (2) of this subsection shall be performed in accordance
17 with the procedures and requirements set forth pursuant to the
18 public bidding requirements of the board of trustees. A contract
19 with an energy savings company shall include, but not be limited to:
20 preparation of an energy savings plan; the responsibilities of the
21 parties for project schedules, installations, performance and quality,
22 payment of subcontractors, project completion, commissioning,
23 savings implementation; a requirement that the savings to be
24 achieved by energy conservation measures be verified upon
25 commissioning of the improvements; allocation of State and federal
26 rebates and tax credits; and any other provisions deemed necessary
27 by the parties.

28 (b) All workers performing public works activities for
29 subcontractors awarded contracts by an energy services company
30 pursuant to this section shall be paid prevailing wages in
31 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,
32 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with
33 the provisions of "The Public Works Contractor Registration Act,"
34 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately
35 classified as contractors by the Division of Property Management
36 and Construction shall be eligible to be awarded a contract as a
37 subcontractor of an energy services company under this section for
38 performing public works activities pursuant to regulations adopted
39 by the Division of Property Management and Construction.

40 (c) In order to expedite communications with an energy services
41 company and facilitate the implementation of an energy savings
42 improvement program, a board of trustees may designate or appoint
43 an employee of the public institution of higher education with
44 decision-making authority to coordinate with the energy services
45 company and to address issues associated with the implementation
46 of an energy savings improvement program as they arise, provided
47 that any decision requiring a change order shall be made only upon

1 the approval of the board of trustees of the public institution of
2 higher education.

3 (4) **【**Except as provided in paragraph (5) of this subsection, a
4 A subsidiary or wholly-owned or partially-owned affiliate of the
5 energy services company shall not be an eligible contractor or
6 subcontractor under an energy savings services contract.

7 **【**(5)When the energy services company is the manufacturer of
8 direct digital control systems and contracts with the board of
9 trustees to provide a guaranteed energy savings option pursuant to
10 subsection f. of this section, the specification of such direct digital
11 control systems may be treated as proprietary goods and if so
12 treated, the bid specification shall set forth an allowance price for
13 its supply by the energy services company which shall be used by
14 all bidders in the public bidding process. Direct digital controls
15 shall be open protocol format and shall meet the interoperability
16 guidelines established by the American Society of Heating,
17 Refrigerating and Air-Conditioning Engineers.**】**

18 c. An energy savings improvement program may be financed
19 through a lease-purchase agreement or through the issuance of
20 energy savings obligations pursuant to this subsection.

21 (1) An energy savings improvement program may be financed
22 through a lease-purchase agreement between a board of trustees and
23 an energy services company or other public or private entity. Under
24 a lease-purchase agreement, ownership of the energy savings
25 equipment or improved facilities shall pass to the board of trustees
26 when all lease payments have been made. Notwithstanding the
27 provisions of any other law to the contrary, the duration of such a
28 lease-purchase agreement shall not exceed 15 years, except that the
29 duration of a lease purchase agreement for a combined heat and
30 power or cogeneration project shall not exceed 20 years. For the
31 purposes of this paragraph, the duration of the repayment term of a
32 lease-purchase agreement shall commence on the date upon which
33 construction and installation of the energy savings equipment,
34 “combined heat and power facility” or “cogeneration facility,” as
35 those terms are defined pursuant to section 3 of P.L.1999, c.23
36 (C.48:3-51), or other energy conservation measures undertaken
37 pursuant to the energy savings plan, have been completed.

38 (2) Any lease-purchase or other agreement entered into in
39 connection with an energy savings improvement program may be a
40 general obligation of the public institution of higher education
41 pursuant to this subsection, and may contain: a clause making it
42 subject to the availability and appropriation annually of sufficient
43 funds as may be required to meet the extended obligation; and a
44 non-substitution clause maintaining that if the agreement is
45 terminated for non-appropriation, the board of trustees may not
46 replace the leased equipment or facilities with equipment or
47 facilities that perform the same or similar functions.

1 (3) A board of trustees may arrange for incurring energy savings
2 obligations to finance an energy savings improvement program and
3 may enter into any agreement with the New Jersey Educational
4 Facilities Authority or other persons in connection with the issuance
5 by the authority of its obligations on behalf of the public institution
6 of higher education in order to finance the institution's energy
7 savings improvement program. Energy savings obligations may be
8 funded through appropriations for utility services in the annual
9 budget of the board, or incurred as a general obligation of the public
10 institution of higher education in connection with the issuance by
11 the New Jersey Educational Facilities Authority of bonds or notes
12 pursuant to N.J.S.18A:72A-2 et seq., or, in the case of a county
13 college, by a sponsoring county as a refunding bond pursuant to
14 N.J.S.40A:2-52 et seq., including the issuance of bond anticipation
15 notes as may be necessary, provided that all such bonds and notes
16 mature within the periods authorized for such energy savings
17 obligations.

18 (4) Lease-purchase agreements and energy savings obligations
19 shall not be used to finance maintenance, guarantees, or verification
20 of guarantees of energy conservation measures. Lease-purchase
21 agreements and energy savings obligations may be used to finance
22 the cost of an energy audit or the cost of verification of energy
23 savings as part of adopting an energy savings plan. Maturity
24 schedules of lease-purchase agreements or energy savings
25 obligations **[must]** shall not exceed the estimated average useful
26 life of the **[individual]** energy conservation measures.

27 d. (1) The energy audit component of an energy savings
28 improvement program shall be conducted either by the board of
29 trustees or by a qualified third party retained by the board for that
30 purpose. It shall not be conducted by an energy services company
31 subsequently hired to develop an energy savings improvement
32 program. The energy audit shall identify the current energy use of
33 any or all facilities and energy conservation measures that can be
34 implemented in which the energy savings and energy efficiency
35 could be realized and maximized.

36 (2) To implement an energy savings improvement program, a
37 board of trustees shall develop an energy savings plan that consists
38 of one or more energy conservation measures. The plan shall:

39 (a) contain the results of an energy audit;

40 (b) describe the energy conservation measures that will
41 comprise the program;

42 (c) estimate greenhouse gas reductions resulting from those
43 energy savings;

44 (d) identify all design and compliance issues that require the
45 professional services of an architect or engineer and identify who
46 will provide these services;

- 1 (e) include an assessment of risks involved in the successful
2 implementation of the plan;
- 3 (f) identify the eligibility for, and costs and revenues associated
4 with the PJM Independent System Operator for demand response
5 and curtailable service activities;
- 6 (g) include schedules showing calculations of all costs of
7 implementing the proposed energy conservation measures and the
8 projected energy savings;
- 9 (h) identify maintenance requirements necessary to ensure
10 continued energy savings, and describe how they will be fulfilled;
11 and
- 12 (i) if developed by an energy services company, a description
13 of, and cost estimates of an energy savings guarantee.
- 14 All professionals providing engineering services under the plan
15 shall have errors and omissions insurance.
- 16 (3) Prior to the adoption of the plan, the board of trustees shall
17 contract with a qualified third party to verify the projected energy
18 savings to be realized from the proposed program have been
19 calculated as required by subsection e. of this section.
- 20 (4) Upon adoption, the plan shall be submitted to the Board of
21 Public Utilities, which shall post it on the Internet on a public
22 webpage maintained for such purpose. If the board of trustees
23 maintains its own website, it shall also post the plan on that site.
24 The Board of Public Utilities may require periodic reporting
25 concerning the implementation of the plan.
- 26 (5) Verification by a qualified third party shall be required when
27 energy conservation measures are placed in service or
28 commissioned, to ensure the savings projected in the energy savings
29 plan shall be achieved.
- 30 (6) Energy-related capital improvements that do not reduce
31 energy usage may be included in an energy savings improvement
32 program but the cost of such improvements shall not be financed as
33 a lease-purchase or through energy savings obligations authorized
34 by subsection c. of this section. Nothing herein is intended to
35 prevent the financing of such capital improvements through
36 otherwise authorized means.
- 37 (7) A qualified third party when required by this subsection may
38 include an employee of the public institution of higher education
39 who is properly trained and qualified to perform such work.
- 40 e. (1) (a) The calculation of energy savings for the purposes of
41 determining that the energy savings resulting from the program will
42 be sufficient to cover the cost of the program's energy conservation
43 measures, as provided in subsection a. of this section, shall involve
44 determination of the dollar amount saved through implementation
45 of an energy savings improvement program using the guidelines of
46 the International Performance Measurement and Verification
47 Protocol or other protocols approved by the Board of Public

1 Utilities and standards adopted by the Board of Public Utilities
2 pursuant to this section. The calculation shall include all applicable
3 State and federal rebates and tax credits, but shall not include the
4 cost of an energy audit and the cost of verifying energy savings.
5 The calculation shall state which party has made application for
6 rebates and credits and how these applications translate into energy
7 savings.

8 (b) During the procurement phase of an energy savings
9 improvement program, an energy service company's proposal
10 submitted in response to a request for proposal shall not include a
11 savings calculation that assumes, includes, or references capital cost
12 avoidance savings, the current or projected value of a "solar
13 renewable energy certificate," as defined pursuant to section 3 of
14 P.L.1999, c.23 (C.48:3-51), or other environmental or similar
15 attributes or benefits of whatever nature that derive from the
16 generation of renewable energy, and any costs or discounts
17 associated with maintenance services, an energy savings guarantee,
18 or third party verification of energy conservation measures and
19 energy savings. The calculation of energy savings shall utilize and
20 specifically reference as a benchmark the actual demand and energy
21 components of the public utility tariff rate applicable to the board of
22 trustees then in effect, and not a blended rate that aggregates,
23 combines, or restates in any manner the distinct demand and energy
24 components of the public utility tariff rate into a single combined or
25 restated tariff rate. If an energy services company submits a
26 proposal to a board of trustees that does not calculate projected
27 energy savings in the manner required by this subsection, such
28 proposal shall be rejected by the board of trustees.

29 (2) For the purposes of this section, the Board of Public Utilities
30 shall adopt standards and uniform values for interest rates and
31 escalation of labor, electricity, oil, and gas, as well as standards for
32 presenting these costs in a life cycle and net present value format,
33 standards for the presentation of obligations for carbon reductions,
34 and other standards that the board may determine necessary.

35 f. (1) When an energy services company is awarded an energy
36 savings services contract, it shall offer the board of trustees the
37 option to purchase, for an additional amount, an energy savings
38 guarantee. The guarantee, if accepted by a separate vote of the
39 board of trustees, shall insure that the energy savings resulting from
40 the energy savings improvement program, determined periodically
41 over the duration of the guarantee, will be sufficient to defray all
42 payments required to be made pursuant to the lease-purchase
43 agreement or energy savings obligation, and if the savings are not
44 sufficient, the energy services company will reimburse the board of
45 trustees for any additional amounts. Annual costs of a guarantee
46 shall not be financed or included as costs in an energy savings plan
47 but shall be fully disclosed in an energy savings plan.

1 (2) When a guaranteed energy savings option is purchased, the
2 contract shall require a qualified third party to verify the energy
3 savings at intervals established by the parties.

4 (3) When an energy services company is awarded an energy
5 savings services contract to provide or perform goods or services
6 for the purpose of enabling a board of trustees to conserve energy
7 through energy efficiency equipment, including a “combined heat
8 and power facility” as that term is defined pursuant to section 3 of
9 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
10 shall extend for a term of up to 15 years for energy efficiency
11 projects, and for up to 20 years for a combined heat and power
12 facility after construction completion. If a board of trustees shall
13 elect to contract with an energy services company for an energy
14 savings guarantee in connection with a contract awarded pursuant to
15 this section, such guarantee may extend for a term of up to 15 years
16 for energy efficiency projects, or up to 20 years for a combined heat
17 and power facility after construction completion.

18 g. As used in this section:

19 "direct digital control systems" means the devices and
20 computerized control equipment that contain software and computer
21 interfaces that perform the logic that control a building's heating,
22 ventilating, and air conditioning system. Direct digital controls
23 shall be open protocol format and shall meet the interoperability
24 guidelines established by the American Society of Heating,
25 Refrigerating and Air-Conditioning Engineers;

26 "educational facility" means a structure suitable for use as a
27 dormitory, dining hall, student union, administrative building,
28 academic building, library, laboratory, research facility, classroom,
29 athletic facility, health care facility, teaching hospital, and parking,
30 maintenance, storage or utility facility or energy conservation
31 measures and other structures or facilities related thereto or required
32 or useful for the instruction of students or the conducting of
33 research or the operation of an institution for higher education, and
34 public libraries, and the necessary and usual attendant and related
35 facilities and equipment, but shall not include any facility used or to
36 be used for sectarian instruction or as a place for religious worship;

37 "energy conservation measure" means an improvement that
38 results in reduced energy use, including, but not limited to,
39 installation of energy efficient equipment; demand response
40 equipment; combined heat and power systems; facilities for the
41 production of renewable energy; water conservation measures,
42 fixtures or facilities; building envelope improvements that are part
43 of an energy savings improvement program; and related control
44 systems for each of the foregoing;

45 "energy related capital improvement" means a capital
46 improvement that uses energy but does not result in a reduction of
47 energy use;

1 "energy saving obligation" means a bond, note or other
2 agreement evidencing the obligation to repay borrowed funds
3 incurred in order to finance energy saving improvements;

4 "energy savings" means a measured reduction in fuel, energy,
5 operating or maintenance costs resulting from the implementation
6 of one or more energy conservation measures services when
7 compared with an established baseline of previous fuel, energy,
8 operating or maintenance costs, including, but not limited to, future
9 capital replacement expenditures avoided as a result of equipment
10 installed or services performed as part of an energy savings plan;

11 "energy savings improvement program" means an initiative of a
12 public institution of higher education to implement energy
13 conservation measures in existing facilities, provided that the value
14 of the energy savings resulting from the program will be sufficient
15 to cover the cost of the program's energy conservation measures;

16 "energy savings plan" means the document that describes the
17 actions to be taken to implement the energy savings improvement
18 program;

19 "energy savings services contract" means a contract with an
20 energy savings company to develop an energy savings plan, prepare
21 bid specifications, manage the performance, provision,
22 construction, and installation of energy conservation measures by
23 subcontractors, to offer a guarantee of energy savings derived from
24 the implementation of an energy savings plan, and may include a
25 provision to manage the bidding process;

26 "energy services company" means a commercial entity that is
27 qualified to develop and implement an energy savings plan in
28 accordance with the provisions of this section;

29 "public works activities" means any work subject to the
30 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

31 "water conservation measure" means an alteration to a facility or
32 equipment that reduces water consumption, maximizes the
33 efficiency of water use, or reduces water loss.

34 h. (1) The State Treasurer and the Board of Public Utilities
35 may take such action as is deemed necessary and consistent with the
36 intent of this section to implement its provisions.

37 (2) The State Treasurer and the Board of Public Utilities may
38 adopt implementation guidelines or directives, and adopt such
39 administrative rules, pursuant to the "Administrative Procedure
40 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
41 implementation of those agencies' respective responsibilities under
42 this section, except that notwithstanding any provision of P.L.1968,
43 c.410 (C.52:14B-1 et seq.) to the contrary, the State Treasurer and
44 the Board of Public Utilities may adopt, immediately upon filing
45 with the Office of Administrative Law, such rules and regulations
46 as deemed necessary to implement the provisions of this act which
47 shall be effective for a period not to exceed 12 months and shall

1 thereafter be amended, adopted or re-adopted in accordance with
2 the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).
3 (cf: P.L.2009, c.4, s.4)

4
5 3. Section 6 of P.L.2009, c.4 (C.40A:11-4.6) is amended to
6 read as follows:

7 6. a. (1) A contracting unit, as defined in P.L.1971, c.198
8 (C.40A:11-1 et seq.), may implement an energy savings
9 improvement program in the manner provided by this section
10 whenever it determines that the savings generated from reduced
11 energy use from the program will be sufficient to cover the cost of
12 the program's energy conservation measures as set forth in an
13 energy savings plan. Under such a program, a contracting unit may
14 enter into an energy savings services contract with an energy
15 services company to implement the program or the contracting unit
16 may authorize separate contracts to implement the program. The
17 provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) shall apply to
18 any contracts awarded pursuant to this section to the extent that the
19 provisions of such law are not inconsistent with any provision of
20 this section.

21 (2) A contracting unit facility alteration required to properly
22 implement other energy efficiency or energy conservation
23 measures, or both, may be included as part of an energy savings
24 services contract, in which case, notwithstanding any other
25 provision of law, rule, regulation, or order to the contrary, the
26 facility alteration may be undertaken or supervised by the energy
27 services company performing the energy savings services contract
28 if:

29 (a) the total cost of the improvement does not exceed 15 percent
30 of the total cost of the work to be performed under the energy
31 savings services contract; and

32 (b) (i) the improvement is necessary to conform to a law, rule,
33 or regulation, or order, or (ii) an analysis within an approved
34 proposal, or the contracting unit, at the time of the award of the
35 proposal, demonstrates that there is an economic advantage to the
36 contracting unit implementing the improvement as part of the
37 energy savings services contract, and the savings rationale for the
38 improvement is documented and supported by reasonable
39 justification.

40 b. (1) To be eligible to enter into an energy savings services
41 contract, an energy services company shall be a commercial entity
42 that is qualified to provide energy savings services in accordance
43 with the provisions of this section. A contracting unit may
44 determine to enter into an energy savings services contract either
45 through public advertising for bids and the receipt of bids therefor
46 or through competitive contracting in lieu of public bidding in the

1 manner provided by sections 1 through 5 of P.L.1999, c.440
2 (C.40A:11-4.1 et seq.).

3 (2) (a) Public works activities performed under an energy
4 savings improvement program shall be subject to all requirements
5 regarding public bidding, bid security, performance guarantees,
6 insurance and other public contracting requirements that are
7 applicable to public works contracts, to the extent not inconsistent
8 with this section. A general contractor, energy services company
9 serving as general contractor, or any subcontractor hired for the
10 furnishing of plumbing and gas fitting and all kindred work, and of
11 steam and hot water heating and ventilating apparatus, steam power
12 plants and kindred work, and electrical work, structural steel and
13 ornamental iron work, shall be classified by the Division of
14 Property Management and Construction in the Department of the
15 Treasury in order to perform public works activities under an
16 energy savings improvement program.

17 (b) Individuals or organizations performing energy audits,
18 acting as commissioning agents, or conducting verification of
19 energy savings plans, implementation of energy conservation
20 measures, or verifying guarantees shall be prequalified by the
21 Division of Property Management and Construction in the
22 Department of the Treasury to perform their work under an energy
23 savings improvement program.

24 (3) (a) An energy services company may be designated as the
25 general contractor for improvements to be made pursuant to an
26 energy savings plan, provided that the hiring of subcontractors that
27 are required to be classified pursuant to subparagraph (a) of
28 paragraph (2) of this subsection shall be performed in accordance
29 with the procedures and requirements set forth pursuant to the
30 public bidding requirements of the contracting unit. A contract
31 with an energy savings company shall include, but not be limited to:
32 preparation of an energy savings plan; the responsibilities of the
33 parties for project schedules, installations, performance and quality,
34 payment of subcontractors, project completion, commissioning,
35 savings implementation; a requirement that the savings to be
36 achieved by energy conservation measures be verified upon
37 commissioning of the improvements; allocation of State and federal
38 rebates and tax credits; and any other provisions deemed necessary
39 by the parties.

40 (b) All workers performing public works activities for
41 subcontractors awarded contracts by an energy services company
42 pursuant to this section shall be paid prevailing wages in
43 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,
44 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with
45 the provisions of "The Public Works Contractor Registration Act,"
46 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately
47 classified as contractors by the Division of Property Management

1 and Construction shall be eligible to be awarded a contract as a
2 subcontractor of an energy services company under this section for
3 performing public works activities pursuant to regulations adopted
4 by the Division of Property Management and Construction.

5 (c) In order to expedite communications with an energy services
6 company and facilitate the implementation of an energy savings
7 improvement program, a contracting unit may designate or appoint
8 an employee of the contracting unit with decision-making authority
9 to coordinate with the energy services company and to address
10 issues associated with the implementation of an energy savings
11 improvement program as they arise, provided that any decision
12 requiring a change order shall be made only upon the approval of
13 the contracting unit.

14 (4) Except as provided in paragraph (5) of this subsection, a
15 subsidiary or wholly-owned or partially-owned affiliate of the
16 energy services company shall not be an eligible contractor or
17 subcontractor under an energy savings services contract.

18 (5) When the energy services company is the manufacturer of
19 direct digital control systems and contracts with the contracting unit
20 to provide a guaranteed energy savings option pursuant to
21 subsection f. of this section, the specification of such direct digital
22 control systems may be treated as proprietary goods and if so
23 treated, the bid specification shall set forth an allowance price for
24 its supply by the energy services company which shall be used by
25 all bidders in the public bidding process. Direct digital controls
26 shall be open protocol format and shall meet the interoperability
27 guidelines established by the American Society of Heating,
28 Refrigerating and Air-Conditioning Engineers. Each contract to be
29 entered into pursuant to this section between a contracting unit and
30 an energy services company that is the manufacturer of direct
31 digital control systems where such direct digital control systems are
32 treated as proprietary goods as part of the contract, shall first be
33 reviewed and approved by the Board of Public Utilities for the
34 purpose of affirming the reasonableness of such allowance price. If
35 the board does not disapprove of the contract within 14 days of
36 receipt thereof, the contract shall be deemed approved.

37 c. An energy savings improvement program may be financed
38 through a lease-purchase agreement or through the issuance of
39 energy savings obligations pursuant to this subsection.

40 (1) An energy savings improvement program may be financed
41 through a lease-purchase agreement between a contracting unit and
42 an energy services company or other public or private entity. Under
43 a lease-purchase agreement, ownership of the energy savings
44 equipment or improved facilities shall pass to the contracting unit
45 when all lease payments have been made. Notwithstanding the
46 provisions of any other law to the contrary, the duration of such a
47 lease-purchase agreement shall not exceed 15 years, except that the

1 duration of a lease purchase agreement for a combined heat and
2 power or cogeneration project shall not exceed 20 years. For the
3 purposes of this paragraph, the duration of the repayment term of a
4 lease-purchase agreement shall commence on the date upon which
5 construction and installation of the energy savings equipment,
6 “combined heat and power facility” or “cogeneration facility,” as
7 those terms are defined pursuant to section 3 of P.L.1999, c.23
8 (C.48:3-51), or other energy conservation measures undertaken
9 pursuant to the energy savings plan, have been completed.

10 (2) Any lease-purchase agreement entered into pursuant to this
11 subsection, may contain: a clause making it subject to the
12 availability and appropriation annually of sufficient funds as may
13 be required to meet the extended obligation; and a non-substitution
14 clause maintaining that if the agreement is terminated for non-
15 appropriation, the contracting unit may not replace the leased
16 equipment or facilities with equipment or facilities that perform the
17 same or similar functions.

18 (3) A contracting unit may arrange for incurring energy savings
19 obligations to finance an energy savings improvement program.
20 Energy savings obligations may be funded through appropriations
21 for utility services in the annual budget of the contracting unit and
22 may be issued as refunding bonds pursuant to N.J.S.40A:2-52 et
23 seq., including the issuance of bond anticipation notes as may be
24 necessary, provided that all such bonds and notes mature within the
25 periods authorized for such energy savings obligations. Energy
26 savings obligations may be issued either through the contracting
27 unit or another public agency authorized to undertake financing on
28 behalf of the unit.

29 (4) Lease-purchase agreements and energy savings obligations
30 shall not be used to finance maintenance, guarantees, or verification
31 of guarantees of energy conservation measures. Lease-purchase
32 agreements and energy savings obligations may be used to finance
33 the cost of an energy audit or the cost of verification of energy
34 savings as part of adopting an energy savings plan.
35 Notwithstanding any law to the contrary, lease-purchase agreements
36 and energy savings certificates shall not be excepted from any
37 budget or tax levy limitation otherwise provided by law. Maturity
38 schedules of lease-purchase agreements or energy savings
39 obligations **【must】 shall not** exceed the estimated average useful
40 life of the **【individual】** energy conservation measures.

41 d. (1) The energy audit component of an energy savings
42 improvement program shall be conducted either by the contracting
43 unit or by a qualified independent third party retained by the
44 governing body for that purpose. It shall not be conducted by an
45 energy services company subsequently hired to develop an energy
46 savings improvement program. The energy audit shall identify the
47 current energy use of any or all facilities and energy conservation

- 1 measures that can be implemented in which the energy savings and
2 energy efficiency could be realized and maximized.
- 3 (2) To implement an energy savings improvement program, a
4 contracting unit shall develop a plan that consists of one or more
5 energy conservation measures. The plan shall:
- 6 (a) contain the results of an energy audit;
- 7 (b) describe the energy conservation measures that will
8 comprise the program;
- 9 (c) estimate greenhouse gas reductions resulting from those
10 energy savings;
- 11 (d) identify all design and compliance issues that require the
12 professional services of an architect or engineer and identify who
13 will provide these services;
- 14 (e) include an assessment of risks involved in the successful
15 implementation of the plan;
- 16 (f) identify the eligibility for, and costs and revenues associated
17 with the PJM Independent System Operator for demand response
18 and curtailable service activities;
- 19 (g) include schedules showing calculations of all costs of
20 implementing the proposed energy conservation measures and the
21 projected energy savings;
- 22 (h) identify maintenance requirements necessary to ensure
23 continued energy savings, and describe how they will be fulfilled;
24 and
- 25 (i) if developed by an energy services company, a description
26 of, and cost estimates of an energy savings guarantee.
- 27 All professionals providing engineering services under the plan
28 shall have errors and omissions insurance.
- 29 (3) Prior to the adoption of the plan, the contracting unit shall
30 contract with a qualified third party to verify the projected energy
31 savings to be realized from the proposed program have been
32 calculated as required by subsection e. of this section.
- 33 (4) Upon adoption, the plan shall be submitted to the Board of
34 Public Utilities, which shall post it on the Internet on a public
35 webpage maintained for such purpose. If the contracting unit
36 maintains its own website, it shall also post the plan on that site.
37 The board may require periodic reporting concerning the
38 implementation of the plan.
- 39 (5) Verification by a qualified third party shall be required when
40 energy conservation measures are placed in service or
41 commissioned, to ensure the savings projected in the energy savings
42 plan shall be achieved.
- 43 (6) Energy-related capital improvements that do not reduce
44 energy usage may be included in an energy savings improvement
45 program but the cost of such improvements shall not be financed as
46 a lease-purchase or through energy savings obligations authorized
47 by subsection c. of this section. Nothing herein is intended to

1 prevent financing of such capital improvements through otherwise
2 authorized means.

3 (7) A qualified third party when required by this subsection may
4 include an employee of the contracting unit who is properly trained
5 and qualified to perform such work.

6 e. (1) (a) The calculation of energy savings for the purposes of
7 determining that the energy savings resulting from the program will
8 be sufficient to cover the cost of the program's energy conservation
9 measures, as provided in subsection a. of this section, shall involve
10 determination of the dollar amount saved through implementation
11 of an energy savings improvement program using the guidelines of
12 the International Performance Measurement and Verification
13 Protocol or other protocols approved by the Board of Public
14 Utilities and standards adopted by the Board of Public Utilities
15 pursuant to this section. The calculation shall include all applicable
16 State and federal rebates and tax credits, but shall not include the
17 cost of an energy audit and the cost of verifying energy savings.
18 The calculation shall state which party has made application for
19 rebates and credits and how these applications translate into energy
20 savings.

21 (b) During the procurement phase of an energy savings
22 improvement program, an energy service company's proposal
23 submitted in response to a request for proposal shall not include a
24 savings calculation that assumes, includes, or references capital cost
25 avoidance savings, the current or projected value of a "solar
26 renewable energy certificate," as defined pursuant to section 3 of
27 P.L.1999, c.23 (C.48:3-51), or other environmental or similar
28 attributes or benefits of whatever nature that derive from the
29 generation of renewable energy, and any costs or discounts
30 associated with maintenance services, an energy savings guarantee,
31 or third party verification of energy conservation measures and
32 energy savings. The calculation of energy savings shall utilize and
33 specifically reference as a benchmark the actual demand and energy
34 components of the public utility tariff rate applicable to the
35 contracting unit then in effect, and not a blended rate that
36 aggregates, combines, or restates in any manner the distinct demand
37 and energy components of the public utility tariff rate into a single
38 combined or restated tariff rate. If an energy services company
39 submits a proposal to a contracting unit that does not calculate
40 projected energy savings in the manner required by this subsection,
41 such proposal shall be rejected by the contracting unit.

42 (2) For the purposes of this section, the Board of Public Utilities
43 shall adopt standards and uniform values for interest rates and
44 escalation of labor, electricity, oil, and gas, as well as standards for
45 presenting these costs in a life cycle and net present value format,
46 standards for the presentation of obligations for carbon reductions,
47 and other standards that the board may determine necessary.

1 f. (1) When an energy services company is awarded an energy
2 savings services contract, it shall offer the contracting unit the
3 option to purchase, for an additional amount, an energy savings
4 guarantee. The guarantee, if accepted by a separate vote of the
5 governing body of the contracting unit, shall insure that the energy
6 savings resulting from the energy savings improvement program,
7 determined periodically over the duration of the guarantee, will be
8 sufficient to defray all payments required to be made pursuant to
9 the lease-purchase agreement or energy savings obligation, and if
10 the savings are not sufficient, the energy services company will
11 reimburse the contracting unit for any additional amounts. Annual
12 costs of a guarantee shall not be financed or included as costs in an
13 energy savings plan but shall be fully disclosed in an energy
14 savings plan.

15 (2) When a guaranteed energy savings option is purchased, the
16 contract shall require a qualified third party to verify the energy
17 savings at intervals established by the parties.

18 (3) When an energy services company is awarded an energy
19 savings services contract to provide or perform goods or services
20 for the purpose of enabling a contracting unit to conserve energy
21 through energy efficiency equipment, including a “combined heat
22 and power facility” as that term is defined pursuant to section 3 of
23 P.L.1999, c.23 (C48:3-51), on a self-funded basis, such contract
24 shall extend for a term of up to 15 years for energy efficiency
25 projects, and for up to 20 years for a combined heat and power
26 facility after construction completion. If a contracting unit shall
27 elect to contract with an energy services company for an energy
28 savings guarantee in connection with a contract awarded pursuant to
29 this section, such guarantee may extend for a term of up to 15 years
30 for energy efficiency projects, or up to 20 years for a combined heat
31 and power facility after construction completion.

32 g. As used in this section:

33 "direct digital control systems" means the devices and
34 computerized control equipment that contain software and computer
35 interfaces that perform the logic that control a building's heating,
36 ventilating, and air conditioning system. Direct digital controls
37 shall be open protocol format and shall meet the interoperability
38 guidelines established by the American Society of Heating,
39 Refrigerating and Air-Conditioning Engineers;

40 "energy conservation measure" means an improvement that
41 results in reduced energy use, including, but not limited to,
42 installation of energy efficient equipment; demand response
43 equipment; combined heat and power systems; facilities for the
44 production of renewable energy; water conservation measures,
45 fixtures or facilities; building envelope improvements that are part
46 of an energy savings improvement program; and related control
47 systems for each of the foregoing;

1 "energy related capital improvement" means a capital
2 improvement that uses energy but does not result in a reduction of
3 energy use;

4 "energy saving obligation" means a bond, note or other
5 agreement evidencing the obligation to repay borrowed funds
6 incurred in order to finance energy saving improvements;

7 "energy savings" means a measured reduction in fuel, energy,
8 operating or maintenance costs resulting from the implementation
9 of one or more energy conservation measures services when
10 compared with an established baseline of previous fuel, energy,
11 operating or maintenance costs, including, but not limited to, future
12 capital replacement expenditures avoided as a result of equipment
13 installed or services performed as part of an energy savings plan;

14 "energy savings improvement program" means an initiative of a
15 contracting unit to implement energy conservation measures in
16 existing facilities, provided that the value of the energy savings
17 resulting from the program will be sufficient to cover the cost of the
18 program's energy conservation measures;

19 "energy savings plan" means the document that describes the
20 actions to be taken to implement the energy savings improvement
21 program;

22 "energy savings services contract" means a contract with an
23 energy savings company to develop an energy savings plan, prepare
24 bid specifications, manage the performance, provision,
25 construction, and installation of energy conservation measures by
26 subcontractors, to offer a guarantee of energy savings derived from
27 the implementation of an energy savings plan, and may include a
28 provision to manage the bidding process;

29 "energy services company" means a commercial entity that is
30 qualified to develop and implement an energy savings plan in
31 accordance with the provisions of this section;

32 "public works activities" means any work subject to the
33 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

34 "water conservation measure" means an alteration to a facility or
35 equipment that reduces water consumption, maximizes the
36 efficiency of water use, or reduces water loss.

37 h. (1) The Director of the Division of Local Government
38 Services in the Department of Community Affairs, the State
39 Treasurer, and the Board of Public Utilities may take such action as
40 is deemed necessary and consistent with the intent of this section to
41 implement its provisions.

42 (2) The Director of the Division of Local Government Services
43 in the Department of Community Affairs, the State Treasurer, and
44 the Board of Public Utilities may adopt implementation guidelines
45 or directives, and adopt such administrative rules, pursuant to the
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
47 seq.), as are necessary for the implementation of those agencies'

1 respective responsibilities under this section, except that
2 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et
3 seq.) to the contrary, the Director of the Division of Local
4 Government Services in the Department of Community Affairs, the
5 State Treasurer, and the Board of Public Utilities may adopt,
6 immediately upon filing with the Office of Administrative Law,
7 such rules and regulations as deemed necessary to implement the
8 provisions of this act which shall be effective for a period not to
9 exceed 12 months and shall thereafter be amended, adopted or re-
10 adopted in accordance with the provisions of P.L.1968, c.410
11 (C.52:14B-1 et seq.).
12 (cf: P.L.2009, c.4, s.6)

13
14 4. Section 9 of P.L.2009, c.4 (C.52:34-25) is amended to read
15 as follows:

16 9. a. (1) A State contracting agency, as defined in this section,
17 may implement an energy savings improvement program in the
18 manner provided by this section whenever it determines that the
19 savings generated from reduced energy use from the program will
20 be sufficient to cover the cost of the program's energy conservation
21 measures as set forth in an energy savings plan. Under such a
22 program, a contracting agency may enter into an energy savings
23 services contract with an energy services company to implement the
24 program or the contracting agency may authorize separate contracts
25 to implement the program. The provisions of Title 52 of the
26 Revised Statutes shall apply to any contracts awarded pursuant to
27 this section to the extent that the provisions of such law are not
28 inconsistent with any provision of this section.

29 (2) A State contracting agency facility alteration required to
30 properly implement other energy efficiency or energy conservation
31 measures, or both, may be included as part of an energy savings
32 services contract, in which case, notwithstanding any other
33 provision of law, rule, regulation, or order to the contrary, the
34 facility alteration may be undertaken or supervised by the energy
35 services company performing the energy savings services contract
36 if:

37 (a) the total cost of the improvement does not exceed 15 percent
38 of the total cost of the work to be performed under the energy
39 savings services contract; and

40 (b) (i) the improvement is necessary to conform to a law, rule,
41 or regulation, or order, or (ii) an analysis within an approved
42 proposal, or the State contracting agency, at the time of the award
43 of the proposal, demonstrates that there is an economic advantage to
44 the State contracting agency implementing the improvement as part
45 of the energy savings services contract, and the savings rationale for
46 the improvement is documented and supported by reasonable
47 justification.

1 b. (1) To be eligible to enter into an energy savings services
2 contract, an energy services company shall be a commercial entity
3 that is qualified to provide energy savings services in accordance
4 with the provisions of this section. A State contracting agency may
5 determine to enter into an energy savings services contract through
6 public advertising for bids and the receipt of bids therefor.

7 (2) (a) Public works activities performed under an energy
8 savings improvement program shall be subject to all requirements
9 regarding public bidding, bid security, performance guarantees,
10 insurance and other public contracting requirements that are
11 applicable to public works contracts, to the extent not inconsistent
12 with this section. A general contractor, energy services company
13 serving as general contractor, or any subcontractor hired for the
14 furnishing of plumbing and gas fitting and all kindred work, and of
15 steam and hot water heating and ventilating apparatus, steam power
16 plants and kindred work, and electrical work, structural steel and
17 ornamental iron work, shall be classified by the Division of
18 Property Management and Construction in the Department of the
19 Treasury in order to perform public works activities under an
20 energy savings improvement program. A general contractor, energy
21 services company serving as general contractor, or any
22 subcontractor hired for the furnishing of electrical work shall use
23 only electrical contractors licensed by the State, pursuant to
24 P.L.1962, c.162 (C.45:5A-1 et seq.), to perform electrical work
25 under an energy savings improvement program. Electrical work
26 shall include, but not be limited to, the wiring of temperature and
27 energy management controls, the installation of control systems,
28 and the retrofitting of any lighting equipment.

29 (b) Individuals or organizations performing energy audits,
30 acting as commissioning agents, or conducting verification of
31 energy savings plans, implementation of energy conservation
32 measures, or verifying guarantees shall be prequalified by the
33 Division of Property Management and Construction in the
34 Department of the Treasury to perform their work under an energy
35 savings improvement program.

36 (3) (a) An energy services company may be designated as the
37 general contractor for improvements to be made pursuant to an
38 energy savings plan, provided that the hiring of subcontractors that
39 are required to be classified pursuant to subparagraph (a) of
40 paragraph (2) of this subsection shall be performed in accordance
41 with the procedures and requirements set forth pursuant to **[the**
42 **public bidding requirements of the State contracting agency]**
43 subparagraph (b) of this paragraph. A contract with an energy
44 savings company shall include, but not be limited to: preparation of
45 an energy savings plan, the responsibilities of the parties for project
46 schedules, installations, performance and quality, payment of
47 subcontractors, project completion, commissioning, savings

1 implementation; a requirement that the savings to be achieved by
2 energy conservation measures be verified upon commissioning of
3 the improvements; allocation of State and federal rebates and tax
4 credits; and any other provisions deemed necessary by the parties.

5 (b) Notwithstanding any other law or regulation to the contrary,
6 an energy services company shall select, in accordance with the
7 procedures and requirements set forth pursuant to the public bidding
8 process of the State contracting agency, only those subcontractors
9 that have been pre-qualified by the Division of Property
10 Management and Construction as eligible to submit bids. In pre-
11 qualifying subcontractors for eligibility, the division shall create
12 one or more pools of subcontractors based on the value and
13 complexity of the work to be undertaken under an energy savings
14 improvement program. The pre-qualification pools shall include
15 subcontractors having the following qualifications:

16 (i) the financial means and ability to complete the required work;

17 (ii) the experience, capability, and skills necessary to complete
18 the work required of energy savings improvement program projects;
19 and

20 (iii) a record of experience conducting similar work in a timely
21 fashion.

22 Each subcontractor chosen by the energy services company shall
23 certify that all employees have completed a registered
24 apprenticeship program that provided each trainee with combined
25 classroom and on-the-job training under the direct and close
26 supervision of a highly skilled worker in an occupation recognized
27 as an apprenticeable trade, registered by the Office of
28 Apprenticeship of the United States Department of Labor and
29 meeting the standards established by the office, or registered by a
30 State apprenticeship agency recognized by the office. The energy
31 services company shall then select from the eligible pools of
32 prequalified subcontractors. All workers performing public works
33 activities for subcontractors awarded contracts by an energy
34 services company pursuant to this section shall be paid prevailing
35 wages in accordance with the "New Jersey Prevailing Wage Act,"
36 P.L.1963, c.150 (C.34:11-56.25 et seq.). All subcontractors shall
37 comply with the provisions of "The Public Works Contractor
38 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.). Only
39 firms appropriately classified as contractors by the Division of
40 Property Management and Construction shall be eligible to be
41 awarded a contract as a subcontractor of an energy services
42 company under this section for performing public works activities
43 pursuant to regulations adopted by the Division of Property
44 Management and Construction.

45 (c) In order to expedite communications with an energy services
46 company and facilitate the implementation of an energy savings
47 improvement program, a State contracting agency may designate or

1 appoint an employee of the State contracting agency with decision-
2 making authority to coordinate with the energy services company
3 and to address issues associated with the implementation of an
4 energy savings improvement program as they arise, provided that
5 any decision requiring a change order shall be made only upon the
6 approval of the State contracting agency.

7 (4) **【Except as provided in paragraph (5) of this subsection, a】**
8 **A** subsidiary or wholly-owned or partially-owned affiliate of the
9 energy services company shall not be an eligible contractor or
10 subcontractor under an energy savings services contract.

11 **【(5)When the energy services company is the manufacturer of**
12 **direct digital control systems and contracts with the contracting**
13 **agency to provide a guaranteed energy savings option pursuant to**
14 **subsection f. of this section, the specification of such direct digital**
15 **control systems may be treated as proprietary goods and if so**
16 **treated, the bid specification shall set forth an allowance price for**
17 **its supply by the energy services company which shall be used by**
18 **all bidders in the public bidding process. Direct digital controls**
19 **shall be open protocol format and shall meet the interoperability**
20 **guidelines established by the American Society of Heating,**
21 **Refrigerating and Air-Conditioning Engineers.】**

22 c. In addition to existing authorization of a State agency to
23 enter into lease-purchase agreements or to issue obligations to
24 finance the costs of an energy savings improvement program, a
25 contracting agency is hereby authorized to finance the costs of an
26 energy savings improvement program by entering into a lease
27 purchase agreement. Any financing mechanism shall be
28 administered in a manner consistent with this subsection insofar as
29 it does not conflict with the provisions of other law that applies to
30 the contracting agency.

31 (1) An energy savings improvement program may be financed
32 through a lease-purchase agreement between a State contracting
33 agency and an energy services company or other public or private
34 entity. Under a lease-purchase agreement, ownership of the energy
35 savings equipment or improved facilities shall pass to the
36 contracting agency or the client agency responsible for the facility
37 when all lease payments have been made. Notwithstanding the
38 provisions of any other law to the contrary, the duration of such a
39 lease-purchase agreement shall not exceed 15 years, except that the
40 duration of a lease purchase agreement for a combined heat and
41 power or cogeneration project shall not exceed 20 years. For the
42 purposes of this paragraph, the duration of the repayment term of a
43 lease-purchase agreement shall commence on the date upon which
44 construction and installation of the energy savings equipment,
45 “combined heat and power facility” or “cogeneration facility,” as
46 those terms are defined pursuant to section 3 of P.L.1999, c.23

1 (C.48:3-51), or other energy conservation measures undertaken
2 pursuant to the energy savings plan, have been completed.

3 (2) Lease-purchase agreements and energy savings obligations
4 shall not be used to finance maintenance, guarantees, or verification
5 of guarantees of energy conservation measures. Lease-purchase
6 agreements may be used to finance the cost of an energy audit or
7 the cost of verification of energy savings as part of adopting an
8 energy savings plan. Maturity schedules of lease-purchase
9 agreements **[must]** shall not exceed the estimated average useful
10 life of the **[individual]** energy conservation measures.

11 d. (1) The energy audit component of an energy savings
12 improvement program shall be conducted either by the contracting
13 agency or by a qualified independent third party retained by the
14 contracting agency for that purpose. It shall not be conducted by an
15 energy services company subsequently hired to develop an energy
16 savings improvement program. The energy audit shall identify the
17 current energy use of any or all facilities and energy conservation
18 measures that can be implemented in which the energy savings and
19 energy efficiency could be realized and maximized.

20 (2) To implement an energy savings improvement program, a
21 contracting agency shall develop an energy savings plan that
22 consists of one or more energy conservation measures. The plan
23 shall:

24 (a) contain the results of an energy audit;

25 (b) describe the energy conservation measures that will
26 comprise the program;

27 (c) estimate greenhouse gas reductions resulting from those
28 energy savings;

29 (d) identify all design and compliance issues that require the
30 professional services of an architect or engineer and identify who
31 will provide these services;

32 (e) include an assessment of risks involved in the successful
33 implementation of the plan;

34 (f) identify the eligibility for, and costs and revenues associated
35 with the PJM Independent System Operator for demand response
36 and curtailable service activities;

37 (g) include schedules showing calculations of all costs of
38 implementing the proposed energy conservation measures and the
39 projected energy savings;

40 (h) identify maintenance requirements necessary to ensure
41 continued energy savings, and describe how they will be fulfilled;
42 and

43 (i) if developed by an energy services company, a description
44 of, and cost estimates of an energy savings guarantee.

45 All professionals providing engineering services under the plan
46 shall have errors and omissions insurance.

1 (3) Prior to the adoption of the plan, the contracting agency
2 shall contract with a qualified third party to verify the projected
3 energy savings to be realized from the proposed program have been
4 calculated as required by subsection e. of this section.

5 (4) Upon adoption, the plan shall be submitted to the Board of
6 Public Utilities, which shall post it on the Internet on a public
7 webpage maintained for such purpose. If the contracting agency
8 maintains its own website, it shall also post the plan on that site.
9 The Board of Public Utilities may require periodic reporting
10 concerning the implementation of the plan.

11 (5) Verification by a qualified third party shall be required when
12 energy conservation measures are placed in service or
13 commissioned, to ensure the savings projected in the energy savings
14 plan shall be achieved.

15 (6) Energy-related capital improvements that do not reduce
16 energy usage may be included in an energy savings improvement
17 program but the cost of such improvements shall not be financed as
18 a lease-purchase or through energy savings obligations authorized
19 by subsection c. of this section. Nothing herein is intended to
20 prevent financing of such capital improvements through otherwise
21 authorized means.

22 (7) A qualified third party when required by this subsection may
23 include an employee of the State contracting agency who is
24 properly trained and qualified to perform such work.

25 e. (1) (a) The calculation of energy savings for the purposes of
26 determining that the energy savings resulting from the program will
27 be sufficient to cover the cost of the program's energy conservation
28 measures, as provided in subsection a. of this section, shall involve
29 determination of the dollar amount saved through implementation
30 of an energy savings improvement program using the guidelines of
31 the International Performance Measurement and Verification
32 Protocol or other protocols approved by the Board of Public
33 Utilities and standards adopted by the Board of Public Utilities
34 pursuant to this section. The calculation shall include all applicable
35 State and federal rebates and tax credits, but shall not include the
36 cost of an energy audit and the cost of verifying energy savings.
37 The calculation shall state which party has made application for
38 rebates and credits and how these applications translate into energy
39 savings.

40 (b) During the procurement phase of an energy savings
41 improvement program, an energy service company's proposal
42 submitted in response to a request for proposal shall not include a
43 savings calculation that assumes, includes, or references capital cost
44 avoidance savings, the current or projected value of a "solar
45 renewable energy certificate," as defined pursuant to section 3 of
46 P.L.1999, c.23 (C.48:3-51), or other environmental or similar
47 attributes or benefits of whatever nature that derive from the

1 generation of renewable energy, and any costs or discounts
2 associated with maintenance services, an energy savings guarantee,
3 or third party verification of energy conservation measures and
4 energy savings. The calculation of energy savings shall utilize and
5 specifically reference as a benchmark the actual demand and energy
6 components of the public utility tariff rate applicable to the State
7 contracting agency then in effect, and not a blended rate that
8 aggregates, combines, or restates in any manner the distinct demand
9 and energy components of the public utility tariff rate into a single
10 combined or restated tariff rate. If an energy services company
11 submits a proposal to a State contracting agency that does not
12 calculate projected energy savings in the manner required by this
13 subsection, such proposal shall be rejected by the State contracting
14 agency.

15 (2) For the purposes of this section, the Board of Public Utilities
16 shall adopt standards and uniform values for interest rates and
17 escalation of labor, electricity, oil, and gas, as well as standards for
18 presenting these costs in a life cycle and net present value format,
19 standards for the presentation of obligations for carbon reductions,
20 and other standards that the board may determine necessary.

21 f. (1) When an energy services company is awarded an energy
22 savings services contract, it shall offer the contracting agency the
23 option to purchase, for an additional amount, an energy savings
24 guarantee. The guarantee, if accepted by the contracting agency,
25 shall insure that the energy savings resulting from the energy
26 savings improvement program, determined periodically over the
27 duration of the guarantee, will be sufficient to defray all payments
28 required to be made pursuant to the lease-purchase agreement or
29 energy savings obligation, and if the savings are not sufficient, the
30 energy services company will reimburse the contracting agency for
31 any additional amounts. Annual costs of a guarantee shall not be
32 financed or included as costs in an energy savings plan but shall be
33 fully disclosed in an energy savings plan.

34 (2) When a guaranteed energy savings option is purchased, the
35 contract shall require a qualified third party to verify the energy
36 savings at intervals established by the parties.

37 (3) When an energy services company is awarded an energy
38 savings services contract to provide or perform goods or services
39 for the purpose of enabling a State contracting agency to conserve
40 energy through energy efficiency equipment, including a “combined
41 heat and power facility” as that term is defined pursuant to section 3
42 of P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
43 shall extend for a term of up to 15 years for energy efficiency
44 projects, and for up to 20 years for a combined heat and power
45 facility after construction completion. If a State contracting agency
46 shall elect to contract with an energy services company for an
47 energy savings guarantee in connection with a contract awarded

1 pursuant to this section, such guarantee may extend for a term of up
2 to 15 years for energy efficiency projects, or up to 20 years for a
3 combined heat and power facility after construction completion.

4 g. As used in this section:

5 ["direct digital control systems" means the devices and
6 computerized control equipment that contain software and computer
7 interfaces that perform the logic that control a building's heating,
8 ventilating, and air conditioning system. Direct digital controls
9 shall be open protocol format and shall meet the interoperability
10 guidelines established by the American Society of Heating,
11 Refrigerating and Air-Conditioning Engineers;]

12 "energy conservation measure" means an improvement that
13 results in reduced energy use, including, but not limited to,
14 installation of energy efficient equipment; demand response
15 equipment; combined heat and power systems; facilities for the
16 production of renewable energy; water conservation measures,
17 fixtures or facilities; building envelope improvements that are part
18 of an energy savings improvement program; and related control
19 systems for each of the foregoing;

20 "energy related capital improvement" means a capital
21 improvement that uses energy but does not result in a reduction of
22 energy use;

23 "energy savings" means a measured reduction in fuel, energy,
24 operating or maintenance costs resulting from the implementation
25 of one or more energy conservation measures services when
26 compared with an established baseline of previous fuel, energy,
27 operating or maintenance costs, including, but not limited to, future
28 capital replacement expenditures avoided as a result of equipment
29 installed or services performed as part of an energy savings plan;

30 "energy savings improvement program" means an initiative of a
31 State contracting agency to implement energy conservation
32 measures in existing facilities, provided that the value of the energy
33 savings resulting from the program will be sufficient to cover the
34 cost of the program's energy conservation measures;

35 "energy savings plan" means the document that describes the
36 actions to be taken to implement the energy savings improvement
37 program;

38 "energy savings services contract" means a contract with an
39 energy savings company to develop an energy savings plan, prepare
40 bid specifications, manage the performance, provision,
41 construction, and installation of energy conservation measures by
42 subcontractors, to offer a guarantee of energy savings derived from
43 the implementation of an energy savings plan, and may include a
44 provision to manage the bidding process;

45 "energy services company" means a commercial entity that is
46 qualified to develop and implement an energy savings plan in
47 accordance with the provisions of this section;

1 "public works activities" means any work subject to the
2 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.);

3 "State contracting agency" or "contracting agency" means any of
4 the principal departments in the Executive Branch of State
5 Government, and any division, board, bureau, office, commission or
6 other instrumentality created by a principal department; and

7 "water conservation measure" means an alteration to a facility or
8 equipment that reduces water consumption, maximizes the
9 efficiency of water use, or reduces water loss.

10 h. (1) The State Treasurer and the Board of Public Utilities
11 may take such action as is deemed necessary and consistent with the
12 intent of this section to implement its provisions.

13 (2) The State Treasurer and the Board of Public Utilities may
14 adopt implementation guidelines or directives, and adopt such
15 administrative rules, pursuant to the "Administrative Procedure
16 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
17 implementation of those agencies' respective responsibilities under
18 this section, except that notwithstanding any provision of P.L.1968,
19 c.410 (C.52:14B-1 et seq.) to the contrary, the State Treasurer, and
20 the Board of Public Utilities may adopt, immediately upon filing
21 with the Office of Administrative Law, such rules and regulations
22 as deemed necessary to implement the provisions of this act which
23 shall be effective for a period not to exceed 12 months and shall
24 thereafter be amended, adopted or re-adopted in accordance with
25 the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

26 (cf: P.L.2009, c.4, s.9)

27
28 5. Section 10 of P.L.2009, c.4 (C.52:35A-1) is amended to read
29 as follows:

30 10. a. (1) A public agency, as defined in this section, may
31 implement an energy savings improvement program in the manner
32 provided by this section whenever it determines that the savings
33 generated from reduced energy use from the program will be
34 sufficient to cover the cost of the program's energy conservation
35 measures as set forth in an energy savings plan. Under such a
36 program, a public agency may enter into an energy savings services
37 contract with an energy services company to implement the
38 program or the public agency may authorize separate contracts to
39 implement the program. The provisions of any other law applicable
40 to a public agency shall apply to any contracts awarded pursuant to
41 this section to the extent that the provisions of such law are not
42 inconsistent with any provision of this section.

43 (2) A public agency facility alteration required to properly
44 implement other energy efficiency or energy conservation
45 measures, or both, may be included as part of an energy savings
46 services contract, in which case, notwithstanding any other
47 provision of law, rule, regulation, or order to the contrary, the

1 facility alteration may be undertaken or supervised by the energy
2 services company performing the energy savings services contract
3 if:

4 (a) the total cost of the improvement does not exceed 15 percent
5 of the total cost of the work to be performed under the energy
6 savings services contract; and

7 (b) (i) the improvement is necessary to conform to a law, rule,
8 or regulation, or order, or (ii) an analysis within an approved
9 proposal, or the public agency, at the time of the award of the
10 proposal, demonstrates that there is an economic advantage to the
11 public agency implementing the improvement as part of the energy
12 savings services contract, and the savings rationale for the
13 improvement is documented and supported by reasonable
14 justification.

15 b. (1) To be eligible to enter into an energy savings services
16 contract, an energy services company shall be a commercial entity
17 that is qualified to provide public agencies with energy savings
18 services in accordance with the provisions of this section. A public
19 agency may determine to enter into an energy savings services
20 contract which shall be awarded through a procedure that results in
21 the award of a contract to a vendor determined by the public agency
22 to be the most advantageous, price and other factors considered.

23 (2) (a) Public works activities performed under an energy
24 savings improvement program shall be subject to all requirements
25 regarding public bidding, bid security, performance guarantees,
26 insurance and other public contracting requirements that are
27 applicable to public works contracts, to the extent not inconsistent
28 with this section. A general contractor, energy services company
29 serving as general contractor, or any subcontractor hired for the
30 furnishing of plumbing and gas fitting and all kindred work, and of
31 steam and hot water heating and ventilating apparatus, steam power
32 plants and kindred work, and electrical work, structural steel and
33 ornamental iron work shall be classified by the Division of Property
34 Management and Construction in the Department of the Treasury in
35 order to perform public works activities under an energy savings
36 improvement program.

37 (b) Individuals or organizations performing energy audits,
38 acting as commissioning agents, or conducting verification of
39 energy savings plans, implementation of energy conservation
40 measures, or verifying guarantees shall be prequalified by the
41 Division of Property Management and Construction in the
42 Department of the Treasury to perform their work under an energy
43 savings improvement program.

44 (3) (a) An energy services company may be designated as the
45 general contractor for improvements to be made pursuant to an
46 energy savings plan, provided that the hiring of subcontractors that
47 are required to be classified pursuant to subparagraph (a) of

1 paragraph (2) of this subsection shall be performed in accordance
2 with the procedures and requirements set forth pursuant to the
3 public bidding requirements of the public agency. A contract with
4 an energy savings company shall include, but not be limited to:
5 preparation of an energy savings plan; the responsibilities of the
6 parties for project schedules, installations, performance and quality,
7 payment of subcontractors, project completion, commissioning,
8 savings implementation; a requirement that the savings to be
9 achieved by energy conservation measures be verified upon
10 commissioning of the improvements; allocation of State and federal
11 rebates and tax credits; and any other provisions deemed necessary
12 by the parties.

13 (b) All workers performing public works activities for
14 subcontractors awarded contracts by an energy services company
15 pursuant to this section shall be paid prevailing wages in
16 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,
17 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with
18 the provisions of "The Public Works Contractor Registration Act,"
19 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately
20 classified as contractors by the Division of Property Management
21 and Construction shall be eligible to be awarded a contract as a
22 subcontractor of an energy services company under this section for
23 performing public works activities pursuant to regulations adopted
24 by the Division of Property Management and Construction.

25 (c) In order to expedite communications with an energy services
26 company and facilitate the implementation of an energy savings
27 improvement program, a public agency may designate or appoint an
28 employee of the public agency with decision-making authority to
29 coordinate with the energy services company and to address issues
30 associated with the implementation of an energy savings
31 improvement program as they arise, provided that any decision
32 requiring a change order shall be made only upon the approval of
33 the public agency.

34 (4) Except as provided in paragraph (5) of this subsection, a
35 subsidiary or wholly-owned or partially-owned affiliate of the
36 energy services company shall not be an eligible contractor or
37 subcontractor under an energy savings services contract.

38 (5) When the energy services company is the manufacturer of
39 direct digital control systems and contracts with the public agency
40 to provide a guaranteed energy savings option pursuant to
41 subsection f. of this section, the specification of such direct digital
42 control systems may be treated as proprietary goods and if so
43 treated, the bid specification shall set forth an allowance price for
44 its supply by the energy services company which shall be used by
45 all bidders in the public bidding process. Direct digital controls
46 shall be open protocol format and shall meet the interoperability
47 guidelines established by the American Society of Heating,

1 Refrigerating and Air-Conditioning Engineers. Each contract to be
2 entered into pursuant to this section between a public agency and an
3 energy services company that is the manufacturer of direct digital
4 control systems where such direct digital control systems are treated
5 as proprietary goods as part of the contract, shall first be reviewed
6 and approved by the Board of Public Utilities for the purpose of
7 affirming the reasonableness of such allowance price. If the board
8 does not disapprove of the contract within 14 days of receipt
9 thereof, the contract shall be deemed approved.

10 c. In addition to existing authorization of a public agency to
11 enter into lease-purchase agreements or to issue obligations to
12 finance the costs of an energy savings improvement program, a
13 public agency is hereby authorized to finance the costs of an energy
14 savings improvement program by entering into a lease purchase
15 agreement or by issuing energy savings obligations pursuant to this
16 subsection. Any financing mechanism shall be administered in a
17 manner consistent with this subsection insofar as it does not conflict
18 with the provisions of other law that applies to the public agency.

19 (1) An energy savings improvement program may be financed
20 through a lease-purchase agreement between a public agency and an
21 energy services company or other public or private entity. Under a
22 lease-purchase agreement, ownership of the energy savings
23 equipment or improved facilities shall pass to the public agency
24 when all lease payments have been made. Notwithstanding the
25 provisions of any other law to the contrary, the duration of such a
26 lease-purchase agreement shall not exceed 15 years, except that the
27 duration of a lease purchase agreement for a combined heat and
28 power or cogeneration project shall not exceed 20 years. For the
29 purposes of this paragraph, the duration of the repayment term of a
30 lease-purchase agreement shall commence on the date upon which
31 construction and installation of the energy savings equipment,
32 “combined heat and power facility” or “cogeneration facility,” as
33 those terms are defined pursuant to section 3 of P.L.1999, c.23
34 (C.48:3-51), or other energy conservation measures undertaken
35 pursuant to the energy savings plan, have been completed.

36 (2) A public agency may arrange for incurring energy savings
37 obligations to finance an energy savings improvement program.
38 Energy savings obligations may be funded through appropriations
39 for utility services in the annual budget of the public agency and
40 may be issued as refunding bonds, including the issuance of bond
41 anticipation notes as may be necessary, provided that all such bonds
42 and notes mature within the periods authorized for such energy
43 savings obligations. Energy savings obligations may be issued
44 either through the public agency or another public agency
45 authorized to undertake financing on behalf of the public agency.

46 (3) Lease-purchase agreements and energy savings obligations
47 shall not be used to finance maintenance, guarantees, or verification

1 of guarantees of energy conservation measures. Lease-purchase
2 agreements and energy savings obligations may be used to finance
3 the cost of an energy audit or the cost of verification of energy
4 savings as part of adopting an energy savings plan.
5 Notwithstanding any law to the contrary, lease-purchase agreements
6 and energy savings certificates shall not be excepted from any
7 budget or tax levy limitation otherwise provided by law. Maturity
8 schedules of lease-purchase agreements or energy savings
9 obligations **[must]** shall not exceed the estimated average useful
10 life of the **[individual]** energy conservation measures.

11 d. (1) The energy audit component of an energy savings
12 improvement program shall be conducted either by the public
13 agency or by a qualified independent third party retained by the
14 board for that purpose. It shall not be conducted by an energy
15 services company subsequently hired to develop an energy savings
16 improvement program. The energy audit shall identify the current
17 energy use of any or all facilities and energy conservation measures
18 that can be implemented in which the energy savings and energy
19 efficiency could be realized and maximized.

20 (2) To implement a program, a public agency shall develop an
21 energy savings plan that consists of one or more energy
22 conservation measures. The plan shall: (a) contain the results of an
23 energy audit;

24 (b) describe the energy conservation measures that will
25 comprise the program;

26 (c) estimate greenhouse gas reductions resulting from those
27 energy savings;

28 (d) identify all design and compliance issues that require the
29 professional services of an architect or engineer and identify who
30 will provide these services;

31 (e) include an assessment of risks involved in the successful
32 implementation of the plan;

33 (f) identify the eligibility for, and costs and revenues associated
34 with the PJM Independent System Operator for demand response
35 and curtailable service activities;

36 (g) include schedules showing calculations of all costs of
37 implementing the proposed energy conservation measures and the
38 projected energy savings;

39 (h) identify maintenance requirements necessary to ensure
40 continued energy savings, and describe how they will be fulfilled;
41 and

42 (i) if developed by an energy services company, a description
43 of, and cost estimates of an energy savings guarantee.

44 All professionals providing engineering services under the plan
45 shall have errors and omissions insurance.

46 (3) Prior to the adoption of the plan, the public agency shall
47 contract with a qualified third party to verify the projected energy

1 savings to be realized from the proposed program have been
2 calculated as required by subsection e. of this section.

3 (4) Upon adoption, the plan shall be submitted to the Board of
4 Public Utilities, which shall post it on the Internet on a public
5 webpage maintained for such purpose. If the public agency
6 maintains its own website, it shall also post the plan on that site.
7 The board may require periodic reporting concerning the
8 implementation of the plan.

9 (5) Verification by a qualified third party shall be required when
10 energy conservation measures are placed in service or
11 commissioned, to ensure the savings projected in the energy savings
12 plan shall be achieved.

13 (6) Energy-related capital improvements that do not reduce
14 energy usage may be included in an energy savings improvement
15 program but the cost of such improvements shall not be financed as
16 a lease-purchase or through energy savings obligations authorized
17 by subsection c. of this section. Nothing herein is intended to
18 prevent financing of such capital improvements through otherwise
19 authorized means.

20 (7) A qualified third party when required by this subsection may
21 include an employee of the public agency who is properly trained
22 and qualified to perform such work.

23 e. (1) (a) The calculation of energy savings for the purposes of
24 determining that the energy savings resulting from the program will
25 be sufficient to cover the cost of the program's energy conservation
26 measures, as provided in subsection a. of this section, shall involve
27 determination of the dollar amount saved through implementation
28 of an energy savings improvement program using the guidelines of
29 the International Performance Measurement and Verification
30 Protocol or other protocols approved by the Board of Public
31 Utilities and standards adopted by the Board of Public Utilities
32 pursuant to this section. The calculation shall include all applicable
33 State and federal rebates and tax credits, but shall not include the
34 cost of an energy audit and the cost of verifying energy savings.
35 The calculation shall state which party has made application for
36 rebates and credits and how these applications translate into energy
37 savings.

38 (b) During the procurement phase of an energy savings
39 improvement program, an energy service company's proposal
40 submitted in response to a request for proposal shall not include a
41 savings calculation that assumes, includes, or references capital cost
42 avoidance savings, the current or projected value of a "solar
43 renewable energy certificate," as defined pursuant to section 3 of
44 P.L.1999, c.23 (C.48:3-51), or other environmental or similar
45 attributes or benefits of whatever nature that derive from the
46 generation of renewable energy, and any costs or discounts
47 associated with maintenance services, an energy savings guarantee.

1 or third party verification of energy conservation measures and
2 energy savings. The calculation of energy savings shall utilize and
3 specifically reference as a benchmark the actual demand and energy
4 components of the public utility tariff rate applicable to the public
5 agency then in effect, and not a blended rate that aggregates,
6 combines, or restates in any manner the distinct demand and energy
7 components of the public utility tariff rate into a single combined or
8 restated tariff rate. If an energy services company submits a
9 proposal to a public agency that does not calculate projected energy
10 savings in the manner required by this subsection, such proposal
11 shall be rejected by the public agency.

12 (2) For the purposes of this section, the Board of Public Utilities
13 shall adopt standards and uniform values for interest rates and
14 escalation of labor, electricity, oil, and gas, as well as standards for
15 presenting these costs in a life cycle and net present value format,
16 standards for the presentation of obligations for carbon reductions,
17 and other standards that the board may determine necessary.

18 f. (1) When an energy services company is awarded an energy
19 savings services contract, it shall offer the public agency the option
20 to purchase, for an additional amount, an energy savings guarantee.
21 The guarantee, if accepted by a separate vote of the governing body
22 of the public agency, shall insure that the energy savings of the
23 public agency resulting from the energy savings improvement
24 program, determined periodically over the duration of the
25 guarantee, will be sufficient to defray all payments required to be
26 made pursuant to the lease-purchase agreement or energy savings
27 obligation, and if the savings are not sufficient, the energy services
28 company will reimburse the public agency for any additional
29 amounts. Annual costs of a guarantee shall not be financed or
30 included as costs in an energy savings plan but shall be fully
31 disclosed in an energy savings plan.

32 (2) When a guaranteed energy savings option is purchased, the
33 contract shall require a qualified third party to verify the energy
34 savings at intervals established by the parties.

35 (3) When a guaranteed energy savings option is not purchased,
36 the energy savings services contract shall not include maintenance
37 services provided by the energy services company.

38 (4) When an energy services company is awarded an energy
39 savings services contract to provide or perform goods or services
40 for the purpose of enabling a public agency to conserve energy
41 through energy efficiency equipment, including a “combined heat
42 and power facility” as that term is defined pursuant to section 3 of
43 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
44 shall extend for a term of up to 15 years for energy efficiency
45 projects, and for up to 20 years for a combined heat and power
46 facility after construction completion. If a public agency shall elect
47 to contract with an energy services company for an energy savings

1 guarantee in connection with a contract awarded pursuant to this
2 section, such guarantee may extend for a term of up to 15 years for
3 energy efficiency projects, or up to 20 years for a combined heat
4 and power facility after construction completion.

5 g. As used in this section:

6 "direct digital control systems" means the devices and
7 computerized control equipment that contain software and computer
8 interfaces that perform the logic that control a building's heating,
9 ventilating, and air conditioning system. Direct digital controls
10 shall be open protocol format and shall meet the interoperability
11 guidelines established by the American Society of Heating,
12 Refrigerating and Air-Conditioning Engineers;

13 "energy conservation measure" means an improvement that
14 results in reduced energy use, including, but not limited to,
15 installation of energy efficient equipment; demand response
16 equipment; combined heat and power systems; facilities for the
17 production of renewable energy; water conservation measures,
18 fixtures or facilities; building envelope improvements that are part
19 of an energy savings improvement program; and related control
20 systems for each of the foregoing;

21 "energy related capital improvement" means a capital
22 improvement that uses energy but does not result in a reduction of
23 energy use;

24 "energy saving obligation" means a bond, note or other
25 agreement evidencing the obligation to repay borrowed funds
26 incurred in order to finance energy saving improvements;

27 "energy savings" means a measured reduction in fuel, energy,
28 operating or maintenance costs resulting from the implementation
29 of one or more energy conservation measures services when
30 compared with an established baseline of previous fuel, energy,
31 operating or maintenance costs, including, but not limited to, future
32 capital replacement expenditures avoided as a result of equipment
33 installed or services performed as part of an energy savings plan;

34 "energy savings improvement program" means an initiative of a
35 public agency to implement energy conservation measures in
36 existing facilities, provided that the value of the energy savings
37 resulting from the program will be sufficient to cover the cost of the
38 program's energy conservation measures;

39 "energy savings plan" means the document that describes the
40 actions to be taken to implement the energy savings improvement
41 program;

42 "energy savings services contract" means a contract with an
43 energy savings company to develop an energy savings plan, prepare
44 bid specifications, manage the performance, provision,
45 construction, and installation of energy conservation measures by
46 subcontractors, to offer a guarantee of energy savings derived from

1 the implementation of an energy savings plan, and may include a
2 provision to manage the bidding process;

3 "energy services company" means a commercial entity that is
4 qualified to develop and implement an energy savings plan in
5 accordance with the provisions of this section;

6 "public agency" means any government entity that is authorized
7 to expend public funds and enter into contracts which is not
8 otherwise authorized to implement an energy savings improvement
9 program pursuant to section 1, 4, 6, or 9 of P.L.2009, c.4
10 (C.18A:18A-4.6, C.18A:65A-1, C.40A:11-4.6, or C.52:34-25).

11 "public works activities" means any work subject to the
12 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

13 "water conservation measure" means an alteration to a facility or
14 equipment that reduces water consumption, maximizes the
15 efficiency of water use, or reduces water loss.

16 h. (1) The State Treasurer and the Board of Public Utilities
17 may take such action as is deemed necessary and consistent with the
18 intent of this section to implement its provisions.

19 (2) The State Treasurer and the Board of Public Utilities may
20 adopt implementation guidelines or directives, and adopt such
21 administrative rules, pursuant to the "Administrative Procedure
22 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
23 implementation of those agencies' respective responsibilities under
24 this section, except that notwithstanding any provision of P.L.1968,
25 c.410 (C.52:14B-1 et seq.) to the contrary, the Director of the
26 Division of Local Government Services in the Department of
27 Community Affairs, the State Treasurer, and the Board of Public
28 Utilities may adopt, immediately upon filing with the Office of
29 Administrative Law, such rules and regulations as deemed
30 necessary to implement the provisions of this act which shall be
31 effective for a period not to exceed 12 months and shall thereafter
32 be amended, adopted or re-adopted in accordance with the
33 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).
34 (cf: P.L.2009, c.4, s.10)

35
36 6. (New section) a. Notwithstanding the provisions to the
37 contrary of R.S.52:32-2 or any other law, or any rule or regulation
38 adopted pursuant thereto, where a State contracting agency
39 implements an energy savings improvement program pursuant to
40 section 9 of P.L.2009, c.4 (C.52:34-25), the State contracting
41 agency, prior to entering into an energy savings services contract,
42 shall use a competitive selection process that ensures that the award
43 is made to the responsible bidder whose proposal is determined to
44 be the most advantageous to the State.

45 b. Nothing in this section shall preclude a State contracting
46 agency from using procurement processes other than those
47 prescribed herein and in section 9 of P.L.2009, c.4 (C.52:34-25), if

1 those processes have been approved by the federal government
2 under section 801 of the “National Energy Conservation Policy
3 Act” (42 U.S.C. s.8287).

4 c. The Division of Property Management and Construction in
5 the Department of the Treasury shall not charge any fee for the
6 review or approval of an energy savings improvement program
7 implemented by a State contracting agency pursuant to section 9 of
8 P.L.2009, c.4 (C.52:34-25).

9
10 7. (New section) a. The Board of Public Utilities, in
11 consultation with the State Treasurer and the Commissioner of the
12 Department of Community Affairs, shall establish, in a form similar
13 to that prescribed by the "Local Public Contracts Law," P.L.1971,
14 c.198 (C.40A:11-1 et seq.), a standard request for proposal to be
15 used for all energy savings improvement program projects to be
16 undertaken by any State contracting agency or public agency
17 authorized to implement an energy savings improvement program
18 pursuant to the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.),
19 provided, however, that a State contracting agency or public agency
20 may use its own request for proposal upon the submission of the
21 request for proposal to the board. Unless the board disapproves the
22 request for proposal within 14 days of its receipt from a State
23 contracting agency or public agency, the request for proposal shall
24 be deemed approved. No single category contained in the
25 evaluation criteria of a request for proposal shall weigh more than
26 25 percent.

27 b. Within 90 days after the effective date of P.L. ,
28 c. (C.) (pending before the Legislature as this bill), the Board
29 of Public Utilities, in consultation with the State Treasurer and the
30 Commissioner of the Department of Community Affairs, shall
31 establish, in a form similar to that prescribed by the "Local Public
32 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), a standard
33 request for proposal to be used for all energy savings improvement
34 program projects to be undertaken by any board of education, board
35 of trustees, or contracting unit authorized to implement an energy
36 savings improvement program pursuant to the provisions of
37 P.L.2009, c.4 (C.18A:18A-4.6 et al.), provided, however, that a
38 board of education, board of trustees, or contracting unit may use its
39 own request for proposal upon the submission of the request for
40 proposal to the Board of Public Utilities. Unless the board
41 disapproves the request for proposal within 14 days of its receipt
42 from a board of education, board of trustees, or contracting unit, the
43 request for proposal shall be deemed approved. No single category
44 contained in the evaluation criteria of a request for proposal shall
45 weigh more than 25 percent.

- 1 8. (New section) a. The Board of Public Utilities is designated
2 as the agency of the State Government responsible for
3 implementing and enforcing the provisions of P.L.2009, c.4
4 (C.18A:18A-4.6 et al.) and for responding to requests for assistance
5 from public entities, including boards of education, boards of
6 trustees of public institutions of higher education, contracting units,
7 and public agencies, authorized to implement an energy savings
8 improvement program pursuant to P.L.2009, c.4 (C.18A:18A-4.6 et
9 al.).
- 10 b. The board is authorized to investigate, review and take
11 appropriate action with respect to procurements for energy savings
12 projects conducted by public agencies, other than State contracting
13 agencies, pursuant to P.L.2009, c.4 (C.18A:18A-4.6 et al.).
- 14 c. The board shall take such actions as it deems necessary and
15 appropriate, consistent with the purposes of this section, to
16 implement and enforce the provisions of P.L.2009, c.4 (C.18A:18A-
17 4.6 et al.). The authority granted to the board pursuant to this
18 section to enforce compliance with P.L.2009, c.4 shall include, but
19 not be limited to:
- 20 (1) modifying a non-conforming request for proposal and any
21 attachment thereto, whereby the board shall provide written
22 comments to the public entity when it chooses to modify a non-
23 conforming request for proposal, outlining any issues and providing
24 the opportunity for the issues to be remedied;
- 25 (2) (a) modifying or canceling a procurement by a public entity
26 for an energy savings project, whereby the board, within 14 days of
27 its receipt of a procurement by a public entity after the procurement
28 award, may modify or cancel the procurement, otherwise the
29 procurement shall be deemed approved, and (b) if modifying a
30 procurement, the board shall provide written comments to the
31 public entity when it chooses to do so, outlining any issues and
32 providing the opportunity for the issues to be remedied; and
- 33 (3) withholding State and federal renewable energy and energy
34 efficiency incentives from an energy savings project.
- 35 d. The board may grant limited exceptions to a local housing
36 authority, established pursuant to the "Local Housing Authorities
37 Law," P.L.1938, c.19 or the "Local Redevelopment and Housing
38 Law," P.L.1992, c.79 (C.40A:12A-1 et al.), to use an energy
39 performance contracting process developed by the United States
40 Department of Housing and Urban Development for selecting an
41 energy service company subject to United States Department of
42 Housing and Urban Development and board review and approval.
43 The exception shall permit such process to be followed for the
44 selection of an energy service company, the preparation of the
45 energy savings improvement program, the selection of energy
46 savings projects, and third party verification requirements. All
47 other requirements for bidding and construction shall be consistent

1 with the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.). This
2 limited exception shall permit the preparation of an investment
3 grade energy savings improvement program audit to replace the
4 requirement for the traditional energy audit component performed
5 in advance.

6 e. The board shall undertake a study of the effectiveness of
7 energy savings improvement programs implemented pursuant to
8 P.L.2009, c.4 (C.18A:18A-4.6 et al.). Within three years after the
9 effective date of P.L. , c. (C.) (pending before the
10 Legislature as this bill), the board shall prepare a report of its study
11 and shall provide a copy thereof to the Governor and, pursuant to
12 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

13

14 9. This act shall take effect immediately.

15

16

17

18

19 Clarifies requests for proposals of public entities implementing
20 energy savings improvement program contracts.

ASSEMBLY, No. 2313

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 6, 2012

Sponsored by:

Assemblyman UPENDRA J. CHIVUKULA
District 17 (Middlesex and Somerset)

SYNOPSIS

Authorizes State contracting agencies, local contracting units, boards of education, public institutions of higher education, and other public entities to enter into guaranteed energy savings contracts.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning guaranteed energy savings contracts and
2 supplementing various parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. The Legislature finds and declares:

8 a. The unprecedented economic circumstances presented by the
9 confluence of the continuing impact of the recession of 2007, the
10 crush of local property taxes, and the need to respond aggressively
11 to climate change and to create green jobs to support New Jersey's
12 economy warrant the establishment of temporary changes to the
13 contractual procurement of energy efficiency and conservation
14 services by governmental entities;

15 b. The two percent property tax cap law provides no exemption
16 for increasing governmental energy costs, so that an energy savings
17 "tool-kit" proposal is needed to provide governmental entities with
18 the resources necessary to reduce energy consumption and costs;

19 c. The State of New Jersey has already underwritten at a very
20 significant taxpayer cost a large number of energy audits of
21 municipal, county, school and other governmental agencies, which
22 have not been acted upon due to the intractable procurement process
23 created, and these audits are losing all economic value as time
24 passes;

25 d. It is the policy of the State for governmental entities to
26 undertake energy conservation and efficiency measures in all
27 aspects of their operations whenever practical and feasible;

28 e. Because of the initial cost of undertaking projects that
29 promote energy efficiency and conservation, many governmental
30 entities have foregone needed or desirable facility upgrades that
31 would increase energy efficiencies and improve the working
32 environment of facilities;

33 f. Efforts to invest in improvements to the energy efficiencies
34 of governmental entities in many instances have not been pursued
35 because of concern that such investment might further raise
36 property taxes, and because of competing demands for funds needed
37 for other essential activities, programs, and projects undertaken by
38 governmental entities;

39 g. Guaranteed energy savings contracts provide a mechanism to
40 initiate projects to improve energy efficiencies that are needed or
41 desirable but not currently funded;

42 h. Guaranteed energy savings contracts do not readily lend
43 themselves to award pursuant to the sealed bid process, which
44 awards a contract to the lowest cost bidder based on upfront
45 construction and labor costs, without regard to long term savings or
46 reduced life cycle costs that the governmental entity may
47 reasonably expect to achieve as a result of the contract work, and
48 energy services companies have been universally reluctant to

1 financially underwrite these performance contracts while
2 maintaining almost no control over the quality of work performed
3 by the low cost bidder;

4 i. Competitive contracting is an open and fair procurement
5 method that provides governmental entities the opportunity to
6 evaluate, with the assistance of independent qualified energy
7 professionals to guide the process, competing proposals based on all
8 relevant cost and savings factors including long-term savings and
9 reduced life-cycle costs and to enter into guaranteed energy savings
10 contracts while providing taxpayers the highest level of protection;

11 j. The need to evaluate differing proposals as to the nature of
12 the energy efficiency and conservation measures to be implemented
13 and the savings realized therefrom, and the funding mechanisms to
14 be employed, as well as the guaranteed nature of the savings to be
15 realized by governmental entities that enter into guaranteed energy
16 savings contracts, supports the use of competitive contracting
17 techniques in lieu of sealed bidding techniques; and

18 k. The use of competitive contracting in the procurement of
19 energy efficiency and conservation services should not call into
20 question the Legislature's long-standing support of the current
21 procurement laws for other matters that require award to the lowest
22 responsive bidder.

23

24 2. a. As used in this section:

25 "Allowable costs" means the equipment and project costs
26 associated with energy efficiency and energy conservation measures
27 that a State agency reasonably believes will be incurred during the
28 term of a guaranteed energy savings contract and that are
29 documented by industry engineering standards.

30 "Competitive contracting," with respect to the procurement of
31 specialized goods and services required to implement an energy
32 efficiency or energy conservation measure, means the method of
33 contracting for specialized goods and services in which formal
34 proposals are solicited by a State agency from vendors through a
35 standardized request for proposal process utilizing an "RFP" model
36 template as provided by the Department of Community Affairs in
37 consultation with the Board of Public Utilities, and are evaluated by
38 the State agency utilizing the services of qualified energy
39 professionals and engineers who shall be employed by the State
40 agency to independently verify the energy savings calculations in
41 the proposals as prescribed in paragraph (3) of subsection c. of this
42 section, and who shall assist the State agency in the selection of the
43 qualified provider creating the maximum savings potential, after
44 which the State agency may then award a contract to a vendor or
45 vendors from among the formal competitive proposals received
46 based upon the inclusion of all cost and cost savings considerations.

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1 "Director of Energy Savings" means the person holding the
2 position so designated and established within the Department of the
3 Treasury pursuant to Executive Order No. 11 of 2006.

4 "Energy efficiency or energy conservation measure" means a
5 program or facility alteration intended to reduce a State agency's
6 energy consumption or operating costs, and includes, but is not
7 limited to:

8 (1) insulation of the building structure or systems within the
9 building;

10 (2) installation of storm windows or doors, caulking or weather
11 stripping, multi-glazed windows or doors, heat-absorbing or heat-
12 reflective glazed and coated window or door systems, additional
13 glazing, reductions in glass area, or other window and door system
14 modifications that reduce energy consumption;

15 (3) installation of automated or computerized energy control
16 systems;

17 (4) heating, ventilating or air conditioning system modification
18 or replacement;

19 (5) replacement or modification of lighting fixtures to increase
20 the energy efficiency of the lighting system without increasing the
21 overall illumination of a facility, unless an increase in illumination
22 is necessary to conform to applicable State or local building codes
23 for the lighting system after the proposed modifications are made;

24 (6) installation of energy recovery systems;

25 (7) installation of systems that produce steam or forms of energy
26 such as heat as well as electricity for use within a building or
27 complex of buildings;

28 (8) implementation of energy efficiency or energy conservation
29 measures that provide operating cost reductions based on life-cycle
30 cost analysis;

31 (9) implementation of a training program or facility alteration
32 that reduces energy consumption or reduces operating costs,
33 including allowable costs, based on future reductions in labor costs
34 or costs for contracted services;

35 (10) a facility alteration that includes expenditures required to
36 properly implement other energy conservation measures;

37 (11) implementation of a program to reduce energy costs through
38 rate adjustments, load shifting to reduce peak demand, load
39 shedding, or use of alternative energy suppliers;

40 (12) installation of energy information and control systems that
41 monitor consumption, redirect systems to optimal energy sources
42 and manage energy-using equipment;

43 (13) indoor air quality improvements;

44 (14) installation of daylighting systems; and

45 (15) use of renewable or on-site distributed power generation
46 systems.

47 "Energy savings" means a measured reduction in fuel, energy, or
48 operating or maintenance costs resulting from the implementation

1 of one or more energy efficiency or energy conservation measures,
2 when compared with an established baseline of previous fuel,
3 energy, water, or operating or maintenance costs, including, but not
4 limited to, future capital replacement expenditures avoided as a
5 result of equipment installed or services performed pursuant to a
6 guaranteed energy savings contract. In the event that a State agency
7 has obtained an audit, the energy savings proposal need not
8 conform to the results of the audit but shall use the audit as a
9 guideline to assist in evaluating and securing energy cost reductions
10 and shall be utilized productively to help guide prospective
11 qualified providers to develop proposals.

12 "Guaranteed energy savings contract" or "guaranteed contract"
13 means a contract between a State agency and a qualified provider
14 for the installation of energy efficiency or energy conservation
15 measures, or a combination thereof, and for implementation of one
16 or more such measures pursuant to such a contract between a State
17 agency and a qualified provider, entered into in accordance with the
18 provisions of this section.

19 "Industry engineering standards" means recognized industry
20 standards including, but not limited to, life cycle costing, the R.S.
21 Means-estimated method developed by the R.S. Means Company,
22 historical data, manufacturer's data, and the American Society of
23 Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)
24 standards.

25 "Qualified provider" means a person or business capable of
26 evaluating, recommending, designing, implementing, and installing
27 energy efficiency or energy conservation measures pursuant to a
28 guaranteed energy savings contract approved by a State agency.
29 Qualified providers shall either be certified by the Division of
30 Property Management and Construction in the Department of the
31 Treasury as eligible to participate in the formal competitive
32 proposal process, or qualified under federal guidelines as an energy
33 services company, and shall reasonably demonstrate that it is
34 financially capable of meeting its obligations under the performance
35 guarantees set forth in a guaranteed energy savings contract for the
36 contract period.

37 "State agency" means any principal department in the Executive
38 Branch of State government, any division, board, bureau, office,
39 commission, or other agency or instrumentality within or created by
40 such principal department, and any independent State authority,
41 commission, instrumentality, or agency.

42 b. Notwithstanding the provisions of chapter 34 of Title 52 of
43 the Revised Statutes, or any other law, rule, regulation, or order to
44 the contrary, a State agency, as defined in this section, may use
45 competitive contracting for a period not to exceed 36 months
46 following the effective date of P.L. , c. (C.) (pending
47 before the Legislature as this bill), to enter into a guaranteed energy
48 savings contract with a qualified provider for a period of up to 15

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1 years, or for a period of up to 20 years from the final installation of
2 a project in the case of a lease purchase agreement for a combined
3 heat and power facility or cogeneration facility, as defined in
4 section 3 of P.L.1999, c.23 (C.48:3-51), in accordance with the
5 provisions of this section and any guidelines or regulations adopted
6 by the Director of Energy Savings.

7 A State agency that uses competitive contracting for the purpose
8 of entering into a guaranteed energy savings contract, may evaluate
9 any proposal that meets the requirements of the State agency and
10 that is submitted in a timely manner by a qualified provider to the
11 State agency.

12 c. A State agency shall select the qualified provider that best
13 meets the needs of that State agency, subject to the following:

14 (1) After reviewing the reports required to be provided pursuant
15 to subsection d. of this section, a State agency may enter into a
16 guaranteed energy savings contract with a qualified provider if: (a)
17 the State agency finds that the amount it would spend on the energy
18 efficiency or energy conservation measures recommended in the
19 proposal would not exceed the amount to be saved in energy
20 savings within a 15-year period from the date on which
21 performance, or within a 20-year period from the final installation
22 of a project in the case of a lease purchase agreement for a
23 combined heat and power facility or cogeneration facility, as
24 defined in section 3 of P.L.1999, c.23 (C.48:3-51), if the
25 recommendations in the proposal were followed; and (b) the
26 qualified provider provides a written guarantee in its proposal in
27 favor of the State agency that the amount of energy savings realized
28 by the State agency as a result of entering into the guaranteed
29 energy savings contract with the qualified provider shall meet or
30 exceed the cost to the State agency of the guaranteed energy savings
31 contract;

32 (2) The guaranteed energy savings contract includes: (a)
33 specifications requiring the qualified provider to demonstrate the
34 qualifications, experience and training of its employees, contractors
35 and subcontractors, including job training, education, and
36 experience in successfully completing projects similar in size and
37 scope; (b) other criteria to assure a reliable source of skilled and
38 experienced labor to guarantee efficient and cost-effective
39 completion of the work and safety by standardizing the terms and
40 conditions of employment of labor on any project undertaken
41 pursuant to this section; and (c) requirements to ensure labor
42 stability and the payment of prevailing wages pursuant to P.L.1963,
43 c. 150 (C.34:11-56.25 et seq.), and to ensure that labor contractors
44 and subcontractors provide and maintain formal training and
45 apprenticeship programs and approved health care and pension
46 benefit plans in accordance with P.L.1948, c.446 (C.34:1A-34 et
47 seq.); and

1 (3) The State agency shall contract with a third party entity
2 consisting of qualified energy professionals and engineers, which is
3 independent of the qualified providers submitting proposals to the
4 State agency, to verify, in accordance with guidelines adopted by
5 the Director of Energy Savings pursuant to subsection b. of this
6 section, that the projected energy savings to be realized from the
7 proposals submitted to the State agency are sufficient to cover the
8 cost of the installation or implementation of the energy saving
9 measures over the entire duration of the contract term.

10 d. Before a guaranteed energy savings contract may be
11 awarded by a State agency, the qualified provider shall provide a
12 report as part of its proposal which shall summarize estimates of all
13 costs of installation, maintenance, repairs and debt service and
14 estimates of the amounts by which energy, or operating costs will
15 be reduced. This report shall:

16 (1) be available for public inspection;

17 (2) contain a listing of employees, contractors, and
18 subcontractors to be used by the qualified provider as the low
19 bidder selected from the list of qualified contractors provided by the
20 qualified provider with respect to the energy efficiency or energy
21 conservation measures, or both;

22 (3) comply with the guidelines adopted by the Director of
23 Energy Savings establishing a methodology for computing and
24 comparing energy savings; and

25 (4) show evidence of financial stability and size that
26 demonstrates the qualified provider's capability to meet its
27 obligations under the performance guarantee over the entire
28 duration of the performance period.

29 e. A qualified provider to whom a guaranteed energy savings
30 contract is awarded shall provide a sufficient bond to the State
31 agency for its faithful performance.

32 f. A State agency may enter into a separate guaranteed energy
33 savings contract with each qualified provider selected in accordance
34 with the provisions of this section.

35 g. A guaranteed energy savings contract may provide for
36 project financing that requires all payments, except any obligations
37 that are incurred as a result of the termination of the contract prior
38 to its scheduled expiration, to be made over a period of time. Each
39 guaranteed energy savings contract shall provide that the project
40 financing savings in any year are guaranteed to the extent necessary
41 to make payments under the contract during that year.

42 h. A guaranteed energy savings contract shall include a written
43 guarantee that energy savings shall meet or exceed the cost of the
44 energy efficiency or energy conservation measures, or both, to be
45 evaluated, recommended, designed, implemented, and installed
46 under the project financed by such a contract.

47 i. Beginning with the second year of a guaranteed energy
48 savings contract, and in each year thereafter, the qualified provider

1 performing a guaranteed energy savings contract shall submit
2 annual reports to the State agency for each guaranteed energy
3 savings contract between the qualified provider and that State
4 agency, to confirm the actual savings realized for the project, during
5 the preceding 12-month period. This report, and the measurement of
6 the savings, shall comply with the provisions of the United States
7 Department of Energy's Federal Energy Management Program,
8 which stipulates the means to measure and verify consumption
9 based on metering, calculations, or short-term testing. A copy of
10 this annual report shall also be submitted to the Director of Energy
11 Savings and the State Treasurer. In the event that the actual, annual
12 verified savings are less than the annual amount of savings
13 guaranteed by the qualified provider, the qualified provider shall
14 pay the State agency, or cause the State agency to be paid, the
15 difference between the guaranteed savings amount and the actual,
16 verified amount. Measurement and verification costs may be billed
17 separately outside of the base contract with the qualified provider or
18 incorporated among other costs billed under the base contract, at the
19 option of the State agency. A State agency may choose to waive the
20 guarantee at any time during the duration of the contract at its
21 option.

22 j. A guaranteed energy savings contract may provide for
23 project financing, including tax exempt financing by a third party
24 over a period of time not to exceed 15 years, or for a period not to
25 exceed 20 years from the final installation of a project in the case of
26 a lease purchase agreement with a developer of a combined heat
27 and power or cogeneration project, or, if otherwise authorized by
28 law, by the issuance of energy savings bonds as a refunding bond to
29 fund all or part of the energy efficiency or energy conservation
30 measures.

31 k. An improvement that is not directly related to an energy
32 efficiency or energy conservation measure may be included in a
33 guaranteed energy savings contract if:

34 (1) the total cost of the energy improvement does not exceed 15
35 percent of the total cost of the work to be performed under the
36 guaranteed energy savings contract; and,

37 (2) the improvement is necessary to conform to a law, rule,
38 regulation, or order adopted pursuant thereto, or an ordinance or
39 resolution, as appropriate, or if an analysis within an approved
40 proposal, or by the State agency at the time of the award of the
41 proposal, demonstrates that there is an economic advantage to the
42 State agency implementing the improvement as part of the
43 guaranteed energy savings contract, and the savings justification for
44 the improvement is documented by industry engineering standards.

45 l. A facility alteration required to properly implement other
46 energy efficiency or energy conservation measures, or both, may be
47 included as part of a guaranteed energy savings contract, in which
48 case, notwithstanding any other provision of law, rule, regulation,

1 or order to the contrary, the facility alteration may be undertaken or
2 supervised by the qualified provider performing the guaranteed
3 energy savings contract.

4

5 3. a. As used in this section:

6 "Allowable costs" means the equipment and project costs
7 associated with energy efficiency and energy conservation measures
8 that a contracting unit reasonably believes will be incurred during
9 the term of a guaranteed energy savings contract and that are
10 documented by industry engineering standards.

11 "Competitive contracting," with respect to the procurement of
12 specialized goods and services required to implement an energy
13 efficiency or energy conservation measure, means the method of
14 contracting for specialized goods and services in which formal
15 proposals are solicited by a contracting unit from vendors through a
16 standardized request for proposal process utilizing an "RFP" model
17 template as provided by the Department of Community Affairs in
18 consultation with the Board of Public Utilities, and are evaluated by
19 the contracting unit utilizing the services of qualified energy
20 professionals and engineers who shall be employed by the
21 contracting unit to independently verify the energy savings
22 calculations in the proposals as prescribed in paragraph (3) of
23 subsection c. of this section, and who shall assist the contracting
24 unit in the selection of the qualified provider creating the maximum
25 savings potential, after which the contracting unit may then award a
26 contract to a vendor or vendors from among the formal competitive
27 proposals received based upon the inclusion of all cost and cost
28 savings considerations.

29 "Director of Energy Savings" means the person holding the
30 position so designated and established within the Department of the
31 Treasury pursuant to Executive Order No. 11 of 2006.

32 "Energy efficiency or energy conservation measure" means a
33 program or facility alteration intended to reduce a contracting unit's
34 energy consumption or operating costs, and includes, but is not
35 limited to:

36 (1) insulation of the building structure or systems within the
37 building;

38 (2) installation of storm windows or doors, caulking or weather
39 stripping, multi-glazed windows or doors, heat-absorbing or heat-
40 reflective glazed and coated window or door systems, additional
41 glazing, reductions in glass area, or other window and door system
42 modifications that reduce energy consumption;

43 (3) installation of automated or computerized energy control
44 systems;

45 (4) heating, ventilating or air conditioning system modification
46 or replacement;

47 (5) replacement or modification of lighting fixtures to increase
48 the energy efficiency of the lighting system without increasing the

1 overall illumination of a facility, unless an increase in illumination
2 is necessary to conform to applicable State or local building codes
3 for the lighting system after the proposed modifications are made;

4 (6) installation of energy recovery systems;

5 (7) installation of systems that produce steam or forms of energy
6 such as heat as well as electricity for use within a building or
7 complex of buildings;

8 (8) implementation of energy efficiency or energy conservation
9 measures that provide operating cost reductions based on life-cycle
10 cost analysis;

11 (9) implementation of a training program or facility alteration
12 that reduces energy consumption or reduces operating costs,
13 including allowable costs, based on future reductions in labor costs
14 or costs for contracted services;

15 (10) a facility alteration that includes expenditures required to
16 properly implement other energy conservation measures;

17 (11) implementation of a program to reduce energy costs through
18 rate adjustments, load shifting to reduce peak demand, load
19 shedding, or use of alternative energy suppliers;

20 (12) installation of energy information and control systems that
21 monitor consumption, redirect systems to optimal energy sources
22 and manage energy-using equipment;

23 (13) indoor air quality improvements;

24 (14) installation of daylighting systems; and

25 (15) use of renewable or on-site distributed power generation
26 systems.

27 "Energy savings" means a measured reduction in fuel, energy, or
28 operating or maintenance costs resulting from the implementation
29 of one or more energy efficiency or energy conservation measures,
30 when compared with an established baseline of previous fuel,
31 energy, water, or operating or maintenance costs, including, but not
32 limited to, future capital replacement expenditures avoided as a
33 result of equipment installed or services performed pursuant to a
34 guaranteed energy savings contract. In the event that a contracting
35 unit has obtained an audit, the energy savings proposal need not
36 conform to the results of the audit but shall use the audit as a
37 guideline to assist in evaluating and securing energy cost reductions
38 and shall be utilized productively to help guide prospective
39 qualified providers to develop proposals.

40 "Guaranteed energy savings contract" or "guaranteed contract"
41 means a contract between a contracting unit and a qualified
42 provider for the installation of energy efficiency or energy
43 conservation measures, or a combination thereof, and for
44 implementation of one or more such measures pursuant to such a
45 contract between a contracting unit and a qualified provider, entered
46 into in accordance with the provisions of this section.

47 "Industry engineering standards" means recognized industry
48 standards including, but not limited to, life cycle costing, the R.S.

1 Means-estimated method developed by the R.S. Means Company,
2 historical data, manufacturer's data, and the American Society of
3 Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)
4 standards.

5 "Qualified provider" means a person or business capable of
6 evaluating, recommending, designing, implementing, and installing
7 energy efficiency or energy conservation measures pursuant to a
8 guaranteed energy savings contract approved by a contracting unit.
9 Qualified providers shall either be certified by the Division of
10 Property Management and Construction in the Department of the
11 Treasury as eligible to participate in the formal competitive
12 proposal process, or qualified under federal guidelines as an energy
13 services company, and shall reasonably demonstrate that it is
14 financially capable of meeting its obligations under the performance
15 guarantees set forth in a guaranteed energy savings contract for the
16 contract period.

17 b. Notwithstanding the provisions of the "Local Public
18 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), or any other
19 law, rule, regulation, or order to the contrary, a contracting unit, as
20 defined in P.L.1971, c.198, may use competitive contracting for a
21 period not to exceed 36 months following the effective date of
22 P.L. , c. (C.) (pending before the Legislature as this bill),
23 to enter into a guaranteed energy savings contract with a qualified
24 provider for a period of up to 15 years, or for a period of up to 20
25 years from the final installation of a project in the case of a lease
26 purchase agreement for a combined heat and power facility or
27 cogeneration facility, as defined in section 3 of P.L.1999, c.23
28 (C.48:3-51), in accordance with the provisions of this section and
29 any guidelines or regulations adopted by the Director of Energy
30 Savings.

31 A contracting unit that uses competitive contracting for the
32 purpose of entering into a guaranteed energy savings contract, may
33 evaluate any proposal that meets the requirements of the contracting
34 unit and that is submitted in a timely manner by a qualified provider
35 to the contracting unit.

36 c. A contracting unit shall select the qualified provider that
37 best meets the needs of that contracting unit, subject to the
38 following:

39 (1) After reviewing the reports required to be provided pursuant
40 to subsection d. of this section, a contracting unit may enter into a
41 guaranteed energy savings contract with a qualified provider if: (a)
42 the contracting unit finds that the amount it would spend on the
43 energy efficiency or energy conservation measures recommended in
44 the proposal would not exceed the amount to be saved in energy
45 savings within a 15-year period from the date on which
46 performance, or within a 20-year period from the final installation
47 of a project in the case of a lease purchase agreement for a
48 combined heat and power facility or cogeneration facility, as

1 defined in section 3 of P.L.1999, c.23 (C.48:3-51), if the
2 recommendations in the proposal were followed; and (b) the
3 qualified provider provides a written guarantee in its proposal in
4 favor of the contracting unit that the amount of energy savings
5 realized by the contracting unit as a result of entering into the
6 guaranteed energy savings contract with the qualified provider shall
7 meet or exceed the cost to the contracting unit of the guaranteed
8 energy savings contract;

9 (2) The guaranteed energy savings contract includes: (a)
10 specifications requiring the qualified provider to demonstrate the
11 qualifications, experience and training of its employees, contractors
12 and subcontractors, including job training, education, and
13 experience in successfully completing projects similar in size and
14 scope; (b) other criteria to assure a reliable source of skilled and
15 experienced labor to guarantee efficient and cost-effective
16 completion of the work and safety by standardizing the terms and
17 conditions of employment of labor on any project undertaken
18 pursuant to this section; and (c) requirements to ensure labor
19 stability and the payment of prevailing wages pursuant to P.L.1963,
20 c. 150 (C.34:11-56.25 et seq.), and to ensure that labor contractors
21 and subcontractors provide and maintain formal training and
22 apprenticeship programs and approved health care and pension
23 benefit plans in accordance with P.L.1948, c.446 (C.34:1A-34 et
24 seq.); and

25 (3) The contracting unit shall contract with a third party entity
26 consisting of qualified energy professionals and engineers, which is
27 independent of the qualified providers submitting proposals to the
28 contracting unit, to verify, in accordance with guidelines adopted by
29 the Director of Energy Savings pursuant to subsection b. of this
30 section, that the projected energy savings to be realized from the
31 proposals submitted to the contracting unit are sufficient to cover
32 the cost of the installation or implementation of the energy saving
33 measures over the entire duration of the contract term.

34 d. Before a guaranteed energy savings contract may be
35 awarded by a contracting unit, the qualified provider shall provide a
36 report as part of its proposal which shall summarize estimates of all
37 costs of installation, maintenance, repairs and debt service and
38 estimates of the amounts by which energy, or operating costs will
39 be reduced. This report shall:

40 (1) be available for public inspection;

41 (2) contain a listing of employees, contractors, and
42 subcontractors to be used by the qualified provider as the low
43 bidder selected from the list of qualified contractors provided by the
44 qualified provider with respect to the energy efficiency or energy
45 conservation measures, or both;

46 (3) comply with the guidelines adopted by the Director of
47 Energy Savings establishing a methodology for computing and
48 comparing energy savings; and

1 (4) show evidence of financial stability and size that
2 demonstrates the qualified provider's capability to meet its
3 obligations under the performance guarantee over the entire
4 duration of the performance period.

5 e. A qualified provider to whom a guaranteed energy savings
6 contract is awarded shall provide a sufficient bond to the
7 contracting unit for its faithful performance.

8 f. A contracting unit may enter into a separate guaranteed
9 energy savings contract with each qualified provider selected in
10 accordance with the provisions of this section.

11 g. A guaranteed energy savings contract may provide for
12 project financing that requires all payments, except any obligations
13 that are incurred as a result of the termination of the contract prior
14 to its scheduled expiration, to be made over a period of time. Each
15 guaranteed energy savings contract shall provide that the project
16 financing savings in any year are guaranteed to the extent necessary
17 to make payments under the contract during that year.

18 h. A guaranteed energy savings contract shall include a written
19 guarantee that energy savings shall meet or exceed the cost of the
20 energy efficiency or energy conservation measures, or both, to be
21 evaluated, recommended, designed, implemented, and installed
22 under the project financed by such a contract.

23 i. Beginning with the second year of a guaranteed energy
24 savings contract, and in each year thereafter, the qualified provider
25 performing a guaranteed energy savings contract shall submit
26 annual reports to the contracting unit for each guaranteed energy
27 savings contract between the qualified provider and that contracting
28 unit, to confirm the actual savings realized for the project, during
29 the preceding 12-month period. This report, and the measurement of
30 the savings, shall comply with the provisions of the United States
31 Department of Energy's Federal Energy Management Program,
32 which stipulates the means to measure and verify consumption
33 based on metering, calculations, or short-term testing. In the event
34 that the actual, annual verified savings are less than the annual
35 amount of savings guaranteed by the qualified provider, the
36 provider shall pay the contracting unit, or cause the contracting unit
37 to be paid, the difference between the guaranteed savings amount
38 and the actual, verified amount. Measurement and verification
39 costs may be billed separately outside of the base contract with the
40 qualified provider or incorporated among other costs billed under
41 the base contract, at the option of the contracting unit. A
42 contracting unit may choose to waive the guarantee at any time
43 during the duration of the contract at its option.

44 j. A guaranteed energy savings contract may provide for
45 project financing, including tax exempt financing by a third party
46 over a period of time not to exceed 15 years, or for a period not to
47 exceed 20 years from the final installation of a project in the case of
48 a lease purchase agreement with a developer of a combined heat

1 and power or cogeneration project, or, if otherwise authorized by
2 law, by the issuance of energy savings bonds as a refunding bond to
3 fund all or part of the energy efficiency or energy conservation
4 measures.

5 k. An improvement that is not directly related to an energy
6 efficiency or energy conservation measure may be included in a
7 guaranteed energy savings contract if:

8 (1) the total cost of the energy improvement does not exceed 15
9 percent of the total cost of the work to be performed under the
10 guaranteed energy savings contract; and,

11 (2) the improvement is necessary to conform to a law, rule,
12 regulation, or order adopted pursuant thereto, or an ordinance or
13 resolution, as appropriate, or if an analysis within an approved
14 proposal, or by the contracting unit at the time of the award of the
15 proposal, demonstrates that there is an economic advantage to the
16 contracting unit implementing the improvement as part of the
17 guaranteed energy savings contract, and the savings justification for
18 the improvement is documented by industry engineering standards.

19 l. A facility alteration required to properly implement other
20 energy efficiency or energy conservation measures, or both, may be
21 included as part of a guaranteed energy savings contract, in which
22 case, notwithstanding any other provision of law, rule, regulation,
23 or order to the contrary, the facility alteration may be undertaken or
24 supervised by the qualified provider performing the guaranteed
25 energy savings contract.

26

27 4. a. As used in this section:

28 "Allowable costs" means the equipment and project costs
29 associated with energy efficiency and energy conservation measures
30 that a board of education reasonably believes will be incurred
31 during the term of a guaranteed energy savings contract and that are
32 documented by industry engineering standards.

33 "Competitive contracting," with respect to the procurement of
34 specialized goods and services required to implement an energy
35 efficiency or energy conservation measure, means the method of
36 contracting for specialized goods and services in which formal
37 proposals are solicited by a board of education from vendors
38 through a standardized request for proposal process utilizing an
39 "RFP" model template as provided by the Department of
40 Community Affairs in consultation with the Board of Public
41 Utilities, and are evaluated by the board of education utilizing the
42 services of qualified energy professionals and engineers who shall
43 be employed by the board of education to independently verify the
44 energy savings calculations in the proposals as prescribed in
45 paragraph (3) of subsection c. of this section, and who shall assist
46 the board of education in the selection of the qualified provider
47 creating the maximum savings potential, after which the board of
48 education may then award a contract to a vendor or vendors from

1 among the formal competitive proposals received based upon the
2 inclusion of all cost and cost savings considerations.

3 "Director of Energy Savings" means the person holding the
4 position so designated and established within the Department of the
5 Treasury pursuant to Executive Order No. 11 of 2006.

6 "Energy efficiency or energy conservation measure" means a
7 program or facility alteration intended to reduce a board of
8 education's energy consumption or operating costs, and includes,
9 but is not limited to:

10 (1) insulation of the building structure or systems within the
11 building;

12 (2) installation of storm windows or doors, caulking or weather
13 stripping, multi-glazed windows or doors, heat-absorbing or heat-
14 reflective glazed and coated window or door systems, additional
15 glazing, reductions in glass area, or other window and door system
16 modifications that reduce energy consumption;

17 (3) installation of automated or computerized energy control
18 systems;

19 (4) heating, ventilating or air conditioning system modification
20 or replacement;

21 (5) replacement or modification of lighting fixtures to increase
22 the energy efficiency of the lighting system without increasing the
23 overall illumination of a facility, unless an increase in illumination
24 is necessary to conform to applicable State or local building codes
25 for the lighting system after the proposed modifications are made;

26 (6) installation of energy recovery systems;

27 (7) installation of systems that produce steam or forms of energy
28 such as heat as well as electricity for use within a building or
29 complex of buildings;

30 (8) implementation of energy efficiency or energy conservation
31 measures that provide operating cost reductions based on life-cycle
32 cost analysis;

33 (9) implementation of a training program or facility alteration
34 that reduces energy consumption or reduces operating costs,
35 including allowable costs, based on future reductions in labor costs
36 or costs for contracted services;

37 (10) a facility alteration that includes expenditures required to
38 properly implement other energy conservation measures;

39 (11) implementation of a program to reduce energy costs through
40 rate adjustments, load shifting to reduce peak demand, load
41 shedding, or use of alternative energy suppliers;

42 (12) installation of energy information and control systems that
43 monitor consumption, redirect systems to optimal energy sources
44 and manage energy-using equipment;

45 (13) indoor air quality improvements;

46 (14) installation of daylighting systems; and

47 (15) use of renewable or on-site distributed power generation
48 systems.

1 "Energy savings" means a measured reduction in fuel, energy, or
2 operating or maintenance costs resulting from the implementation
3 of one or more energy efficiency or energy conservation measures,
4 when compared with an established baseline of previous fuel,
5 energy, water, or operating or maintenance costs, including, but not
6 limited to, future capital replacement expenditures avoided as a
7 result of equipment installed or services performed pursuant to a
8 guaranteed energy savings contract. In the event that a board of
9 education has obtained an audit, the energy savings proposal need
10 not conform to the results of the audit but shall use the audit as a
11 guideline to assist in evaluating and securing energy cost reductions
12 and shall be utilized productively to help guide prospective
13 qualified providers to develop proposals.

14 "Guaranteed energy savings contract" or "guaranteed contract"
15 means a contract between a board of education and a qualified
16 provider for the installation of energy efficiency or energy
17 conservation measures, or a combination thereof, and for
18 implementation of one or more such measures pursuant to such a
19 contract between a board of education and a qualified provider,
20 entered into in accordance with the provisions of this section.

21 "Industry engineering standards" means recognized industry
22 standards including, but not limited to, life cycle costing, the R.S.
23 Means-estimated method developed by the R.S. Means Company,
24 historical data, manufacturer's data, and the American Society of
25 Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)
26 standards.

27 "Qualified provider" means a person or business capable of
28 evaluating, recommending, designing, implementing, and installing
29 energy efficiency or energy conservation measures pursuant to a
30 guaranteed energy savings contract approved by a board of
31 education. Qualified providers shall either be certified by the
32 Division of Property Management and Construction in the
33 Department of the Treasury as eligible to participate in the formal
34 competitive proposal process, or qualified under federal guidelines
35 as an energy services company, and shall reasonably demonstrate
36 that it is financially capable of meeting its obligations under the
37 performance guarantees set forth in a guaranteed energy savings
38 contract for the contract period.

39 b. Notwithstanding the provisions of the "Public School
40 Contracts Law," N.J.S.18A:18A-1 et seq., or any other law, rule,
41 regulation, or order to the contrary, a board of education, may use
42 competitive contracting for a period not to exceed 36 months
43 following the effective date of P.L. , c. (C.) (pending
44 before the Legislature as this bill), to enter into a guaranteed energy
45 savings contract with a qualified provider for a period of up to 15
46 years, or for a period of up to 20 years from the final installation of
47 a project in the case of a lease purchase agreement for a combined
48 heat and power facility or cogeneration facility, as defined in

1 section 3 of P.L.1999, c.23 (C.48:3-51), in accordance with the
2 provisions of this section and any guidelines or regulations adopted
3 by the Director of Energy Savings.

4 A board of education that uses competitive contracting for the
5 purpose of entering into a guaranteed energy savings contract, may
6 evaluate any proposal that meets the requirements of the board of
7 education and that is submitted in a timely manner by a qualified
8 provider to the board of education.

9 c. A board of education shall select the qualified provider that
10 best meets the needs of that board of education, subject to the
11 following:

12 (1) After reviewing the reports required to be provided pursuant
13 to subsection d. of this section, a board of education may enter into
14 a guaranteed energy savings contract with a qualified provider if:
15 (a) the board of education finds that the amount it would spend on
16 the energy efficiency or energy conservation measures
17 recommended in the proposal would not exceed the amount to be
18 saved in energy savings within a 15-year period from the date on
19 which performance, or within a 20-year period from the final
20 installation of a project in the case of a lease purchase agreement
21 for a combined heat and power facility or cogeneration facility, as
22 defined in section 3 of P.L.1999, c.23 (C.48:3-51), if the
23 recommendations in the proposal were followed; and (b) the
24 qualified provider provides a written guarantee in its proposal in
25 favor of the board of education that the amount of energy savings
26 realized by the board of education as a result of entering into the
27 guaranteed energy savings contract with the qualified provider shall
28 meet or exceed the cost to the board of education of the guaranteed
29 energy savings contract;

30 (2) The guaranteed energy savings contract includes: (a)
31 specifications requiring the qualified provider to demonstrate the
32 qualifications, experience and training of its employees, contractors
33 and subcontractors, including job training, education, and
34 experience in successfully completing projects similar in size and
35 scope; (b) other criteria to assure a reliable source of skilled and
36 experienced labor to guarantee efficient and cost-effective
37 completion of the work and safety by standardizing the terms and
38 conditions of employment of labor on any project undertaken
39 pursuant to this section; and (c) requirements to ensure labor
40 stability and the payment of prevailing wages pursuant to P.L.1963,
41 c. 150 (C.34:11-56.25 et seq.), and to ensure that labor contractors
42 and subcontractors provide and maintain formal training and
43 apprenticeship programs and approved health care and pension
44 benefit plans in accordance with P.L.1948, c.446 (C.34:1A-34 et
45 seq.); and

46 (3) The board of education shall contract with a third party
47 entity consisting of qualified energy professionals and engineers,
48 which is independent of the qualified providers submitting

1 proposals to the board of education, to verify, in accordance with
2 guidelines adopted by the Director of Energy Savings pursuant to
3 subsection b. of this section, that the projected energy savings to be
4 realized from the proposals submitted to the board of education are
5 sufficient to cover the cost of the installation or implementation of
6 the energy saving measures over the entire duration of the contract
7 term.

8 d. Before a guaranteed energy savings contract may be
9 awarded by a board of education, the qualified provider shall
10 provide a report as part of its proposal which shall summarize
11 estimates of all costs of installation, maintenance, repairs and debt
12 service and estimates of the amounts by which energy, or operating
13 costs will be reduced. This report shall:

14 (1) be available for public inspection;

15 (2) contain a listing of employees, contractors, and
16 subcontractors to be used by the qualified provider as the low
17 bidder selected from the list of qualified contractors provided by the
18 qualified provider with respect to the energy efficiency or energy
19 conservation measures, or both;

20 (3) comply with the guidelines adopted by the Director of
21 Energy Savings establishing a methodology for computing and
22 comparing energy savings; and

23 (4) show evidence of financial stability and size that
24 demonstrates the qualified provider's capability to meet its
25 obligations under the performance guarantee over the entire
26 duration of the performance period.

27 e. A qualified provider to whom a guaranteed energy savings
28 contract is awarded shall provide a sufficient bond to the board of
29 education for its faithful performance.

30 f. A board of education may enter into a separate guaranteed
31 energy savings contract with each qualified provider selected in
32 accordance with the provisions of this section.

33 g. A guaranteed energy savings contract may provide for
34 project financing that requires all payments, except any obligations
35 that are incurred as a result of the termination of the contract prior
36 to its scheduled expiration, to be made over a period of time. Each
37 guaranteed energy savings contract shall provide that the project
38 financing savings in any year are guaranteed to the extent necessary
39 to make payments under the contract during that year.

40 h. A guaranteed energy savings contract shall include a written
41 guarantee that energy savings shall meet or exceed the cost of the
42 energy efficiency or energy conservation measures, or both, to be
43 evaluated, recommended, designed, implemented, and installed
44 under the project financed by such a contract.

45 i. Beginning with the second year of a guaranteed energy
46 savings contract, and in each year thereafter, the qualified provider
47 performing a guaranteed energy savings contract shall submit
48 annual reports to the board of education for each guaranteed energy

1 savings contract between the qualified provider and that board of
2 education, to confirm the actual savings realized for the project,
3 during the preceding 12-month period. This report, and the
4 measurement of the savings, shall comply with the provisions of the
5 United States Department of Energy's Federal Energy Management
6 Program, which stipulates the means to measure and verify
7 consumption based on metering, calculations, or short-term testing.
8 In the event that the actual, annual verified savings are less than the
9 annual amount of savings guaranteed by the qualified provider, the
10 qualified provider shall pay the board of education, or cause the
11 board of education to be paid, the difference between the
12 guaranteed savings amount and the actual, verified amount.
13 Measurement and verification costs may be billed separately outside
14 of the base contract with the qualified provider or incorporated
15 among other costs billed under the base contract, at the option of
16 the board of education. A board of education may choose to waive
17 the guarantee at any time during the duration of the contract at its
18 option.

19 j. A guaranteed energy savings contract may provide for
20 project financing, including tax exempt financing by a third party
21 over a period of time not to exceed 15 years, or for a period not to
22 exceed 20 years from the final installation of a project in the case of
23 a lease purchase agreement with a developer of a combined heat
24 and power or cogeneration project, or, if otherwise authorized by
25 law, by the issuance of energy savings bonds as a refunding bond to
26 fund all or part of the energy efficiency or energy conservation
27 measures.

28 k. An improvement that is not directly related to an energy
29 efficiency or energy conservation measure may be included in a
30 guaranteed energy savings contract if:

31 (1) the total cost of the energy improvement does not exceed 15
32 percent of the total cost of the work to be performed under the
33 guaranteed energy savings contract; and,

34 (2) the improvement is necessary to conform to a law, rule,
35 regulation, or order adopted pursuant thereto, or an ordinance or
36 resolution, as appropriate, or if an analysis within an approved
37 proposal, or by the board of education at the time of the award of
38 the proposal, demonstrates that there is an economic advantage to
39 the board of education implementing the improvement as part of the
40 guaranteed energy savings contract, and the savings justification for
41 the improvement is documented by industry engineering standards.

42 l. A facility alteration required to properly implement other
43 energy efficiency or energy conservation measures, or both, may be
44 included as part of a guaranteed energy savings contract, in which
45 case, notwithstanding any other provision of law, rule, regulation,
46 or order to the contrary, the facility alteration may be undertaken or
47 supervised by the qualified provider performing the guaranteed
48 energy savings contract.

1 5. a. As used in this section:

2 "Allowable costs" means the equipment and project costs
3 associated with energy efficiency and energy conservation measures
4 that a State college reasonably believes will be incurred during the
5 term of a guaranteed energy savings contract and that are
6 documented by industry engineering standards.

7 "Competitive contracting," with respect to the procurement of
8 specialized goods and services required to implement an energy
9 efficiency or energy conservation measure, means the method of
10 contracting for specialized goods and services in which formal
11 proposals are solicited by a State college from vendors through a
12 standardized request for proposal process utilizing an "RFP" model
13 template as provided by the Department of Community Affairs in
14 consultation with the Board of Public Utilities, and are evaluated by
15 the State college utilizing the services of qualified energy
16 professionals and engineers who shall be employed by the State
17 college to independently verify the energy savings calculations in
18 the proposals as prescribed in paragraph (3) of subsection c. of this
19 section, and who shall assist the State college in the selection of the
20 qualified provider creating the maximum savings potential, after
21 which the State college may then award a contract to a vendor or
22 vendors from among the formal competitive proposals received
23 based upon the inclusion of all cost and cost savings considerations.

24 "Director of Energy Savings" means the person holding the
25 position so designated and established within the Department of the
26 Treasury pursuant to Executive Order No. 11 of 2006.

27 "Energy efficiency or energy conservation measure" means a
28 program or facility alteration intended to reduce a State college's
29 energy consumption or operating costs, and includes, but is not
30 limited to:

31 (1) insulation of the building structure or systems within the
32 building;

33 (2) installation of storm windows or doors, caulking or weather
34 stripping, multi-glazed windows or doors, heat-absorbing or heat-
35 reflective glazed and coated window or door systems, additional
36 glazing, reductions in glass area, or other window and door system
37 modifications that reduce energy consumption;

38 (3) installation of automated or computerized energy control
39 systems;

40 (4) heating, ventilating or air conditioning system modification
41 or replacement;

42 (5) replacement or modification of lighting fixtures to increase
43 the energy efficiency of the lighting system without increasing the
44 overall illumination of a facility, unless an increase in illumination
45 is necessary to conform to applicable State or local building codes
46 for the lighting system after the proposed modifications are made;

47 (6) installation of energy recovery systems;

1 (7) installation of systems that produce steam or forms of energy
2 such as heat as well as electricity for use within a building or
3 complex of buildings;

4 (8) implementation of energy efficiency or energy conservation
5 measures that provide operating cost reductions based on life-cycle
6 cost analysis;

7 (9) implementation of a training program or facility alteration
8 that reduces energy consumption or reduces operating costs,
9 including allowable costs, based on future reductions in labor costs
10 or costs for contracted services;

11 (10) a facility alteration that includes expenditures required to
12 properly implement other energy conservation measures;

13 (11) implementation of a program to reduce energy costs through
14 rate adjustments, load shifting to reduce peak demand, load
15 shedding, or use of alternative energy suppliers;

16 (12) installation of energy information and control systems that
17 monitor consumption, redirect systems to optimal energy sources
18 and manage energy-using equipment;

19 (13) indoor air quality improvements;

20 (14) installation of daylighting systems; and

21 (15) use of renewable or on-site distributed power generation
22 systems.

23 "Energy savings" means a measured reduction in fuel, energy, or
24 operating or maintenance costs resulting from the implementation
25 of one or more energy efficiency or energy conservation measures,
26 when compared with an established baseline of previous fuel,
27 energy, water, or operating or maintenance costs, including, but not
28 limited to, future capital replacement expenditures avoided as a
29 result of equipment installed or services performed pursuant to a
30 guaranteed energy savings contract. In the event that a State
31 college has obtained an audit, the energy savings proposal need not
32 conform to the results of the audit but shall use the audit as a
33 guideline to assist in evaluating and securing energy cost reductions
34 and shall be utilized productively to help guide prospective
35 qualified providers to develop proposals.

36 "Guaranteed energy savings contract" or "guaranteed contract"
37 means a contract between a State college and a qualified provider
38 for the installation of energy efficiency or energy conservation
39 measures, or a combination thereof, and for implementation of one
40 or more such measures pursuant to such a contract between a State
41 college and a qualified provider, entered into in accordance with the
42 provisions of this section.

43 "Industry engineering standards" means recognized industry
44 standards including, but not limited to, life cycle costing, the R.S.
45 Means-estimated method developed by the R.S. Means Company,
46 historical data, manufacturer's data, and the American Society of
47 Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)
48 standards.

1 "Qualified provider" means a person or business capable of
2 evaluating, recommending, designing, implementing, and installing
3 energy efficiency or energy conservation measures pursuant to a
4 guaranteed energy savings contract approved by a State college.
5 Qualified providers shall either be certified by the Division of
6 Property Management and Construction in the Department of the
7 Treasury as eligible to participate in the formal competitive
8 proposal process, or qualified under federal guidelines as an energy
9 services company, and shall reasonably demonstrate that it is
10 financially capable of meeting its obligations under the performance
11 guarantees set forth in a guaranteed energy savings contract for the
12 contract period.

13 b. Notwithstanding the provisions of the "State College
14 Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), or any other
15 law, rule, regulation, or order to the contrary, a State college may
16 use competitive contracting for a period not to exceed 36 months
17 following the effective date of P.L. , c. (C.) (pending
18 before the Legislature as this bill), to enter into a guaranteed energy
19 savings contract with a qualified provider for a period of up to 15
20 years, or for a period of up to 20 years from the final installation of
21 a project in the case of a lease purchase agreement for a combined
22 heat and power facility or cogeneration facility, as defined in
23 section 3 of P.L.1999, c.23 (C.48:3-51), in accordance with the
24 provisions of this section and any guidelines or regulations adopted
25 by the Director of Energy Savings.

26 A State college that uses competitive contracting for the purpose
27 of entering into a guaranteed energy savings contract, may evaluate
28 any proposal that meets the requirements of the State college and
29 that is submitted in a timely manner by a qualified provider to the
30 State college.

31 c. A State college shall select the qualified provider that best
32 meets the needs of that State college, subject to the following:

33 (1) After reviewing the reports required to be provided pursuant
34 to subsection c. of this section, a State college may enter into a
35 guaranteed energy savings contract with a qualified provider if: (a)
36 the State college finds that the amount it would spend on the energy
37 efficiency or energy conservation measures recommended in the
38 proposal would not exceed the amount to be saved in energy
39 savings within a 15-year period from the date on which
40 performance, or within a 20-year period from the final installation
41 of a project in the case of a lease purchase agreement for a
42 combined heat and power facility or cogeneration facility, as
43 defined in section 3 of P.L.1999, c.23 (C.48:3-51), if the
44 recommendations in the proposal were followed; and (b) the
45 qualified provider provides a written guarantee in its proposal in
46 favor of the State college that the amount of energy savings realized
47 by the State college as a result of entering into the guaranteed
48 energy savings contract with the qualified provider shall meet or

1 exceed the cost to the State college of the guaranteed energy
2 savings contract;

3 (2) The guaranteed energy savings contract includes: (a)
4 specifications requiring the qualified provider to demonstrate the
5 qualifications, experience and training of its employees, contractors
6 and subcontractors, including job training, education, and
7 experience in successfully completing projects similar in size and
8 scope; (b) other criteria to assure a reliable source of skilled and
9 experienced labor to guarantee efficient and cost-effective
10 completion of the work and safety by standardizing the terms and
11 conditions of employment of labor on any project undertaken
12 pursuant to this section; and (c) requirements to ensure labor
13 stability and the payment of prevailing wages pursuant to P.L.1963,
14 c. 150 (C.34:11-56.25 et seq.), and to ensure that labor contractors
15 and subcontractors provide and maintain formal training and
16 apprenticeship programs and approved health care and pension
17 benefit plans in accordance with P.L.1948, c.446 (C.34:1A-34 et
18 seq.); and

19 (3) The State college shall contract with a third party entity
20 consisting of qualified energy professionals and engineers, which is
21 independent of the qualified providers submitting proposals to the
22 State college, to verify, in accordance with guidelines adopted by
23 the Director of Energy Savings pursuant to subsection d. of this
24 section, that the projected energy savings to be realized from the
25 proposals submitted to the State college are sufficient to cover the
26 cost of the installation or implementation of the energy saving
27 measures over the entire duration of the contract term.

28 d. Before a guaranteed energy savings contract may be
29 awarded by a State college, the qualified provider shall provide a
30 report as part of its proposal which shall summarize estimates of all
31 costs of installation, maintenance, repairs and debt service and
32 estimates of the amounts by which energy, or operating costs will
33 be reduced. This report shall:

34 (1) be available for public inspection;

35 (2) contain a listing of employees, contractors, and
36 subcontractors to be used by the qualified provider as the low
37 bidder selected from the list of qualified contractors provided by the
38 qualified provider with respect to the energy efficiency or energy
39 conservation measures, or both;

40 (3) comply with the guidelines adopted by the Director of
41 Energy Savings establishing a methodology for computing and
42 comparing energy savings; and

43 (4) show evidence of financial stability and size that
44 demonstrates the qualified provider's capability to meet its
45 obligations under the performance guarantee over the entire
46 duration of the performance period.

- 1 e. A qualified provider to whom a guaranteed energy savings
2 contract is awarded shall provide a sufficient bond to the State
3 college for its faithful performance.
- 4 f. A State college may enter into a separate guaranteed energy
5 savings contract with each qualified provider selected in accordance
6 with the provisions of this section.
- 7 g. A guaranteed energy savings contract may provide for
8 project financing that requires all payments, except any obligations
9 that are incurred as a result of the termination of the contract prior
10 to its scheduled expiration, to be made over a period of time. Each
11 guaranteed energy savings contract shall provide that the project
12 financing savings in any year are guaranteed to the extent necessary
13 to make payments under the contract during that year.
- 14 h. A guaranteed energy savings contract shall include a written
15 guarantee that energy savings shall meet or exceed the cost of the
16 energy efficiency or energy conservation measures, or both, to be
17 evaluated, recommended, designed, implemented, and installed
18 under the project financed by such a contract.
- 19 i. Beginning with the second year of a guaranteed energy
20 savings contract, and in each year thereafter, the qualified provider
21 performing a guaranteed energy savings contract shall submit
22 annual reports to the State college for each guaranteed energy
23 savings contract between the qualified provider and that State
24 college, to confirm the actual savings realized for the project,
25 during the preceding 12-month period. This report, and the
26 measurement of the savings, shall comply with the provisions of the
27 United States Department of Energy's Federal Energy Management
28 Program, which stipulates the means to measure and verify
29 consumption based on metering, calculations, or short-term testing.
30 In the event that the actual, annual verified savings are less than the
31 annual amount of savings guaranteed by the qualified provider, the
32 qualified provider shall pay the State college, or cause the State
33 college to be paid, the difference between the guaranteed savings
34 amount and the actual, verified amount. Measurement and
35 verification costs may be billed separately outside of the base
36 contract with the qualified provider or incorporated among other
37 costs billed under the base contract, at the option of the State
38 college. A State college may choose to waive the guarantee at any
39 time during the duration of the contract at its option.
- 40 j. A guaranteed energy savings contract may provide for
41 project financing, including tax exempt financing by a third party
42 over a period of time not to exceed 15 years, or for a period not to
43 exceed 20 years from the final installation of a project in the case of
44 a lease purchase agreement with a developer of a combined heat
45 and power or cogeneration project, or, if otherwise authorized by
46 law, by the issuance of energy savings bonds as a refunding bond to
47 fund all or part of the energy efficiency or energy conservation
48 measures.

1 k. An improvement that is not directly related to an energy
2 efficiency or energy conservation measure may be included in a
3 guaranteed energy savings contract if:

4 (1) the total cost of the energy improvement does not exceed 15
5 percent of the total cost of the work to be performed under the
6 guaranteed energy savings contract; and,

7 (2) the improvement is necessary to conform to a law, rule,
8 regulation, or order adopted pursuant thereto, or an ordinance or
9 resolution, as appropriate, or if an analysis within an approved
10 proposal, or by the State college at the time of the award of the
11 proposal, demonstrates that there is an economic advantage to the
12 State college implementing the improvement as part of the
13 guaranteed energy savings contract, and the savings justification for
14 the improvement is documented by industry engineering standards.

15 l. A facility alteration required to properly implement other
16 energy efficiency or energy conservation measures, or both, may be
17 included as part of a guaranteed energy savings contract, in which
18 case, notwithstanding any other provision of law, rule, regulation,
19 or order to the contrary, the facility alteration may be undertaken or
20 supervised by the qualified provider performing the guaranteed
21 energy savings contract.

22

23 6. a. As used in this section:

24 "Allowable costs" means the equipment and project costs
25 associated with energy efficiency and energy conservation measures
26 that a county college reasonably believes will be incurred during the
27 term of a guaranteed energy savings contract and that are
28 documented by industry engineering standards.

29 "Competitive contracting," with respect to the procurement of
30 specialized goods and services required to implement an energy
31 efficiency or energy conservation measure, means the method of
32 contracting for specialized goods and services in which formal
33 proposals are solicited by a county college from vendors through a
34 standardized request for proposal process utilizing an "RFP" model
35 template as provided by the Department of Community Affairs in
36 consultation with the Board of Public Utilities, and are evaluated by
37 the county college utilizing the services of qualified energy
38 professionals and engineers who shall be employed by the county
39 college to independently verify the energy savings calculations in
40 the proposals as prescribed in paragraph (3) of subsection c. of this
41 section, and who shall assist the county college in the selection of
42 the qualified provider creating the maximum savings potential, after
43 which the county college may then award a contract to a vendor or
44 vendors from among the formal competitive proposals received
45 based upon the inclusion of all cost and cost savings considerations.

46 "Director of Energy Savings" means the person holding the
47 position so designated and established within the Department of the
48 Treasury pursuant to Executive Order No. 11 of 2006.

1 "Energy efficiency or energy conservation measure" means a
2 program or facility alteration intended to reduce a county college's
3 energy consumption or operating costs, and includes, but is not
4 limited to:

5 (1) insulation of the building structure or systems within the
6 building;

7 (2) installation of storm windows or doors, caulking or weather
8 stripping, multi-glazed windows or doors, heat-absorbing or heat-
9 reflective glazed and coated window or door systems, additional
10 glazing, reductions in glass area, or other window and door system
11 modifications that reduce energy consumption;

12 (3) installation of automated or computerized energy control
13 systems;

14 (4) heating, ventilating or air conditioning system modification
15 or replacement;

16 (5) replacement or modification of lighting fixtures to increase
17 the energy efficiency of the lighting system without increasing the
18 overall illumination of a facility, unless an increase in illumination
19 is necessary to conform to applicable State or local building codes
20 for the lighting system after the proposed modifications are made;

21 (6) installation of energy recovery systems;

22 (7) installation of systems that produce steam or forms of energy
23 such as heat as well as electricity for use within a building or
24 complex of buildings;

25 (8) implementation of energy efficiency or energy conservation
26 measures that provide operating cost reductions based on life-cycle
27 cost analysis;

28 (9) implementation of a training program or facility alteration
29 that reduces energy consumption or reduces operating costs,
30 including allowable costs, based on future reductions in labor costs
31 or costs for contracted services;

32 (10) a facility alteration that includes expenditures required to
33 properly implement other energy conservation measures;

34 (11) implementation of a program to reduce energy costs through
35 rate adjustments, load shifting to reduce peak demand, load
36 shedding, or use of alternative energy suppliers;

37 (12) installation of energy information and control systems that
38 monitor consumption, redirect systems to optimal energy sources
39 and manage energy-using equipment;

40 (13) indoor air quality improvements;

41 (14) installation of daylighting systems; and

42 (15) use of renewable or on-site distributed power generation
43 systems.

44 "Energy savings" means a measured reduction in fuel, energy, or
45 operating or maintenance costs resulting from the implementation
46 of one or more energy efficiency or energy conservation measures,
47 when compared with an established baseline of previous fuel,
48 energy, water, or operating or maintenance costs, including, but not

1 limited to, future capital replacement expenditures avoided as a
2 result of equipment installed or services performed pursuant to a
3 guaranteed energy savings contract. In the event that a county
4 college has obtained an audit, the energy savings proposal need not
5 conform to the results of the audit but shall use the audit as a
6 guideline to assist in evaluating and securing energy cost reductions
7 and shall be utilized productively to help guide prospective
8 qualified providers to develop proposals.

9 "Guaranteed energy savings contract" or "guaranteed contract"
10 means a contract between a county college and a qualified provider
11 for the installation of energy efficiency or energy conservation
12 measures, or a combination thereof, and for implementation of one
13 or more such measures pursuant to such a contract between a
14 county college and a qualified provider, entered into in accordance
15 with the provisions of this section.

16 "Industry engineering standards" means recognized industry
17 standards including, but not limited to, life cycle costing, the R.S.
18 Means-estimated method developed by the R.S. Means Company,
19 historical data, manufacturer's data, and the American Society of
20 Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)
21 standards.

22 "Qualified provider" means a person or business capable of
23 evaluating, recommending, designing, implementing, and installing
24 energy efficiency or energy conservation measures pursuant to a
25 guaranteed energy savings contract approved by a county college.
26 Qualified providers shall either be certified by the Division of
27 Property Management and Construction in the Department of the
28 Treasury as eligible to participate in the formal competitive
29 proposal process, or qualified under federal guidelines as an energy
30 services company, and shall reasonably demonstrate that it is
31 financially capable of meeting its obligations under the performance
32 guarantees set forth in a guaranteed energy savings contract for the
33 contract period.

34 b. Notwithstanding the provisions of the "County College
35 Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.), or any
36 other law, rule, regulation, or order to the contrary, a county
37 college, may use competitive contracting for a period not to exceed
38 36 months following the effective date of P.L. , c. (C.)
39 (pending before the Legislature as this bill), to enter into a
40 guaranteed energy savings contract with a qualified provider for a
41 period of up to 15 years, or for a period of up to 20 years from the
42 final installation of a project in the case of a lease purchase
43 agreement for a combined heat and power facility or cogeneration
44 facility, as defined in section 3 of P.L.1999, c.23 (C.48:3-51), in
45 accordance with the provisions of this section and any guidelines or
46 regulations adopted by the Director of Energy Savings.

47 A county college that uses competitive contracting for the
48 purpose of entering into a guaranteed energy savings contract, may

1 evaluate any proposal that meets the requirements of the county
2 college and that is submitted in a timely manner by a qualified
3 provider to the county college.

4 c. A county college shall select the qualified provider that best
5 meets the needs of that county college, subject to the following:

6 (1) After reviewing the reports required to be provided pursuant
7 to subsection d. of this section, a county college may enter into a
8 guaranteed energy savings contract with a qualified provider if: (a)
9 the county college finds that the amount it would spend on the
10 energy efficiency or energy conservation measures recommended in
11 the proposal would not exceed the amount to be saved in energy
12 savings within a 15-year period from the date on which
13 performance, or within a 20-year period from the final installation
14 of a project in the case of a lease purchase agreement for a
15 combined heat and power facility or cogeneration facility, as
16 defined in section 3 of P.L.1999, c.23 (C.48:3-51), if the
17 recommendations in the proposal were followed; and (b) the
18 qualified provider provides a written guarantee in its proposal in
19 favor of the county college that the amount of energy savings
20 realized by the county college as a result of entering into the
21 guaranteed energy savings contract with the qualified provider shall
22 meet or exceed the cost to the county college of the guaranteed
23 energy savings contract;

24 (2) The guaranteed energy savings contract includes: (a)
25 specifications requiring the qualified provider to demonstrate the
26 qualifications, experience and training of its employees, contractors
27 and subcontractors, including job training, education, and
28 experience in successfully completing projects similar in size and
29 scope; (b) other criteria to assure a reliable source of skilled and
30 experienced labor to guarantee efficient and cost-effective
31 completion of the work and safety by standardizing the terms and
32 conditions of employment of labor on any project undertaken
33 pursuant to this section; and (c) requirements to ensure labor
34 stability and the payment of prevailing wages pursuant to P.L.1963,
35 c. 150 (C.34:11-56.25 et seq.), and to ensure that labor contractors
36 and subcontractors provide and maintain formal training and
37 apprenticeship programs and approved health care and pension
38 benefit plans in accordance with P.L.1948, c.446 (C.34:1A-34 et
39 seq.); and

40 (3) The county college shall contract with a third party entity
41 consisting of qualified energy professionals and engineers, which is
42 independent of the qualified providers submitting proposals to the
43 county college, to verify, in accordance with guidelines adopted by
44 the Director of Energy Savings pursuant to subsection b. of this
45 section, that the projected energy savings to be realized from the
46 proposals submitted to the county college are sufficient to cover the
47 cost of the installation or implementation of the energy saving
48 measures over the entire duration of the contract term.

1 d. Before a guaranteed energy savings contract may be
2 awarded by a county college, the qualified provider shall provide a
3 report as part of its proposal which shall summarize estimates of all
4 costs of installation, maintenance, repairs and debt service and
5 estimates of the amounts by which energy, or operating costs will
6 be reduced. This report shall:

- 7 (1) be available for public inspection;
- 8 (2) contain a listing of employees, contractors, and
9 subcontractors to be used by the qualified provider as the low
10 bidder selected from the list of qualified contractors provided by the
11 qualified provider with respect to the energy efficiency or energy
12 conservation measures, or both;
- 13 (3) comply with the guidelines adopted by the Director of
14 Energy Savings establishing a methodology for computing and
15 comparing energy savings; and
- 16 (4) show evidence of financial stability and size that
17 demonstrates the qualified provider's capability to meet its
18 obligations under the performance guarantee over the entire
19 duration of the performance period.

20 e. A qualified provider to whom a guaranteed energy savings
21 contract is awarded shall provide a sufficient bond to the county
22 college for its faithful performance.

23 f. A county college may enter into a separate guaranteed
24 energy savings contract with each qualified provider selected in
25 accordance with the provisions of this section.

26 g. A guaranteed energy savings contract may provide for
27 project financing that requires all payments, except any obligations
28 that are incurred as a result of the termination of the contract prior
29 to its scheduled expiration, to be made over a period of time. Each
30 guaranteed energy savings contract shall provide that the project
31 financing savings in any year are guaranteed to the extent necessary
32 to make payments under the contract during that year.

33 h. A guaranteed energy savings contract shall include a written
34 guarantee that energy savings shall meet or exceed the cost of the
35 energy efficiency or energy conservation measures, or both, to be
36 evaluated, recommended, designed, implemented, and installed
37 under the project financed by such a contract.

38 i. Beginning with the second year of a guaranteed energy
39 savings contract, and in each year thereafter, the qualified provider
40 performing a guaranteed energy savings contract shall submit
41 annual reports to the county college for each guaranteed energy
42 savings contract between the qualified provider and that county
43 college, to confirm the actual savings realized for the project,
44 during the preceding 12-month period. This report, and the
45 measurement of the savings, shall comply with the provisions of the
46 United States Department of Energy's Federal Energy Management
47 Program, which stipulates the means to measure and verify
48 consumption based on metering, calculations, or short-term testing.

1 In the event that the actual, annual verified savings are less than the
2 annual amount of savings guaranteed by the qualified provider, the
3 qualified provider shall pay the county college, or cause the county
4 college to be paid, the difference between the guaranteed savings
5 amount and the actual, verified amount. Measurement and
6 verification costs may be billed separately outside of the base
7 contract with the qualified provider or incorporated among other
8 costs billed under the base contract, at the option of the county
9 college. A county college may choose to waive the guarantee at
10 any time during the duration of the contract at its option.

11 j. A guaranteed energy savings contract may provide for
12 project financing, including tax exempt financing by a third party
13 over a period of time not to exceed 15 years, or for a period not to
14 exceed 20 years from the final installation of a project in the case of
15 a lease purchase agreement with a developer of a combined heat
16 and power or cogeneration project, or, if otherwise authorized by
17 law, by the issuance of energy savings bonds as a refunding bond to
18 fund all or part of the energy efficiency or energy conservation
19 measures.

20 k. An improvement that is not directly related to an energy
21 efficiency or energy conservation measure may be included in a
22 guaranteed energy savings contract if:

23 (1) the total cost of the energy improvement does not exceed 15
24 percent of the total cost of the work to be performed under the
25 guaranteed energy savings contract; and,

26 (2) the improvement is necessary to conform to a law, rule,
27 regulation, or order adopted pursuant thereto, or an ordinance or
28 resolution, as appropriate, or if an analysis within an approved
29 proposal, or by the county college at the time of the award of the
30 proposal, demonstrates that there is an economic advantage to the
31 county college implementing the improvement as part of the
32 guaranteed energy savings contract, and the savings justification for
33 the improvement is documented by industry engineering standards.

34 l. A facility alteration required to properly implement other
35 energy efficiency or energy conservation measures, or both, may be
36 included as part of a guaranteed energy savings contract, in which
37 case, notwithstanding any other provision of law, rule, regulation,
38 or order to the contrary, the facility alteration may be undertaken or
39 supervised by the qualified provider performing the guaranteed
40 energy savings contract.

41

42 7. a. As used in this section:

43 "Allowable costs" means the equipment and project costs
44 associated with energy efficiency and energy conservation measures
45 that a public entity reasonably believes will be incurred during the
46 term of a guaranteed energy savings contract and that are
47 documented by industry engineering standards.

1 "Competitive contracting," with respect to the procurement of
2 specialized goods and services required to implement an energy
3 efficiency or energy conservation measure, means the method of
4 contracting for specialized goods and services in which formal
5 proposals are solicited by a public entity from vendors through a
6 standardized request for proposal process utilizing an "RFP" model
7 template as provided by the Department of Community Affairs in
8 consultation with the Board of Public Utilities, and are evaluated by
9 the public entity utilizing the services of qualified energy
10 professionals and engineers who shall be employed by the public
11 entity to independently verify the energy savings calculations in the
12 proposals as prescribed in paragraph (3) of subsection c. of this
13 section, and who shall assist the public entity in the selection of the
14 qualified provider creating the maximum savings potential, after
15 which the public entity may then award a contract to a vendor or
16 vendors from among the formal competitive proposals received
17 based upon the inclusion of all cost and cost savings considerations.

18 "Director of Energy Savings" means the person holding the
19 position so designated and established within the Department of the
20 Treasury pursuant to Executive Order No. 11 of 2006.

21 "Energy efficiency or energy conservation measure" means a
22 program or facility alteration intended to reduce a public entity's
23 energy consumption or operating costs, and includes, but is not
24 limited to:

25 (1) insulation of the building structure or systems within the
26 building;

27 (2) installation of storm windows or doors, caulking or weather
28 stripping, multi-glazed windows or doors, heat-absorbing or heat-
29 reflective glazed and coated window or door systems, additional
30 glazing, reductions in glass area, or other window and door system
31 modifications that reduce energy consumption;

32 (3) installation of automated or computerized energy control
33 systems;

34 (4) heating, ventilating or air conditioning system modification
35 or replacement;

36 (5) replacement or modification of lighting fixtures to increase
37 the energy efficiency of the lighting system without increasing the
38 overall illumination of a facility, unless an increase in illumination
39 is necessary to conform to applicable State or local building codes
40 for the lighting system after the proposed modifications are made;

41 (6) installation of energy recovery systems;

42 (7) installation of systems that produce steam or forms of energy
43 such as heat as well as electricity for use within a building or
44 complex of buildings;

45 (8) implementation of energy efficiency or energy conservation
46 measures that provide operating cost reductions based on life-cycle
47 cost analysis;

1 (9) implementation of a training program or facility alteration
2 that reduces energy consumption or reduces operating costs,
3 including allowable costs, based on future reductions in labor costs
4 or costs for contracted services;

5 (10) a facility alteration that includes expenditures required to
6 properly implement other energy conservation measures;

7 (11) implementation of a program to reduce energy costs through
8 rate adjustments, load shifting to reduce peak demand, load
9 shedding, or use of alternative energy suppliers;

10 (12) installation of energy information and control systems that
11 monitor consumption, redirect systems to optimal energy sources
12 and manage energy-using equipment;

13 (13) indoor air quality improvements;

14 (14) installation of daylighting systems; and

15 (15) use of renewable or on-site distributed power generation
16 systems.

17 "Energy savings" means a measured reduction in fuel, energy, or
18 operating or maintenance costs resulting from the implementation
19 of one or more energy efficiency or energy conservation measures,
20 when compared with an established baseline of previous fuel,
21 energy, water, or operating or maintenance costs, including, but not
22 limited to, future capital replacement expenditures avoided as a
23 result of equipment installed or services performed pursuant to a
24 guaranteed energy savings contract. In the event that a public entity
25 has obtained an audit, the energy savings proposal need not
26 conform to the results of the audit but shall use the audit as a
27 guideline to assist in evaluating and securing energy cost reductions
28 and shall be utilized productively to help guide prospective
29 qualified providers to develop proposals.

30 "Guaranteed energy savings contract" or "guaranteed contract"
31 means a contract between a public entity and a qualified provider
32 for the installation of energy efficiency or energy conservation
33 measures, or a combination thereof, and for implementation of one
34 or more such measures pursuant to such a contract between a public
35 entity and a qualified provider, entered into in accordance with the
36 provisions of this section.

37 "Industry engineering standards" means recognized industry
38 standards including, but not limited to, life cycle costing, the R.S.
39 Means-estimated method developed by the R.S. Means Company,
40 historical data, manufacturer's data, and the American Society of
41 Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)
42 standards.

43 "Public entity" means a governmental entity in this State that is
44 not a "State agency" as defined in section 2 of P.L. , c. (C.)
45 (pending before the Legislature as this bill), a "contracting unit" as
46 defined in section 2 of P.L.1971, c.198 (C.40A:11-2), a "board of
47 education" as defined in chapter 18A of Title 18A of the New
48 Jersey Statutes (N.J.S.18A:18A-1 et seq.), a "State college" as

1 defined in section 2 of P.L.1986, c.43 (C.18A:64-53), or a “county
2 college” as defined in section 2 of P.L.1982, c.189 (C.18A:64A-
3 25.2).

4 "Qualified provider" means a person or business capable of
5 evaluating, recommending, designing, implementing, and installing
6 energy efficiency or energy conservation measures pursuant to a
7 guaranteed energy savings contract approved by a public entity.
8 Qualified providers shall either be certified by the Division of
9 Property Management and Construction in the Department of the
10 Treasury as eligible to participate in the formal competitive
11 proposal process, or qualified under federal guidelines as an energy
12 services company, and shall reasonably demonstrate that it is
13 financially capable of meeting its obligations under the performance
14 guarantees set forth in a guaranteed energy savings contract for the
15 contract period.

16 b. Notwithstanding the provisions of any other law or any rule,
17 regulation, or order to the contrary, a public entity, may use
18 competitive contracting for a period not to exceed 36 months
19 following the effective date of P.L. , c. (C.) (pending
20 before the Legislature as this bill), to enter into a guaranteed energy
21 savings contract with a qualified provider for a period of up to 15
22 years, or for a period of up to 20 years from the final installation of
23 a project in the case of a lease purchase agreement for a combined
24 heat and power facility or cogeneration facility, as defined in
25 section 3 of P.L.1999, c.23 (C.48:3-51), in accordance with the
26 provisions of this section and any guidelines or regulations adopted
27 by the Director of Energy Savings.

28 A public entity that uses competitive contracting for the purpose
29 of entering into a guaranteed energy savings contract, may evaluate
30 any proposal that meets the requirements of the public entity and
31 that is submitted in a timely manner by a qualified provider to the
32 public entity.

33 c. A public entity shall select the qualified provider that best
34 meets the needs of that public entity, subject to the following:

35 (1) After reviewing the reports required to be provided pursuant
36 to subsection d. of this section, a public entity may enter into a
37 guaranteed energy savings contract with a qualified provider if: (a)
38 the public entity finds that the amount it would spend on the energy
39 efficiency or energy conservation measures recommended in the
40 proposal would not exceed the amount to be saved in energy
41 savings within a 15-year period from the date on which
42 performance, or within a 20-year period from the final installation
43 of a project in the case of a lease purchase agreement for a
44 combined heat and power facility or cogeneration facility, as
45 defined in section 3 of P.L.1999, c.23 (C.48:3-51), if the
46 recommendations in the proposal were followed; and (b) the
47 qualified provider provides a written guarantee in its proposal in
48 favor of the public entity that the amount of energy savings realized

1 by the public entity as a result of entering into the guaranteed
2 energy savings contract with the qualified provider shall meet or
3 exceed the cost to the public entity of the guaranteed energy savings
4 contract;

5 (2) The guaranteed energy savings contract includes: (a)
6 specifications requiring the qualified provider to demonstrate the
7 qualifications, experience and training of its employees, contractors
8 and subcontractors, including job training, education, and
9 experience in successfully completing projects similar in size and
10 scope; (b) other criteria to assure a reliable source of skilled and
11 experienced labor to guarantee efficient and cost-effective
12 completion of the work and safety by standardizing the terms and
13 conditions of employment of labor on any project undertaken
14 pursuant to this section; and (c) requirements to ensure labor
15 stability and the payment of prevailing wages pursuant to P.L.1963,
16 c. 150 (C.34:11-56.25 et seq.), and to ensure that labor contractors
17 and subcontractors provide and maintain formal training and
18 apprenticeship programs and approved health care and pension
19 benefit plans in accordance with P.L.1948, c.446 (C.34:1A-34 et
20 seq.); and

21 (3) The public entity shall contract with a third party entity
22 consisting of qualified energy professionals and engineers, which is
23 independent of the qualified providers submitting proposals to the
24 public entity, to verify, in accordance with guidelines adopted by
25 the Director of Energy Savings pursuant to subsection b. of this
26 section, that the projected energy savings to be realized from the
27 proposals submitted to the public entity are sufficient to cover the
28 cost of the installation or implementation of the energy saving
29 measures over the entire duration of the contract term.

30 d. Before a guaranteed energy savings contract may be
31 awarded by a public entity, the qualified provider shall provide a
32 report as part of its proposal which shall summarize estimates of all
33 costs of installation, maintenance, repairs and debt service and
34 estimates of the amounts by which energy, or operating costs will
35 be reduced. This report shall:

36 (1) be available for public inspection;

37 (2) contain a listing of employees, contractors, and
38 subcontractors to be used by the qualified provider as the low
39 bidder selected from the list of qualified contractors provided by the
40 qualified provider with respect to the energy efficiency or energy
41 conservation measures, or both;

42 (3) comply with the guidelines adopted by the Director of
43 Energy Savings establishing a methodology for computing and
44 comparing energy savings; and

45 (4) show evidence of financial stability and size that
46 demonstrates the qualified provider's capability to meet its
47 obligations under the performance guarantee over the entire
48 duration of the performance period.

- 1 e. A qualified provider to whom a guaranteed energy savings
2 contract is awarded shall provide a sufficient bond to the public
3 entity for its faithful performance.
- 4 f. A public entity may enter into a separate guaranteed energy
5 savings contract with each qualified provider selected in accordance
6 with the provisions of this section.
- 7 g. A guaranteed energy savings contract may provide for
8 project financing that requires all payments, except any obligations
9 that are incurred as a result of the termination of the contract prior
10 to its scheduled expiration, to be made over a period of time. Each
11 guaranteed energy savings contract shall provide that the project
12 financing savings in any year are guaranteed to the extent necessary
13 to make payments under the contract during that year.
- 14 h. A guaranteed energy savings contract shall include a written
15 guarantee that energy savings shall meet or exceed the cost of the
16 energy efficiency or energy conservation measures, or both, to be
17 evaluated, recommended, designed, implemented, and installed
18 under the project financed by such a contract.
- 19 i. Beginning with the second year of a guaranteed energy
20 savings contract, and in each year thereafter, the qualified provider
21 performing a guaranteed energy savings contract shall submit
22 annual reports to the public entity for each guaranteed energy
23 savings contract between the qualified provider and that public
24 entity, to confirm the actual savings realized for the project, during
25 the preceding 12-month period. This report, and the measurement of
26 the savings, shall comply with the provisions of the United States
27 Department of Energy's Federal Energy Management Program,
28 which stipulates the means to measure and verify consumption
29 based on metering, calculations, or short-term testing. In the event
30 that the actual, annual verified savings are less than the annual
31 amount of savings guaranteed by the qualified provider, the
32 qualified provider shall pay the public entity, or cause the public
33 entity to be paid, the difference between the guaranteed savings
34 amount and the actual, verified amount. Measurement and
35 verification costs may be billed separately outside of the base
36 contract with the qualified provider or incorporated among other
37 costs billed under the base contract, at the option of the public
38 entity. A public entity may choose to waive the guarantee at any
39 time during the duration of the contract at its option.
- 40 j. A guaranteed energy savings contract may provide for
41 project financing, including tax exempt financing by a third party
42 over a period of time not to exceed 15 years, or for a period not to
43 exceed 20 years from the final installation of a project in the case of
44 a lease purchase agreement with a developer of a combined heat
45 and power or cogeneration project, or, if otherwise authorized by
46 law, by the issuance of energy savings bonds as a refunding bond to
47 fund all or part of the energy efficiency or energy conservation
48 measures.

1 k. An improvement that is not directly related to an energy
2 efficiency or energy conservation measure may be included in a
3 guaranteed energy savings contract if:

4 (1) the total cost of the energy improvement does not exceed 15
5 percent of the total cost of the work to be performed under the
6 guaranteed energy savings contract; and,

7 (2) the improvement is necessary to conform to a law, rule,
8 regulation, or order adopted pursuant thereto, or an ordinance or
9 resolution, as appropriate, or if an analysis within an approved
10 proposal, or by the public entity at the time of the award of the
11 proposal, demonstrates that there is an economic advantage to the
12 public entity implementing the improvement as part of the
13 guaranteed energy savings contract, and the savings justification for
14 the improvement is documented by industry engineering standards.

15 1. A facility alteration required to properly implement other
16 energy efficiency or energy conservation measures, or both, may be
17 included as part of a guaranteed energy savings contract, in which
18 case, notwithstanding any other provision of law, rule, regulation,
19 or order to the contrary, the facility alteration may be undertaken or
20 supervised by the qualified provider performing the guaranteed
21 energy savings contract.

22

23 8. This act shall take effect immediately.

24

25

26

STATEMENT

27

28 This bill establishes a 36-month temporary period during which
29 time State contracting agencies, local contracting units, boards of
30 education, public institutions of higher education, and other public
31 entities shall be allowed to enter into guaranteed energy savings
32 contracts through competitive contracting, notwithstanding the
33 provisions of the "Local Public Contracts Law," P.L.1971, c.198
34 (C.40A:11-1 et seq.), or any other law, rule, regulation or order to
35 the contrary.

36 A "guaranteed energy savings contract" is defined to mean a
37 contract, entered into after the effective date of the bill, between a
38 public entity and a qualified provider for the installation and
39 implementation of energy efficiency or energy conservation
40 measures, or a combination thereof.

41 The bill provides that a public entity may only enter into a
42 guaranteed energy savings contract with a qualified provider, if an
43 independent group of energy professionals and engineers verifies
44 that the cost of the energy efficiency or energy conservation
45 measures will not exceed the amount to be saved over the life of the
46 contract. The bill requires a qualified provider to submit annual
47 reports confirming the actual savings realized by a project and to
48 pay the public entity the difference between the guaranteed savings

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37

- 1 amount and the actual, verified savings if the actual savings are less
- 2 the guaranteed savings amount.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2313 and 2564

STATE OF NEW JERSEY
215th LEGISLATURE

ADOPTED JUNE 21, 2012

Sponsored by:

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

Assemblyman TROY SINGLETON

District 7 (Burlington)

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

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Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

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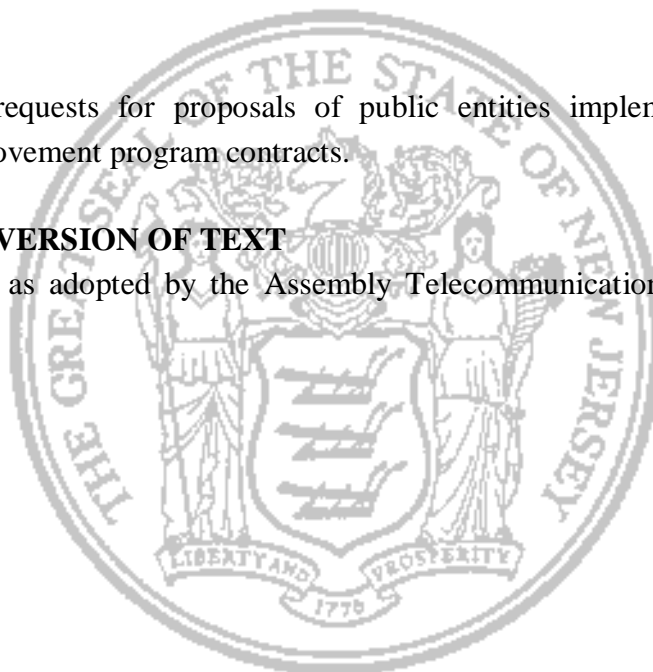
Senator Sarlo

SYNOPSIS

Clarifies requests for proposals of public entities implementing energy savings improvement program contracts.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Telecommunications and Utilities Committee.



(Sponsorship Updated As Of: 6/29/2012)

1 AN ACT concerning energy savings improvement programs,
2 amending various parts of the statutory law, and supplementing
3 Title 52 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.2009, c.4 (C.18A:18A-4.6) is amended to
9 read as follows:

10 1. a. (1) A board of education, as defined in N.J.S.18A:18A-2,
11 may implement an energy savings improvement program in the
12 manner provided by this section whenever it determines that the
13 savings generated from reduced energy use from the program will
14 be sufficient to cover the cost of the program's energy conservation
15 measures as set forth in an energy savings plan. Under such a
16 program, a board of education may enter into an energy savings
17 services contract with an energy services company to implement the
18 program or the board may authorize separate contracts to implement
19 the program. The provisions of N.J.S.18A:18A-1 et seq. shall apply
20 to any contracts awarded pursuant to this section to the extent that
21 the provisions of such law are not inconsistent with any provision
22 of this section.

23 (2) A board of education facility alteration required to properly
24 implement other energy efficiency or energy conservation
25 measures, or both, may be included as part of an energy savings
26 services contract, in which case, notwithstanding any other
27 provision of law, rule, regulation, or order to the contrary, the
28 facility alteration may be undertaken or supervised by the energy
29 services company performing the energy savings services contract
30 if:

31 (a) the total cost of the improvement does not exceed 15 percent
32 of the total cost of the work to be performed under the energy
33 savings services contract; and

34 (b) (i) the improvement is necessary to conform to a law, rule,
35 or regulation, or order, or (ii) an analysis within an approved
36 proposal, or the board of education, at the time of the award of the
37 proposal, demonstrates that there is an economic advantage to the
38 board of education implementing the improvement as part of the
39 energy savings services contract, and the savings rationale for the
40 improvement is documented and supported by reasonable
41 justification.

42 b. (1) To be eligible to enter into an energy savings services
43 contract, an energy services company shall be a commercial entity
44 that is qualified to provide energy savings services in accordance
45 with the provisions of this section. A board of education may

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 determine to enter into an energy savings services contract either
2 through public advertising for bids and the receipt of bids therefor
3 or through competitive contracting in lieu of public bidding in the
4 manner provided by sections 45 through 49 of P.L.1999, c.440
5 (C.18A:18A-4.1 et seq.).

6 (2) (a) Public works activities performed under an energy
7 savings improvement program shall be subject to all requirements
8 regarding public bidding, bid security, performance guarantees,
9 insurance and other public contracting requirements that are
10 applicable to public works contracts, to the extent not inconsistent
11 with this section. A general contractor, energy services company
12 serving as general contractor, or any subcontractor hired for the
13 furnishing of plumbing and gas fitting and all kindred work, and of
14 steam and hot water heating and ventilating apparatus, steam power
15 plants and kindred work, and electrical work, structural steel and
16 ornamental iron work, shall be classified by the Division of
17 Property Management and Construction in the Department of the
18 Treasury in order to perform public works activities under an
19 energy savings improvement program.

20 (b) Individuals or organizations performing energy audits,
21 acting as commissioning agents, or conducting verification of
22 energy savings plans, implementation of energy conservation
23 measures, or verifying guarantees shall be prequalified by the
24 Division of Property Management and Construction in the
25 Department of the Treasury to perform their work under an energy
26 savings improvement program.

27 (3) (a) An energy services company may be designated as the
28 general contractor for improvements to be made pursuant to an
29 energy savings plan, provided that the hiring of subcontractors that
30 are required to be classified pursuant to subparagraph (a) of
31 paragraph (2) of this subsection shall be performed in accordance
32 with the procedures and requirements set forth pursuant to the
33 public bidding requirements of the board of education. A contract
34 with an energy savings company shall include, but not be limited to:
35 preparation of an energy savings plan; the responsibilities of the
36 parties for project schedules, installations, performance and quality,
37 payment of subcontractors, project completion, commissioning,
38 savings implementation; a requirement that the savings to be
39 achieved by energy conservation measures be verified upon
40 commissioning of the improvements; allocation of State and federal
41 rebates and tax credits; and any other provisions deemed necessary
42 by the parties.

43 (b) All workers performing public works activities for
44 subcontractors awarded contracts by an energy services company
45 pursuant to this section shall be paid prevailing wages in
46 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,
47 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with

1 the provisions of "The Public Works Contractor Registration Act,"
2 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately
3 classified as contractors by the Division of Property Management
4 and Construction shall be eligible to be awarded a contract as a
5 subcontractor of an energy services company under this section for
6 performing public works activities pursuant to regulations adopted
7 by the Division of Property Management and Construction.

8 (c) In order to expedite communications with an energy services
9 company and facilitate the implementation of an energy savings
10 improvement program, a board of education may designate or
11 appoint an employee of the board of education with decision-
12 making authority to coordinate with the energy services company
13 and to address issues associated with the implementation of an
14 energy savings improvement program as they arise, provided that
15 any decision requiring a change order shall be made only upon the
16 approval of the board of education.

17 (4) Except as provided in paragraph (5) of this subsection, a
18 subsidiary or wholly-owned or partially-owned affiliate of the
19 energy services company shall not be an eligible contractor or
20 subcontractor under an energy savings services contract.

21 (5) When the energy services company is the manufacturer of
22 direct digital control systems and contracts with the board of
23 education to provide a guaranteed energy savings option pursuant to
24 subsection f. of this section, the specification of such direct digital
25 control systems may be treated as proprietary goods and if so
26 treated, the bid specification shall set forth an allowance price for
27 its supply by the energy services company which shall be used by
28 all bidders in the public bidding process. Direct digital controls
29 shall be open protocol format and shall meet the interoperability
30 guidelines established by the American Society of Heating,
31 Refrigerating and Air-Conditioning Engineers. Each contract to be
32 entered into pursuant to this section between a board of education
33 and an energy services company that is the manufacturer of direct
34 digital control systems where such direct digital control systems are
35 treated as proprietary goods as part of the contract, shall first be
36 reviewed and approved by the Board of Public Utilities for the
37 purpose of affirming the reasonableness of such allowance price. If
38 the board does not disapprove of the contract within 14 days of
39 receipt thereof, the contract shall be deemed approved.

40 c. An energy savings improvement program may be financed
41 through a lease-purchase agreement or through the issuance of
42 energy savings obligations pursuant to this subsection.

43 (1) An energy savings improvement program may be financed
44 through a lease-purchase agreement between a board of education
45 and an energy services company or other public or private entity.
46 Under a lease-purchase agreement, ownership of the energy savings
47 equipment or improved facilities shall pass to the board of

1 education when all lease payments have been made.
2 Notwithstanding the provisions of section 46 of P.L.1999, c.440
3 (C.18A:18A-4.2) or any other law to the contrary, the duration of
4 such a lease-purchase agreement shall not exceed 15 years, except
5 that the duration of a lease purchase agreement for a combined heat
6 and power or cogeneration project shall not exceed 20 years. For
7 the purposes of this paragraph, the duration of the repayment term
8 of a lease-purchase agreement shall commence on the date upon
9 which construction and installation of the energy savings
10 equipment, “combined heat and power facility” or “cogeneration
11 facility,” as those terms are defined pursuant to section 3 of
12 P.L.1999, c.23 (C.48:3-51), or other energy conservation measures
13 undertaken pursuant to the energy savings plan, have been
14 completed.

15 (2) Any lease-purchase agreement entered into pursuant to this
16 subsection may contain: a clause making it subject to the
17 availability and appropriation annually of sufficient funds as may
18 be required to meet the extended obligation; and a non-substitution
19 clause maintaining that if the agreement is terminated for non-
20 appropriation, the board of education may not replace the leased
21 equipment or facilities with equipment or facilities that perform the
22 same or similar functions.

23 (3) A board of education may arrange for incurring energy
24 savings obligations to finance an energy savings improvement
25 program. Energy savings obligations may be funded through
26 appropriations for utility services in the annual budget of the board
27 and may be issued as refunding bonds pursuant to P.L.1969, c.130
28 (C.18A:24-61.1 et seq.), including the issuance of bond anticipation
29 notes as may be necessary, provided that all such bonds and notes
30 mature within the periods authorized for such energy savings
31 obligations. Energy savings obligations may be issued either
32 through the board of education or another public agency authorized
33 to undertake financing on behalf of the board.

34 (4) Lease-purchase agreements and energy savings obligations
35 shall not be used to finance maintenance, guarantees, or verification
36 of guarantees of energy conservation measures. Lease-purchase
37 agreements and energy savings obligations may be used to finance
38 the cost of an energy audit or the cost of verification of energy
39 savings as part of adopting an energy savings plan.
40 Notwithstanding any law to the contrary, lease-purchase agreements
41 and energy savings certificates shall not be excepted from any
42 budget or tax levy limitation otherwise provided by law. Maturity
43 schedules of lease-purchase agreements or energy savings
44 obligations **[must]** shall not exceed the estimated average useful
45 life of the **[individual]** energy conservation measures.

46 d. (1) The energy audit component of an energy savings
47 improvement program shall be conducted either by the board of

1 education or by a qualified third party retained by the board for that
2 purpose. It shall not be conducted by an energy services company
3 subsequently hired to develop an energy savings improvement
4 program. The energy audit shall identify the current energy use of
5 any or all facilities and energy conservation measures that can be
6 implemented in which the energy savings and energy efficiency
7 could be realized and maximized.

8 (2) To implement an energy savings improvement program, a
9 board of education shall develop an energy savings plan that
10 consists of one or more energy conservation measures. The plan
11 shall:

12 (a) contain the results of an energy audit;

13 (b) describe the energy conservation measures that will
14 comprise the program;

15 (c) estimate greenhouse gas reductions resulting from those
16 energy savings;

17 (d) identify all design and compliance issues that require the
18 professional services of an architect or engineer and identify who
19 will provide these services;

20 (e) include an assessment of risks involved in the successful
21 implementation of the plan;

22 (f) identify the eligibility for, and costs and revenues associated
23 with the PJM Independent System Operator for demand response
24 and curtailable service activities;

25 (g) include schedules showing calculations of all costs of
26 implementing the proposed energy conservation measures and the
27 projected energy savings;

28 (h) identify maintenance requirements necessary to ensure
29 continued energy savings, and describe how they will be fulfilled;
30 and

31 (i) if developed by an energy services company, a description
32 of, and cost estimates of an energy savings guarantee.

33 All professionals providing engineering services under the plan
34 shall have errors and omissions insurance.

35 (3) Prior to the adoption of the plan by the governing body, the
36 board of education shall contract with a qualified third party to
37 verify the projected energy savings to be realized from the proposed
38 program have been calculated as required by subsection e. of this
39 section.

40 (4) Upon adoption, the plan shall be submitted to the Board of
41 Public Utilities, which shall post it on the Internet on a public
42 webpage maintained for such purpose. If the board of education
43 maintains its own website, it shall also post the plan on that site.
44 The Board of Public Utilities may require periodic reporting
45 concerning the implementation of the plan.

46 (5) Verification by a qualified third party shall be required when
47 energy conservation measures are placed in service or

1 commissioned, to ensure the savings projected in the energy savings
2 plan shall be achieved.

3 (6) Energy-related capital improvements that do not reduce
4 energy usage may be included in an energy savings improvement
5 program but the cost of such improvements shall not be financed as
6 a lease-purchase or through energy savings obligations authorized
7 by subsection c. of this section. Nothing herein is intended to
8 prevent financing of such capital improvements through otherwise
9 authorized means.

10 (7) A qualified third party when required by this subsection may
11 include an employee of the board of education who is properly
12 trained and qualified to perform such work.

13 e. (1) (a) The calculation of energy savings for the purposes of
14 determining that the energy savings resulting from the program will
15 be sufficient to cover the cost of the program's energy conservation
16 measures, as provided in subsection a. of this section, shall involve
17 determination of the dollar amount saved through implementation
18 of an energy savings improvement program using the guidelines of
19 the International Performance Measurement and Verification
20 Protocol or other protocols approved by the Board of Public
21 Utilities and standards adopted by the Board of Public Utilities
22 pursuant to this section. The calculation shall include all applicable
23 State and federal rebates and tax credits, but shall not include the
24 cost of an energy audit and the cost of verifying energy savings.
25 The calculation shall state which party has made application for
26 rebates and credits and how these applications translate into energy
27 savings.

28 (b) During the procurement phase of an energy savings
29 improvement program, an energy service company's proposal
30 submitted in response to a request for proposal shall not include a
31 savings calculation that assumes, includes, or references capital cost
32 avoidance savings, the current or projected value of a "solar
33 renewable energy certificate," as defined pursuant to section 3 of
34 P.L.1999, c.23 (C.48:3-51), or other environmental or similar
35 attributes or benefits of whatever nature that derive from the
36 generation of renewable energy, and any costs or discounts
37 associated with maintenance services, an energy savings guarantee,
38 or third party verification of energy conservation measures and
39 energy savings. The calculation of energy savings shall utilize and
40 specifically reference as a benchmark the actual demand and energy
41 components of the public utility tariff rate applicable to the board of
42 education then in effect, and not a blended rate that aggregates,
43 combines, or restates in any manner the distinct demand and energy
44 components of the public utility tariff rate into a single combined or
45 restated tariff rate. If an energy services company submits a
46 proposal to a board of education that does not calculate projected

1 energy savings in the manner required by this subsection, such
2 proposal shall be rejected by the board of education.

3 (2) For the purposes of this section, the Board of Public Utilities
4 shall adopt standards and uniform values for interest rates and
5 escalation of labor, electricity, oil, and gas, as well as standards for
6 presenting these costs in a life cycle and net present value format,
7 standards for the presentation of obligations for carbon reductions,
8 and other standards that the board may determine necessary.

9 f. (1) When an energy services company is awarded an energy
10 savings services contract, it shall offer the board of education the
11 option to purchase, for an additional amount, an energy savings
12 guarantee. The guarantee, if accepted by a separate vote of the
13 board of education, shall insure that the energy savings resulting
14 from the energy savings improvement program, determined
15 periodically over the duration of the guarantee, will be sufficient to
16 defray all payments required to be made pursuant to the lease-
17 purchase agreement or energy savings obligation, and if the savings
18 are not sufficient, the energy services company will reimburse the
19 board for any additional amounts. Annual costs of a guarantee shall
20 not be financed or included as costs in an energy savings plan but
21 shall be fully disclosed in an energy savings plan.

22 (2) When a guaranteed energy savings option is purchased, the
23 contract shall require a qualified third party to verify the energy
24 savings at intervals established by the parties.

25 (3) When an energy services company is awarded an energy
26 savings services contract to provide or perform goods or services
27 for the purpose of enabling a board of education to conserve energy
28 through energy efficiency equipment, including a “combined heat
29 and power facility” as that term is defined pursuant to section 3 of
30 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
31 shall extend for a term of up to 15 years for energy efficiency
32 projects, and for up to 20 years for a combined heat and power
33 facility after construction completion. If a board of education shall
34 elect to contract with an energy services company for an energy
35 savings guarantee in connection with a contract awarded pursuant to
36 this section, such guarantee may extend for a term of up to 15 years
37 for energy efficiency projects, or up to 20 years for a combined heat
38 and power facility after construction completion.

39 g. As used in this section:

40 "direct digital control systems" means the devices and
41 computerized control equipment that contain software and computer
42 interfaces that perform the logic that control a building's heating,
43 ventilating, and air conditioning system. Direct digital controls
44 shall be open protocol format and shall meet the interoperability
45 guidelines established by the American Society of Heating,
46 Refrigerating and Air-Conditioning Engineers;

1 "energy conservation measure" means an improvement that
2 results in reduced energy use, including, but not limited to,
3 installation of energy efficient equipment; demand response
4 equipment; combined heat and power systems; facilities for the
5 production of renewable energy; water conservation measures,
6 fixtures or facilities; building envelope improvements that are part
7 of an energy savings improvement program; and related control
8 systems for each of the foregoing;

9 "energy related capital improvement" means a capital
10 improvement that uses energy but does not result in a reduction of
11 energy use;

12 "energy saving obligation" means a bond, note or other
13 agreement evidencing the obligation to repay borrowed funds
14 incurred in order to finance energy saving improvements;

15 "energy savings" means a measured reduction in fuel, energy,
16 operating or maintenance costs resulting from the implementation
17 of one or more energy conservation measures services when
18 compared with an established baseline of previous fuel, energy,
19 operating or maintenance costs, including, but not limited to, future
20 capital replacement expenditures avoided as a result of equipment
21 installed or services performed as part of an energy savings plan;

22 "energy savings improvement program" means an initiative of a
23 board of education to implement energy conservation measures in
24 existing facilities, provided that the value of the energy savings
25 resulting from the program will be sufficient to cover the cost of the
26 program's energy conservation measures;

27 "energy savings plan" means the document that describes the
28 actions to be taken to implement the energy savings improvement
29 program;

30 "energy savings services contract" means a contract with an
31 energy savings company to develop an energy savings plan, prepare
32 bid specifications, manage the performance, provision,
33 construction, and installation of energy conservation measures by
34 subcontractors, to offer a guarantee of energy savings derived from
35 the implementation of an energy savings plan, and may include a
36 provision to manage the bidding process;

37 "energy services company" means a commercial entity that is
38 qualified to develop and implement an energy savings plan in
39 accordance with the provisions of this section;

40 "public works activities" means any work subject to the
41 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

42 "water conservation measure" means an alteration to a facility or
43 equipment that reduces water consumption, maximizes the
44 efficiency of water use, or reduces water loss.

45 h. (1) The Director of the Division of Local Government
46 Services in the Department of Community Affairs, the State
47 Treasurer, and the Board of Public Utilities may take such action as

1 is deemed necessary and consistent with the intent of this section to
2 implement its provisions.

3 (2) The Director of the Division of Local Government Services
4 in the Department of Community Affairs, the State Treasurer and
5 the Board of Public Utilities may adopt implementation guidelines
6 or directives, and adopt such administrative rules, pursuant to the
7 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
8 seq.), as are necessary for the implementation of those agencies'
9 respective responsibilities under this section, except that
10 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et
11 seq.) to the contrary, the Director of the Division of Local
12 Government Services in the Department of Community Affairs, the
13 State Treasurer, and the Board of Public Utilities may adopt,
14 immediately upon filing with the Office of Administrative Law,
15 such rules and regulations as deemed necessary to implement the
16 provisions of this act which shall be effective for a period not to
17 exceed 12 months and shall thereafter be amended, adopted or re-
18 adopted in accordance with the provisions of P.L.1968, c.410
19 (C.52:14B-1 et seq.).
20 (cf: P.L.2009, c.4, s.1)

21

22 2. Section 4 of P.L.2009, c.4 (C.18A:65A-1) is amended to
23 read as follows:

24 4. a. (1) The board of trustees of a public institution of higher
25 education may implement an energy savings improvement program
26 in the manner provided by this section whenever it determines that
27 the savings generated from reduced energy use from the program
28 will be sufficient to cover the cost of the program's energy
29 conservation measures as set forth in an energy savings plan. Under
30 such a program, a board of trustees may enter into an energy
31 savings services contract with an energy services company to
32 implement the program or the board may authorize separate
33 contracts to implement the program. The provisions of:
34 N.J.S.18A:64-1 et seq., in the case of any State college; P.L.1995,
35 c.400 (C.18A:64E-12 et seq.), in the case of the New Jersey
36 Institute of Technology; N.J.S.18A:65-1 et seq., in the case of
37 Rutgers, the State University; P.L.1970, c.102 (C.18A:64G-1 et al.),
38 in the case of the University of Medicine and Dentistry of New
39 Jersey; and N.J.S.18A:64A-1 et seq., in the case of the county
40 colleges; shall apply to any contracts awarded pursuant to this
41 section to the extent that the provisions of such law are not
42 inconsistent with any provision of this section.

43 In the case of Rutgers, the State University, references in this
44 section to the board of trustees shall mean the Rutgers board of
45 governors.

46 (2) An educational facility alteration required to properly
47 implement other energy efficiency or energy conservation

1 measures, or both, may be included as part of an energy savings
2 services contract, in which case, notwithstanding any other
3 provision of law, rule, regulation, or order to the contrary, the
4 facility alteration may be undertaken or supervised by the energy
5 services company performing the energy savings services contract
6 if:

7 (a) the total cost of the improvement does not exceed 15 percent
8 of the total cost of the work to be performed under the energy
9 savings services contract; and

10 (b) (i) the improvement is necessary to conform to a law, rule,
11 or regulation, or order, or (ii) an analysis within an approved
12 proposal, or the board of trustees, at the time of the award of the
13 proposal, demonstrates that there is an economic advantage to the
14 board of trustees implementing the improvement as part of the
15 energy savings services contract, and the savings rationale for the
16 improvement is documented and supported by reasonable
17 justification.

18 b. (1) To be eligible to enter into an energy savings services
19 contract, an energy services company shall be a commercial entity
20 that is qualified to provide energy savings services in accordance
21 with the provisions of this section. A public institution of higher
22 education may enter into an energy savings services contract
23 through public advertising for bids and the receipt of bids therefor.

24 (2) (a) Public works activities performed under an energy
25 savings improvement program shall be subject to all requirements
26 regarding public bidding, bid security, performance guarantees,
27 insurance and other public contracting requirements that are
28 applicable to public works contracts, to the extent not inconsistent
29 with this section. A general contractor, energy services company
30 serving as general contractor, or any subcontractor hired for the
31 furnishing of plumbing and gas fitting and all kindred work, and of
32 steam and hot water heating and ventilating apparatus, steam power
33 plants and kindred work, and electrical work, structural steel and
34 ornamental iron work, shall be classified by the Division of
35 Property Management and Construction in the Department of the
36 Treasury in order to perform public works activities under an
37 energy savings improvement program.

38 (b) Individuals or organizations performing energy audits,
39 acting as commissioning agents, or conducting verification of
40 energy savings plans, implementation of energy conservation
41 measures, or verifying guarantees shall be prequalified by the
42 Division of Property Management and Construction in the
43 Department of the Treasury to perform their work under an energy
44 savings improvement program.

45 (c) Where there is a need for compatibility of a direct digital
46 control system with previously installed control systems and
47 equipment, the bid specifications may include a requirement for

1 proprietary goods, and if so included, the bid specification shall set
2 forth an allowance price for its supply which shall be used by all
3 bidders in the public bidding process.

4 (3) (a) An energy services company may be designated as the
5 general contractor for improvements to be made pursuant to an
6 energy savings plan, provided that the hiring of subcontractors that
7 are required to be classified pursuant to subparagraph (a) of
8 paragraph (2) of this subsection shall be performed in accordance
9 with the procedures and requirements set forth pursuant to the
10 public bidding requirements of the board of trustees. A contract
11 with an energy savings company shall include, but not be limited to:
12 preparation of an energy savings plan; the responsibilities of the
13 parties for project schedules, installations, performance and quality,
14 payment of subcontractors, project completion, commissioning,
15 savings implementation; a requirement that the savings to be
16 achieved by energy conservation measures be verified upon
17 commissioning of the improvements; allocation of State and federal
18 rebates and tax credits; and any other provisions deemed necessary
19 by the parties.

20 (b) All workers performing public works activities for
21 subcontractors awarded contracts by an energy services company
22 pursuant to this section shall be paid prevailing wages in
23 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,
24 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with
25 the provisions of "The Public Works Contractor Registration Act,"
26 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately
27 classified as contractors by the Division of Property Management
28 and Construction shall be eligible to be awarded a contract as a
29 subcontractor of an energy services company under this section for
30 performing public works activities pursuant to regulations adopted
31 by the Division of Property Management and Construction.

32 (c) In order to expedite communications with an energy services
33 company and facilitate the implementation of an energy savings
34 improvement program, a board of trustees may designate or appoint
35 an employee of the public institution of higher education with
36 decision-making authority to coordinate with the energy services
37 company and to address issues associated with the implementation
38 of an energy savings improvement program as they arise, provided
39 that any decision requiring a change order shall be made only upon
40 the approval of the board of trustees of the public institution of
41 higher education.

42 (4) **[**Except as provided in paragraph (5) of this subsection, a
43 A subsidiary or wholly-owned or partially-owned affiliate of the
44 energy services company shall not be an eligible contractor or
45 subcontractor under an energy savings services contract.

46 **[(5)**When the energy services company is the manufacturer of
47 direct digital control systems and contracts with the board of

1 trustees to provide a guaranteed energy savings option pursuant to
2 subsection f. of this section, the specification of such direct digital
3 control systems may be treated as proprietary goods and if so
4 treated, the bid specification shall set forth an allowance price for
5 its supply by the energy services company which shall be used by
6 all bidders in the public bidding process. Direct digital controls
7 shall be open protocol format and shall meet the interoperability
8 guidelines established by the American Society of Heating,
9 Refrigerating and Air-Conditioning Engineers.】

10 c. An energy savings improvement program may be financed
11 through a lease-purchase agreement or through the issuance of
12 energy savings obligations pursuant to this subsection.

13 (1) An energy savings improvement program may be financed
14 through a lease-purchase agreement between a board of trustees and
15 an energy services company or other public or private entity. Under
16 a lease-purchase agreement, ownership of the energy savings
17 equipment or improved facilities shall pass to the board of trustees
18 when all lease payments have been made. Notwithstanding the
19 provisions of any other law to the contrary, the duration of such a
20 lease-purchase agreement shall not exceed 15 years, except that the
21 duration of a lease purchase agreement for a combined heat and
22 power or cogeneration project shall not exceed 20 years. For the
23 purposes of this paragraph, the duration of the repayment term of a
24 lease-purchase agreement shall commence on the date upon which
25 construction and installation of the energy savings equipment,
26 “combined heat and power facility” or “cogeneration facility,” as
27 those terms are defined pursuant to section 3 of P.L.1999, c.23
28 (C.48:3-51), or other energy conservation measures undertaken
29 pursuant to the energy savings plan, have been completed.

30 (2) Any lease-purchase or other agreement entered into in
31 connection with an energy savings improvement program may be a
32 general obligation of the public institution of higher education
33 pursuant to this subsection, and may contain: a clause making it
34 subject to the availability and appropriation annually of sufficient
35 funds as may be required to meet the extended obligation; and a
36 non-substitution clause maintaining that if the agreement is
37 terminated for non-appropriation, the board of trustees may not
38 replace the leased equipment or facilities with equipment or
39 facilities that perform the same or similar functions.

40 (3) A board of trustees may arrange for incurring energy savings
41 obligations to finance an energy savings improvement program and
42 may enter into any agreement with the New Jersey Educational
43 Facilities Authority or other persons in connection with the issuance
44 by the authority of its obligations on behalf of the public institution
45 of higher education in order to finance the institution's energy
46 savings improvement program. Energy savings obligations may be
47 funded through appropriations for utility services in the annual

1 budget of the board, or incurred as a general obligation of the public
2 institution of higher education in connection with the issuance by
3 the New Jersey Educational Facilities Authority of bonds or notes
4 pursuant to N.J.S.18A:72A-2 et seq., or, in the case of a county
5 college, by a sponsoring county as a refunding bond pursuant to
6 N.J.S.40A:2-52 et seq., including the issuance of bond anticipation
7 notes as may be necessary, provided that all such bonds and notes
8 mature within the periods authorized for such energy savings
9 obligations.

10 (4) Lease-purchase agreements and energy savings obligations
11 shall not be used to finance maintenance, guarantees, or verification
12 of guarantees of energy conservation measures. Lease-purchase
13 agreements and energy savings obligations may be used to finance
14 the cost of an energy audit or the cost of verification of energy
15 savings as part of adopting an energy savings plan. Maturity
16 schedules of lease-purchase agreements or energy savings
17 obligations **[must]** shall not exceed the estimated average useful
18 life of the **[individual]** energy conservation measures.

19 d. (1) The energy audit component of an energy savings
20 improvement program shall be conducted either by the board of
21 trustees or by a qualified third party retained by the board for that
22 purpose. It shall not be conducted by an energy services company
23 subsequently hired to develop an energy savings improvement
24 program. The energy audit shall identify the current energy use of
25 any or all facilities and energy conservation measures that can be
26 implemented in which the energy savings and energy efficiency
27 could be realized and maximized.

28 (2) To implement an energy savings improvement program, a
29 board of trustees shall develop an energy savings plan that consists
30 of one or more energy conservation measures. The plan shall:

31 (a) contain the results of an energy audit;

32 (b) describe the energy conservation measures that will
33 comprise the program;

34 (c) estimate greenhouse gas reductions resulting from those
35 energy savings;

36 (d) identify all design and compliance issues that require the
37 professional services of an architect or engineer and identify who
38 will provide these services;

39 (e) include an assessment of risks involved in the successful
40 implementation of the plan;

41 (f) identify the eligibility for, and costs and revenues associated
42 with the PJM Independent System Operator for demand response
43 and curtailable service activities;

44 (g) include schedules showing calculations of all costs of
45 implementing the proposed energy conservation measures and the
46 projected energy savings;

1 (h) identify maintenance requirements necessary to ensure
2 continued energy savings, and describe how they will be fulfilled;
3 and

4 (i) if developed by an energy services company, a description
5 of, and cost estimates of an energy savings guarantee.

6 All professionals providing engineering services under the plan
7 shall have errors and omissions insurance.

8 (3) Prior to the adoption of the plan, the board of trustees shall
9 contract with a qualified third party to verify the projected energy
10 savings to be realized from the proposed program have been
11 calculated as required by subsection e. of this section.

12 (4) Upon adoption, the plan shall be submitted to the Board of
13 Public Utilities, which shall post it on the Internet on a public
14 webpage maintained for such purpose. If the board of trustees
15 maintains its own website, it shall also post the plan on that site.
16 The Board of Public Utilities may require periodic reporting
17 concerning the implementation of the plan.

18 (5) Verification by a qualified third party shall be required when
19 energy conservation measures are placed in service or
20 commissioned, to ensure the savings projected in the energy savings
21 plan shall be achieved.

22 (6) Energy-related capital improvements that do not reduce
23 energy usage may be included in an energy savings improvement
24 program but the cost of such improvements shall not be financed as
25 a lease-purchase or through energy savings obligations authorized
26 by subsection c. of this section. Nothing herein is intended to
27 prevent the financing of such capital improvements through
28 otherwise authorized means.

29 (7) A qualified third party when required by this subsection may
30 include an employee of the public institution of higher education
31 who is properly trained and qualified to perform such work.

32 e. (1) (a) The calculation of energy savings for the purposes of
33 determining that the energy savings resulting from the program will
34 be sufficient to cover the cost of the program's energy conservation
35 measures, as provided in subsection a. of this section, shall involve
36 determination of the dollar amount saved through implementation
37 of an energy savings improvement program using the guidelines of
38 the International Performance Measurement and Verification
39 Protocol or other protocols approved by the Board of Public
40 Utilities and standards adopted by the Board of Public Utilities
41 pursuant to this section. The calculation shall include all applicable
42 State and federal rebates and tax credits, but shall not include the
43 cost of an energy audit and the cost of verifying energy savings.
44 The calculation shall state which party has made application for
45 rebates and credits and how these applications translate into energy
46 savings.

1 **(b) During the procurement phase of an energy savings**
2 **improvement program, an energy service company’s proposal**
3 **submitted in response to a request for proposal shall not include a**
4 **savings calculation that assumes, includes, or references capital cost**
5 **avoidance savings, the current or projected value of a “solar**
6 **renewable energy certificate,” as defined pursuant to section 3 of**
7 **P.L.1999, c.23 (C.48:3-51), or other environmental or similar**
8 **attributes or benefits of whatever nature that derive from the**
9 **generation of renewable energy, and any costs or discounts**
10 **associated with maintenance services, an energy savings guarantee,**
11 **or third party verification of energy conservation measures and**
12 **energy savings. The calculation of energy savings shall utilize and**
13 **specifically reference as a benchmark the actual demand and energy**
14 **components of the public utility tariff rate applicable to the board of**
15 **trustees then in effect, and not a blended rate that aggregates,**
16 **combines, or restates in any manner the distinct demand and energy**
17 **components of the public utility tariff rate into a single combined or**
18 **restated tariff rate. If an energy services company submits a**
19 **proposal to a board of trustees that does not calculate projected**
20 **energy savings in the manner required by this subsection, such**
21 **proposal shall be rejected by the board of trustees.**

22 (2) For the purposes of this section, the Board of Public Utilities
23 shall adopt standards and uniform values for interest rates and
24 escalation of labor, electricity, oil, and gas, as well as standards for
25 presenting these costs in a life cycle and net present value format,
26 standards for the presentation of obligations for carbon reductions,
27 and other standards that the board may determine necessary.

28 f. (1) When an energy services company is awarded an energy
29 savings services contract, it shall offer the board of trustees the
30 option to purchase, for an additional amount, an energy savings
31 guarantee. The guarantee, if accepted by a separate vote of the
32 board of trustees, shall insure that the energy savings resulting from
33 the energy savings improvement program, determined periodically
34 over the duration of the guarantee, will be sufficient to defray all
35 payments required to be made pursuant to the lease-purchase
36 agreement or energy savings obligation, and if the savings are not
37 sufficient, the energy services company will reimburse the board of
38 trustees for any additional amounts. Annual costs of a guarantee
39 shall not be financed or included as costs in an energy savings plan
40 but shall be fully disclosed in an energy savings plan.

41 (2) When a guaranteed energy savings option is purchased, the
42 contract shall require a qualified third party to verify the energy
43 savings at intervals established by the parties.

44 **(3) When an energy services company is awarded an energy**
45 **savings services contract to provide or perform goods or services**
46 **for the purpose of enabling a board of trustees to conserve energy**
47 **through energy efficiency equipment, including a “combined heat**

1 and power facility” as that term is defined pursuant to section 3 of
2 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
3 shall extend for a term of up to 15 years for energy efficiency
4 projects, and for up to 20 years for a combined heat and power
5 facility after construction completion. If a board of trustees shall
6 elect to contract with an energy services company for an energy
7 savings guarantee in connection with a contract awarded pursuant to
8 this section, such guarantee may extend for a term of up to 15 years
9 for energy efficiency projects, or up to 20 years for a combined heat
10 and power facility after construction completion.

11 g. As used in this section:

12 "direct digital control systems" means the devices and
13 computerized control equipment that contain software and computer
14 interfaces that perform the logic that control a building's heating,
15 ventilating, and air conditioning system. Direct digital controls
16 shall be open protocol format and shall meet the interoperability
17 guidelines established by the American Society of Heating,
18 Refrigerating and Air-Conditioning Engineers;

19 "educational facility" means a structure suitable for use as a
20 dormitory, dining hall, student union, administrative building,
21 academic building, library, laboratory, research facility, classroom,
22 athletic facility, health care facility, teaching hospital, and parking,
23 maintenance, storage or utility facility or energy conservation
24 measures and other structures or facilities related thereto or required
25 or useful for the instruction of students or the conducting of
26 research or the operation of an institution for higher education, and
27 public libraries, and the necessary and usual attendant and related
28 facilities and equipment, but shall not include any facility used or to
29 be used for sectarian instruction or as a place for religious worship;

30 "energy conservation measure" means an improvement that
31 results in reduced energy use, including, but not limited to,
32 installation of energy efficient equipment; demand response
33 equipment; combined heat and power systems; facilities for the
34 production of renewable energy; water conservation measures,
35 fixtures or facilities; building envelope improvements that are part
36 of an energy savings improvement program; and related control
37 systems for each of the foregoing;

38 "energy related capital improvement" means a capital
39 improvement that uses energy but does not result in a reduction of
40 energy use;

41 "energy saving obligation" means a bond, note or other
42 agreement evidencing the obligation to repay borrowed funds
43 incurred in order to finance energy saving improvements;

44 "energy savings" means a measured reduction in fuel, energy,
45 operating or maintenance costs resulting from the implementation
46 of one or more energy conservation measures services when
47 compared with an established baseline of previous fuel, energy,

1 operating or maintenance costs, including, but not limited to, future
2 capital replacement expenditures avoided as a result of equipment
3 installed or services performed as part of an energy savings plan;

4 "energy savings improvement program" means an initiative of a
5 public institution of higher education to implement energy
6 conservation measures in existing facilities, provided that the value
7 of the energy savings resulting from the program will be sufficient
8 to cover the cost of the program's energy conservation measures;

9 "energy savings plan" means the document that describes the
10 actions to be taken to implement the energy savings improvement
11 program;

12 "energy savings services contract" means a contract with an
13 energy savings company to develop an energy savings plan, prepare
14 bid specifications, manage the performance, provision,
15 construction, and installation of energy conservation measures by
16 subcontractors, to offer a guarantee of energy savings derived from
17 the implementation of an energy savings plan, and may include a
18 provision to manage the bidding process;

19 "energy services company" means a commercial entity that is
20 qualified to develop and implement an energy savings plan in
21 accordance with the provisions of this section;

22 "public works activities" means any work subject to the
23 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

24 "water conservation measure" means an alteration to a facility or
25 equipment that reduces water consumption, maximizes the
26 efficiency of water use, or reduces water loss.

27 h. (1) The State Treasurer and the Board of Public Utilities
28 may take such action as is deemed necessary and consistent with the
29 intent of this section to implement its provisions.

30 (2) The State Treasurer and the Board of Public Utilities may
31 adopt implementation guidelines or directives, and adopt such
32 administrative rules, pursuant to the "Administrative Procedure
33 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
34 implementation of those agencies' respective responsibilities under
35 this section, except that notwithstanding any provision of P.L.1968,
36 c.410 (C.52:14B-1 et seq.) to the contrary, the State Treasurer and
37 the Board of Public Utilities may adopt, immediately upon filing
38 with the Office of Administrative Law, such rules and regulations
39 as deemed necessary to implement the provisions of this act which
40 shall be effective for a period not to exceed 12 months and shall
41 thereafter be amended, adopted or re-adopted in accordance with
42 the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

43 (cf: P.L.2009, c.4, s.4)

44

45 3. Section 6 of P.L.2009, c.4 (C.40A:11-4.6) is amended to
46 read as follows:

1 6. a. (1) A contracting unit, as defined in P.L.1971, c.198
2 (C.40A:11-1 et seq.), may implement an energy savings
3 improvement program in the manner provided by this section
4 whenever it determines that the savings generated from reduced
5 energy use from the program will be sufficient to cover the cost of
6 the program's energy conservation measures as set forth in an
7 energy savings plan. Under such a program, a contracting unit may
8 enter into an energy savings services contract with an energy
9 services company to implement the program or the contracting unit
10 may authorize separate contracts to implement the program. The
11 provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) shall apply to
12 any contracts awarded pursuant to this section to the extent that the
13 provisions of such law are not inconsistent with any provision of
14 this section.

15 (2) A contracting unit facility alteration required to properly
16 implement other energy efficiency or energy conservation
17 measures, or both, may be included as part of an energy savings
18 services contract, in which case, notwithstanding any other
19 provision of law, rule, regulation, or order to the contrary, the
20 facility alteration may be undertaken or supervised by the energy
21 services company performing the energy savings services contract
22 if:

23 (a) the total cost of the improvement does not exceed 15 percent
24 of the total cost of the work to be performed under the energy
25 savings services contract; and

26 (b) (i) the improvement is necessary to conform to a law, rule,
27 or regulation, or order, or (ii) an analysis within an approved
28 proposal, or the contracting unit, at the time of the award of the
29 proposal, demonstrates that there is an economic advantage to the
30 contracting unit implementing the improvement as part of the
31 energy savings services contract, and the savings rationale for the
32 improvement is documented and supported by reasonable
33 justification.

34 b. (1) To be eligible to enter into an energy savings services
35 contract, an energy services company shall be a commercial entity
36 that is qualified to provide energy savings services in accordance
37 with the provisions of this section. A contracting unit may
38 determine to enter into an energy savings services contract either
39 through public advertising for bids and the receipt of bids therefor
40 or through competitive contracting in lieu of public bidding in the
41 manner provided by sections 1 through 5 of P.L.1999, c.440
42 (C.40A:11-4.1 et seq.).

43 (2) (a) Public works activities performed under an energy
44 savings improvement program shall be subject to all requirements
45 regarding public bidding, bid security, performance guarantees,
46 insurance and other public contracting requirements that are
47 applicable to public works contracts, to the extent not inconsistent

1 with this section. A general contractor, energy services company
2 serving as general contractor, or any subcontractor hired for the
3 furnishing of plumbing and gas fitting and all kindred work, and of
4 steam and hot water heating and ventilating apparatus, steam power
5 plants and kindred work, and electrical work, structural steel and
6 ornamental iron work, shall be classified by the Division of
7 Property Management and Construction in the Department of the
8 Treasury in order to perform public works activities under an
9 energy savings improvement program.

10 (b) Individuals or organizations performing energy audits,
11 acting as commissioning agents, or conducting verification of
12 energy savings plans, implementation of energy conservation
13 measures, or verifying guarantees shall be prequalified by the
14 Division of Property Management and Construction in the
15 Department of the Treasury to perform their work under an energy
16 savings improvement program.

17 (3) (a) An energy services company may be designated as the
18 general contractor for improvements to be made pursuant to an
19 energy savings plan, provided that the hiring of subcontractors that
20 are required to be classified pursuant to subparagraph (a) of
21 paragraph (2) of this subsection shall be performed in accordance
22 with the procedures and requirements set forth pursuant to the
23 public bidding requirements of the contracting unit. A contract
24 with an energy savings company shall include, but not be limited to:
25 preparation of an energy savings plan; the responsibilities of the
26 parties for project schedules, installations, performance and quality,
27 payment of subcontractors, project completion, commissioning,
28 savings implementation; a requirement that the savings to be
29 achieved by energy conservation measures be verified upon
30 commissioning of the improvements; allocation of State and federal
31 rebates and tax credits; and any other provisions deemed necessary
32 by the parties.

33 (b) All workers performing public works activities for
34 subcontractors awarded contracts by an energy services company
35 pursuant to this section shall be paid prevailing wages in
36 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,
37 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with
38 the provisions of "The Public Works Contractor Registration Act,"
39 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately
40 classified as contractors by the Division of Property Management
41 and Construction shall be eligible to be awarded a contract as a
42 subcontractor of an energy services company under this section for
43 performing public works activities pursuant to regulations adopted
44 by the Division of Property Management and Construction.

45 (c) In order to expedite communications with an energy services
46 company and facilitate the implementation of an energy savings
47 improvement program, a contracting unit may designate or appoint

1 an employee of the contracting unit with decision-making authority
2 to coordinate with the energy services company and to address
3 issues associated with the implementation of an energy savings
4 improvement program as they arise, provided that any decision
5 requiring a change order shall be made only upon the approval of
6 the contracting unit.

7 (4) Except as provided in paragraph (5) of this subsection, a
8 subsidiary or wholly-owned or partially-owned affiliate of the
9 energy services company shall not be an eligible contractor or
10 subcontractor under an energy savings services contract.

11 (5) When the energy services company is the manufacturer of
12 direct digital control systems and contracts with the contracting unit
13 to provide a guaranteed energy savings option pursuant to
14 subsection f. of this section, the specification of such direct digital
15 control systems may be treated as proprietary goods and if so
16 treated, the bid specification shall set forth an allowance price for
17 its supply by the energy services company which shall be used by
18 all bidders in the public bidding process. Direct digital controls
19 shall be open protocol format and shall meet the interoperability
20 guidelines established by the American Society of Heating,
21 Refrigerating and Air-Conditioning Engineers. Each contract to be
22 entered into pursuant to this section between a contracting unit and
23 an energy services company that is the manufacturer of direct
24 digital control systems where such direct digital control systems are
25 treated as proprietary goods as part of the contract, shall first be
26 reviewed and approved by the Board of Public Utilities for the
27 purpose of affirming the reasonableness of such allowance price. If
28 the board does not disapprove of the contract within 14 days of
29 receipt thereof, the contract shall be deemed approved.

30 c. An energy savings improvement program may be financed
31 through a lease-purchase agreement or through the issuance of
32 energy savings obligations pursuant to this subsection.

33 (1) An energy savings improvement program may be financed
34 through a lease-purchase agreement between a contracting unit and
35 an energy services company or other public or private entity. Under
36 a lease-purchase agreement, ownership of the energy savings
37 equipment or improved facilities shall pass to the contracting unit
38 when all lease payments have been made. Notwithstanding the
39 provisions of any other law to the contrary, the duration of such a
40 lease-purchase agreement shall not exceed 15 years, except that the
41 duration of a lease purchase agreement for a combined heat and
42 power or cogeneration project shall not exceed 20 years. For the
43 purposes of this paragraph, the duration of the repayment term of a
44 lease-purchase agreement shall commence on the date upon which
45 construction and installation of the energy savings equipment,
46 “combined heat and power facility” or “cogeneration facility,” as
47 those terms are defined pursuant to section 3 of P.L.1999, c.23

1 (C.48:3-51), or other energy conservation measures undertaken
2 pursuant to the energy savings plan, have been completed.

3 (2) Any lease-purchase agreement entered into pursuant to this
4 subsection, may contain: a clause making it subject to the
5 availability and appropriation annually of sufficient funds as may
6 be required to meet the extended obligation; and a non-substitution
7 clause maintaining that if the agreement is terminated for non-
8 appropriation, the contracting unit may not replace the leased
9 equipment or facilities with equipment or facilities that perform the
10 same or similar functions.

11 (3) A contracting unit may arrange for incurring energy savings
12 obligations to finance an energy savings improvement program.
13 Energy savings obligations may be funded through appropriations
14 for utility services in the annual budget of the contracting unit and
15 may be issued as refunding bonds pursuant to N.J.S.40A:2-52 et
16 seq., including the issuance of bond anticipation notes as may be
17 necessary, provided that all such bonds and notes mature within the
18 periods authorized for such energy savings obligations. Energy
19 savings obligations may be issued either through the contracting
20 unit or another public agency authorized to undertake financing on
21 behalf of the unit.

22 (4) Lease-purchase agreements and energy savings obligations
23 shall not be used to finance maintenance, guarantees, or verification
24 of guarantees of energy conservation measures. Lease-purchase
25 agreements and energy savings obligations may be used to finance
26 the cost of an energy audit or the cost of verification of energy
27 savings as part of adopting an energy savings plan.
28 Notwithstanding any law to the contrary, lease-purchase agreements
29 and energy savings certificates shall not be excepted from any
30 budget or tax levy limitation otherwise provided by law. Maturity
31 schedules of lease-purchase agreements or energy savings
32 obligations **[must]** shall not exceed the estimated average useful
33 life of the **[individual]** energy conservation measures.

34 d. (1) The energy audit component of an energy savings
35 improvement program shall be conducted either by the contracting
36 unit or by a qualified independent third party retained by the
37 governing body for that purpose. It shall not be conducted by an
38 energy services company subsequently hired to develop an energy
39 savings improvement program. The energy audit shall identify the
40 current energy use of any or all facilities and energy conservation
41 measures that can be implemented in which the energy savings and
42 energy efficiency could be realized and maximized.

43 (2) To implement an energy savings improvement program, a
44 contracting unit shall develop a plan that consists of one or more
45 energy conservation measures. The plan shall:

46 (a) contain the results of an energy audit;

- 1 (b) describe the energy conservation measures that will
2 comprise the program;
- 3 (c) estimate greenhouse gas reductions resulting from those
4 energy savings;
- 5 (d) identify all design and compliance issues that require the
6 professional services of an architect or engineer and identify who
7 will provide these services;
- 8 (e) include an assessment of risks involved in the successful
9 implementation of the plan;
- 10 (f) identify the eligibility for, and costs and revenues associated
11 with the PJM Independent System Operator for demand response
12 and curtailable service activities;
- 13 (g) include schedules showing calculations of all costs of
14 implementing the proposed energy conservation measures and the
15 projected energy savings;
- 16 (h) identify maintenance requirements necessary to ensure
17 continued energy savings, and describe how they will be fulfilled;
18 and
- 19 (i) if developed by an energy services company, a description
20 of, and cost estimates of an energy savings guarantee.
- 21 All professionals providing engineering services under the plan
22 shall have errors and omissions insurance.
- 23 (3) Prior to the adoption of the plan, the contracting unit shall
24 contract with a qualified third party to verify the projected energy
25 savings to be realized from the proposed program have been
26 calculated as required by subsection e. of this section.
- 27 (4) Upon adoption, the plan shall be submitted to the Board of
28 Public Utilities, which shall post it on the Internet on a public
29 webpage maintained for such purpose. If the contracting unit
30 maintains its own website, it shall also post the plan on that site.
31 The board may require periodic reporting concerning the
32 implementation of the plan.
- 33 (5) Verification by a qualified third party shall be required when
34 energy conservation measures are placed in service or
35 commissioned, to ensure the savings projected in the energy savings
36 plan shall be achieved.
- 37 (6) Energy-related capital improvements that do not reduce
38 energy usage may be included in an energy savings improvement
39 program but the cost of such improvements shall not be financed as
40 a lease-purchase or through energy savings obligations authorized
41 by subsection c. of this section. Nothing herein is intended to
42 prevent financing of such capital improvements through otherwise
43 authorized means.
- 44 (7) A qualified third party when required by this subsection may
45 include an employee of the contracting unit who is properly trained
46 and qualified to perform such work.

1 e. (1) (a) The calculation of energy savings for the purposes of
2 determining that the energy savings resulting from the program will
3 be sufficient to cover the cost of the program's energy conservation
4 measures, as provided in subsection a. of this section, shall involve
5 determination of the dollar amount saved through implementation
6 of an energy savings improvement program using the guidelines of
7 the International Performance Measurement and Verification
8 Protocol or other protocols approved by the Board of Public
9 Utilities and standards adopted by the Board of Public Utilities
10 pursuant to this section. The calculation shall include all applicable
11 State and federal rebates and tax credits, but shall not include the
12 cost of an energy audit and the cost of verifying energy savings.
13 The calculation shall state which party has made application for
14 rebates and credits and how these applications translate into energy
15 savings.

16 (b) During the procurement phase of an energy savings
17 improvement program, an energy service company's proposal
18 submitted in response to a request for proposal shall not include a
19 savings calculation that assumes, includes, or references capital cost
20 avoidance savings, the current or projected value of a "solar
21 renewable energy certificate," as defined pursuant to section 3 of
22 P.L.1999, c.23 (C.48:3-51), or other environmental or similar
23 attributes or benefits of whatever nature that derive from the
24 generation of renewable energy, and any costs or discounts
25 associated with maintenance services, an energy savings guarantee,
26 or third party verification of energy conservation measures and
27 energy savings. The calculation of energy savings shall utilize and
28 specifically reference as a benchmark the actual demand and energy
29 components of the public utility tariff rate applicable to the
30 contracting unit then in effect, and not a blended rate that
31 aggregates, combines, or restates in any manner the distinct demand
32 and energy components of the public utility tariff rate into a single
33 combined or restated tariff rate. If an energy services company
34 submits a proposal to a contracting unit that does not calculate
35 projected energy savings in the manner required by this subsection,
36 such proposal shall be rejected by the contracting unit.

37 (2) For the purposes of this section, the Board of Public Utilities
38 shall adopt standards and uniform values for interest rates and
39 escalation of labor, electricity, oil, and gas, as well as standards for
40 presenting these costs in a life cycle and net present value format,
41 standards for the presentation of obligations for carbon reductions,
42 and other standards that the board may determine necessary.

43 f. (1) When an energy services company is awarded an energy
44 savings services contract, it shall offer the contracting unit the
45 option to purchase, for an additional amount, an energy savings
46 guarantee. The guarantee, if accepted by a separate vote of the
47 governing body of the contracting unit, shall insure that the energy

1 savings resulting from the energy savings improvement program,
2 determined periodically over the duration of the guarantee, will be
3 sufficient to defray all payments required to be made pursuant to
4 the lease-purchase agreement or energy savings obligation, and if
5 the savings are not sufficient, the energy services company will
6 reimburse the contracting unit for any additional amounts. Annual
7 costs of a guarantee shall not be financed or included as costs in an
8 energy savings plan but shall be fully disclosed in an energy
9 savings plan.

10 (2) When a guaranteed energy savings option is purchased, the
11 contract shall require a qualified third party to verify the energy
12 savings at intervals established by the parties.

13 (3) When an energy services company is awarded an energy
14 savings services contract to provide or perform goods or services
15 for the purpose of enabling a contracting unit to conserve energy
16 through energy efficiency equipment, including a “combined heat
17 and power facility” as that term is defined pursuant to section 3 of
18 P.L.1999, c.23 (C48:3-51), on a self-funded basis, such contract
19 shall extend for a term of up to 15 years for energy efficiency
20 projects, and for up to 20 years for a combined heat and power
21 facility after construction completion. If a contracting unit shall
22 elect to contract with an energy services company for an energy
23 savings guarantee in connection with a contract awarded pursuant to
24 this section, such guarantee may extend for a term of up to 15 years
25 for energy efficiency projects, or up to 20 years for a combined heat
26 and power facility after construction completion.

27 g. As used in this section:

28 "direct digital control systems" means the devices and
29 computerized control equipment that contain software and computer
30 interfaces that perform the logic that control a building's heating,
31 ventilating, and air conditioning system. Direct digital controls
32 shall be open protocol format and shall meet the interoperability
33 guidelines established by the American Society of Heating,
34 Refrigerating and Air-Conditioning Engineers;

35 "energy conservation measure" means an improvement that
36 results in reduced energy use, including, but not limited to,
37 installation of energy efficient equipment; demand response
38 equipment; combined heat and power systems; facilities for the
39 production of renewable energy; water conservation measures,
40 fixtures or facilities; building envelope improvements that are part
41 of an energy savings improvement program; and related control
42 systems for each of the foregoing;

43 "energy related capital improvement" means a capital
44 improvement that uses energy but does not result in a reduction of
45 energy use;

1 "energy saving obligation" means a bond, note or other
2 agreement evidencing the obligation to repay borrowed funds
3 incurred in order to finance energy saving improvements;

4 "energy savings" means a measured reduction in fuel, energy,
5 operating or maintenance costs resulting from the implementation
6 of one or more energy conservation measures services when
7 compared with an established baseline of previous fuel, energy,
8 operating or maintenance costs, including, but not limited to, future
9 capital replacement expenditures avoided as a result of equipment
10 installed or services performed as part of an energy savings plan;

11 "energy savings improvement program" means an initiative of a
12 contracting unit to implement energy conservation measures in
13 existing facilities, provided that the value of the energy savings
14 resulting from the program will be sufficient to cover the cost of the
15 program's energy conservation measures;

16 "energy savings plan" means the document that describes the
17 actions to be taken to implement the energy savings improvement
18 program;

19 "energy savings services contract" means a contract with an
20 energy savings company to develop an energy savings plan, prepare
21 bid specifications, manage the performance, provision,
22 construction, and installation of energy conservation measures by
23 subcontractors, to offer a guarantee of energy savings derived from
24 the implementation of an energy savings plan, and may include a
25 provision to manage the bidding process;

26 "energy services company" means a commercial entity that is
27 qualified to develop and implement an energy savings plan in
28 accordance with the provisions of this section;

29 "public works activities" means any work subject to the
30 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

31 "water conservation measure" means an alteration to a facility or
32 equipment that reduces water consumption, maximizes the
33 efficiency of water use, or reduces water loss.

34 h. (1) The Director of the Division of Local Government
35 Services in the Department of Community Affairs, the State
36 Treasurer, and the Board of Public Utilities may take such action as
37 is deemed necessary and consistent with the intent of this section to
38 implement its provisions.

39 (2) The Director of the Division of Local Government Services
40 in the Department of Community Affairs, the State Treasurer, and
41 the Board of Public Utilities may adopt implementation guidelines
42 or directives, and adopt such administrative rules, pursuant to the
43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
44 seq.), as are necessary for the implementation of those agencies'
45 respective responsibilities under this section, except that
46 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et
47 seq.) to the contrary, the Director of the Division of Local

1 Government Services in the Department of Community Affairs, the
2 State Treasurer, and the Board of Public Utilities may adopt,
3 immediately upon filing with the Office of Administrative Law,
4 such rules and regulations as deemed necessary to implement the
5 provisions of this act which shall be effective for a period not to
6 exceed 12 months and shall thereafter be amended, adopted or re-
7 adopted in accordance with the provisions of P.L.1968, c.410
8 (C.52:14B-1 et seq.).
9 (cf: P.L.2009, c.4, s.6)

10
11 4. Section 9 of P.L.2009, c.4 (C.52:34-25) is amended to read
12 as follows:

13 9. a. (1) A State contracting agency, as defined in this section,
14 may implement an energy savings improvement program in the
15 manner provided by this section whenever it determines that the
16 savings generated from reduced energy use from the program will
17 be sufficient to cover the cost of the program's energy conservation
18 measures as set forth in an energy savings plan. Under such a
19 program, a contracting agency may enter into an energy savings
20 services contract with an energy services company to implement the
21 program or the contracting agency may authorize separate contracts
22 to implement the program. The provisions of Title 52 of the
23 Revised Statutes shall apply to any contracts awarded pursuant to
24 this section to the extent that the provisions of such law are not
25 inconsistent with any provision of this section.

26 (2) A State contracting agency facility alteration required to
27 properly implement other energy efficiency or energy conservation
28 measures, or both, may be included as part of an energy savings
29 services contract, in which case, notwithstanding any other
30 provision of law, rule, regulation, or order to the contrary, the
31 facility alteration may be undertaken or supervised by the energy
32 services company performing the energy savings services contract
33 if:

34 (a) the total cost of the improvement does not exceed 15 percent
35 of the total cost of the work to be performed under the energy
36 savings services contract; and

37 (b) (i) the improvement is necessary to conform to a law, rule,
38 or regulation, or order, or (ii) an analysis within an approved
39 proposal, or the State contracting agency, at the time of the award
40 of the proposal, demonstrates that there is an economic advantage to
41 the State contracting agency implementing the improvement as part
42 of the energy savings services contract, and the savings rationale for
43 the improvement is documented and supported by reasonable
44 justification.

45 b. (1) To be eligible to enter into an energy savings services
46 contract, an energy services company shall be a commercial entity
47 that is qualified to provide energy savings services in accordance

1 with the provisions of this section. A State contracting agency may
2 determine to enter into an energy savings services contract through
3 public advertising for bids and the receipt of bids therefor.

4 (2) (a) Public works activities performed under an energy
5 savings improvement program shall be subject to all requirements
6 regarding public bidding, bid security, performance guarantees,
7 insurance and other public contracting requirements that are
8 applicable to public works contracts, to the extent not inconsistent
9 with this section. A general contractor, energy services company
10 serving as general contractor, or any subcontractor hired for the
11 furnishing of plumbing and gas fitting and all kindred work, and of
12 steam and hot water heating and ventilating apparatus, steam power
13 plants and kindred work, and electrical work, structural steel and
14 ornamental iron work, shall be classified by the Division of
15 Property Management and Construction in the Department of the
16 Treasury in order to perform public works activities under an
17 energy savings improvement program. A general contractor, energy
18 services company serving as general contractor, or any
19 subcontractor hired for the furnishing of electrical work shall use
20 only electrical contractors licensed by the State, pursuant to
21 P.L.1962, c.162 (C.45:5A-1 et seq.), to perform electrical work
22 under an energy savings improvement program. Electrical work
23 shall include, but not be limited to, the wiring of temperature and
24 energy management controls, the installation of control systems,
25 and the retrofitting of any lighting equipment.

26 (b) Individuals or organizations performing energy audits,
27 acting as commissioning agents, or conducting verification of
28 energy savings plans, implementation of energy conservation
29 measures, or verifying guarantees shall be prequalified by the
30 Division of Property Management and Construction in the
31 Department of the Treasury to perform their work under an energy
32 savings improvement program.

33 (3) (a) An energy services company may be designated as the
34 general contractor for improvements to be made pursuant to an
35 energy savings plan, provided that the hiring of subcontractors that
36 are required to be classified pursuant to subparagraph (a) of
37 paragraph (2) of this subsection shall be performed in accordance
38 with the procedures and requirements set forth pursuant to **[the**
39 **public bidding requirements of the State contracting agency]**
40 subparagraph (b) of this paragraph. A contract with an energy
41 savings company shall include, but not be limited to: preparation of
42 an energy savings plan, the responsibilities of the parties for project
43 schedules, installations, performance and quality, payment of
44 subcontractors, project completion, commissioning, savings
45 implementation; a requirement that the savings to be achieved by
46 energy conservation measures be verified upon commissioning of

1 the improvements; allocation of State and federal rebates and tax
2 credits; and any other provisions deemed necessary by the parties.

3 (b) Notwithstanding any other law or regulation to the contrary,
4 an energy services company shall select, in accordance with the
5 procedures and requirements set forth pursuant to the public bidding
6 process of the State contracting agency, only those subcontractors
7 that have been pre-qualified by the Division of Property
8 Management and Construction as eligible to submit bids. In pre-
9 qualifying subcontractors for eligibility, the division shall create
10 one or more pools of subcontractors based on the value and
11 complexity of the work to be undertaken under an energy savings
12 improvement program. The pre-qualification pools shall include
13 subcontractors having the following qualifications:

14 (i) the financial means and ability to complete the required work;

15 (ii) the experience, capability, and skills necessary to complete
16 the work required of energy savings improvement program projects;
17 and

18 (iii) a record of experience conducting similar work in a timely
19 fashion.

20 Each subcontractor chosen by the energy services company shall
21 certify that all employees have completed a registered
22 apprenticeship program that provided each trainee with combined
23 classroom and on-the-job training under the direct and close
24 supervision of a highly skilled worker in an occupation recognized
25 as an apprenticeable trade, registered by the Office of
26 Apprenticeship of the United States Department of Labor and
27 meeting the standards established by the office, or registered by a
28 State apprenticeship agency recognized by the office. The energy
29 services company shall then select from the eligible pools of
30 prequalified subcontractors. All workers performing public works
31 activities for subcontractors awarded contracts by an energy
32 services company pursuant to this section shall be paid prevailing
33 wages in accordance with the "New Jersey Prevailing Wage Act,"
34 P.L.1963, c.150 (C.34:11-56.25 et seq.). All subcontractors shall
35 comply with the provisions of "The Public Works Contractor
36 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.). Only
37 firms appropriately classified as contractors by the Division of
38 Property Management and Construction shall be eligible to be
39 awarded a contract as a subcontractor of an energy services
40 company under this section for performing public works activities
41 pursuant to regulations adopted by the Division of Property
42 Management and Construction.

43 (c) In order to expedite communications with an energy services
44 company and facilitate the implementation of an energy savings
45 improvement program, a State contracting agency may designate or
46 appoint an employee of the State contracting agency with decision-
47 making authority to coordinate with the energy services company

1 and to address issues associated with the implementation of an
2 energy savings improvement program as they arise, provided that
3 any decision requiring a change order shall be made only upon the
4 approval of the State contracting agency.

5 (4) **【**Except as provided in paragraph (5) of this subsection, a**】**
6 A subsidiary or wholly-owned or partially-owned affiliate of the
7 energy services company shall not be an eligible contractor or
8 subcontractor under an energy savings services contract.

9 **【**(5)When the energy services company is the manufacturer of
10 direct digital control systems and contracts with the contracting
11 agency to provide a guaranteed energy savings option pursuant to
12 subsection f. of this section, the specification of such direct digital
13 control systems may be treated as proprietary goods and if so
14 treated, the bid specification shall set forth an allowance price for
15 its supply by the energy services company which shall be used by
16 all bidders in the public bidding process. Direct digital controls
17 shall be open protocol format and shall meet the interoperability
18 guidelines established by the American Society of Heating,
19 Refrigerating and Air-Conditioning Engineers.**】**

20 c. In addition to existing authorization of a State agency to
21 enter into lease-purchase agreements or to issue obligations to
22 finance the costs of an energy savings improvement program, a
23 contracting agency is hereby authorized to finance the costs of an
24 energy savings improvement program by entering into a lease
25 purchase agreement. Any financing mechanism shall be
26 administered in a manner consistent with this subsection insofar as
27 it does not conflict with the provisions of other law that applies to
28 the contracting agency.

29 (1) An energy savings improvement program may be financed
30 through a lease-purchase agreement between a State contracting
31 agency and an energy services company or other public or private
32 entity. Under a lease-purchase agreement, ownership of the energy
33 savings equipment or improved facilities shall pass to the
34 contracting agency or the client agency responsible for the facility
35 when all lease payments have been made. Notwithstanding the
36 provisions of any other law to the contrary, the duration of such a
37 lease-purchase agreement shall not exceed 15 years, except that the
38 duration of a lease purchase agreement for a combined heat and
39 power or cogeneration project shall not exceed 20 years. For the
40 purposes of this paragraph, the duration of the repayment term of a
41 lease-purchase agreement shall commence on the date upon which
42 construction and installation of the energy savings equipment,
43 “combined heat and power facility” or “cogeneration facility,” as
44 those terms are defined pursuant to section 3 of P.L.1999, c.23
45 (C.48:3-51), or other energy conservation measures undertaken
46 pursuant to the energy savings plan, have been completed.

1 (2) Lease-purchase agreements and energy savings obligations
2 shall not be used to finance maintenance, guarantees, or verification
3 of guarantees of energy conservation measures. Lease-purchase
4 agreements may be used to finance the cost of an energy audit or
5 the cost of verification of energy savings as part of adopting an
6 energy savings plan. Maturity schedules of lease-purchase
7 agreements **[must]** shall not exceed the estimated average useful
8 life of the **[individual]** energy conservation measures.

9 d. (1) The energy audit component of an energy savings
10 improvement program shall be conducted either by the contracting
11 agency or by a qualified independent third party retained by the
12 contracting agency for that purpose. It shall not be conducted by an
13 energy services company subsequently hired to develop an energy
14 savings improvement program. The energy audit shall identify the
15 current energy use of any or all facilities and energy conservation
16 measures that can be implemented in which the energy savings and
17 energy efficiency could be realized and maximized.

18 (2) To implement an energy savings improvement program, a
19 contracting agency shall develop an energy savings plan that
20 consists of one or more energy conservation measures. The plan
21 shall:

- 22 (a) contain the results of an energy audit;
- 23 (b) describe the energy conservation measures that will
24 comprise the program;
- 25 (c) estimate greenhouse gas reductions resulting from those
26 energy savings;
- 27 (d) identify all design and compliance issues that require the
28 professional services of an architect or engineer and identify who
29 will provide these services;
- 30 (e) include an assessment of risks involved in the successful
31 implementation of the plan;
- 32 (f) identify the eligibility for, and costs and revenues associated
33 with the PJM Independent System Operator for demand response
34 and curtailable service activities;
- 35 (g) include schedules showing calculations of all costs of
36 implementing the proposed energy conservation measures and the
37 projected energy savings;
- 38 (h) identify maintenance requirements necessary to ensure
39 continued energy savings, and describe how they will be fulfilled;
40 and
- 41 (i) if developed by an energy services company, a description
42 of, and cost estimates of an energy savings guarantee.

43 All professionals providing engineering services under the plan
44 shall have errors and omissions insurance.

45 (3) Prior to the adoption of the plan, the contracting agency
46 shall contract with a qualified third party to verify the projected

1 energy savings to be realized from the proposed program have been
2 calculated as required by subsection e. of this section.

3 (4) Upon adoption, the plan shall be submitted to the Board of
4 Public Utilities, which shall post it on the Internet on a public
5 webpage maintained for such purpose. If the contracting agency
6 maintains its own website, it shall also post the plan on that site.
7 The Board of Public Utilities may require periodic reporting
8 concerning the implementation of the plan.

9 (5) Verification by a qualified third party shall be required when
10 energy conservation measures are placed in service or
11 commissioned, to ensure the savings projected in the energy savings
12 plan shall be achieved.

13 (6) Energy-related capital improvements that do not reduce
14 energy usage may be included in an energy savings improvement
15 program but the cost of such improvements shall not be financed as
16 a lease-purchase or through energy savings obligations authorized
17 by subsection c. of this section. Nothing herein is intended to
18 prevent financing of such capital improvements through otherwise
19 authorized means.

20 (7) A qualified third party when required by this subsection may
21 include an employee of the State contracting agency who is
22 properly trained and qualified to perform such work.

23 e. (1) (a) The calculation of energy savings for the purposes of
24 determining that the energy savings resulting from the program will
25 be sufficient to cover the cost of the program's energy conservation
26 measures, as provided in subsection a. of this section, shall involve
27 determination of the dollar amount saved through implementation
28 of an energy savings improvement program using the guidelines of
29 the International Performance Measurement and Verification
30 Protocol or other protocols approved by the Board of Public
31 Utilities and standards adopted by the Board of Public Utilities
32 pursuant to this section. The calculation shall include all applicable
33 State and federal rebates and tax credits, but shall not include the
34 cost of an energy audit and the cost of verifying energy savings.
35 The calculation shall state which party has made application for
36 rebates and credits and how these applications translate into energy
37 savings.

38 (b) During the procurement phase of an energy savings
39 improvement program, an energy service company's proposal
40 submitted in response to a request for proposal shall not include a
41 savings calculation that assumes, includes, or references capital cost
42 avoidance savings, the current or projected value of a "solar
43 renewable energy certificate," as defined pursuant to section 3 of
44 P.L.1999, c.23 (C.48:3-51), or other environmental or similar
45 attributes or benefits of whatever nature that derive from the
46 generation of renewable energy, and any costs or discounts
47 associated with maintenance services, an energy savings guarantee.

1 or third party verification of energy conservation measures and
2 energy savings. The calculation of energy savings shall utilize and
3 specifically reference as a benchmark the actual demand and energy
4 components of the public utility tariff rate applicable to the State
5 contracting agency then in effect, and not a blended rate that
6 aggregates, combines, or restates in any manner the distinct demand
7 and energy components of the public utility tariff rate into a single
8 combined or restated tariff rate. If an energy services company
9 submits a proposal to a State contracting agency that does not
10 calculate projected energy savings in the manner required by this
11 subsection, such proposal shall be rejected by the State contracting
12 agency.

13 (2) For the purposes of this section, the Board of Public Utilities
14 shall adopt standards and uniform values for interest rates and
15 escalation of labor, electricity, oil, and gas, as well as standards for
16 presenting these costs in a life cycle and net present value format,
17 standards for the presentation of obligations for carbon reductions,
18 and other standards that the board may determine necessary.

19 f. (1) When an energy services company is awarded an energy
20 savings services contract, it shall offer the contracting agency the
21 option to purchase, for an additional amount, an energy savings
22 guarantee. The guarantee, if accepted by the contracting agency,
23 shall insure that the energy savings resulting from the energy
24 savings improvement program, determined periodically over the
25 duration of the guarantee, will be sufficient to defray all payments
26 required to be made pursuant to the lease-purchase agreement or
27 energy savings obligation, and if the savings are not sufficient, the
28 energy services company will reimburse the contracting agency for
29 any additional amounts. Annual costs of a guarantee shall not be
30 financed or included as costs in an energy savings plan but shall be
31 fully disclosed in an energy savings plan.

32 (2) When a guaranteed energy savings option is purchased, the
33 contract shall require a qualified third party to verify the energy
34 savings at intervals established by the parties.

35 (3) When an energy services company is awarded an energy
36 savings services contract to provide or perform goods or services
37 for the purpose of enabling a State contracting agency to conserve
38 energy through energy efficiency equipment, including a “combined
39 heat and power facility” as that term is defined pursuant to section 3
40 of P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
41 shall extend for a term of up to 15 years for energy efficiency
42 projects, and for up to 20 years for a combined heat and power
43 facility after construction completion. If a State contracting agency
44 shall elect to contract with an energy services company for an
45 energy savings guarantee in connection with a contract awarded
46 pursuant to this section, such guarantee may extend for a term of up

- 1 to 15 years for energy efficiency projects, or up to 20 years for a
2 combined heat and power facility after construction completion.
- 3 g. As used in this section:
- 4 **["direct digital control systems" means the devices and**
5 **computerized control equipment that contain software and computer**
6 **interfaces that perform the logic that control a building's heating,**
7 **ventilating, and air conditioning system. Direct digital controls**
8 **shall be open protocol format and shall meet the interoperability**
9 **guidelines established by the American Society of Heating,**
10 **Refrigerating and Air-Conditioning Engineers;]**
- 11 "energy conservation measure" means an improvement that
12 results in reduced energy use, including, but not limited to,
13 installation of energy efficient equipment; demand response
14 equipment; combined heat and power systems; facilities for the
15 production of renewable energy; water conservation measures,
16 fixtures or facilities; building envelope improvements that are part
17 of an energy savings improvement program; and related control
18 systems for each of the foregoing;
- 19 "energy related capital improvement" means a capital
20 improvement that uses energy but does not result in a reduction of
21 energy use;
- 22 "energy savings" means a measured reduction in fuel, energy,
23 operating or maintenance costs resulting from the implementation
24 of one or more energy conservation measures services when
25 compared with an established baseline of previous fuel, energy,
26 operating or maintenance costs, including, but not limited to, future
27 capital replacement expenditures avoided as a result of equipment
28 installed or services performed as part of an energy savings plan;
- 29 "energy savings improvement program" means an initiative of a
30 State contracting agency to implement energy conservation
31 measures in existing facilities, provided that the value of the energy
32 savings resulting from the program will be sufficient to cover the
33 cost of the program's energy conservation measures;
- 34 "energy savings plan" means the document that describes the
35 actions to be taken to implement the energy savings improvement
36 program;
- 37 "energy savings services contract" means a contract with an
38 energy savings company to develop an energy savings plan, prepare
39 bid specifications, manage the performance, provision,
40 construction, and installation of energy conservation measures by
41 subcontractors, to offer a guarantee of energy savings derived from
42 the implementation of an energy savings plan, and may include a
43 provision to manage the bidding process;
- 44 "energy services company" means a commercial entity that is
45 qualified to develop and implement an energy savings plan in
46 accordance with the provisions of this section;

1 "public works activities" means any work subject to the
2 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.);

3 "State contracting agency" or "contracting agency" means any of
4 the principal departments in the Executive Branch of State
5 Government, and any division, board, bureau, office, commission or
6 other instrumentality created by a principal department; and

7 "water conservation measure" means an alteration to a facility or
8 equipment that reduces water consumption, maximizes the
9 efficiency of water use, or reduces water loss.

10 h. (1) The State Treasurer and the Board of Public Utilities
11 may take such action as is deemed necessary and consistent with the
12 intent of this section to implement its provisions.

13 (2) The State Treasurer and the Board of Public Utilities may
14 adopt implementation guidelines or directives, and adopt such
15 administrative rules, pursuant to the "Administrative Procedure
16 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
17 implementation of those agencies' respective responsibilities under
18 this section, except that notwithstanding any provision of P.L.1968,
19 c.410 (C.52:14B-1 et seq.) to the contrary, the State Treasurer, and
20 the Board of Public Utilities may adopt, immediately upon filing
21 with the Office of Administrative Law, such rules and regulations
22 as deemed necessary to implement the provisions of this act which
23 shall be effective for a period not to exceed 12 months and shall
24 thereafter be amended, adopted or re-adopted in accordance with
25 the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

26 (cf: P.L.2009, c.4, s.9)

27
28 5. Section 10 of P.L.2009, c.4 (C.52:35A-1) is amended to read
29 as follows:

30 10. a. (1) A public agency, as defined in this section, may
31 implement an energy savings improvement program in the manner
32 provided by this section whenever it determines that the savings
33 generated from reduced energy use from the program will be
34 sufficient to cover the cost of the program's energy conservation
35 measures as set forth in an energy savings plan. Under such a
36 program, a public agency may enter into an energy savings services
37 contract with an energy services company to implement the
38 program or the public agency may authorize separate contracts to
39 implement the program. The provisions of any other law applicable
40 to a public agency shall apply to any contracts awarded pursuant to
41 this section to the extent that the provisions of such law are not
42 inconsistent with any provision of this section.

43 (2) A public agency facility alteration required to properly
44 implement other energy efficiency or energy conservation
45 measures, or both, may be included as part of an energy savings
46 services contract, in which case, notwithstanding any other
47 provision of law, rule, regulation, or order to the contrary, the

1 facility alteration may be undertaken or supervised by the energy
2 services company performing the energy savings services contract
3 if:

4 (a) the total cost of the improvement does not exceed 15 percent
5 of the total cost of the work to be performed under the energy
6 savings services contract; and

7 (b) (i) the improvement is necessary to conform to a law, rule,
8 or regulation, or order, or (ii) an analysis within an approved
9 proposal, or the public agency, at the time of the award of the
10 proposal, demonstrates that there is an economic advantage to the
11 public agency implementing the improvement as part of the energy
12 savings services contract, and the savings rationale for the
13 improvement is documented and supported by reasonable
14 justification.

15 b. (1) To be eligible to enter into an energy savings services
16 contract, an energy services company shall be a commercial entity
17 that is qualified to provide public agencies with energy savings
18 services in accordance with the provisions of this section. A public
19 agency may determine to enter into an energy savings services
20 contract which shall be awarded through a procedure that results in
21 the award of a contract to a vendor determined by the public agency
22 to be the most advantageous, price and other factors considered.

23 (2) (a) Public works activities performed under an energy
24 savings improvement program shall be subject to all requirements
25 regarding public bidding, bid security, performance guarantees,
26 insurance and other public contracting requirements that are
27 applicable to public works contracts, to the extent not inconsistent
28 with this section. A general contractor, energy services company
29 serving as general contractor, or any subcontractor hired for the
30 furnishing of plumbing and gas fitting and all kindred work, and of
31 steam and hot water heating and ventilating apparatus, steam power
32 plants and kindred work, and electrical work, structural steel and
33 ornamental iron work shall be classified by the Division of Property
34 Management and Construction in the Department of the Treasury in
35 order to perform public works activities under an energy savings
36 improvement program.

37 (b) Individuals or organizations performing energy audits,
38 acting as commissioning agents, or conducting verification of
39 energy savings plans, implementation of energy conservation
40 measures, or verifying guarantees shall be prequalified by the
41 Division of Property Management and Construction in the
42 Department of the Treasury to perform their work under an energy
43 savings improvement program.

44 (3) (a) An energy services company may be designated as the
45 general contractor for improvements to be made pursuant to an
46 energy savings plan, provided that the hiring of subcontractors that
47 are required to be classified pursuant to subparagraph (a) of

1 paragraph (2) of this subsection shall be performed in accordance
2 with the procedures and requirements set forth pursuant to the
3 public bidding requirements of the public agency. A contract with
4 an energy savings company shall include, but not be limited to:
5 preparation of an energy savings plan; the responsibilities of the
6 parties for project schedules, installations, performance and quality,
7 payment of subcontractors, project completion, commissioning,
8 savings implementation; a requirement that the savings to be
9 achieved by energy conservation measures be verified upon
10 commissioning of the improvements; allocation of State and federal
11 rebates and tax credits; and any other provisions deemed necessary
12 by the parties.

13 (b) All workers performing public works activities for
14 subcontractors awarded contracts by an energy services company
15 pursuant to this section shall be paid prevailing wages in
16 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,
17 c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with
18 the provisions of "The Public Works Contractor Registration Act,"
19 P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately
20 classified as contractors by the Division of Property Management
21 and Construction shall be eligible to be awarded a contract as a
22 subcontractor of an energy services company under this section for
23 performing public works activities pursuant to regulations adopted
24 by the Division of Property Management and Construction.

25 (c) In order to expedite communications with an energy services
26 company and facilitate the implementation of an energy savings
27 improvement program, a public agency may designate or appoint an
28 employee of the public agency with decision-making authority to
29 coordinate with the energy services company and to address issues
30 associated with the implementation of an energy savings
31 improvement program as they arise, provided that any decision
32 requiring a change order shall be made only upon the approval of
33 the public agency.

34 (4) Except as provided in paragraph (5) of this subsection, a
35 subsidiary or wholly-owned or partially-owned affiliate of the
36 energy services company shall not be an eligible contractor or
37 subcontractor under an energy savings services contract.

38 (5) When the energy services company is the manufacturer of
39 direct digital control systems and contracts with the public agency
40 to provide a guaranteed energy savings option pursuant to
41 subsection f. of this section, the specification of such direct digital
42 control systems may be treated as proprietary goods and if so
43 treated, the bid specification shall set forth an allowance price for
44 its supply by the energy services company which shall be used by
45 all bidders in the public bidding process. Direct digital controls
46 shall be open protocol format and shall meet the interoperability
47 guidelines established by the American Society of Heating,

1 Refrigerating and Air-Conditioning Engineers. Each contract to be
2 entered into pursuant to this section between a public agency and an
3 energy services company that is the manufacturer of direct digital
4 control systems where such direct digital control systems are treated
5 as proprietary goods as part of the contract, shall first be reviewed
6 and approved by the Board of Public Utilities for the purpose of
7 affirming the reasonableness of such allowance price. If the board
8 does not disapprove of the contract within 14 days of receipt
9 thereof, the contract shall be deemed approved.

10 c. In addition to existing authorization of a public agency to
11 enter into lease-purchase agreements or to issue obligations to
12 finance the costs of an energy savings improvement program, a
13 public agency is hereby authorized to finance the costs of an energy
14 savings improvement program by entering into a lease purchase
15 agreement or by issuing energy savings obligations pursuant to this
16 subsection. Any financing mechanism shall be administered in a
17 manner consistent with this subsection insofar as it does not conflict
18 with the provisions of other law that applies to the public agency.

19 (1) An energy savings improvement program may be financed
20 through a lease-purchase agreement between a public agency and an
21 energy services company or other public or private entity. Under a
22 lease-purchase agreement, ownership of the energy savings
23 equipment or improved facilities shall pass to the public agency
24 when all lease payments have been made. Notwithstanding the
25 provisions of any other law to the contrary, the duration of such a
26 lease-purchase agreement shall not exceed 15 years, except that the
27 duration of a lease purchase agreement for a combined heat and
28 power or cogeneration project shall not exceed 20 years. For the
29 purposes of this paragraph, the duration of the repayment term of a
30 lease-purchase agreement shall commence on the date upon which
31 construction and installation of the energy savings equipment,
32 “combined heat and power facility” or “cogeneration facility,” as
33 those terms are defined pursuant to section 3 of P.L.1999, c.23
34 (C.48:3-51), or other energy conservation measures undertaken
35 pursuant to the energy savings plan, have been completed.

36 (2) A public agency may arrange for incurring energy savings
37 obligations to finance an energy savings improvement program.
38 Energy savings obligations may be funded through appropriations
39 for utility services in the annual budget of the public agency and
40 may be issued as refunding bonds, including the issuance of bond
41 anticipation notes as may be necessary, provided that all such bonds
42 and notes mature within the periods authorized for such energy
43 savings obligations. Energy savings obligations may be issued
44 either through the public agency or another public agency
45 authorized to undertake financing on behalf of the public agency.

46 (3) Lease-purchase agreements and energy savings obligations
47 shall not be used to finance maintenance, guarantees, or verification

1 of guarantees of energy conservation measures. Lease-purchase
2 agreements and energy savings obligations may be used to finance
3 the cost of an energy audit or the cost of verification of energy
4 savings as part of adopting an energy savings plan.
5 Notwithstanding any law to the contrary, lease-purchase agreements
6 and energy savings certificates shall not be excepted from any
7 budget or tax levy limitation otherwise provided by law. Maturity
8 schedules of lease-purchase agreements or energy savings
9 obligations **[must]** shall not exceed the estimated average useful
10 life of the **[individual]** energy conservation measures.

11 d. (1) The energy audit component of an energy savings
12 improvement program shall be conducted either by the public
13 agency or by a qualified independent third party retained by the
14 board for that purpose. It shall not be conducted by an energy
15 services company subsequently hired to develop an energy savings
16 improvement program. The energy audit shall identify the current
17 energy use of any or all facilities and energy conservation measures
18 that can be implemented in which the energy savings and energy
19 efficiency could be realized and maximized.

20 (2) To implement a program, a public agency shall develop an
21 energy savings plan that consists of one or more energy
22 conservation measures. The plan shall: (a) contain the results of an
23 energy audit;

24 (b) describe the energy conservation measures that will
25 comprise the program;

26 (c) estimate greenhouse gas reductions resulting from those
27 energy savings;

28 (d) identify all design and compliance issues that require the
29 professional services of an architect or engineer and identify who
30 will provide these services;

31 (e) include an assessment of risks involved in the successful
32 implementation of the plan;

33 (f) identify the eligibility for, and costs and revenues associated
34 with the PJM Independent System Operator for demand response
35 and curtailable service activities;

36 (g) include schedules showing calculations of all costs of
37 implementing the proposed energy conservation measures and the
38 projected energy savings;

39 (h) identify maintenance requirements necessary to ensure
40 continued energy savings, and describe how they will be fulfilled;
41 and

42 (i) if developed by an energy services company, a description
43 of, and cost estimates of an energy savings guarantee.

44 All professionals providing engineering services under the plan
45 shall have errors and omissions insurance.

46 (3) Prior to the adoption of the plan, the public agency shall
47 contract with a qualified third party to verify the projected energy

1 savings to be realized from the proposed program have been
2 calculated as required by subsection e. of this section.

3 (4) Upon adoption, the plan shall be submitted to the Board of
4 Public Utilities, which shall post it on the Internet on a public
5 webpage maintained for such purpose. If the public agency
6 maintains its own website, it shall also post the plan on that site.
7 The board may require periodic reporting concerning the
8 implementation of the plan.

9 (5) Verification by a qualified third party shall be required when
10 energy conservation measures are placed in service or
11 commissioned, to ensure the savings projected in the energy savings
12 plan shall be achieved.

13 (6) Energy-related capital improvements that do not reduce
14 energy usage may be included in an energy savings improvement
15 program but the cost of such improvements shall not be financed as
16 a lease-purchase or through energy savings obligations authorized
17 by subsection c. of this section. Nothing herein is intended to
18 prevent financing of such capital improvements through otherwise
19 authorized means.

20 (7) A qualified third party when required by this subsection may
21 include an employee of the public agency who is properly trained
22 and qualified to perform such work.

23 e. (1) (a) The calculation of energy savings for the purposes of
24 determining that the energy savings resulting from the program will
25 be sufficient to cover the cost of the program's energy conservation
26 measures, as provided in subsection a. of this section, shall involve
27 determination of the dollar amount saved through implementation
28 of an energy savings improvement program using the guidelines of
29 the International Performance Measurement and Verification
30 Protocol or other protocols approved by the Board of Public
31 Utilities and standards adopted by the Board of Public Utilities
32 pursuant to this section. The calculation shall include all applicable
33 State and federal rebates and tax credits, but shall not include the
34 cost of an energy audit and the cost of verifying energy savings.
35 The calculation shall state which party has made application for
36 rebates and credits and how these applications translate into energy
37 savings.

38 (b) During the procurement phase of an energy savings
39 improvement program, an energy service company's proposal
40 submitted in response to a request for proposal shall not include a
41 savings calculation that assumes, includes, or references capital cost
42 avoidance savings, the current or projected value of a "solar
43 renewable energy certificate," as defined pursuant to section 3 of
44 P.L.1999, c.23 (C.48:3-51), or other environmental or similar
45 attributes or benefits of whatever nature that derive from the
46 generation of renewable energy, and any costs or discounts
47 associated with maintenance services, an energy savings guarantee.

1 or third party verification of energy conservation measures and
2 energy savings. The calculation of energy savings shall utilize and
3 specifically reference as a benchmark the actual demand and energy
4 components of the public utility tariff rate applicable to the public
5 agency then in effect, and not a blended rate that aggregates,
6 combines, or restates in any manner the distinct demand and energy
7 components of the public utility tariff rate into a single combined or
8 restated tariff rate. If an energy services company submits a
9 proposal to a public agency that does not calculate projected energy
10 savings in the manner required by this subsection, such proposal
11 shall be rejected by the public agency.

12 (2) For the purposes of this section, the Board of Public Utilities
13 shall adopt standards and uniform values for interest rates and
14 escalation of labor, electricity, oil, and gas, as well as standards for
15 presenting these costs in a life cycle and net present value format,
16 standards for the presentation of obligations for carbon reductions,
17 and other standards that the board may determine necessary.

18 f. (1) When an energy services company is awarded an energy
19 savings services contract, it shall offer the public agency the option
20 to purchase, for an additional amount, an energy savings guarantee.
21 The guarantee, if accepted by a separate vote of the governing body
22 of the public agency, shall insure that the energy savings of the
23 public agency resulting from the energy savings improvement
24 program, determined periodically over the duration of the
25 guarantee, will be sufficient to defray all payments required to be
26 made pursuant to the lease-purchase agreement or energy savings
27 obligation, and if the savings are not sufficient, the energy services
28 company will reimburse the public agency for any additional
29 amounts. Annual costs of a guarantee shall not be financed or
30 included as costs in an energy savings plan but shall be fully
31 disclosed in an energy savings plan.

32 (2) When a guaranteed energy savings option is purchased, the
33 contract shall require a qualified third party to verify the energy
34 savings at intervals established by the parties.

35 (3) When a guaranteed energy savings option is not purchased,
36 the energy savings services contract shall not include maintenance
37 services provided by the energy services company.

38 (4) When an energy services company is awarded an energy
39 savings services contract to provide or perform goods or services
40 for the purpose of enabling a public agency to conserve energy
41 through energy efficiency equipment, including a “combined heat
42 and power facility” as that term is defined pursuant to section 3 of
43 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
44 shall extend for a term of up to 15 years for energy efficiency
45 projects, and for up to 20 years for a combined heat and power
46 facility after construction completion. If a public agency shall elect
47 to contract with an energy services company for an energy savings

1 guarantee in connection with a contract awarded pursuant to this
2 section, such guarantee may extend for a term of up to 15 years for
3 energy efficiency projects, or up to 20 years for a combined heat
4 and power facility after construction completion.

5 g. As used in this section:

6 "direct digital control systems" means the devices and
7 computerized control equipment that contain software and computer
8 interfaces that perform the logic that control a building's heating,
9 ventilating, and air conditioning system. Direct digital controls
10 shall be open protocol format and shall meet the interoperability
11 guidelines established by the American Society of Heating,
12 Refrigerating and Air-Conditioning Engineers;

13 "energy conservation measure" means an improvement that
14 results in reduced energy use, including, but not limited to,
15 installation of energy efficient equipment; demand response
16 equipment; combined heat and power systems; facilities for the
17 production of renewable energy; water conservation measures,
18 fixtures or facilities; building envelope improvements that are part
19 of an energy savings improvement program; and related control
20 systems for each of the foregoing;

21 "energy related capital improvement" means a capital
22 improvement that uses energy but does not result in a reduction of
23 energy use;

24 "energy saving obligation" means a bond, note or other
25 agreement evidencing the obligation to repay borrowed funds
26 incurred in order to finance energy saving improvements;

27 "energy savings" means a measured reduction in fuel, energy,
28 operating or maintenance costs resulting from the implementation
29 of one or more energy conservation measures services when
30 compared with an established baseline of previous fuel, energy,
31 operating or maintenance costs, including, but not limited to, future
32 capital replacement expenditures avoided as a result of equipment
33 installed or services performed as part of an energy savings plan;

34 "energy savings improvement program" means an initiative of a
35 public agency to implement energy conservation measures in
36 existing facilities, provided that the value of the energy savings
37 resulting from the program will be sufficient to cover the cost of the
38 program's energy conservation measures;

39 "energy savings plan" means the document that describes the
40 actions to be taken to implement the energy savings improvement
41 program;

42 "energy savings services contract" means a contract with an
43 energy savings company to develop an energy savings plan, prepare
44 bid specifications, manage the performance, provision,
45 construction, and installation of energy conservation measures by
46 subcontractors, to offer a guarantee of energy savings derived from

1 the implementation of an energy savings plan, and may include a
2 provision to manage the bidding process;

3 "energy services company" means a commercial entity that is
4 qualified to develop and implement an energy savings plan in
5 accordance with the provisions of this section;

6 "public agency" means any government entity that is authorized
7 to expend public funds and enter into contracts which is not
8 otherwise authorized to implement an energy savings improvement
9 program pursuant to section 1, 4, 6, or 9 of P.L.2009, c.4
10 (C.18A:18A-4.6, C.18A:65A-1, C.40A:11-4.6, or C.52:34-25).

11 "public works activities" means any work subject to the
12 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

13 "water conservation measure" means an alteration to a facility or
14 equipment that reduces water consumption, maximizes the
15 efficiency of water use, or reduces water loss.

16 h. (1) The State Treasurer and the Board of Public Utilities
17 may take such action as is deemed necessary and consistent with the
18 intent of this section to implement its provisions.

19 (2) The State Treasurer and the Board of Public Utilities may
20 adopt implementation guidelines or directives, and adopt such
21 administrative rules, pursuant to the "Administrative Procedure
22 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
23 implementation of those agencies' respective responsibilities under
24 this section, except that notwithstanding any provision of P.L.1968,
25 c.410 (C.52:14B-1 et seq.) to the contrary, the Director of the
26 Division of Local Government Services in the Department of
27 Community Affairs, the State Treasurer, and the Board of Public
28 Utilities may adopt, immediately upon filing with the Office of
29 Administrative Law, such rules and regulations as deemed
30 necessary to implement the provisions of this act which shall be
31 effective for a period not to exceed 12 months and shall thereafter
32 be amended, adopted or re-adopted in accordance with the
33 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).
34 (cf: P.L.2009, c.4, s.10)

35
36 6. (New section) a. Notwithstanding the provisions to the
37 contrary of R.S.52:32-2 or any other law, or any rule or regulation
38 adopted pursuant thereto, where a State contracting agency
39 implements an energy savings improvement program pursuant to
40 section 9 of P.L.2009, c.4 (C.52:34-25), the State contracting
41 agency, prior to entering into an energy savings services contract,
42 shall use a competitive selection process that ensures that the award
43 is made to the responsible bidder whose proposal is determined to
44 be the most advantageous to the State.

45 b. Nothing in this section shall preclude a State contracting
46 agency from using procurement processes other than those
47 prescribed herein and in section 9 of P.L.2009, c.4 (C.52:34-25), if

1 those processes have been approved by the federal government
2 under section 801 of the “National Energy Conservation Policy
3 Act” (42 U.S.C. s.8287).

4 c. The Division of Property Management and Construction in
5 the Department of the Treasury shall not charge any fee for the
6 review or approval of an energy savings improvement program
7 implemented by a State contracting agency pursuant to section 9 of
8 P.L.2009, c.4 (C.52:34-25).

9
10 7. (New section) a. The Board of Public Utilities, in
11 consultation with the State Treasurer and the Commissioner of the
12 Department of Community Affairs, shall establish, in a form similar
13 to that prescribed by the "Local Public Contracts Law," P.L.1971,
14 c.198 (C.40A:11-1 et seq.), a standard request for proposal to be
15 used for all energy savings improvement program projects to be
16 undertaken by any State contracting agency or public agency
17 authorized to implement an energy savings improvement program
18 pursuant to the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.),
19 provided, however, that a State contracting agency or public agency
20 may use its own request for proposal upon the submission of the
21 request for proposal to the board. Unless the board disapproves the
22 request for proposal within 14 days of its receipt from a State
23 contracting agency or public agency, the request for proposal shall
24 be deemed approved. No single category contained in the
25 evaluation criteria of a request for proposal shall weigh more than
26 25 percent.

27 b. Within 90 days after the effective date of P.L. ,
28 c. (C.) (pending before the Legislature as this bill), the Board
29 of Public Utilities, in consultation with the State Treasurer and the
30 Commissioner of the Department of Community Affairs, shall
31 establish, in a form similar to that prescribed by the "Local Public
32 Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), a standard
33 request for proposal to be used for all energy savings improvement
34 program projects to be undertaken by any board of education, board
35 of trustees, or contracting unit authorized to implement an energy
36 savings improvement program pursuant to the provisions of
37 P.L.2009, c.4 (C.18A:18A-4.6 et al.), provided, however, that a
38 board of education, board of trustees, or contracting unit may use its
39 own request for proposal upon the submission of the request for
40 proposal to the Board of Public Utilities. Unless the board
41 disapproves the request for proposal within 14 days of its receipt
42 from a board of education, board of trustees, or contracting unit, the
43 request for proposal shall be deemed approved. No single category
44 contained in the evaluation criteria of a request for proposal shall
45 weigh more than 25 percent.

- 1 8. (New section) a. The Board of Public Utilities is designated
2 as the agency of the State Government responsible for
3 implementing and enforcing the provisions of P.L.2009, c.4
4 (C.18A:18A-4.6 et al.) and for responding to requests for assistance
5 from public entities, including boards of education, boards of
6 trustees of public institutions of higher education, contracting units,
7 and public agencies, authorized to implement an energy savings
8 improvement program pursuant to P.L.2009, c.4 (C.18A:18A-4.6 et
9 al.).
- 10 b. The board is authorized to investigate, review and take
11 appropriate action with respect to procurements for energy savings
12 projects conducted by public agencies, other than State contracting
13 agencies, pursuant to P.L.2009, c.4 (C.18A:18A-4.6 et al.).
- 14 c. The board shall take such actions as it deems necessary and
15 appropriate, consistent with the purposes of this section, to
16 implement and enforce the provisions of P.L.2009, c.4 (C.18A:18A-
17 4.6 et al.). The authority granted to the board pursuant to this
18 section to enforce compliance with P.L.2009, c.4 shall include, but
19 not be limited to:
- 20 (1) modifying a non-conforming request for proposal and any
21 attachment thereto, whereby the board shall provide written
22 comments to the public entity when it chooses to modify a non-
23 conforming request for proposal, outlining any issues and providing
24 the opportunity for the issues to be remedied;
- 25 (2) (a) modifying or canceling a procurement by a public entity
26 for an energy savings project, whereby the board, within 14 days of
27 its receipt of a procurement by a public entity after the procurement
28 award, may modify or cancel the procurement, otherwise the
29 procurement shall be deemed approved, and (b) if modifying a
30 procurement, the board shall provide written comments to the
31 public entity when it chooses to do so, outlining any issues and
32 providing the opportunity for the issues to be remedied; and
- 33 (3) withholding State and federal renewable energy and energy
34 efficiency incentives from an energy savings project.
- 35 d. The board may grant limited exceptions to a local housing
36 authority, established pursuant to the "Local Housing Authorities
37 Law," P.L.1938, c.19 or the "Local Redevelopment and Housing
38 Law," P.L.1992, c.79 (C.40A:12A-1 et al.), to use an energy
39 performance contracting process developed by the United States
40 Department of Housing and Urban Development for selecting an
41 energy service company subject to United States Department of
42 Housing and Urban Development and board review and approval.
43 The exception shall permit such process to be followed for the
44 selection of an energy service company, the preparation of the
45 energy savings improvement program, the selection of energy
46 savings projects, and third party verification requirements. All
47 other requirements for bidding and construction shall be consistent

- 1 with the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.). This
2 limited exception shall permit the preparation of an investment
3 grade energy savings improvement program audit to replace the
4 requirement for the traditional energy audit component performed
5 in advance.
- 6 e. The board shall undertake a study of the effectiveness of
7 energy savings improvement programs implemented pursuant to
8 P.L.2009, c.4 (C.18A:18A-4.6 et al.). Within three years after the
9 effective date of P.L. , c. (C.) (pending before the
10 Legislature as this bill), the board shall prepare a report of its study
11 and shall provide a copy thereof to the Governor and, pursuant to
12 section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.
- 13
- 14 9. This act shall take effect immediately.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2313 and 2564

STATE OF NEW JERSEY

DATED: JUNE 20, 2012

The Assembly Telecommunications and Utilities Committee reports favorably a Committee Substitute for Assembly Bill Nos. 2313 and 2564.

This bill, as substituted, makes changes to the statute authorizing the State's public entities (i.e., State agencies and authorities; public institutions of higher education; local boards of education; counties, municipalities, and other local units; and any other public contracting agency) to participate in an energy savings improvement program ("ESIP") under the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.) ("ESIP law"). Specifically, the substitute bill provides that:

1) for purposes of defining the duration of the repayment term of a lease-purchase agreement with an energy services company ("ESCO"), the agreement shall be deemed to commence on the date upon which construction and installation of the energy savings equipment, combined heat and power facility or cogeneration facility, or other energy conservation measures undertaken pursuant to the energy savings plan, is completed;

2) during the procurement phase of an ESIP, an ESCO's proposal submitted in response to a public entity's request for proposal ("RFP") shall not include a savings calculation that assumes, includes, or references capital cost avoidance savings, the current or projected value of a "solar renewable energy certificate," or other environmental or similar attributes or benefits of whatever nature that derive from the generation of renewable energy, and any costs or discounts associated with maintenance services, an energy savings guarantee, or third party verification of energy conservation measures and energy savings. The calculation of energy savings shall utilize and specifically reference as a benchmark the actual demand and energy components of the public utility tariff rate applicable to the public agency then in effect. If an ESCO submits a proposal to a public entity that does not calculate projected energy savings of an amount that, at a minimum, covers the costs of the ESIP's energy conservation measures, such proposal shall be rejected by the public entity;

3) the Board of Public Utilities (“BPU”), in consultation with the State Treasurer and Department of Community Affairs, shall establish a standard RFP to be used for all ESIP projects to be undertaken by any public entity authorized to implement an ESIP. No single category contained in the evaluation criteria of the RFP shall weigh more than 25 percent. A public entity wishing to use its own RFP must first submit the nonstandard RFP to the BPU. Unless the BPU disapproves the RFP within 14 days of its receipt from the public entity, the RFP is deemed approved. Further, the substitute bill requires each contract between a board of education, contracting unit, or public agency, and an ESCO that is the manufacturer of direct digital control systems, where such control systems are treated as proprietary goods as part of the contract, to first be reviewed and approved by the BPU for the purpose of affirming the reasonableness of an allowance price by the ESCO;

4) the BPU is designated as the agency of the State government responsible for implementing and enforcing the provisions of the ESIP law and for responding to requests for assistance from public entities other than State contracting agencies. The BPU is authorized to investigate, review, and take appropriate action with respect to procurements for energy savings projects conducted by public entities pursuant to the ESIP law. Under the substitute bill, the BPU’s implementation and enforcement power shall include, but not be limited to: (a) modifying a non-conforming RFP and any attachment thereto; (b) reviewing a procurement by a public entity which includes certain procedures to be taken by the BPU and public entity; and (c) withholding State and federal renewable energy and energy efficiency incentives from an energy savings project;

5) the BPU is required to undertake a study of the effectiveness of ESIPs implemented pursuant to the ESIP law and, within three years after the effective date of the substitute bill, prepare a report of its study and provide a copy thereof to the Governor and to the Legislature;

6) a State contracting agency, in implementing an ESIP, shall use a public bidding process to have the ESCO hire only those subcontractors having been pre-qualified by the Division of Property Management and Construction (“DPMC”) to be eligible to submit bids for qualified work. In pre-qualifying subcontractors for eligibility, the DPMC shall create one or more pools of subcontractors based on the value and complexity of the work to be undertaken under an ESIP. The pre-qualification pools shall include subcontractors having the following qualifications: (a) the financial means and ability to complete the required work; (b) the experience, capability, and skills necessary to complete the work required of energy savings improvement program projects; and (c) a record of experience conducting similar work in a timely fashion; and

7) an alteration undertaken at a public entity's facility that is required to properly implement other energy efficiency or energy conservation measures, or both, may be included as part of a energy savings services contract, in which case, the facility alteration may be undertaken or supervised by the ESCO performing the contract if: (a) the total cost of the improvement does not exceed 15 percent of the total cost of the work to be performed under the contract; and (b) the improvement is necessary to conform to a law, rule, or regulation, or order, or an analysis within an approved proposal, or the public entity, at the time of the award of the proposal, demonstrates that there is an economic advantage to the public entity implementing the improvement as part of the contract, and the savings rationale for the improvement is documented and supported by reasonable justification.

Further, the substitute bill removes from the ESIP law provisions applicable to State agencies and institutions of higher education the requirement that, when an ESCO requires potential subcontractors bidding on a guaranteed energy savings option contract to use a direct digital control system of the ESCO's own manufacture, the bid specification must set forth an allowance price for that system, to be used by all bidders for the subcontract. The substitute bill provides that maturity schedules of lease-purchase agreements and energy savings obligations under an ESIP shall not exceed the estimated average useful life of the energy conservation measures. Finally, the substitute bill allows the board to grant limited exceptions to a local housing authority, established pursuant to the "Local Housing Authorities Law," P.L.1938, c.19 or the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.), to use an energy performance contracting process developed by the U.S. Department of Housing and Urban Development ("HUD") for selecting an ESCO subject to HUD and board review and approval.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2313 and 2564
STATE OF NEW JERSEY
215th LEGISLATURE

DATED: AUGUST 3, 2012

SUMMARY

Synopsis: Clarifies requests for proposals of public entities implementing energy savings improvement program contracts.

Type of Impact: Possible Local and State costs

Agencies Affected: Board of Public Utilities (BPU), Local Governments, Higher Education Institutions, State Agencies and Authorities

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost		Indeterminate	
Local Cost		Indeterminate	

- The BPU faces additional costs now that it is tasked with the creation of a new standard Request for Proposal (RFP) form for public entities to use when issuing RFPs for Energy Savings Improvement Program (ESIP) projects and the review of non-conforming RFPs. The Division of Property Management and Construction (DPMC) faces additional costs as a result of the need to prequalify and organize subcontractors that work on ESIP projects into various pools.
- The bill adds to the scope of the ESIP by including public institutions of higher education including county colleges, and by including Combined Heat and Power (CHP) facilities as eligible ESIP projects. These expansions of the ESIP create more possibilities for public entities to realize cost savings; however, the data is not available to estimate the size of that market for savings.
- The bill also adds potential costs to the ESIP by requiring Energy Services Companies (ESCOs) to pay all subcontracted employees prevailing wages. It is not clear how much of the labor in projects under the ESIP are currently performed by individuals not receiving a prevailing wage, but any increased labor costs will be partially included in the bids of ESCOs

and as a result, decrease the profitability of these projects for the ESCO and decrease the cost savings realized by the public entities.

BILL DESCRIPTION

The Assembly Committee Substitute to Assembly Bills Nos. 2313 and 2564 of 2012 makes changes to the statute authorizing the State's public entities (i.e., State agencies, authorities, and public institutions of higher education, county colleges, local boards of education, counties, and municipalities) to participate in an ESIP under the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.) ESIP law. Specifically, the amended bill provides that: 1) concerning the duration of the repayment term of a lease-purchase agreement with an ESCO, the agreement shall be deemed to commence on the date upon which construction and installation of the energy savings equipment, combined heat and power facility or cogeneration facility, or other energy conservation measures undertaken pursuant to the energy savings plan, have been completed; and 2) during the procurement phase of an ESIP, an ESCO's proposal submitted in response to a public entity's RFP shall not include a savings calculation that assumes, includes, or references capital cost avoidance savings, the current or projected value of a solar renewable energy certificate, or other environmental or similar attributes or benefits of whatever nature that derive from the generation of renewable energy, and any costs or discounts associated with maintenance services, an energy savings guarantee, or third party verification of energy conservation measures and energy savings. The calculation of energy savings shall utilize and specifically reference as a benchmark the actual demand and energy components of the public utility tariff rate applicable to the public entity then in effect. If an ESCO submits a proposal to a public entity that does not calculate projected energy savings of an amount that, at a minimum, covers the costs of the ESIP's energy conservation measures, such proposal shall be rejected by the public entity.

The bill provides that a State contracting agency, in implementing an ESIP, shall use a public bidding process to have the ESCO hire only those subcontractors having been pre-qualified by the DPMC to be eligible to submit bids for qualified work. In pre-qualifying subcontractors for eligibility, the DPMC shall create one or more pools of subcontractors based on the value and complexity of the work to be undertaken under an ESIP. The pre-qualification pools shall include subcontractors having the following qualifications: (a) the financial means and ability to complete the required work, (b) the experience, capability, and skills necessary to complete the work required of energy savings improvement program projects; and (c) a record of experience conducting similar work in a timely fashion.

The bill requires the BPU, in consultation with the State Treasurer and Department of Community Affairs, to establish a standard RFP to be used for all ESIP projects to be undertaken by any public entity authorized to implement an ESIP. Further, the amended bill requires each contract between a board of education, contracting unit, or public agency, and an ESCO that is the manufacturer of direct digital control systems, where such control systems are treated as proprietary goods as part of the contract, to first be reviewed and approved by the BPU for the purpose of affirming the reasonableness of an allowance price by the ESCO. The BPU is required to review any RFPs that deviate from the standard established by the BPU. If the BPU modifies a non-conforming RFP during its review process, the BPU must notify the government entity of the changes, the reason for the changes, and provide an opportunity for the government entity to address any issues. The bill also provides the BPU with the authority to grant limited exemptions to local housing authorities to use an energy performance contracting process developed by the US Department of Housing and Urban Development (HUD), subject to BPU and HUD approval

Finally, the amended bill removes from the ESIP law applicable to State agencies, institutions of higher education, and county colleges the requirement that, when an ESCO requires potential subcontractors bidding on a guaranteed energy savings option contract to use a direct digital control system of the ESCO's own manufacture, the bid specification must set forth an allowance price for that system, to be used by all bidders for the subcontract.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that the fiscal impact of this bill is indeterminate at this point in time. The changes made to the ESIP expand the number of public entities that can participate to include public institutions of higher education and expand the types of improvements to include CHP facilities. The office does not have data from public entities available to it that would be necessary to calculate the potential for additional savings due to these changes. It is also the case that not all public entities that could benefit from an ESIP will participate, diluting the total amount of savings at the State and local level that will eventually be realized. The public entities that do participate will be highly likely to realize cost savings.

The provision of this bill that requires the BPU to create a standardized RFP form for an ESIP will result in costs to the BPU for the initial development of the form; however those costs will be offset by continuing savings that will be realized by local and State government entities that will be able to reduce their own administrative costs by using the standardized RFP, rather than having to develop their own RFP internally. The DPMC will face high administrative costs in prequalifying ESIP subcontractors and organizing prequalified subcontractors into various eligibility pools. The increase or decrease in costs realized by the State contracting agencies participating in the ESIP depends as a result of these prequalification activities and allowing subcontractors to bid on projects will depend upon whether the price of subcontracted labor will increase or decrease as compared to having contractors to negotiate and secure subcontracted labor directly. An open bidding process is typically expected to produce lower prices; however by limiting the number of eligible subcontractors, it is possible that fewer low cost subcontractors will be available for ESIP projects.

The bill also has a provision that requires ESCOs that utilize subcontracted labor to ensure that all subcontracted labor is paid a prevailing wage for work on an ESIP. This provision has the potential to increase the cost of improvements made under the ESIP. Information is not currently available about the amount of labor paid below prevailing wage on current projects under the program, so it is not possible to determine the amount of possible additional costs. To the extent that there are subcontractors paying employees less than the prevailing wage, those increased costs will likely be shared between ESCOs that will now face higher labor costs and the public entities that will now receive bids from ESCOs that have included higher labor rates due to the provision. It is not expected that the ESCO would be able to pass along the full cost of the increased labor rate due to the competitive bid process. It is also possible that there will be some RFPs that would have resulted in marginal savings that now will not happen because higher wages would eliminate those savings, making the project unprofitable for the ESCOs.

The overall impact of this bill is likely to be slightly lower cost savings on individual projects for public entities due to the changes in prevailing wages for subcontractors; however the establishment of a standardized RFP form is likely to partially offset that lower savings by reducing administrative costs for participation in an ESIP. Additionally, expansions to the ESIP create additional opportunities for savings and new projects which will result in net positive cost savings across State and local government.

Section: Authorities, Utilities, Transportation and Communications

*Analyst: Patrick Brennan
Assistant Fiscal Analyst II*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 1753

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED MARCH 5, 2012

Sponsored by:
Senator PAUL A. SARLO
District 36 (Bergen and Passaic)

SYNOPSIS

Clarifies requests for proposals of public entities implementing energy savings improvement program contracts.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/16/2012)

S1753 SARLO

2

1 AN ACT concerning energy savings improvement programs,
2 amending various parts of the statutory law, and supplementing
3 Title 52 of the Revised Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. Section 1 of P.L.2009, c.4 (C.18A:18A-4.6) is amended to
9 read as follows:

10 1. a. A board of education, as defined in N.J.S.18A:18A-2, may
11 implement an energy savings improvement program in the manner
12 provided by this section whenever it determines that the savings
13 generated from reduced energy use from the program will be
14 sufficient to cover the cost of the program's energy conservation
15 measures as set forth in an energy savings plan. Under such a
16 program, a board of education may enter into an energy savings
17 services contract with an energy services company to implement the
18 program or the board may authorize separate contracts to implement
19 the program. The provisions of N.J.S.18A:18A-1 et seq. shall apply
20 to any contracts awarded pursuant to this section to the extent that
21 the provisions of such law are not inconsistent with any provision
22 of this section.

23 b. (1) To be eligible to enter into an energy savings services
24 contract, an energy services company shall be a commercial entity
25 that is qualified to provide energy savings services in accordance
26 with the provisions of this section. A board of education may
27 determine to enter into an energy savings services contract either
28 through public advertising for bids and the receipt of bids therefor
29 or through competitive contracting in lieu of public bidding in the
30 manner provided by sections 45 through 49 of P.L.1999, c.440
31 (C.18A:18A-4.1 et seq.).

32 (2) (a) Public works activities performed under an energy
33 savings improvement program shall be subject to all requirements
34 regarding public bidding, bid security, performance guarantees,
35 insurance and other public contracting requirements that are
36 applicable to public works contracts, to the extent not inconsistent
37 with this section. A general contractor, energy services company
38 serving as general contractor, or any subcontractor hired for the
39 furnishing of plumbing and gas fitting and all kindred work, and of
40 steam and hot water heating and ventilating apparatus, steam power
41 plants and kindred work, and electrical work, structural steel and
42 ornamental iron work, shall be classified by the Division of
43 Property Management and Construction in the Department of the
44 Treasury in order to perform public works activities under an
45 energy savings improvement program.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (b) Individuals or organizations performing energy audits,
2 acting as commissioning agents, or conducting verification of
3 energy savings plans, implementation of energy conservation
4 measures, or verifying guarantees shall be prequalified by the
5 Division of Property Management and Construction in the
6 Department of the Treasury to perform their work under an energy
7 savings improvement program.

8 (3) (a) An energy services company may be designated as the
9 general contractor for improvements to be made pursuant to an
10 energy savings plan, provided that the hiring of subcontractors that
11 are required to be classified pursuant to subparagraph (a) of
12 paragraph (2) of this subsection shall be performed in accordance
13 with the procedures and requirements set forth pursuant to **[the**
14 **public bidding requirements of the board of education]**
15 subparagraph (b) of this paragraph. A contract with an energy
16 savings company shall include, but not be limited to: preparation of
17 an energy savings plan; the responsibilities of the parties for project
18 schedules, installations, performance and quality, payment of
19 subcontractors, project completion, commissioning, savings
20 implementation; a requirement that the savings to be achieved by
21 energy conservation measures be verified upon commissioning of
22 the improvements; allocation of State and federal rebates and tax
23 credits; and any other provisions deemed necessary by the parties.

24 (b) Notwithstanding any other law or regulation to the contrary,
25 an energy services company shall procure any required
26 subcontractors through a competitive contracting procedure. An
27 energy services company, competitively selected through a public
28 request for proposal process by a board of education to develop an
29 energy savings improvement program pursuant to P.L.2009, c.4
30 (C.18A:18A-4.6 et al.), shall define appropriate scopes of work for
31 the energy savings plan approved by the board of education and
32 shall advertise requests for proposal to procure such services in a
33 local newspaper of general circulation for a period of not less than
34 five business days. The requests for proposal may be for
35 installation labor only, or for combined labor and equipment,
36 depending upon which approach is most economical for the board
37 of education. The energy services company shall use its best efforts
38 to procure a minimum of three quotations from subcontractors that
39 have been duly classified by the Division of Property Management
40 and Construction, and shall provide the quotations received to the
41 board of education. The energy services company shall award the
42 contract to the subcontractor based upon price and other factors,
43 which shall include, without limitation, the subcontractor's relevant
44 experience, resources, bonding and insurance capability, ability to
45 meet project deadlines, and references. Where an award is not
46 based solely upon price, the energy services company shall justify
47 the award to the board of education. If the board of education does
48 not approve the award, the energy services company shall continue

1 to select subcontractors until one is approved by the board of
2 education. Upon approval in writing of the subcontractor by the
3 board of education, the energy services company shall finalize a
4 contract with the subcontractor that includes the agreed scope of
5 work and price. All subcontractors awarded contracts by an energy
6 services company pursuant to this section shall be paid prevailing
7 wages in accordance with the “New Jersey Prevailing Wage Act,”
8 P.L.1963, c.150 (C.34:11-56.25 et seq.), and shall be appropriately
9 classified as contractors by the Division of Property Management
10 and Construction.

11 (c) In order to expedite communications with an energy services
12 company and facilitate the implementation of an energy savings
13 improvement program, a board of education may designate or
14 appoint a representative or agent with decision-making authority to
15 coordinate with the energy services company and to address issues
16 associated with the implementation of an energy savings
17 improvement program as they arise.

18 (4) Except as provided in paragraph (5) of this subsection, a
19 subsidiary or wholly-owned or partially-owned affiliate of the
20 energy services company shall not be an eligible contractor or
21 subcontractor under an energy savings services contract.

22 (5) When the energy services company is the manufacturer of
23 direct digital control systems and contracts with the board of
24 education to provide a guaranteed energy savings option pursuant to
25 subsection f. of this section, the specification of such direct digital
26 control systems may be treated as proprietary goods and if so
27 treated, the bid specification shall set forth an allowance price for
28 its supply by the energy services company which shall be used by
29 all bidders in the public bidding process. Direct digital controls
30 shall be open protocol format and shall meet the interoperability
31 guidelines established by the American Society of Heating,
32 Refrigerating and Air-Conditioning Engineers. Each contract to be
33 entered into pursuant to this section between a board of education
34 and an energy services company that is the manufacturer of direct
35 digital control systems where such direct digital control systems are
36 treated as proprietary goods as part of the contract, shall first be
37 reviewed and approved by the State Comptroller for the purpose of
38 affirming the reasonableness of such allowance price.

39 c. An energy savings improvement program may be financed
40 through a lease-purchase agreement or through the issuance of
41 energy savings obligations pursuant to this subsection.

42 (1) An energy savings improvement program may be financed
43 through a lease-purchase agreement between a board of education
44 and an energy services company or other public or private entity.
45 Under a lease-purchase agreement, ownership of the energy savings
46 equipment or improved facilities shall pass to the board of
47 education when all lease payments have been made.
48 Notwithstanding the provisions of section 46 of P.L.1999, c.440

1 (C.18A:18A-4.2) or any other law to the contrary, the duration of
2 such a lease-purchase agreement shall not exceed 15 years, except
3 that the duration of a lease purchase agreement for a combined heat
4 and power or cogeneration project shall not exceed 20 years. For
5 the purposes of this paragraph, the duration of the repayment term
6 of a lease-purchase agreement shall commence on the date upon
7 which construction and installation of the energy savings
8 equipment, “combined heat and power facility” or “cogeneration
9 facility,” as those terms are defined pursuant to section 3 of
10 P.L.1999, c.23 (C.48:3-51), or other energy conservation measures
11 undertaken pursuant to the energy savings plan, have been
12 completed.

13 (2) Any lease-purchase agreement entered into pursuant to this
14 subsection may contain: a clause making it subject to the
15 availability and appropriation annually of sufficient funds as may
16 be required to meet the extended obligation; and a non-substitution
17 clause maintaining that if the agreement is terminated for non-
18 appropriation, the board of education may not replace the leased
19 equipment or facilities with equipment or facilities that perform the
20 same or similar functions.

21 (3) A board of education may arrange for incurring energy
22 savings obligations to finance an energy savings improvement
23 program. Energy savings obligations may be funded through
24 appropriations for utility services in the annual budget of the board
25 and may be issued as refunding bonds pursuant to P.L.1969, c.130
26 (C.18A:24-61.1 et seq.), including the issuance of bond anticipation
27 notes as may be necessary, provided that all such bonds and notes
28 mature within the periods authorized for such energy savings
29 obligations. Energy savings obligations may be issued either
30 through the board of education or another public agency authorized
31 to undertake financing on behalf of the board.

32 (4) Lease-purchase agreements and energy savings obligations
33 shall not be used to finance maintenance, guarantees, or verification
34 of guarantees of energy conservation measures. Lease-purchase
35 agreements and energy savings obligations may be used to finance
36 the cost of an energy audit or the cost of verification of energy
37 savings as part of adopting an energy savings plan.
38 Notwithstanding any law to the contrary, lease-purchase agreements
39 and energy savings certificates shall not be excepted from any
40 budget or tax levy limitation otherwise provided by law. Maturity
41 schedules of lease-purchase agreements or energy savings
42 obligations must exceed the estimated useful life of the individual
43 energy conservation measures.

44 d. (1) The energy audit component of an energy savings
45 improvement program shall be conducted either by the board of
46 education or by a qualified third party retained by the board for that
47 purpose. It shall not be conducted by an energy services company
48 subsequently hired to develop an energy savings improvement

1 program. The energy audit shall identify the current energy use of
2 any or all facilities and energy conservation measures that can be
3 implemented in which the energy savings and energy efficiency
4 could be realized and maximized.

5 (2) To implement an energy savings improvement program, a
6 board of education shall develop an energy savings plan that
7 consists of one or more energy conservation measures. The plan
8 shall:

9 (a) contain the results of an energy audit;

10 (b) describe the energy conservation measures that will
11 comprise the program;

12 (c) estimate greenhouse gas reductions resulting from those
13 energy savings;

14 (d) identify all design and compliance issues that require the
15 professional services of an architect or engineer and identify who
16 will provide these services;

17 (e) include an assessment of risks involved in the successful
18 implementation of the plan;

19 (f) identify the eligibility for, and costs and revenues associated
20 with the PJM Independent System Operator for demand response
21 and curtailable service activities;

22 (g) include schedules showing calculations of all costs of
23 implementing the proposed energy conservation measures and the
24 projected energy savings;

25 (h) identify maintenance requirements necessary to ensure
26 continued energy savings, and describe how they will be fulfilled;
27 and

28 (i) if developed by an energy services company, a description
29 of, and cost estimates of an energy savings guarantee.

30 All professionals providing engineering services under the plan
31 shall have errors and omissions insurance.

32 (3) Prior to the adoption of the plan by the governing body, the
33 board of education shall contract with a qualified third party to
34 verify the projected energy savings to be realized from the proposed
35 program have been calculated as required by subsection e. of this
36 section.

37 (4) Upon adoption, the plan shall be submitted to the Board of
38 Public Utilities, which shall post it on the Internet on a public
39 webpage maintained for such purpose. If the board of education
40 maintains its own website, it shall also post the plan on that site.
41 The Board of Public Utilities may require periodic reporting
42 concerning the implementation of the plan.

43 (5) Verification by a qualified third party shall be required when
44 energy conservation measures are placed in service or
45 commissioned, to ensure the savings projected in the energy savings
46 plan shall be achieved.

47 (6) Energy-related capital improvements that do not reduce
48 energy usage may be included in an energy savings improvement

1 program but the cost of such improvements shall not be financed as
2 a lease-purchase or through energy savings obligations authorized
3 by subsection c. of this section. Nothing herein is intended to
4 prevent financing of such capital improvements through otherwise
5 authorized means.

6 (7) A qualified third party when required by this subsection may
7 include an employee of the board of education who is properly
8 trained and qualified to perform such work.

9 e. (1) (a) The calculation of energy savings for the purposes of
10 determining that the energy savings resulting from the program will
11 be sufficient to cover the cost of the program's energy conservation
12 measures, as provided in subsection a. of this section, shall involve
13 determination of the dollar amount saved through implementation
14 of an energy savings improvement program using the guidelines of
15 the International Performance Measurement and Verification
16 Protocol or other protocols approved by the Board of Public
17 Utilities and standards adopted by the Board of Public Utilities
18 pursuant to this section. The calculation shall include all applicable
19 State and federal rebates and tax credits, but shall not include the
20 cost of an energy audit and the cost of verifying energy savings.
21 The calculation shall state which party has made application for
22 rebates and credits and how these applications translate into energy
23 savings.

24 (b) During the procurement phase of a program, an energy
25 service company's proposal submitted in response to a request for
26 proposal shall not include a savings calculation that assumes,
27 includes, or references capital cost avoidance savings, the current or
28 projected value of a "solar renewable energy certificate," as defined
29 pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other
30 environmental or similar attributes or benefits of whatever nature
31 that derive from the generation of renewable energy, and any costs
32 or discounts associated with maintenance services, an energy
33 savings guarantee, or third party verification of energy conservation
34 measures and energy savings. The calculation of energy savings
35 shall utilize and specifically reference as a benchmark the actual
36 demand and energy components of the public utility tariff rate
37 applicable to the board of education then in effect, and not a
38 blended rate that aggregates, combines, or restates in any manner
39 the distinct demand and energy components of the public utility
40 tariff rate into a single combined or restated tariff rate. If an energy
41 services company submits a proposal to a board of education that
42 does not calculate projected energy savings in the manner required
43 by this subsection, such proposal shall be rejected by the board of
44 education.

45 (2) For the purposes of this section, the Board of Public Utilities
46 shall adopt standards and uniform values for interest rates and
47 escalation of labor, electricity, oil, and gas, as well as standards for
48 presenting these costs in a life cycle and net present value format,

1 standards for the presentation of obligations for carbon reductions,
2 and other standards that the board may determine necessary.

3 f. (1) When an energy services company is awarded an energy
4 savings services contract, it shall offer the board of education the
5 option to purchase, for an additional amount, an energy savings
6 guarantee. The guarantee, if accepted by a separate vote of the
7 board of education, shall insure that the energy savings resulting
8 from the energy savings improvement program, determined
9 periodically over the duration of the guarantee, will be sufficient to
10 defray all payments required to be made pursuant to the lease-
11 purchase agreement or energy savings obligation, and if the savings
12 are not sufficient, the energy services company will reimburse the
13 board for any additional amounts. Annual costs of a guarantee shall
14 not be financed or included as costs in an energy savings plan but
15 shall be fully disclosed in an energy savings plan.

16 (2) When a guaranteed energy savings option is purchased, the
17 contract shall require a qualified third party to verify the energy
18 savings at intervals established by the parties.

19 (3) When an energy services company is awarded an energy
20 savings services contract to provide or perform goods or services
21 for the purpose of enabling a board of education to conserve energy
22 through energy efficiency equipment, including a "combined heat
23 and power facility" as that term is defined pursuant to section 3 of
24 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
25 shall extend for a term of up to 15 years for energy efficiency
26 projects, and for up to 20 years for a combined heat and power
27 facility after construction completion. If a board of education shall
28 elect to contract with an energy services company for an energy
29 savings guarantee in connection with a contract awarded pursuant to
30 this section, such guarantee may extend for a term of up to 15 years
31 for energy efficiency projects, or up to 20 years for a combined heat
32 and power facility after construction completion.

33 g. As used in this section:

34 "direct digital control systems" means the devices and
35 computerized control equipment that contain software and computer
36 interfaces that perform the logic that control a building's heating,
37 ventilating, and air conditioning system. Direct digital controls
38 shall be open protocol format and shall meet the interoperability
39 guidelines established by the American Society of Heating,
40 Refrigerating and Air-Conditioning Engineers;

41 "energy conservation measure" means an improvement that
42 results in reduced energy use, including, but not limited to,
43 installation of energy efficient equipment; demand response
44 equipment; combined heat and power systems; facilities for the
45 production of renewable energy; water conservation measures,
46 fixtures or facilities; building envelope improvements that are part
47 of an energy savings improvement program; and related control
48 systems for each of the foregoing;

1 "energy related capital improvement" means a capital
2 improvement that uses energy but does not result in a reduction of
3 energy use;

4 "energy saving obligation" means a bond, note or other
5 agreement evidencing the obligation to repay borrowed funds
6 incurred in order to finance energy saving improvements;

7 "energy savings" means a measured reduction in fuel, energy,
8 operating or maintenance costs resulting from the implementation
9 of one or more energy conservation measures services when
10 compared with an established baseline of previous fuel, energy,
11 operating or maintenance costs, including, but not limited to, future
12 capital replacement expenditures avoided as a result of equipment
13 installed or services performed as part of an energy savings plan;

14 "energy savings improvement program" means an initiative of a
15 board of education to implement energy conservation measures in
16 existing facilities, provided that the value of the energy savings
17 resulting from the program will be sufficient to cover the cost of the
18 program's energy conservation measures;

19 "energy savings plan" means the document that describes the
20 actions to be taken to implement the energy savings improvement
21 program;

22 "energy savings services contract" means a contract with an
23 energy savings company to develop an energy savings plan, prepare
24 bid specifications, manage the performance, provision,
25 construction, and installation of energy conservation measures by
26 subcontractors, to offer a guarantee of energy savings derived from
27 the implementation of an energy savings plan, and may include a
28 provision to manage the bidding process;

29 "energy services company" means a commercial entity that is
30 qualified to develop and implement an energy savings plan in
31 accordance with the provisions of this section;

32 "public works activities" means any work subject to the
33 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

34 "water conservation measure" means an alteration to a facility or
35 equipment that reduces water consumption, maximizes the
36 efficiency of water use, or reduces water loss.

37 h. (1) The Director of the Division of Local Government
38 Services in the Department of Community Affairs, the State
39 Treasurer, and the Board of Public Utilities may take such action as
40 is deemed necessary and consistent with the intent of this section to
41 implement its provisions.

42 (2) The Director of the Division of Local Government Services
43 in the Department of Community Affairs, the State Treasurer and
44 the Board of Public Utilities may adopt implementation guidelines
45 or directives, and adopt such administrative rules, pursuant to the
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
47 seq.), as are necessary for the implementation of those agencies'
48 respective responsibilities under this section, except that

1 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et
2 seq.) to the contrary, the Director of the Division of Local
3 Government Services in the Department of Community Affairs, the
4 State Treasurer, and the Board of Public Utilities may adopt,
5 immediately upon filing with the Office of Administrative Law,
6 such rules and regulations as deemed necessary to implement the
7 provisions of this act which shall be effective for a period not to
8 exceed 12 months and shall thereafter be amended, adopted or re-
9 adopted in accordance with the provisions of P.L.1968, c.410
10 (C.52:14B-1 et seq.).

11 (cf: P.L.2009, c.4, s.1)

12

13 2. Section 6 of P.L.2009, c.4 (C.40A:11-4.6) is amended to
14 read as follows:

15 6. a. A contracting unit, as defined in P.L.1971, c.198
16 (C.40A:11-1 et seq.), may implement an energy savings
17 improvement program in the manner provided by this section
18 whenever it determines that the savings generated from reduced
19 energy use from the program will be sufficient to cover the cost of
20 the program's energy conservation measures as set forth in an
21 energy savings plan. Under such a program, a contracting unit may
22 enter into an energy savings services contract with an energy
23 services company to implement the program or the contracting unit
24 may authorize separate contracts to implement the program. The
25 provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) shall apply to
26 any contracts awarded pursuant to this section to the extent that the
27 provisions of such law are not inconsistent with any provision of
28 this section.

29 b. (1) To be eligible to enter into an energy savings services
30 contract, an energy services company shall be a commercial entity
31 that is qualified to provide energy savings services in accordance
32 with the provisions of this section. A contracting unit may
33 determine to enter into an energy savings services contract either
34 through public advertising for bids and the receipt of bids therefor
35 or through competitive contracting in lieu of public bidding in the
36 manner provided by sections 1 through 5 of P.L.1999, c.440
37 (C.40A:11-4.1 et seq.).

38 (2) (a) Public works activities performed under an energy
39 savings improvement program shall be subject to all requirements
40 regarding public bidding, bid security, performance guarantees,
41 insurance and other public contracting requirements that are
42 applicable to public works contracts, to the extent not inconsistent
43 with this section. A general contractor, energy services company
44 serving as general contractor, or any subcontractor hired for the
45 furnishing of plumbing and gas fitting and all kindred work, and of
46 steam and hot water heating and ventilating apparatus, steam power
47 plants and kindred work, and electrical work, structural steel and
48 ornamental iron work, shall be classified by the Division of

1 Property Management and Construction in the Department of the
2 Treasury in order to perform public works activities under an
3 energy savings improvement program.

4 (b) Individuals or organizations performing energy audits,
5 acting as commissioning agents, or conducting verification of
6 energy savings plans, implementation of energy conservation
7 measures, or verifying guarantees shall be prequalified by the
8 Division of Property Management and Construction in the
9 Department of the Treasury to perform their work under an energy
10 savings improvement program.

11 (3) (a) An energy services company may be designated as the
12 general contractor for improvements to be made pursuant to an
13 energy savings plan, provided that the hiring of subcontractors that
14 are required to be classified pursuant to subparagraph (a) of
15 paragraph (2) of this subsection shall be performed in accordance
16 with the procedures and requirements set forth pursuant to [the
17 public bidding requirements of the contracting unit] subparagraph
18 (b) of this paragraph. A contract with an energy savings company
19 shall include, but not be limited to: preparation of an energy savings
20 plan; the responsibilities of the parties for project schedules,
21 installations, performance and quality, payment of subcontractors,
22 project completion, commissioning, savings implementation; a
23 requirement that the savings to be achieved by energy conservation
24 measures be verified upon commissioning of the improvements;
25 allocation of State and federal rebates and tax credits; and any other
26 provisions deemed necessary by the parties.

27 (b) Notwithstanding any other law or regulation to the contrary,
28 an energy services company shall procure any required
29 subcontractors through a competitive contracting procedure. An
30 energy services company, competitively selected through a public
31 request for proposal process by a contracting unit to develop an
32 energy savings improvement program pursuant to P.L.2009, c.4
33 (C.18A:18A-4.6 et al.), shall define appropriate scopes of work for
34 the energy savings plan approved by the contracting unit and shall
35 advertise requests for proposal to procure such services in a local
36 newspaper of general circulation for a period of not less than five
37 business days. The requests for proposal may be for installation
38 labor only, or for combined labor and equipment, depending upon
39 which approach is most economical for the contracting unit. The
40 energy services company shall use its best efforts to procure a
41 minimum of three quotations from subcontractors that have been
42 duly classified by the Division of Property Management and
43 Construction, and shall provide the quotations received to the
44 contracting unit. The energy services company shall award the
45 contract to the subcontractor based upon price and other factors,
46 which shall include, without limitation, the subcontractor's relevant
47 experience, resources, bonding and insurance capability, ability to
48 meet project deadlines, and references. Where an award is not

1 based solely upon price, the energy services company shall justify
2 the award to the contracting unit. If the contracting unit does not
3 approve the award, the energy services company shall continue to
4 select subcontractors until one is approved by the contracting unit.
5 Upon approval in writing of the subcontractor by the contracting
6 unit, the energy services company shall finalize a contract with the
7 subcontractor that includes the agreed scope of work and price. All
8 subcontractors awarded contracts by an energy services company
9 pursuant to this section shall be paid prevailing wages in
10 accordance with the "New Jersey Prevailing Wage Act," P.L.1963,
11 c.150 (C.34:11-56.25 et seq.), and shall be appropriately classified
12 as contractors by the Division of Property Management and
13 Construction.

14 (c) In order to expedite communications with an energy services
15 company and facilitate the implementation of an energy savings
16 improvement program, a contracting unit may designate or appoint
17 a representative or agent with decision-making authority to
18 coordinate with the energy services company and to address issues
19 associated with the implementation of an energy savings
20 improvement program as they arise.

21 (4) Except as provided in paragraph (5) of this subsection, a
22 subsidiary or wholly-owned or partially-owned affiliate of the
23 energy services company shall not be an eligible contractor or
24 subcontractor under an energy savings services contract.

25 (5) When the energy services company is the manufacturer of
26 direct digital control systems and contracts with the contracting unit
27 to provide a guaranteed energy savings option pursuant to
28 subsection f. of this section, the specification of such direct digital
29 control systems may be treated as proprietary goods and if so
30 treated, the bid specification shall set forth an allowance price for
31 its supply by the energy services company which shall be used by
32 all bidders in the public bidding process. Direct digital controls
33 shall be open protocol format and shall meet the interoperability
34 guidelines established by the American Society of Heating,
35 Refrigerating and Air-Conditioning Engineers. Each contract to be
36 entered into pursuant to this section between a contracting unit and
37 an energy services company that is the manufacturer of direct
38 digital control systems where such direct digital control systems are
39 treated as proprietary goods as part of the contract, shall first be
40 reviewed and approved by the State Comptroller for the purpose of
41 affirming the reasonableness of such allowance price.

42 c. An energy savings improvement program may be financed
43 through a lease-purchase agreement or through the issuance of
44 energy savings obligations pursuant to this subsection.

45 (1) An energy savings improvement program may be financed
46 through a lease-purchase agreement between a contracting unit and
47 an energy services company or other public or private entity. Under
48 a lease-purchase agreement, ownership of the energy savings

1 equipment or improved facilities shall pass to the contracting unit
2 when all lease payments have been made. Notwithstanding the
3 provisions of any other law to the contrary, the duration of such a
4 lease-purchase agreement shall not exceed 15 years, except that the
5 duration of a lease purchase agreement for a combined heat and
6 power or cogeneration project shall not exceed 20 years. For the
7 purposes of this paragraph, the duration of the repayment term of a
8 lease-purchase agreement shall commence on the date upon which
9 construction and installation of the energy savings equipment,
10 “combined heat and power facility” or “cogeneration facility,” as
11 those terms are defined pursuant to section 3 of P.L.1999, c.23
12 (C.48:3-51), or other energy conservation measures undertaken
13 pursuant to the energy savings plan, have been completed.

14 (2) Any lease-purchase agreement entered into pursuant to this
15 subsection, may contain: a clause making it subject to the
16 availability and appropriation annually of sufficient funds as may
17 be required to meet the extended obligation; and a non-substitution
18 clause maintaining that if the agreement is terminated for non-
19 appropriation, the contracting unit may not replace the leased
20 equipment or facilities with equipment or facilities that perform the
21 same or similar functions.

22 (3) A contracting unit may arrange for incurring energy savings
23 obligations to finance an energy savings improvement program.
24 Energy savings obligations may be funded through appropriations
25 for utility services in the annual budget of the contracting unit and
26 may be issued as refunding bonds pursuant to N.J.S.40A:2-52 et
27 seq., including the issuance of bond anticipation notes as may be
28 necessary, provided that all such bonds and notes mature within the
29 periods authorized for such energy savings obligations. Energy
30 savings obligations may be issued either through the contracting
31 unit or another public agency authorized to undertake financing on
32 behalf of the unit.

33 (4) Lease-purchase agreements and energy savings obligations
34 shall not be used to finance maintenance, guarantees, or verification
35 of guarantees of energy conservation measures. Lease-purchase
36 agreements and energy savings obligations may be used to finance
37 the cost of an energy audit or the cost of verification of energy
38 savings as part of adopting an energy savings plan.
39 Notwithstanding any law to the contrary, lease-purchase agreements
40 and energy savings certificates shall not be excepted from any
41 budget or tax levy limitation otherwise provided by law. Maturity
42 schedules of lease-purchase agreements or energy savings
43 obligations must exceed the estimated useful life of the individual
44 energy conservation measures.

45 d. (1) The energy audit component of an energy savings
46 improvement program shall be conducted either by the contracting
47 unit or by a qualified independent third party retained by the
48 governing body for that purpose. It shall not be conducted by an

1 energy services company subsequently hired to develop an energy
2 savings improvement program. The energy audit shall identify the
3 current energy use of any or all facilities and energy conservation
4 measures that can be implemented in which the energy savings and
5 energy efficiency could be realized and maximized.

6 (2) To implement an energy savings improvement program, a
7 contracting unit shall develop a plan that consists of one or more
8 energy conservation measures. The plan shall:

9 (a) contain the results of an energy audit;

10 (b) describe the energy conservation measures that will
11 comprise the program;

12 (c) estimate greenhouse gas reductions resulting from those
13 energy savings;

14 (d) identify all design and compliance issues that require the
15 professional services of an architect or engineer and identify who
16 will provide these services;

17 (e) include an assessment of risks involved in the successful
18 implementation of the plan;

19 (f) identify the eligibility for, and costs and revenues associated
20 with the PJM Independent System Operator for demand response
21 and curtailable service activities;

22 (g) include schedules showing calculations of all costs of
23 implementing the proposed energy conservation measures and the
24 projected energy savings;

25 (h) identify maintenance requirements necessary to ensure
26 continued energy savings, and describe how they will be fulfilled;
27 and

28 (i) if developed by an energy services company, a description
29 of, and cost estimates of an energy savings guarantee.

30 All professionals providing engineering services under the plan
31 shall have errors and omissions insurance.

32 (3) Prior to the adoption of the plan, the contracting unit shall
33 contract with a qualified third party to verify the projected energy
34 savings to be realized from the proposed program have been
35 calculated as required by subsection e. of this section.

36 (4) Upon adoption, the plan shall be submitted to the Board of
37 Public Utilities, which shall post it on the Internet on a public
38 webpage maintained for such purpose. If the contracting unit
39 maintains its own website, it shall also post the plan on that site.
40 The board may require periodic reporting concerning the
41 implementation of the plan.

42 (5) Verification by a qualified third party shall be required when
43 energy conservation measures are placed in service or
44 commissioned, to ensure the savings projected in the energy savings
45 plan shall be achieved.

46 (6) Energy-related capital improvements that do not reduce
47 energy usage may be included in an energy savings improvement
48 program but the cost of such improvements shall not be financed as

1 a lease-purchase or through energy savings obligations authorized
2 by subsection c. of this section. Nothing herein is intended to
3 prevent financing of such capital improvements through otherwise
4 authorized means.

5 (7) A qualified third party when required by this subsection may
6 include an employee of the contracting unit who is properly trained
7 and qualified to perform such work.

8 e. (1) (a) The calculation of energy savings for the purposes of
9 determining that the energy savings resulting from the program will
10 be sufficient to cover the cost of the program's energy conservation
11 measures, as provided in subsection a. of this section, shall involve
12 determination of the dollar amount saved through implementation
13 of an energy savings improvement program using the guidelines of
14 the International Performance Measurement and Verification
15 Protocol or other protocols approved by the Board of Public
16 Utilities and standards adopted by the Board of Public Utilities
17 pursuant to this section. The calculation shall include all applicable
18 State and federal rebates and tax credits, but shall not include the
19 cost of an energy audit and the cost of verifying energy savings.
20 The calculation shall state which party has made application for
21 rebates and credits and how these applications translate into energy
22 savings.

23 (b) During the procurement phase of a program, an energy
24 service company's proposal submitted in response to a request for
25 proposal shall not include a savings calculation that assumes,
26 includes, or references capital cost avoidance savings, the current or
27 projected value of a "solar renewable energy certificate," as defined
28 pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other
29 environmental or similar attributes or benefits of whatever nature
30 that derive from the generation of renewable energy, and any costs
31 or discounts associated with maintenance services, an energy
32 savings guarantee, or third party verification of energy conservation
33 measures and energy savings. The calculation of energy savings
34 shall utilize and specifically reference as a benchmark the actual
35 demand and energy components of the public utility tariff rate
36 applicable to the contracting unit then in effect, and not a blended
37 rate that aggregates, combines, or restates in any manner the distinct
38 demand and energy components of the public utility tariff rate into
39 a single combined or restated tariff rate. If an energy services
40 company submits a proposal to a contracting unit that does not
41 calculate projected energy savings in the manner required by this
42 subsection, such proposal shall be rejected by the contracting unit.

43 (2) For the purposes of this section, the Board of Public Utilities
44 shall adopt standards and uniform values for interest rates and
45 escalation of labor, electricity, oil, and gas, as well as standards for
46 presenting these costs in a life cycle and net present value format,
47 standards for the presentation of obligations for carbon reductions,
48 and other standards that the board may determine necessary.

1 f. (1) When an energy services company is awarded an energy
2 savings services contract, it shall offer the contracting unit the
3 option to purchase, for an additional amount, an energy savings
4 guarantee. The guarantee, if accepted by a separate vote of the
5 governing body of the contracting unit, shall insure that the energy
6 savings resulting from the energy savings improvement program,
7 determined periodically over the duration of the guarantee, will be
8 sufficient to defray all payments required to be made pursuant to
9 the lease-purchase agreement or energy savings obligation, and if
10 the savings are not sufficient, the energy services company will
11 reimburse the contracting unit for any additional amounts. Annual
12 costs of a guarantee shall not be financed or included as costs in an
13 energy savings plan but shall be fully disclosed in an energy
14 savings plan.

15 (2) When a guaranteed energy savings option is purchased, the
16 contract shall require a qualified third party to verify the energy
17 savings at intervals established by the parties.

18 (3) When an energy services company is awarded an energy
19 savings services contract to provide or perform goods or services
20 for the purpose of enabling a contracting unit to conserve energy
21 through energy efficiency equipment, including a “combined heat
22 and power facility” as that term is defined pursuant to section 3 of
23 P.L.1999, c.23 (C48:3-51), on a self-funded basis, such contract
24 shall extend for a term of up to 15 years for energy efficiency
25 projects, and for up to 20 years for a combined heat and power
26 facility after construction completion. If a contracting unit shall
27 elect to contract with an energy services company for an energy
28 savings guarantee in connection with a contract awarded pursuant to
29 this section, such guarantee may extend for a term of up to 15 years
30 for energy efficiency projects, or up to 20 years for a combined heat
31 and power facility after construction completion.

32 g. As used in this section:

33 "direct digital control systems" means the devices and
34 computerized control equipment that contain software and computer
35 interfaces that perform the logic that control a building's heating,
36 ventilating, and air conditioning system. Direct digital controls
37 shall be open protocol format and shall meet the interoperability
38 guidelines established by the American Society of Heating,
39 Refrigerating and Air-Conditioning Engineers;

40 "energy conservation measure" means an improvement that
41 results in reduced energy use, including, but not limited to,
42 installation of energy efficient equipment; demand response
43 equipment; combined heat and power systems; facilities for the
44 production of renewable energy; water conservation measures,
45 fixtures or facilities; building envelope improvements that are part
46 of an energy savings improvement program; and related control
47 systems for each of the foregoing;

1 "energy related capital improvement" means a capital
2 improvement that uses energy but does not result in a reduction of
3 energy use;

4 "energy saving obligation" means a bond, note or other
5 agreement evidencing the obligation to repay borrowed funds
6 incurred in order to finance energy saving improvements;

7 "energy savings" means a measured reduction in fuel, energy,
8 operating or maintenance costs resulting from the implementation
9 of one or more energy conservation measures services when
10 compared with an established baseline of previous fuel, energy,
11 operating or maintenance costs, including, but not limited to, future
12 capital replacement expenditures avoided as a result of equipment
13 installed or services performed as part of an energy savings plan;

14 "energy savings improvement program" means an initiative of a
15 contracting unit to implement energy conservation measures in
16 existing facilities, provided that the value of the energy savings
17 resulting from the program will be sufficient to cover the cost of the
18 program's energy conservation measures;

19 "energy savings plan" means the document that describes the
20 actions to be taken to implement the energy savings improvement
21 program;

22 "energy savings services contract" means a contract with an
23 energy savings company to develop an energy savings plan, prepare
24 bid specifications, manage the performance, provision,
25 construction, and installation of energy conservation measures by
26 subcontractors, to offer a guarantee of energy savings derived from
27 the implementation of an energy savings plan, and may include a
28 provision to manage the bidding process;

29 "energy services company" means a commercial entity that is
30 qualified to develop and implement an energy savings plan in
31 accordance with the provisions of this section;

32 "public works activities" means any work subject to the
33 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

34 "water conservation measure" means an alteration to a facility or
35 equipment that reduces water consumption, maximizes the
36 efficiency of water use, or reduces water loss.

37 h. (1) The Director of the Division of Local Government
38 Services in the Department of Community Affairs, the State
39 Treasurer, and the Board of Public Utilities may take such action as
40 is deemed necessary and consistent with the intent of this section to
41 implement its provisions.

42 (2) The Director of the Division of Local Government Services
43 in the Department of Community Affairs, the State Treasurer, and
44 the Board of Public Utilities may adopt implementation guidelines
45 or directives, and adopt such administrative rules, pursuant to the
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
47 seq.), as are necessary for the implementation of those agencies'
48 respective responsibilities under this section, except that

1 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et
2 seq.) to the contrary, the Director of the Division of Local
3 Government Services in the Department of Community Affairs, the
4 State Treasurer, and the Board of Public Utilities may adopt,
5 immediately upon filing with the Office of Administrative Law,
6 such rules and regulations as deemed necessary to implement the
7 provisions of this act which shall be effective for a period not to
8 exceed 12 months and shall thereafter be amended, adopted or re-
9 adopted in accordance with the provisions of P.L.1968, c.410
10 (C.52:14B-1 et seq.).

11 (cf: P.L.2009, c.4, s.6)

12

13 3. Section 9 of P.L.2009, c.4 (C.52:34-25) is amended to read
14 as follows:

15 9. a. A State contracting agency, as defined in this section, may
16 implement an energy savings improvement program in the manner
17 provided by this section whenever it determines that the savings
18 generated from reduced energy use from the program will be
19 sufficient to cover the cost of the program's energy conservation
20 measures as set forth in an energy savings plan. Under such a
21 program, a contracting agency may enter into an energy savings
22 services contract with an energy services company to implement the
23 program or the contracting agency may authorize separate contracts
24 to implement the program. The provisions of Title 52 of the
25 Revised Statutes shall apply to any contracts awarded pursuant to
26 this section to the extent that the provisions of such law are not
27 inconsistent with any provision of this section.

28 b. (1) To be eligible to enter into an energy savings services
29 contract, an energy services company shall be a commercial entity
30 that is qualified to provide energy savings services in accordance
31 with the provisions of this section. A State contracting agency may
32 determine to enter into an energy savings services contract through
33 public advertising for bids and the receipt of bids therefor.

34 (2) (a) Public works activities performed under an energy
35 savings improvement program shall be subject to all requirements
36 regarding public bidding, bid security, performance guarantees,
37 insurance and other public contracting requirements that are
38 applicable to public works contracts, to the extent not inconsistent
39 with this section. A general contractor, energy services company
40 serving as general contractor, or any subcontractor hired for the
41 furnishing of plumbing and gas fitting and all kindred work, and of
42 steam and hot water heating and ventilating apparatus, steam power
43 plants and kindred work, and electrical work, structural steel and
44 ornamental iron work, shall be classified by the Division of
45 Property Management and Construction in the Department of the
46 Treasury in order to perform public works activities under an
47 energy savings improvement program.

1 (b) Individuals or organizations performing energy audits,
2 acting as commissioning agents, or conducting verification of
3 energy savings plans, implementation of energy conservation
4 measures, or verifying guarantees shall be prequalified by the
5 Division of Property Management and Construction in the
6 Department of the Treasury to perform their work under an energy
7 savings improvement program.

8 (3) (a) An energy services company may be designated as the
9 general contractor for improvements to be made pursuant to an
10 energy savings plan, provided that the hiring of subcontractors that
11 are required to be classified pursuant to subparagraph (a) of
12 paragraph (2) of this subsection shall be performed in accordance
13 with the procedures and requirements set forth pursuant to **[the**
14 **public bidding requirements of the State contracting agency]**
15 subparagraph (b) of this paragraph. A contract with an energy
16 savings company shall include, but not be limited to: preparation of
17 an energy savings plan, the responsibilities of the parties for project
18 schedules, installations, performance and quality, payment of
19 subcontractors, project completion, commissioning, savings
20 implementation; a requirement that the savings to be achieved by
21 energy conservation measures be verified upon commissioning of
22 the improvements; allocation of State and federal rebates and tax
23 credits; and any other provisions deemed necessary by the parties.

24 (b) Notwithstanding any other law or regulation to the contrary,
25 an energy services company shall procure any required
26 subcontractors through a competitive contracting procedure. An
27 energy services company, competitively selected through a public
28 request for proposal process by a State contracting agency to
29 develop an energy savings improvement program pursuant to
30 P.L.2009, c.4 (C.18A:18A-4.6 et al.), shall define appropriate
31 scopes of work for the energy savings plan approved by the State
32 contracting agency and shall advertise requests for proposal to
33 procure such services in a local newspaper of general circulation for
34 a period of not less than five business days. The requests for
35 proposal may be for installation labor only, or for combined labor
36 and equipment, depending upon which approach is most economical
37 for the State contracting agency. The energy services company
38 shall use its best efforts to procure a minimum of three quotations
39 from subcontractors that have been duly classified by the Division
40 of Property Management and Construction, and shall provide the
41 quotations received to the State contracting agency. The energy
42 services company shall award the contract to the subcontractor
43 based upon price and other factors, which shall include, without
44 limitation, the subcontractor's relevant experience, resources,
45 bonding and insurance capability, ability to meet project deadlines,
46 and references. Where an award is not based solely upon price, the
47 energy services company shall justify the award to the State
48 contracting agency. If the State contracting agency does not

1 approve the award, the energy services company shall continue to
2 select subcontractors until one is approved by the State contracting
3 agency. Upon approval in writing of the subcontractor by the State
4 contracting agency, the energy services company shall finalize a
5 contract with the subcontractor that includes the agreed scope of
6 work and price. All subcontractors awarded contracts by an energy
7 services company pursuant to this section shall be paid prevailing
8 wages in accordance with the “New Jersey Prevailing Wage Act,”
9 P.L.1963, c.150 (C.34:11-56.25 et seq.), and shall be appropriately
10 classified as contractors by the Division of Property Management
11 and Construction.

12 (c) In order to expedite communications with an energy services
13 company and facilitate the implementation of an energy savings
14 improvement program, a State contracting agency may designate or
15 appoint a representative or agent with decision-making authority to
16 coordinate with the energy services company and to address issues
17 associated with the implementation of an energy savings
18 improvement program as they arise.

19 (4) Except as provided in paragraph (5) of this subsection, a
20 subsidiary or wholly-owned or partially-owned affiliate of the
21 energy services company shall not be an eligible contractor or
22 subcontractor under an energy savings services contract.

23 [(5)When the energy services company is the manufacturer of
24 direct digital control systems and contracts with the contracting
25 agency to provide a guaranteed energy savings option pursuant to
26 subsection f. of this section, the specification of such direct digital
27 control systems may be treated as proprietary goods and if so
28 treated, the bid specification shall set forth an allowance price for
29 its supply by the energy services company which shall be used by
30 all bidders in the public bidding process. Direct digital controls
31 shall be open protocol format and shall meet the interoperability
32 guidelines established by the American Society of Heating,
33 Refrigerating and Air-Conditioning Engineers.]

34 c. In addition to existing authorization of a State agency to
35 enter into lease-purchase agreements or to issue obligations to
36 finance the costs of an energy savings improvement program, a
37 contracting agency is hereby authorized to finance the costs of an
38 energy savings improvement program by entering into a lease
39 purchase agreement. Any financing mechanism shall be
40 administered in a manner consistent with this subsection insofar as
41 it does not conflict with the provisions of other law that applies to
42 the contracting agency.

43 (1) An energy savings improvement program may be financed
44 through a lease-purchase agreement between a State contracting
45 agency and an energy services company or other public or private
46 entity. Under a lease-purchase agreement, ownership of the energy
47 savings equipment or improved facilities shall pass to the
48 contracting agency or the client agency responsible for the facility

1 when all lease payments have been made. Notwithstanding the
2 provisions of any other law to the contrary, the duration of such a
3 lease-purchase agreement shall not exceed 15 years, except that the
4 duration of a lease purchase agreement for a combined heat and
5 power or cogeneration project shall not exceed 20 years. For the
6 purposes of this paragraph, the duration of the repayment term of a
7 lease-purchase agreement shall commence on the date upon which
8 construction and installation of the energy savings equipment,
9 “combined heat and power facility” or “cogeneration facility,” as
10 those terms are defined pursuant to section 3 of P.L.1999, c.23
11 (C.48:3-51), or other energy conservation measures undertaken
12 pursuant to the energy savings plan, have been completed.

13 (2) Lease-purchase agreements and energy savings obligations
14 shall not be used to finance maintenance, guarantees, or verification
15 of guarantees of energy conservation measures. Lease-purchase
16 agreements may be used to finance the cost of an energy audit or
17 the cost of verification of energy savings as part of adopting an
18 energy savings plan. Maturity schedules of lease-purchase
19 agreements must exceed the estimated useful life of the individual
20 energy conservation measures.

21 d. (1) The energy audit component of an energy savings
22 improvement program shall be conducted either by the contracting
23 agency or by a qualified independent third party retained by the
24 contracting agency for that purpose. It shall not be conducted by an
25 energy services company subsequently hired to develop an energy
26 savings improvement program. The energy audit shall identify the
27 current energy use of any or all facilities and energy conservation
28 measures that can be implemented in which the energy savings and
29 energy efficiency could be realized and maximized.

30 (2) To implement an energy savings improvement program, a
31 contracting agency shall develop an energy savings plan that
32 consists of one or more energy conservation measures. The plan
33 shall:

34 (a) contain the results of an energy audit;

35 (b) describe the energy conservation measures that will
36 comprise the program;

37 (c) estimate greenhouse gas reductions resulting from those
38 energy savings;

39 (d) identify all design and compliance issues that require the
40 professional services of an architect or engineer and identify who
41 will provide these services;

42 (e) include an assessment of risks involved in the successful
43 implementation of the plan;

44 (f) identify the eligibility for, and costs and revenues associated
45 with the PJM Independent System Operator for demand response
46 and curtailable service activities;

1 (g) include schedules showing calculations of all costs of
2 implementing the proposed energy conservation measures and the
3 projected energy savings;

4 (h) identify maintenance requirements necessary to ensure
5 continued energy savings, and describe how they will be fulfilled;
6 and

7 (i) if developed by an energy services company, a description
8 of, and cost estimates of an energy savings guarantee.

9 All professionals providing engineering services under the plan
10 shall have errors and omissions insurance.

11 (3) Prior to the adoption of the plan, the contracting agency
12 shall contract with a qualified third party to verify the projected
13 energy savings to be realized from the proposed program have been
14 calculated as required by subsection e. of this section.

15 (4) Upon adoption, the plan shall be submitted to the Board of
16 Public Utilities, which shall post it on the Internet on a public
17 webpage maintained for such purpose. If the contracting agency
18 maintains its own website, it shall also post the plan on that site.
19 The Board of Public Utilities may require periodic reporting
20 concerning the implementation of the plan.

21 (5) Verification by a qualified third party shall be required when
22 energy conservation measures are placed in service or
23 commissioned, to ensure the savings projected in the energy savings
24 plan shall be achieved.

25 (6) Energy-related capital improvements that do not reduce
26 energy usage may be included in an energy savings improvement
27 program but the cost of such improvements shall not be financed as
28 a lease-purchase or through energy savings obligations authorized
29 by subsection c. of this section. Nothing herein is intended to
30 prevent financing of such capital improvements through otherwise
31 authorized means.

32 (7) A qualified third party when required by this subsection may
33 include an employee of the State contracting agency who is
34 properly trained and qualified to perform such work.

35 e. (1) (a) The calculation of energy savings for the purposes of
36 determining that the energy savings resulting from the program will
37 be sufficient to cover the cost of the program's energy conservation
38 measures, as provided in subsection a. of this section, shall involve
39 determination of the dollar amount saved through implementation
40 of an energy savings improvement program using the guidelines of
41 the International Performance Measurement and Verification
42 Protocol or other protocols approved by the Board of Public
43 Utilities and standards adopted by the Board of Public Utilities
44 pursuant to this section. The calculation shall include all applicable
45 State and federal rebates and tax credits, but shall not include the
46 cost of an energy audit and the cost of verifying energy savings.
47 The calculation shall state which party has made application for

1 rebates and credits and how these applications translate into energy
2 savings.

3 (b) During the procurement phase of a program, an energy
4 service company's proposal submitted in response to a request for
5 proposal shall not include a savings calculation that assumes,
6 includes, or references capital cost avoidance savings, the current or
7 projected value of a "solar renewable energy certificate," as defined
8 pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other
9 environmental or similar attributes or benefits of whatever nature
10 that derive from the generation of renewable energy, and any costs
11 or discounts associated with maintenance services, an energy
12 savings guarantee, or third party verification of energy conservation
13 measures and energy savings. The calculation of energy savings
14 shall utilize and specifically reference as a benchmark the actual
15 demand and energy components of the public utility tariff rate
16 applicable to the State contracting agency then in effect, and not a
17 blended rate that aggregates, combines, or restates in any manner
18 the distinct demand and energy components of the public utility
19 tariff rate into a single combined or restated tariff rate. If an energy
20 services company submits a proposal to a State contracting agency
21 that does not calculate projected energy savings in the manner
22 required by this subsection, such proposal shall be rejected by the
23 State contracting agency.

24 (2) For the purposes of this section, the Board of Public Utilities
25 shall adopt standards and uniform values for interest rates and
26 escalation of labor, electricity, oil, and gas, as well as standards for
27 presenting these costs in a life cycle and net present value format,
28 standards for the presentation of obligations for carbon reductions,
29 and other standards that the board may determine necessary.

30 f. (1) When an energy services company is awarded an energy
31 savings services contract, it shall offer the contracting agency the
32 option to purchase, for an additional amount, an energy savings
33 guarantee. The guarantee, if accepted by the contracting agency,
34 shall insure that the energy savings resulting from the energy
35 savings improvement program, determined periodically over the
36 duration of the guarantee, will be sufficient to defray all payments
37 required to be made pursuant to the lease-purchase agreement or
38 energy savings obligation, and if the savings are not sufficient, the
39 energy services company will reimburse the contracting agency for
40 any additional amounts. Annual costs of a guarantee shall not be
41 financed or included as costs in an energy savings plan but shall be
42 fully disclosed in an energy savings plan.

43 (2) When a guaranteed energy savings option is purchased, the
44 contract shall require a qualified third party to verify the energy
45 savings at intervals established by the parties.

46 (3) When an energy services company is awarded an energy
47 savings services contract to provide or perform goods or services
48 for the purpose of enabling a State contracting agency to conserve

1 energy through energy efficiency equipment, including a “combined
2 heat and power facility” as that term is defined pursuant to section 3
3 of P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
4 shall extend for a term of up to 15 years for energy efficiency
5 projects, and for up to 20 years for a combined heat and power
6 facility after construction completion. If a State contracting agency
7 shall elect to contract with an energy services company for an
8 energy savings guarantee in connection with a contract awarded
9 pursuant to this section, such guarantee may extend for a term of up
10 to 15 years for energy efficiency projects, or up to 20 years for a
11 combined heat and power facility after construction completion.

12 g. As used in this section:

13 "direct digital control systems" means the devices and
14 computerized control equipment that contain software and computer
15 interfaces that perform the logic that control a building's heating,
16 ventilating, and air conditioning system. Direct digital controls
17 shall be open protocol format and shall meet the interoperability
18 guidelines established by the American Society of Heating,
19 Refrigerating and Air-Conditioning Engineers;

20 "energy conservation measure" means an improvement that
21 results in reduced energy use, including, but not limited to,
22 installation of energy efficient equipment; demand response
23 equipment; combined heat and power systems; facilities for the
24 production of renewable energy; water conservation measures,
25 fixtures or facilities; building envelope improvements that are part
26 of an energy savings improvement program; and related control
27 systems for each of the foregoing;

28 "energy related capital improvement" means a capital
29 improvement that uses energy but does not result in a reduction of
30 energy use;

31 "energy savings" means a measured reduction in fuel, energy,
32 operating or maintenance costs resulting from the implementation
33 of one or more energy conservation measures services when
34 compared with an established baseline of previous fuel, energy,
35 operating or maintenance costs, including, but not limited to, future
36 capital replacement expenditures avoided as a result of equipment
37 installed or services performed as part of an energy savings plan;

38 "energy savings improvement program" means an initiative of a
39 State contracting agency to implement energy conservation
40 measures in existing facilities, provided that the value of the energy
41 savings resulting from the program will be sufficient to cover the
42 cost of the program's energy conservation measures;

43 "energy savings plan" means the document that describes the
44 actions to be taken to implement the energy savings improvement
45 program;

46 "energy savings services contract" means a contract with an
47 energy savings company to develop an energy savings plan, prepare
48 bid specifications, manage the performance, provision,

1 construction, and installation of energy conservation measures by
2 subcontractors, to offer a guarantee of energy savings derived from
3 the implementation of an energy savings plan, and may include a
4 provision to manage the bidding process;

5 "energy services company" means a commercial entity that is
6 qualified to develop and implement an energy savings plan in
7 accordance with the provisions of this section;

8 "public works activities" means any work subject to the
9 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.);

10 "State contracting agency" or "contracting agency" means any of
11 the principal departments in the Executive Branch of State
12 Government, and any division, board, bureau, office, commission or
13 other instrumentality created by a principal department; and

14 "water conservation measure" means an alteration to a facility or
15 equipment that reduces water consumption, maximizes the
16 efficiency of water use, or reduces water loss.

17 h. (1) The State Treasurer and the Board of Public Utilities may
18 take such action as is deemed necessary and consistent with the
19 intent of this section to implement its provisions.

20 (2) The State Treasurer and the Board of Public Utilities may
21 adopt implementation guidelines or directives, and adopt such
22 administrative rules, pursuant to the "Administrative Procedure
23 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
24 implementation of those agencies' respective responsibilities under
25 this section, except that notwithstanding any provision of P.L.1968,
26 c.410 (C.52:14B-1 et seq.) to the contrary, the State Treasurer, and
27 the Board of Public Utilities may adopt, immediately upon filing
28 with the Office of Administrative Law, such rules and regulations
29 as deemed necessary to implement the provisions of this act which
30 shall be effective for a period not to exceed 12 months and shall
31 thereafter be amended, adopted or re-adopted in accordance with
32 the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

33 (cf: P.L.2009, c.4, s.9)

34

35 4. Section 10 of P.L.2009, c.4 (C.52:35A-1) is amended to
36 read as follows:

37 10. a. A public agency, as defined in this section, may
38 implement an energy savings improvement program in the manner
39 provided by this section whenever it determines that the savings
40 generated from reduced energy use from the program will be
41 sufficient to cover the cost of the program's energy conservation
42 measures as set forth in an energy savings plan. Under such a
43 program, a public agency may enter into an energy savings services
44 contract with an energy services company to implement the
45 program or the public agency may authorize separate contracts to
46 implement the program. The provisions of any other law applicable
47 to a public agency shall apply to any contracts awarded pursuant to

1 this section to the extent that the provisions of such law are not
2 inconsistent with any provision of this section.

3 b. (1) To be eligible to enter into an energy savings services
4 contract, an energy services company shall be a commercial entity
5 that is qualified to provide public agencies with energy savings
6 services in accordance with the provisions of this section. A public
7 agency may determine to enter into an energy savings services
8 contract which shall be awarded through a procedure that results in
9 the award of a contract to a vendor determined by the public agency
10 to be the most advantageous, price and other factors considered.

11 (2) (a) Public works activities performed under an energy
12 savings improvement program shall be subject to all requirements
13 regarding public bidding, bid security, performance guarantees,
14 insurance and other public contracting requirements that are
15 applicable to public works contracts, to the extent not inconsistent
16 with this section. A general contractor, energy services company
17 serving as general contractor, or any subcontractor hired for the
18 furnishing of plumbing and gas fitting and all kindred work, and of
19 steam and hot water heating and ventilating apparatus, steam power
20 plants and kindred work, and electrical work, structural steel and
21 ornamental iron work shall be classified by the Division of Property
22 Management and Construction in the Department of the Treasury in
23 order to perform public works activities under an energy savings
24 improvement program.

25 (b) Individuals or organizations performing energy audits,
26 acting as commissioning agents, or conducting verification of
27 energy savings plans, implementation of energy conservation
28 measures, or verifying guarantees shall be prequalified by the
29 Division of Property Management and Construction in the
30 Department of the Treasury to perform their work under an energy
31 savings improvement program.

32 (3) (a) An energy services company may be designated as the
33 general contractor for improvements to be made pursuant to an
34 energy savings plan, provided that the hiring of subcontractors that
35 are required to be classified pursuant to subparagraph (a) of
36 paragraph (2) of this subsection shall be performed in accordance
37 with the procedures and requirements set forth pursuant to **[the**
38 **public bidding requirements of the public agency]** subparagraph (b)
39 of this paragraph. A contract with an energy savings company shall
40 include, but not be limited to: preparation of an energy savings
41 plan; the responsibilities of the parties for project schedules,
42 installations, performance and quality, payment of subcontractors,
43 project completion, commissioning, savings implementation; a
44 requirement that the savings to be achieved by energy conservation
45 measures be verified upon commissioning of the improvements;
46 allocation of State and federal rebates and tax credits; and any other
47 provisions deemed necessary by the parties.

1 **(b) Notwithstanding any other law or regulation to the contrary,**
2 **an energy services company shall procure any required**
3 **subcontractors through a competitive contracting procedure. An**
4 **energy services company, competitively selected through a public**
5 **request for proposal process by a public agency to develop an**
6 **energy savings improvement program pursuant to P.L.2009, c.4**
7 **(C.18A:18A-4.6 et al.), shall define appropriate scopes of work for**
8 **the energy savings plan approved by the public agency and shall**
9 **advertise requests for proposal to procure such services in a local**
10 **newspaper of general circulation for a period of not less than five**
11 **business days. The requests for proposal may be for installation**
12 **labor only, or for combined labor and equipment, depending upon**
13 **which approach is most economical for the public agency. The**
14 **energy services company shall use its best efforts to procure a**
15 **minimum of three quotations from subcontractors that have been**
16 **duly classified by the Division of Property Management and**
17 **Construction, and shall provide the quotations received to the public**
18 **agency. The energy services company shall award the contract to**
19 **the subcontractor based upon price and other factors, which shall**
20 **include, without limitation, the subcontractor's relevant experience,**
21 **resources, bonding and insurance capability, ability to meet project**
22 **deadlines, and references. Where an award is not based solely upon**
23 **price, the energy services company shall justify the award to the**
24 **public agency. If the public agency does not approve the award, the**
25 **energy services company shall continue to select subcontractors**
26 **until one is approved by the public agency. Upon approval in**
27 **writing of the subcontractor by the public agency, the energy**
28 **services company shall finalize a contract with the subcontractor**
29 **that includes the agreed scope of work and price. All**
30 **subcontractors awarded contracts by an energy services company**
31 **pursuant to this section shall be paid prevailing wages in**
32 **accordance with the "New Jersey Prevailing Wage Act," P.L.1963,**
33 **c.150 (C.34:11-56.25 et seq.), and shall be appropriately classified**
34 **as contractors by the Division of Property Management and**
35 **Construction.**

36 **(c) In order to expedite communications with an energy services**
37 **company and facilitate the implementation of an energy savings**
38 **improvement program, a public agency may designate or appoint a**
39 **representative or agent with decision-making authority to**
40 **coordinate with the energy services company and to address issues**
41 **associated with the implementation of an energy savings**
42 **improvement program as they arise.**

43 (4) Except as provided in paragraph (5) of this subsection, a
44 subsidiary or wholly-owned or partially-owned affiliate of the
45 energy services company shall not be an eligible contractor or
46 subcontractor under an energy savings services contract.

47 (5) When the energy services company is the manufacturer of
48 direct digital control systems and contracts with the public agency

1 to provide a guaranteed energy savings option pursuant to
2 subsection f. of this section, the specification of such direct digital
3 control systems may be treated as proprietary goods and if so
4 treated, the bid specification shall set forth an allowance price for
5 its supply by the energy services company which shall be used by
6 all bidders in the public bidding process. Direct digital controls
7 shall be open protocol format and shall meet the interoperability
8 guidelines established by the American Society of Heating,
9 Refrigerating and Air-Conditioning Engineers. Each contract to be
10 entered into pursuant to this section between a public agency and an
11 energy services company that is the manufacturer of direct digital
12 control systems where such direct digital control systems are treated
13 as proprietary goods as part of the contract, shall first be reviewed
14 and approved by the State Comptroller for the purpose of affirming
15 the reasonableness of such allowance price.

16 c. In addition to existing authorization of a public agency to
17 enter into lease-purchase agreements or to issue obligations to
18 finance the costs of an energy savings improvement program, a
19 public agency is hereby authorized to finance the costs of an energy
20 savings improvement program by entering into a lease purchase
21 agreement or by issuing energy savings obligations pursuant to this
22 subsection. Any financing mechanism shall be administered in a
23 manner consistent with this subsection insofar as it does not conflict
24 with the provisions of other law that applies to the public agency.

25 (1) An energy savings improvement program may be financed
26 through a lease-purchase agreement between a public agency and an
27 energy services company or other public or private entity. Under a
28 lease-purchase agreement, ownership of the energy savings
29 equipment or improved facilities shall pass to the public agency
30 when all lease payments have been made. Notwithstanding the
31 provisions of any other law to the contrary, the duration of such a
32 lease-purchase agreement shall not exceed 15 years, except that the
33 duration of a lease purchase agreement for a combined heat and
34 power or cogeneration project shall not exceed 20 years. For the
35 purposes of this paragraph, the duration of the repayment term of a
36 lease-purchase agreement shall commence on the date upon which
37 construction and installation of the energy savings equipment,
38 “combined heat and power facility” or “cogeneration facility,” as
39 those terms are defined pursuant to section 3 of P.L.1999, c.23
40 (C.48:3-51), or other energy conservation measures undertaken
41 pursuant to the energy savings plan, have been completed.

42 (2) A public agency may arrange for incurring energy savings
43 obligations to finance an energy savings improvement program.
44 Energy savings obligations may be funded through appropriations
45 for utility services in the annual budget of the public agency and
46 may be issued as refunding bonds, including the issuance of bond
47 anticipation notes as may be necessary, provided that all such bonds
48 and notes mature within the periods authorized for such energy

1 savings obligations. Energy savings obligations may be issued
2 either through the public agency or another public agency
3 authorized to undertake financing on behalf of the public agency.

4 (3) Lease-purchase agreements and energy savings obligations
5 shall not be used to finance maintenance, guarantees, or verification
6 of guarantees of energy conservation measures. Lease-purchase
7 agreements and energy savings obligations may be used to finance
8 the cost of an energy audit or the cost of verification of energy
9 savings as part of adopting an energy savings plan.
10 Notwithstanding any law to the contrary, lease-purchase agreements
11 and energy savings certificates shall not be excepted from any
12 budget or tax levy limitation otherwise provided by law. Maturity
13 schedules of lease-purchase agreements or energy savings
14 obligations must exceed the estimated useful life of the individual
15 energy conservation measures.

16 d. (1) The energy audit component of an energy savings
17 improvement program shall be conducted either by the public
18 agency or by a qualified independent third party retained by the
19 board for that purpose. It shall not be conducted by an energy
20 services company subsequently hired to develop an energy savings
21 improvement program. The energy audit shall identify the current
22 energy use of any or all facilities and energy conservation measures
23 that can be implemented in which the energy savings and energy
24 efficiency could be realized and maximized.

25 (2) To implement a program, a public agency shall develop an
26 energy savings plan that consists of one or more energy
27 conservation measures. The plan shall: (a) contain the results of an
28 energy audit;

29 (b) describe the energy conservation measures that will
30 comprise the program;

31 (c) estimate greenhouse gas reductions resulting from those
32 energy savings;

33 (d) identify all design and compliance issues that require the
34 professional services of an architect or engineer and identify who
35 will provide these services;

36 (e) include an assessment of risks involved in the successful
37 implementation of the plan;

38 (f) identify the eligibility for, and costs and revenues associated
39 with the PJM Independent System Operator for demand response
40 and curtailable service activities;

41 (g) include schedules showing calculations of all costs of
42 implementing the proposed energy conservation measures and the
43 projected energy savings;

44 (h) identify maintenance requirements necessary to ensure
45 continued energy savings, and describe how they will be fulfilled;
46 and

47 (i) if developed by an energy services company, a description
48 of, and cost estimates of an energy savings guarantee.

1 All professionals providing engineering services under the plan
2 shall have errors and omissions insurance.

3 (3) Prior to the adoption of the plan, the public agency shall
4 contract with a qualified third party to verify the projected energy
5 savings to be realized from the proposed program have been
6 calculated as required by subsection e. of this section.

7 (4) Upon adoption, the plan shall be submitted to the Board of
8 Public Utilities, which shall post it on the Internet on a public
9 webpage maintained for such purpose. If the public agency
10 maintains its own website, it shall also post the plan on that site.
11 The board may require periodic reporting concerning the
12 implementation of the plan.

13 (5) Verification by a qualified third party shall be required when
14 energy conservation measures are placed in service or
15 commissioned, to ensure the savings projected in the energy savings
16 plan shall be achieved.

17 (6) Energy-related capital improvements that do not reduce
18 energy usage may be included in an energy savings improvement
19 program but the cost of such improvements shall not be financed as
20 a lease-purchase or through energy savings obligations authorized
21 by subsection c. of this section. Nothing herein is intended to
22 prevent financing of such capital improvements through otherwise
23 authorized means.

24 (7) A qualified third party when required by this subsection may
25 include an employee of the public agency who is properly trained
26 and qualified to perform such work.

27 e. (1) (a) The calculation of energy savings for the purposes of
28 determining that the energy savings resulting from the program will
29 be sufficient to cover the cost of the program's energy conservation
30 measures, as provided in subsection a. of this section, shall involve
31 determination of the dollar amount saved through implementation
32 of an energy savings improvement program using the guidelines of
33 the International Performance Measurement and Verification
34 Protocol or other protocols approved by the Board of Public
35 Utilities and standards adopted by the Board of Public Utilities
36 pursuant to this section. The calculation shall include all applicable
37 State and federal rebates and tax credits, but shall not include the
38 cost of an energy audit and the cost of verifying energy savings.
39 The calculation shall state which party has made application for
40 rebates and credits and how these applications translate into energy
41 savings.

42 (b) During the procurement phase of a program, an energy
43 service company's proposal submitted in response to a request for
44 proposal shall not include a savings calculation that assumes,
45 includes, or references capital cost avoidance savings, the current or
46 projected value of a "solar renewable energy certificate," as defined
47 pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other
48 environmental or similar attributes or benefits of whatever nature

1 that derive from the generation of renewable energy, and any costs
2 or discounts associated with maintenance services, an energy
3 savings guarantee, or third party verification of energy conservation
4 measures and energy savings. The calculation of energy savings
5 shall utilize and specifically reference as a benchmark the actual
6 demand and energy components of the public utility tariff rate
7 applicable to the public agency then in effect, and not a blended rate
8 that aggregates, combines, or restates in any manner the distinct
9 demand and energy components of the public utility tariff rate into
10 a single combined or restated tariff rate. If an energy services
11 company submits a proposal to a public agency that does not
12 calculate projected energy savings in the manner required by this
13 subsection, such proposal shall be rejected by the public agency.

14 (2) For the purposes of this section, the Board of Public Utilities
15 shall adopt standards and uniform values for interest rates and
16 escalation of labor, electricity, oil, and gas, as well as standards for
17 presenting these costs in a life cycle and net present value format,
18 standards for the presentation of obligations for carbon reductions,
19 and other standards that the board may determine necessary.

20 f. (1) When an energy services company is awarded an energy
21 savings services contract, it shall offer the public agency the option
22 to purchase, for an additional amount, an energy savings guarantee.
23 The guarantee, if accepted by a separate vote of the governing body
24 of the public agency, shall insure that the energy savings of the
25 public agency resulting from the energy savings improvement
26 program, determined periodically over the duration of the
27 guarantee, will be sufficient to defray all payments required to be
28 made pursuant to the lease-purchase agreement or energy savings
29 obligation, and if the savings are not sufficient, the energy services
30 company will reimburse the public agency for any additional
31 amounts. Annual costs of a guarantee shall not be financed or
32 included as costs in an energy savings plan but shall be fully
33 disclosed in an energy savings plan.

34 (2) When a guaranteed energy savings option is purchased, the
35 contract shall require a qualified third party to verify the energy
36 savings at intervals established by the parties.

37 (3) When a guaranteed energy savings option is not purchased,
38 the energy savings services contract shall not include maintenance
39 services provided by the energy services company.

40 (4) When an energy services company is awarded an energy
41 savings services contract to provide or perform goods or services
42 for the purpose of enabling a public agency to conserve energy
43 through energy efficiency equipment, including a “combined heat
44 and power facility” as that term is defined pursuant to section 3 of
45 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
46 shall extend for a term of up to 15 years for energy efficiency
47 projects, and for up to 20 years for a combined heat and power
48 facility after construction completion. If a public agency shall elect

1 to contract with an energy services company for an energy savings
2 guarantee in connection with a contract awarded pursuant to this
3 section, such guarantee may extend for a term of up to 15 years for
4 energy efficiency projects, or up to 20 years for a combined heat
5 and power facility after construction completion.

6 g. As used in this section:

7 "direct digital control systems" means the devices and
8 computerized control equipment that contain software and computer
9 interfaces that perform the logic that control a building's heating,
10 ventilating, and air conditioning system. Direct digital controls
11 shall be open protocol format and shall meet the interoperability
12 guidelines established by the American Society of Heating,
13 Refrigerating and Air-Conditioning Engineers;

14 "energy conservation measure" means an improvement that
15 results in reduced energy use, including, but not limited to,
16 installation of energy efficient equipment; demand response
17 equipment; combined heat and power systems; facilities for the
18 production of renewable energy; water conservation measures,
19 fixtures or facilities; building envelope improvements that are part
20 of an energy savings improvement program; and related control
21 systems for each of the foregoing;

22 "energy related capital improvement" means a capital
23 improvement that uses energy but does not result in a reduction of
24 energy use;

25 "energy saving obligation" means a bond, note or other
26 agreement evidencing the obligation to repay borrowed funds
27 incurred in order to finance energy saving improvements;

28 "energy savings" means a measured reduction in fuel, energy,
29 operating or maintenance costs resulting from the implementation
30 of one or more energy conservation measures services when
31 compared with an established baseline of previous fuel, energy,
32 operating or maintenance costs, including, but not limited to, future
33 capital replacement expenditures avoided as a result of equipment
34 installed or services performed as part of an energy savings plan;

35 "energy savings improvement program" means an initiative of a
36 public agency to implement energy conservation measures in
37 existing facilities, provided that the value of the energy savings
38 resulting from the program will be sufficient to cover the cost of the
39 program's energy conservation measures;

40 "energy savings plan" means the document that describes the
41 actions to be taken to implement the energy savings improvement
42 program;

43 "energy savings services contract" means a contract with an
44 energy savings company to develop an energy savings plan, prepare
45 bid specifications, manage the performance, provision,
46 construction, and installation of energy conservation measures by
47 subcontractors, to offer a guarantee of energy savings derived from

1 the implementation of an energy savings plan, and may include a
2 provision to manage the bidding process;

3 "energy services company" means a commercial entity that is
4 qualified to develop and implement an energy savings plan in
5 accordance with the provisions of this section;

6 "public agency" means any government entity that is authorized
7 to expend public funds and enter into contracts which is not
8 otherwise authorized to implement an energy savings improvement
9 program pursuant to section 1, 4, 6, or 9 of P.L.2009, c.4
10 (C.18A:18A-4.6, C.18A:65A-1, C.40A:11-4.6, or C.52:34-25).

11 "public works activities" means any work subject to the
12 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

13 "water conservation measure" means an alteration to a facility or
14 equipment that reduces water consumption, maximizes the
15 efficiency of water use, or reduces water loss.

16 h. (1) The State Treasurer and the Board of Public Utilities
17 may take such action as is deemed necessary and consistent with the
18 intent of this section to implement its provisions.

19 (2) The State Treasurer and the Board of Public Utilities may
20 adopt implementation guidelines or directives, and adopt such
21 administrative rules, pursuant to the "Administrative Procedure
22 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
23 implementation of those agencies' respective responsibilities under
24 this section, except that notwithstanding any provision of P.L.1968,
25 c.410 (C.52:14B-1 et seq.) to the contrary, the Director of the
26 Division of Local Government Services in the Department of
27 Community Affairs, the State Treasurer, and the Board of Public
28 Utilities may adopt, immediately upon filing with the Office of
29 Administrative Law, such rules and regulations as deemed
30 necessary to implement the provisions of this act which shall be
31 effective for a period not to exceed 12 months and shall thereafter
32 be amended, adopted or re-adopted in accordance with the
33 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

34 (cf: P.L.2009, c.4, s.10)

35

36 5. (New section) a. Notwithstanding the provisions to the
37 contrary of R.S.52:32-2 or any other law, or any rule or regulation
38 adopted pursuant thereto, where a State contracting agency
39 implements an energy savings improvement program pursuant to
40 section 9 of P.L.2009, c.4 (C.52:34-25), the State contracting
41 agency, prior to entering into an energy savings services contract,
42 shall use a competitive selection process that ensures that the award
43 is made to the responsible bidder whose proposal is determined to
44 be the most advantageous to the State.

45 b. Nothing in this section shall preclude a State contracting
46 agency from using procurement processes other than those
47 prescribed herein and in section 9 of P.L.2009, c.4 (C.52:34-25), if
48 those processes have been approved by the federal government

1 under section 801 of the “National Energy Conservation Policy
2 Act” (42 U.S.C. s.8287).

3

4 6. (New section) The State Comptroller, in consultation with
5 the Board of Public Utilities, shall establish a standard request for
6 proposal to be used for all energy savings improvement program
7 projects to be undertaken by any contracting unit authorized to
8 implement an energy savings improvement program pursuant to the
9 provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.).

10

11 7. This act shall take effect immediately.

12

13

14

STATEMENT

15

16 This bill makes changes to the statute authorizing the State’s
17 public entities to participate in an energy savings improvement
18 program (“ESIP”) under the provisions of P.L.2009, c.4
19 (C.18A:18A-4.6 et al.). Specifically, the bill provides that: 1)
20 concerning the duration of the repayment term of a lease-purchase
21 agreement with an energy services company (“ESCO”), the
22 agreement shall be deemed to commence on the date upon which
23 construction and installation of the energy savings equipment,
24 “combined heat and power facility” or “cogeneration facility,” as
25 those terms are defined pursuant to section 3 of P.L.1999, c.23
26 (C.48:3-51), or other energy conservation measures undertaken
27 pursuant to the energy savings plan, have been completed; and 2)
28 during the procurement phase of an ESIP, an ESCO’s proposal
29 submitted in response to a public entity’s request for proposal shall
30 not include a savings calculation that assumes, includes, or
31 references capital cost avoidance savings, the current or projected
32 value of a “solar renewable energy certificate,” as defined pursuant
33 to section 3 of P.L.1999, c.23 (C.48:3-51), or other environmental
34 or similar attributes or benefits of whatever nature that derive from
35 the generation of renewable energy, and any costs or discounts
36 associated with maintenance services, an energy savings guarantee,
37 or third party verification of energy conservation measures and
38 energy savings. The calculation of energy savings shall utilize and
39 specifically reference as a benchmark the actual demand and energy
40 components of the public utility tariff rate applicable to the public
41 agency then in effect, and not a blended rate that aggregates,
42 combines, or restates in any manner the distinct demand and energy
43 components of the public utility tariff rate into a single combined or
44 restated tariff rate. If an ESCO submits a proposal to a public
45 agency that does not calculate projected energy savings in the
46 manner required by this subsection, such proposal shall be rejected
47 by the public agency.

1 The bill provides that a State contracting agency, in
2 implementing an ESIP, shall use a competitive selection process
3 that ensures that the award is made to the responsible bidder whose
4 proposal is determined to be the most advantageous to the State.
5 The bill does not preclude the State contracting agency from using
6 procurement processes other than those prescribed herein and in
7 section 6 of P.L.2009, c.4 (C.52:34-25), if those processes have
8 been approved by the federal government in the National Energy
9 Conservation Policy Act (42 U.S.C. s.8287 as amended).

10 The bill requires the State Comptroller, in consultation with the
11 Board of Public Utilities, to establish a standard request for
12 proposal to be used for all ESIP projects to be undertaken by any
13 public entity authorized to implement an ESIP. Further, the bill
14 requires each contract between a board of education, contracting
15 unit, or public agency, and an ESCO that is the manufacturer of
16 direct digital control systems, where such control systems are
17 treated as proprietary goods as part of the contract, to first be
18 reviewed and approved by the State Comptroller for the purpose of
19 affirming the reasonableness of an allowance price by the ESCO.

20 Finally, the bill removes from the ESIP law applicable to State
21 agencies the requirement that, when an ESCO requires potential
22 subcontractors bidding on a guaranteed energy savings option
23 contract to use a direct digital control system of the ESCO's own
24 manufacture, the bid specification must set forth an allowance price
25 for that system, to be used by all bidders for the subcontract. An
26 identical provision in the ESIP statutes applicable to school boards,
27 local government contracting agencies, and other public agencies is
28 retained in those statutes.

ASSEMBLY, No. 2564

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 21, 2012

Sponsored by:

Assemblyman TROY SINGLETON

District 7 (Burlington)

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

SYNOPSIS

Clarifies requests for proposals of public entities implementing energy savings improvement program contracts.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning energy savings improvement programs,
2 amending various parts of the statutory law, and supplementing
3 Title 52 of the Revised Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. Section 1 of P.L.2009, c.4 (C.18A:18A-4.6) is amended to
9 read as follows:

10 1. a. A board of education, as defined in N.J.S.18A:18A-2, may
11 implement an energy savings improvement program in the manner
12 provided by this section whenever it determines that the savings
13 generated from reduced energy use from the program will be
14 sufficient to cover the cost of the program's energy conservation
15 measures as set forth in an energy savings plan. Under such a
16 program, a board of education may enter into an energy savings
17 services contract with an energy services company to implement the
18 program or the board may authorize separate contracts to implement
19 the program. The provisions of N.J.S.18A:18A-1 et seq. shall apply
20 to any contracts awarded pursuant to this section to the extent that
21 the provisions of such law are not inconsistent with any provision
22 of this section.

23 b. (1) To be eligible to enter into an energy savings services
24 contract, an energy services company shall be a commercial entity
25 that is qualified to provide energy savings services in accordance
26 with the provisions of this section. A board of education may
27 determine to enter into an energy savings services contract either
28 through public advertising for bids and the receipt of bids therefor
29 or through competitive contracting in lieu of public bidding in the
30 manner provided by sections 45 through 49 of P.L.1999, c.440
31 (C.18A:18A-4.1 et seq.).

32 (2) (a) Public works activities performed under an energy
33 savings improvement program shall be subject to all requirements
34 regarding public bidding, bid security, performance guarantees,
35 insurance and other public contracting requirements that are
36 applicable to public works contracts, to the extent not inconsistent
37 with this section. A general contractor, energy services company
38 serving as general contractor, or any subcontractor hired for the
39 furnishing of plumbing and gas fitting and all kindred work, and of
40 steam and hot water heating and ventilating apparatus, steam power
41 plants and kindred work, and electrical work, structural steel and
42 ornamental iron work, shall be classified by the Division of
43 Property Management and Construction in the Department of the
44 Treasury in order to perform public works activities under an
45 energy savings improvement program.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (b) Individuals or organizations performing energy audits,
2 acting as commissioning agents, or conducting verification of
3 energy savings plans, implementation of energy conservation
4 measures, or verifying guarantees shall be prequalified by the
5 Division of Property Management and Construction in the
6 Department of the Treasury to perform their work under an energy
7 savings improvement program.

8 (3) (a) An energy services company may be designated as the
9 general contractor for improvements to be made pursuant to an
10 energy savings plan, provided that the hiring of subcontractors that
11 are required to be classified pursuant to subparagraph (a) of
12 paragraph (2) of this subsection shall be performed in accordance
13 with the procedures and requirements set forth pursuant to **the**
14 **public bidding requirements of the board of education**
15 subparagraph (b) of this paragraph. A contract with an energy
16 savings company shall include, but not be limited to: preparation of
17 an energy savings plan; the responsibilities of the parties for project
18 schedules, installations, performance and quality, payment of
19 subcontractors, project completion, commissioning, savings
20 implementation; a requirement that the savings to be achieved by
21 energy conservation measures be verified upon commissioning of
22 the improvements; allocation of State and federal rebates and tax
23 credits; and any other provisions deemed necessary by the parties.

24 (b) Notwithstanding any other law or regulation to the contrary,
25 an energy services company shall procure any required
26 subcontractors through a competitive contracting procedure. An
27 energy services company, competitively selected through a public
28 request for proposal process by a board of education to develop an
29 energy savings improvement program pursuant to P.L.2009, c.4
30 (C.18A:18A-4.6 et al.), shall define appropriate scopes of work for
31 the energy savings plan approved by the board of education and
32 shall advertise requests for proposal to procure such services in a
33 local newspaper of general circulation for a period of not less than
34 five business days. The requests for proposal may be for
35 installation labor only, or for combined labor and equipment,
36 depending upon which approach is most economical for the board
37 of education. The energy services company shall use its best efforts
38 to procure a minimum of three quotations from subcontractors that
39 have been duly classified by the Division of Property Management
40 and Construction, and shall provide the quotations received to the
41 board of education. The energy services company shall award the
42 contract to the subcontractor based upon price and other factors,
43 which shall include, without limitation, the subcontractor's relevant
44 experience, resources, bonding and insurance capability, ability to
45 meet project deadlines, and references. Where an award is not
46 based solely upon price, the energy services company shall justify
47 the award to the board of education. If the board of education does
48 not approve the award, the energy services company shall continue

1 to select subcontractors until one is approved by the board of
2 education. Upon approval in writing of the subcontractor by the
3 board of education, the energy services company shall finalize a
4 contract with the subcontractor that includes the agreed scope of
5 work and price. All subcontractors awarded contracts by an energy
6 services company pursuant to this section shall be paid prevailing
7 wages in accordance with the “New Jersey Prevailing Wage Act,”
8 P.L.1963, c.150 (C.34:11-56.25 et seq.), and shall be appropriately
9 classified as contractors by the Division of Property Management
10 and Construction.

11 (c) In order to expedite communications with an energy services
12 company and facilitate the implementation of an energy savings
13 improvement program, a board of education may designate or
14 appoint a representative or agent with decision-making authority to
15 coordinate with the energy services company and to address issues
16 associated with the implementation of an energy savings
17 improvement program as they arise.

18 (4) Except as provided in paragraph (5) of this subsection, a
19 subsidiary or wholly-owned or partially-owned affiliate of the
20 energy services company shall not be an eligible contractor or
21 subcontractor under an energy savings services contract.

22 (5) When the energy services company is the manufacturer of
23 direct digital control systems and contracts with the board of
24 education to provide a guaranteed energy savings option pursuant to
25 subsection f. of this section, the specification of such direct digital
26 control systems may be treated as proprietary goods and if so
27 treated, the bid specification shall set forth an allowance price for
28 its supply by the energy services company which shall be used by
29 all bidders in the public bidding process. Direct digital controls
30 shall be open protocol format and shall meet the interoperability
31 guidelines established by the American Society of Heating,
32 Refrigerating and Air-Conditioning Engineers. Each contract to be
33 entered into pursuant to this section between a board of education
34 and an energy services company that is the manufacturer of direct
35 digital control systems where such direct digital control systems are
36 treated as proprietary goods as part of the contract, shall first be
37 reviewed and approved by the State Comptroller for the purpose of
38 affirming the reasonableness of such allowance price.

39 c. An energy savings improvement program may be financed
40 through a lease-purchase agreement or through the issuance of
41 energy savings obligations pursuant to this subsection.

42 (1) An energy savings improvement program may be financed
43 through a lease-purchase agreement between a board of education
44 and an energy services company or other public or private entity.
45 Under a lease-purchase agreement, ownership of the energy savings
46 equipment or improved facilities shall pass to the board of
47 education when all lease payments have been made.
48 Notwithstanding the provisions of section 46 of P.L.1999, c.440

1 (C.18A:18A-4.2) or any other law to the contrary, the duration of
2 such a lease-purchase agreement shall not exceed 15 years, except
3 that the duration of a lease purchase agreement for a combined heat
4 and power or cogeneration project shall not exceed 20 years. For
5 the purposes of this paragraph, the duration of the repayment term
6 of a lease-purchase agreement shall commence on the date upon
7 which construction and installation of the energy savings
8 equipment, “combined heat and power facility” or “cogeneration
9 facility,” as those terms are defined pursuant to section 3 of
10 P.L.1999, c.23 (C.48:3-51), or other energy conservation measures
11 undertaken pursuant to the energy savings plan, have been
12 completed.

13 (2) Any lease-purchase agreement entered into pursuant to this
14 subsection may contain: a clause making it subject to the
15 availability and appropriation annually of sufficient funds as may
16 be required to meet the extended obligation; and a non-substitution
17 clause maintaining that if the agreement is terminated for non-
18 appropriation, the board of education may not replace the leased
19 equipment or facilities with equipment or facilities that perform the
20 same or similar functions.

21 (3) A board of education may arrange for incurring energy
22 savings obligations to finance an energy savings improvement
23 program. Energy savings obligations may be funded through
24 appropriations for utility services in the annual budget of the board
25 and may be issued as refunding bonds pursuant to P.L.1969, c.130
26 (C.18A:24-61.1 et seq.), including the issuance of bond anticipation
27 notes as may be necessary, provided that all such bonds and notes
28 mature within the periods authorized for such energy savings
29 obligations. Energy savings obligations may be issued either
30 through the board of education or another public agency authorized
31 to undertake financing on behalf of the board.

32 (4) Lease-purchase agreements and energy savings obligations
33 shall not be used to finance maintenance, guarantees, or verification
34 of guarantees of energy conservation measures. Lease-purchase
35 agreements and energy savings obligations may be used to finance
36 the cost of an energy audit or the cost of verification of energy
37 savings as part of adopting an energy savings plan.
38 Notwithstanding any law to the contrary, lease-purchase agreements
39 and energy savings certificates shall not be excepted from any
40 budget or tax levy limitation otherwise provided by law. Maturity
41 schedules of lease-purchase agreements or energy savings
42 obligations must exceed the estimated useful life of the individual
43 energy conservation measures.

44 d. (1) The energy audit component of an energy savings
45 improvement program shall be conducted either by the board of
46 education or by a qualified third party retained by the board for that
47 purpose. It shall not be conducted by an energy services company
48 subsequently hired to develop an energy savings improvement

1 program. The energy audit shall identify the current energy use of
2 any or all facilities and energy conservation measures that can be
3 implemented in which the energy savings and energy efficiency
4 could be realized and maximized.

5 (2) To implement an energy savings improvement program, a
6 board of education shall develop an energy savings plan that
7 consists of one or more energy conservation measures. The plan
8 shall:

9 (a) contain the results of an energy audit;

10 (b) describe the energy conservation measures that will
11 comprise the program;

12 (c) estimate greenhouse gas reductions resulting from those
13 energy savings;

14 (d) identify all design and compliance issues that require the
15 professional services of an architect or engineer and identify who
16 will provide these services;

17 (e) include an assessment of risks involved in the successful
18 implementation of the plan;

19 (f) identify the eligibility for, and costs and revenues associated
20 with the PJM Independent System Operator for demand response
21 and curtailable service activities;

22 (g) include schedules showing calculations of all costs of
23 implementing the proposed energy conservation measures and the
24 projected energy savings;

25 (h) identify maintenance requirements necessary to ensure
26 continued energy savings, and describe how they will be fulfilled;
27 and

28 (i) if developed by an energy services company, a description
29 of, and cost estimates of an energy savings guarantee.

30 All professionals providing engineering services under the plan
31 shall have errors and omissions insurance.

32 (3) Prior to the adoption of the plan by the governing body, the
33 board of education shall contract with a qualified third party to
34 verify the projected energy savings to be realized from the proposed
35 program have been calculated as required by subsection e. of this
36 section.

37 (4) Upon adoption, the plan shall be submitted to the Board of
38 Public Utilities, which shall post it on the Internet on a public
39 webpage maintained for such purpose. If the board of education
40 maintains its own website, it shall also post the plan on that site.
41 The Board of Public Utilities may require periodic reporting
42 concerning the implementation of the plan.

43 (5) Verification by a qualified third party shall be required when
44 energy conservation measures are placed in service or
45 commissioned, to ensure the savings projected in the energy savings
46 plan shall be achieved.

47 (6) Energy-related capital improvements that do not reduce
48 energy usage may be included in an energy savings improvement

1 program but the cost of such improvements shall not be financed as
2 a lease-purchase or through energy savings obligations authorized
3 by subsection c. of this section. Nothing herein is intended to
4 prevent financing of such capital improvements through otherwise
5 authorized means.

6 (7) A qualified third party when required by this subsection may
7 include an employee of the board of education who is properly
8 trained and qualified to perform such work.

9 e. (1) (a) The calculation of energy savings for the purposes of
10 determining that the energy savings resulting from the program will
11 be sufficient to cover the cost of the program's energy conservation
12 measures, as provided in subsection a. of this section, shall involve
13 determination of the dollar amount saved through implementation
14 of an energy savings improvement program using the guidelines of
15 the International Performance Measurement and Verification
16 Protocol or other protocols approved by the Board of Public
17 Utilities and standards adopted by the Board of Public Utilities
18 pursuant to this section. The calculation shall include all applicable
19 State and federal rebates and tax credits, but shall not include the
20 cost of an energy audit and the cost of verifying energy savings.
21 The calculation shall state which party has made application for
22 rebates and credits and how these applications translate into energy
23 savings.

24 (b) During the procurement phase of a program, an energy
25 service company's proposal submitted in response to a request for
26 proposal shall not include a savings calculation that assumes,
27 includes, or references capital cost avoidance savings, the current or
28 projected value of a "solar renewable energy certificate," as defined
29 pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other
30 environmental or similar attributes or benefits of whatever nature
31 that derive from the generation of renewable energy, and any costs
32 or discounts associated with maintenance services, an energy
33 savings guarantee, or third party verification of energy conservation
34 measures and energy savings. The calculation of energy savings
35 shall utilize and specifically reference as a benchmark the actual
36 demand and energy components of the public utility tariff rate
37 applicable to the board of education then in effect, and not a
38 blended rate that aggregates, combines, or restates in any manner
39 the distinct demand and energy components of the public utility
40 tariff rate into a single combined or restated tariff rate. If an energy
41 services company submits a proposal to a board of education that
42 does not calculate projected energy savings in the manner required
43 by this subsection, such proposal shall be rejected by the board of
44 education.

45 (2) For the purposes of this section, the Board of Public Utilities
46 shall adopt standards and uniform values for interest rates and
47 escalation of labor, electricity, oil, and gas, as well as standards for
48 presenting these costs in a life cycle and net present value format,

1 standards for the presentation of obligations for carbon reductions,
2 and other standards that the board may determine necessary.

3 f. (1) When an energy services company is awarded an energy
4 savings services contract, it shall offer the board of education the
5 option to purchase, for an additional amount, an energy savings
6 guarantee. The guarantee, if accepted by a separate vote of the
7 board of education, shall insure that the energy savings resulting
8 from the energy savings improvement program, determined
9 periodically over the duration of the guarantee, will be sufficient to
10 defray all payments required to be made pursuant to the lease-
11 purchase agreement or energy savings obligation, and if the savings
12 are not sufficient, the energy services company will reimburse the
13 board for any additional amounts. Annual costs of a guarantee shall
14 not be financed or included as costs in an energy savings plan but
15 shall be fully disclosed in an energy savings plan.

16 (2) When a guaranteed energy savings option is purchased, the
17 contract shall require a qualified third party to verify the energy
18 savings at intervals established by the parties.

19 (3) When an energy services company is awarded an energy
20 savings services contract to provide or perform goods or services
21 for the purpose of enabling a board of education to conserve energy
22 through energy efficiency equipment, including a "combined heat
23 and power facility" as that term is defined pursuant to section 3 of
24 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
25 shall extend for a term of up to 15 years for energy efficiency
26 projects, and for up to 20 years for a combined heat and power
27 facility after construction completion. If a board of education shall
28 elect to contract with an energy services company for an energy
29 savings guarantee in connection with a contract awarded pursuant to
30 this section, such guarantee may extend for a term of up to 15 years
31 for energy efficiency projects, or up to 20 years for a combined heat
32 and power facility after construction completion.

33 g. As used in this section:

34 "direct digital control systems" means the devices and
35 computerized control equipment that contain software and computer
36 interfaces that perform the logic that control a building's heating,
37 ventilating, and air conditioning system. Direct digital controls
38 shall be open protocol format and shall meet the interoperability
39 guidelines established by the American Society of Heating,
40 Refrigerating and Air-Conditioning Engineers;

41 "energy conservation measure" means an improvement that
42 results in reduced energy use, including, but not limited to,
43 installation of energy efficient equipment; demand response
44 equipment; combined heat and power systems; facilities for the
45 production of renewable energy; water conservation measures,
46 fixtures or facilities; building envelope improvements that are part
47 of an energy savings improvement program; and related control
48 systems for each of the foregoing;

1 "energy related capital improvement" means a capital
2 improvement that uses energy but does not result in a reduction of
3 energy use;

4 "energy saving obligation" means a bond, note or other
5 agreement evidencing the obligation to repay borrowed funds
6 incurred in order to finance energy saving improvements;

7 "energy savings" means a measured reduction in fuel, energy,
8 operating or maintenance costs resulting from the implementation
9 of one or more energy conservation measures services when
10 compared with an established baseline of previous fuel, energy,
11 operating or maintenance costs, including, but not limited to, future
12 capital replacement expenditures avoided as a result of equipment
13 installed or services performed as part of an energy savings plan;

14 "energy savings improvement program" means an initiative of a
15 board of education to implement energy conservation measures in
16 existing facilities, provided that the value of the energy savings
17 resulting from the program will be sufficient to cover the cost of the
18 program's energy conservation measures;

19 "energy savings plan" means the document that describes the
20 actions to be taken to implement the energy savings improvement
21 program;

22 "energy savings services contract" means a contract with an
23 energy savings company to develop an energy savings plan, prepare
24 bid specifications, manage the performance, provision,
25 construction, and installation of energy conservation measures by
26 subcontractors, to offer a guarantee of energy savings derived from
27 the implementation of an energy savings plan, and may include a
28 provision to manage the bidding process;

29 "energy services company" means a commercial entity that is
30 qualified to develop and implement an energy savings plan in
31 accordance with the provisions of this section;

32 "public works activities" means any work subject to the
33 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

34 "water conservation measure" means an alteration to a facility or
35 equipment that reduces water consumption, maximizes the
36 efficiency of water use, or reduces water loss.

37 h. (1) The Director of the Division of Local Government
38 Services in the Department of Community Affairs, the State
39 Treasurer, and the Board of Public Utilities may take such action as
40 is deemed necessary and consistent with the intent of this section to
41 implement its provisions.

42 (2) The Director of the Division of Local Government Services
43 in the Department of Community Affairs, the State Treasurer and
44 the Board of Public Utilities may adopt implementation guidelines
45 or directives, and adopt such administrative rules, pursuant to the
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
47 seq.), as are necessary for the implementation of those agencies'
48 respective responsibilities under this section, except that

1 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et
2 seq.) to the contrary, the Director of the Division of Local
3 Government Services in the Department of Community Affairs, the
4 State Treasurer, and the Board of Public Utilities may adopt,
5 immediately upon filing with the Office of Administrative Law,
6 such rules and regulations as deemed necessary to implement the
7 provisions of this act which shall be effective for a period not to
8 exceed 12 months and shall thereafter be amended, adopted or re-
9 adopted in accordance with the provisions of P.L.1968, c.410
10 (C.52:14B-1 et seq.).

11 (cf: P.L.2009, c.4, s.1)

12

13 2. Section 6 of P.L.2009, c.4 (C.40A:11-4.6) is amended to
14 read as follows:

15 6. a. A contracting unit, as defined in P.L.1971, c.198
16 (C.40A:11-1 et seq.), may implement an energy savings
17 improvement program in the manner provided by this section
18 whenever it determines that the savings generated from reduced
19 energy use from the program will be sufficient to cover the cost of
20 the program's energy conservation measures as set forth in an
21 energy savings plan. Under such a program, a contracting unit may
22 enter into an energy savings services contract with an energy
23 services company to implement the program or the contracting unit
24 may authorize separate contracts to implement the program. The
25 provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) shall apply to
26 any contracts awarded pursuant to this section to the extent that the
27 provisions of such law are not inconsistent with any provision of
28 this section.

29 b. (1) To be eligible to enter into an energy savings services
30 contract, an energy services company shall be a commercial entity
31 that is qualified to provide energy savings services in accordance
32 with the provisions of this section. A contracting unit may
33 determine to enter into an energy savings services contract either
34 through public advertising for bids and the receipt of bids therefor
35 or through competitive contracting in lieu of public bidding in the
36 manner provided by sections 1 through 5 of P.L.1999, c.440
37 (C.40A:11-4.1 et seq.).

38 (2) (a) Public works activities performed under an energy
39 savings improvement program shall be subject to all requirements
40 regarding public bidding, bid security, performance guarantees,
41 insurance and other public contracting requirements that are
42 applicable to public works contracts, to the extent not inconsistent
43 with this section. A general contractor, energy services company
44 serving as general contractor, or any subcontractor hired for the
45 furnishing of plumbing and gas fitting and all kindred work, and of
46 steam and hot water heating and ventilating apparatus, steam power
47 plants and kindred work, and electrical work, structural steel and
48 ornamental iron work, shall be classified by the Division of

1 Property Management and Construction in the Department of the
2 Treasury in order to perform public works activities under an
3 energy savings improvement program.

4 (b) Individuals or organizations performing energy audits,
5 acting as commissioning agents, or conducting verification of
6 energy savings plans, implementation of energy conservation
7 measures, or verifying guarantees shall be prequalified by the
8 Division of Property Management and Construction in the
9 Department of the Treasury to perform their work under an energy
10 savings improvement program.

11 (3) (a) An energy services company may be designated as the
12 general contractor for improvements to be made pursuant to an
13 energy savings plan, provided that the hiring of subcontractors that
14 are required to be classified pursuant to subparagraph (a) of
15 paragraph (2) of this subsection shall be performed in accordance
16 with the procedures and requirements set forth pursuant to **the**
17 public bidding requirements of the contracting unit **subparagraph**
18 (b) of this paragraph. A contract with an energy savings company
19 shall include, but not be limited to: preparation of an energy savings
20 plan; the responsibilities of the parties for project schedules,
21 installations, performance and quality, payment of subcontractors,
22 project completion, commissioning, savings implementation; a
23 requirement that the savings to be achieved by energy conservation
24 measures be verified upon commissioning of the improvements;
25 allocation of State and federal rebates and tax credits; and any other
26 provisions deemed necessary by the parties.

27 (b) Notwithstanding any other law or regulation to the contrary,
28 an energy services company shall procure any required
29 subcontractors through a competitive contracting procedure. An
30 energy services company, competitively selected through a public
31 request for proposal process by a contracting unit to develop an
32 energy savings improvement program pursuant to P.L.2009, c.4
33 (C.18A:18A-4.6 et al.), shall define appropriate scopes of work for
34 the energy savings plan approved by the contracting unit and shall
35 advertise requests for proposal to procure such services in a local
36 newspaper of general circulation for a period of not less than five
37 business days. The requests for proposal may be for installation
38 labor only, or for combined labor and equipment, depending upon
39 which approach is most economical for the contracting unit. The
40 energy services company shall use its best efforts to procure a
41 minimum of three quotations from subcontractors that have been
42 duly classified by the Division of Property Management and
43 Construction, and shall provide the quotations received to the
44 contracting unit. The energy services company shall award the
45 contract to the subcontractor based upon price and other factors,
46 which shall include, without limitation, the subcontractor's relevant
47 experience, resources, bonding and insurance capability, ability to
48 meet project deadlines, and references. Where an award is not

1 based solely upon price, the energy services company shall justify
2 the award to the contracting unit. If the contracting unit does not
3 approve the award, the energy services company shall continue to
4 select subcontractors until one is approved by the contracting unit.
5 Upon approval in writing of the subcontractor by the contracting
6 unit, the energy services company shall finalize a contract with the
7 subcontractor that includes the agreed scope of work and price. All
8 subcontractors awarded contracts by an energy services company
9 pursuant to this section shall be paid prevailing wages in
10 accordance with the “New Jersey Prevailing Wage Act,” P.L.1963,
11 c.150 (C.34:11-56.25 et seq.), and shall be appropriately classified
12 as contractors by the Division of Property Management and
13 Construction.

14 (c) In order to expedite communications with an energy services
15 company and facilitate the implementation of an energy savings
16 improvement program, a contracting unit may designate or appoint
17 a representative or agent with decision-making authority to
18 coordinate with the energy services company and to address issues
19 associated with the implementation of an energy savings
20 improvement program as they arise.

21 (4) Except as provided in paragraph (5) of this subsection, a
22 subsidiary or wholly-owned or partially-owned affiliate of the
23 energy services company shall not be an eligible contractor or
24 subcontractor under an energy savings services contract.

25 (5) When the energy services company is the manufacturer of
26 direct digital control systems and contracts with the contracting unit
27 to provide a guaranteed energy savings option pursuant to
28 subsection f. of this section, the specification of such direct digital
29 control systems may be treated as proprietary goods and if so
30 treated, the bid specification shall set forth an allowance price for
31 its supply by the energy services company which shall be used by
32 all bidders in the public bidding process. Direct digital controls
33 shall be open protocol format and shall meet the interoperability
34 guidelines established by the American Society of Heating,
35 Refrigerating and Air-Conditioning Engineers. Each contract to be
36 entered into pursuant to this section between a contracting unit and
37 an energy services company that is the manufacturer of direct
38 digital control systems where such direct digital control systems are
39 treated as proprietary goods as part of the contract, shall first be
40 reviewed and approved by the State Comptroller for the purpose of
41 affirming the reasonableness of such allowance price.

42 c. An energy savings improvement program may be financed
43 through a lease-purchase agreement or through the issuance of
44 energy savings obligations pursuant to this subsection.

45 (1) An energy savings improvement program may be financed
46 through a lease-purchase agreement between a contracting unit and
47 an energy services company or other public or private entity. Under
48 a lease-purchase agreement, ownership of the energy savings

1 equipment or improved facilities shall pass to the contracting unit
2 when all lease payments have been made. Notwithstanding the
3 provisions of any other law to the contrary, the duration of such a
4 lease-purchase agreement shall not exceed 15 years, except that the
5 duration of a lease purchase agreement for a combined heat and
6 power or cogeneration project shall not exceed 20 years. For the
7 purposes of this paragraph, the duration of the repayment term of a
8 lease-purchase agreement shall commence on the date upon which
9 construction and installation of the energy savings equipment,
10 “combined heat and power facility” or “cogeneration facility,” as
11 those terms are defined pursuant to section 3 of P.L.1999, c.23
12 (C.48:3-51), or other energy conservation measures undertaken
13 pursuant to the energy savings plan, have been completed.

14 (2) Any lease-purchase agreement entered into pursuant to this
15 subsection, may contain: a clause making it subject to the
16 availability and appropriation annually of sufficient funds as may
17 be required to meet the extended obligation; and a non-substitution
18 clause maintaining that if the agreement is terminated for non-
19 appropriation, the contracting unit may not replace the leased
20 equipment or facilities with equipment or facilities that perform the
21 same or similar functions.

22 (3) A contracting unit may arrange for incurring energy savings
23 obligations to finance an energy savings improvement program.
24 Energy savings obligations may be funded through appropriations
25 for utility services in the annual budget of the contracting unit and
26 may be issued as refunding bonds pursuant to N.J.S.40A:2-52 et
27 seq., including the issuance of bond anticipation notes as may be
28 necessary, provided that all such bonds and notes mature within the
29 periods authorized for such energy savings obligations. Energy
30 savings obligations may be issued either through the contracting
31 unit or another public agency authorized to undertake financing on
32 behalf of the unit.

33 (4) Lease-purchase agreements and energy savings obligations
34 shall not be used to finance maintenance, guarantees, or verification
35 of guarantees of energy conservation measures. Lease-purchase
36 agreements and energy savings obligations may be used to finance
37 the cost of an energy audit or the cost of verification of energy
38 savings as part of adopting an energy savings plan.
39 Notwithstanding any law to the contrary, lease-purchase agreements
40 and energy savings certificates shall not be excepted from any
41 budget or tax levy limitation otherwise provided by law. Maturity
42 schedules of lease-purchase agreements or energy savings
43 obligations must exceed the estimated useful life of the individual
44 energy conservation measures.

45 d. (1) The energy audit component of an energy savings
46 improvement program shall be conducted either by the contracting
47 unit or by a qualified independent third party retained by the
48 governing body for that purpose. It shall not be conducted by an

1 energy services company subsequently hired to develop an energy
2 savings improvement program. The energy audit shall identify the
3 current energy use of any or all facilities and energy conservation
4 measures that can be implemented in which the energy savings and
5 energy efficiency could be realized and maximized.

6 (2) To implement an energy savings improvement program, a
7 contracting unit shall develop a plan that consists of one or more
8 energy conservation measures. The plan shall:

9 (a) contain the results of an energy audit;

10 (b) describe the energy conservation measures that will
11 comprise the program;

12 (c) estimate greenhouse gas reductions resulting from those
13 energy savings;

14 (d) identify all design and compliance issues that require the
15 professional services of an architect or engineer and identify who
16 will provide these services;

17 (e) include an assessment of risks involved in the successful
18 implementation of the plan;

19 (f) identify the eligibility for, and costs and revenues associated
20 with the PJM Independent System Operator for demand response
21 and curtailable service activities;

22 (g) include schedules showing calculations of all costs of
23 implementing the proposed energy conservation measures and the
24 projected energy savings;

25 (h) identify maintenance requirements necessary to ensure
26 continued energy savings, and describe how they will be fulfilled;
27 and

28 (i) if developed by an energy services company, a description
29 of, and cost estimates of an energy savings guarantee.

30 All professionals providing engineering services under the plan
31 shall have errors and omissions insurance.

32 (3) Prior to the adoption of the plan, the contracting unit shall
33 contract with a qualified third party to verify the projected energy
34 savings to be realized from the proposed program have been
35 calculated as required by subsection e. of this section.

36 (4) Upon adoption, the plan shall be submitted to the Board of
37 Public Utilities, which shall post it on the Internet on a public
38 webpage maintained for such purpose. If the contracting unit
39 maintains its own website, it shall also post the plan on that site.
40 The board may require periodic reporting concerning the
41 implementation of the plan.

42 (5) Verification by a qualified third party shall be required when
43 energy conservation measures are placed in service or
44 commissioned, to ensure the savings projected in the energy savings
45 plan shall be achieved.

46 (6) Energy-related capital improvements that do not reduce
47 energy usage may be included in an energy savings improvement
48 program but the cost of such improvements shall not be financed as

1 a lease-purchase or through energy savings obligations authorized
2 by subsection c. of this section. Nothing herein is intended to
3 prevent financing of such capital improvements through otherwise
4 authorized means.

5 (7) A qualified third party when required by this subsection may
6 include an employee of the contracting unit who is properly trained
7 and qualified to perform such work.

8 e. (1) (a) The calculation of energy savings for the purposes of
9 determining that the energy savings resulting from the program will
10 be sufficient to cover the cost of the program's energy conservation
11 measures, as provided in subsection a. of this section, shall involve
12 determination of the dollar amount saved through implementation
13 of an energy savings improvement program using the guidelines of
14 the International Performance Measurement and Verification
15 Protocol or other protocols approved by the Board of Public
16 Utilities and standards adopted by the Board of Public Utilities
17 pursuant to this section. The calculation shall include all applicable
18 State and federal rebates and tax credits, but shall not include the
19 cost of an energy audit and the cost of verifying energy savings.
20 The calculation shall state which party has made application for
21 rebates and credits and how these applications translate into energy
22 savings.

23 (b) During the procurement phase of a program, an energy
24 service company's proposal submitted in response to a request for
25 proposal shall not include a savings calculation that assumes,
26 includes, or references capital cost avoidance savings, the current or
27 projected value of a "solar renewable energy certificate," as defined
28 pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other
29 environmental or similar attributes or benefits of whatever nature
30 that derive from the generation of renewable energy, and any costs
31 or discounts associated with maintenance services, an energy
32 savings guarantee, or third party verification of energy conservation
33 measures and energy savings. The calculation of energy savings
34 shall utilize and specifically reference as a benchmark the actual
35 demand and energy components of the public utility tariff rate
36 applicable to the contracting unit then in effect, and not a blended
37 rate that aggregates, combines, or restates in any manner the distinct
38 demand and energy components of the public utility tariff rate into
39 a single combined or restated tariff rate. If an energy services
40 company submits a proposal to a contracting unit that does not
41 calculate projected energy savings in the manner required by this
42 subsection, such proposal shall be rejected by the contracting unit.

43 (2) For the purposes of this section, the Board of Public Utilities
44 shall adopt standards and uniform values for interest rates and
45 escalation of labor, electricity, oil, and gas, as well as standards for
46 presenting these costs in a life cycle and net present value format,
47 standards for the presentation of obligations for carbon reductions,
48 and other standards that the board may determine necessary.

1 f. (1) When an energy services company is awarded an energy
2 savings services contract, it shall offer the contracting unit the
3 option to purchase, for an additional amount, an energy savings
4 guarantee. The guarantee, if accepted by a separate vote of the
5 governing body of the contracting unit, shall insure that the energy
6 savings resulting from the energy savings improvement program,
7 determined periodically over the duration of the guarantee, will be
8 sufficient to defray all payments required to be made pursuant to
9 the lease-purchase agreement or energy savings obligation, and if
10 the savings are not sufficient, the energy services company will
11 reimburse the contracting unit for any additional amounts. Annual
12 costs of a guarantee shall not be financed or included as costs in an
13 energy savings plan but shall be fully disclosed in an energy
14 savings plan.

15 (2) When a guaranteed energy savings option is purchased, the
16 contract shall require a qualified third party to verify the energy
17 savings at intervals established by the parties.

18 (3) When an energy services company is awarded an energy
19 savings services contract to provide or perform goods or services
20 for the purpose of enabling a contracting unit to conserve energy
21 through energy efficiency equipment, including a “combined heat
22 and power facility” as that term is defined pursuant to section 3 of
23 P.L.1999, c.23 (C48:3-51), on a self-funded basis, such contract
24 shall extend for a term of up to 15 years for energy efficiency
25 projects, and for up to 20 years for a combined heat and power
26 facility after construction completion. If a contracting unit shall
27 elect to contract with an energy services company for an energy
28 savings guarantee in connection with a contract awarded pursuant to
29 this section, such guarantee may extend for a term of up to 15 years
30 for energy efficiency projects, or up to 20 years for a combined heat
31 and power facility after construction completion.

32 g. As used in this section:

33 "direct digital control systems" means the devices and
34 computerized control equipment that contain software and computer
35 interfaces that perform the logic that control a building's heating,
36 ventilating, and air conditioning system. Direct digital controls
37 shall be open protocol format and shall meet the interoperability
38 guidelines established by the American Society of Heating,
39 Refrigerating and Air-Conditioning Engineers;

40 "energy conservation measure" means an improvement that
41 results in reduced energy use, including, but not limited to,
42 installation of energy efficient equipment; demand response
43 equipment; combined heat and power systems; facilities for the
44 production of renewable energy; water conservation measures,
45 fixtures or facilities; building envelope improvements that are part
46 of an energy savings improvement program; and related control
47 systems for each of the foregoing;

1 "energy related capital improvement" means a capital
2 improvement that uses energy but does not result in a reduction of
3 energy use;

4 "energy saving obligation" means a bond, note or other
5 agreement evidencing the obligation to repay borrowed funds
6 incurred in order to finance energy saving improvements;

7 "energy savings" means a measured reduction in fuel, energy,
8 operating or maintenance costs resulting from the implementation
9 of one or more energy conservation measures services when
10 compared with an established baseline of previous fuel, energy,
11 operating or maintenance costs, including, but not limited to, future
12 capital replacement expenditures avoided as a result of equipment
13 installed or services performed as part of an energy savings plan;

14 "energy savings improvement program" means an initiative of a
15 contracting unit to implement energy conservation measures in
16 existing facilities, provided that the value of the energy savings
17 resulting from the program will be sufficient to cover the cost of the
18 program's energy conservation measures;

19 "energy savings plan" means the document that describes the
20 actions to be taken to implement the energy savings improvement
21 program;

22 "energy savings services contract" means a contract with an
23 energy savings company to develop an energy savings plan, prepare
24 bid specifications, manage the performance, provision,
25 construction, and installation of energy conservation measures by
26 subcontractors, to offer a guarantee of energy savings derived from
27 the implementation of an energy savings plan, and may include a
28 provision to manage the bidding process;

29 "energy services company" means a commercial entity that is
30 qualified to develop and implement an energy savings plan in
31 accordance with the provisions of this section;

32 "public works activities" means any work subject to the
33 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

34 "water conservation measure" means an alteration to a facility or
35 equipment that reduces water consumption, maximizes the
36 efficiency of water use, or reduces water loss.

37 h. (1) The Director of the Division of Local Government
38 Services in the Department of Community Affairs, the State
39 Treasurer, and the Board of Public Utilities may take such action as
40 is deemed necessary and consistent with the intent of this section to
41 implement its provisions.

42 (2) The Director of the Division of Local Government Services
43 in the Department of Community Affairs, the State Treasurer, and
44 the Board of Public Utilities may adopt implementation guidelines
45 or directives, and adopt such administrative rules, pursuant to the
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
47 seq.), as are necessary for the implementation of those agencies'
48 respective responsibilities under this section, except that

1 notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et
2 seq.) to the contrary, the Director of the Division of Local
3 Government Services in the Department of Community Affairs, the
4 State Treasurer, and the Board of Public Utilities may adopt,
5 immediately upon filing with the Office of Administrative Law,
6 such rules and regulations as deemed necessary to implement the
7 provisions of this act which shall be effective for a period not to
8 exceed 12 months and shall thereafter be amended, adopted or re-
9 adopted in accordance with the provisions of P.L.1968, c.410
10 (C.52:14B-1 et seq.).

11 (cf: P.L.2009, c.4, s.6)

12

13 3. Section 9 of P.L.2009, c.4 (C.52:34-25) is amended to read
14 as follows:

15 9. a. A State contracting agency, as defined in this section, may
16 implement an energy savings improvement program in the manner
17 provided by this section whenever it determines that the savings
18 generated from reduced energy use from the program will be
19 sufficient to cover the cost of the program's energy conservation
20 measures as set forth in an energy savings plan. Under such a
21 program, a contracting agency may enter into an energy savings
22 services contract with an energy services company to implement the
23 program or the contracting agency may authorize separate contracts
24 to implement the program. The provisions of Title 52 of the
25 Revised Statutes shall apply to any contracts awarded pursuant to
26 this section to the extent that the provisions of such law are not
27 inconsistent with any provision of this section.

28 b. (1) To be eligible to enter into an energy savings services
29 contract, an energy services company shall be a commercial entity
30 that is qualified to provide energy savings services in accordance
31 with the provisions of this section. A State contracting agency may
32 determine to enter into an energy savings services contract through
33 public advertising for bids and the receipt of bids therefor.

34 (2) (a) Public works activities performed under an energy
35 savings improvement program shall be subject to all requirements
36 regarding public bidding, bid security, performance guarantees,
37 insurance and other public contracting requirements that are
38 applicable to public works contracts, to the extent not inconsistent
39 with this section. A general contractor, energy services company
40 serving as general contractor, or any subcontractor hired for the
41 furnishing of plumbing and gas fitting and all kindred work, and of
42 steam and hot water heating and ventilating apparatus, steam power
43 plants and kindred work, and electrical work, structural steel and
44 ornamental iron work, shall be classified by the Division of
45 Property Management and Construction in the Department of the
46 Treasury in order to perform public works activities under an
47 energy savings improvement program.

1 (b) Individuals or organizations performing energy audits,
2 acting as commissioning agents, or conducting verification of
3 energy savings plans, implementation of energy conservation
4 measures, or verifying guarantees shall be prequalified by the
5 Division of Property Management and Construction in the
6 Department of the Treasury to perform their work under an energy
7 savings improvement program.

8 (3) (a) An energy services company may be designated as the
9 general contractor for improvements to be made pursuant to an
10 energy savings plan, provided that the hiring of subcontractors that
11 are required to be classified pursuant to subparagraph (a) of
12 paragraph (2) of this subsection shall be performed in accordance
13 with the procedures and requirements set forth pursuant to **the**
14 **public bidding requirements of the State contracting agency**
15 subparagraph (b) of this paragraph. A contract with an energy
16 savings company shall include, but not be limited to: preparation of
17 an energy savings plan, the responsibilities of the parties for project
18 schedules, installations, performance and quality, payment of
19 subcontractors, project completion, commissioning, savings
20 implementation; a requirement that the savings to be achieved by
21 energy conservation measures be verified upon commissioning of
22 the improvements; allocation of State and federal rebates and tax
23 credits; and any other provisions deemed necessary by the parties.

24 (b) Notwithstanding any other law or regulation to the contrary,
25 an energy services company shall procure any required
26 subcontractors through a competitive contracting procedure. An
27 energy services company, competitively selected through a public
28 request for proposal process by a State contracting agency to
29 develop an energy savings improvement program pursuant to
30 P.L.2009, c.4 (C.18A:18A-4.6 et al.), shall define appropriate
31 scopes of work for the energy savings plan approved by the State
32 contracting agency and shall advertise requests for proposal to
33 procure such services in a local newspaper of general circulation for
34 a period of not less than five business days. The requests for
35 proposal may be for installation labor only, or for combined labor
36 and equipment, depending upon which approach is most economical
37 for the State contracting agency. The energy services company
38 shall use its best efforts to procure a minimum of three quotations
39 from subcontractors that have been duly classified by the Division
40 of Property Management and Construction, and shall provide the
41 quotations received to the State contracting agency. The energy
42 services company shall award the contract to the subcontractor
43 based upon price and other factors, which shall include, without
44 limitation, the subcontractor's relevant experience, resources,
45 bonding and insurance capability, ability to meet project deadlines,
46 and references. Where an award is not based solely upon price, the
47 energy services company shall justify the award to the State
48 contracting agency. If the State contracting agency does not

1 approve the award, the energy services company shall continue to
2 select subcontractors until one is approved by the State contracting
3 agency. Upon approval in writing of the subcontractor by the State
4 contracting agency, the energy services company shall finalize a
5 contract with the subcontractor that includes the agreed scope of
6 work and price. All subcontractors awarded contracts by an energy
7 services company pursuant to this section shall be paid prevailing
8 wages in accordance with the “New Jersey Prevailing Wage Act,”
9 P.L.1963, c.150 (C.34:11-56.25 et seq.), and shall be appropriately
10 classified as contractors by the Division of Property Management
11 and Construction.

12 (c) In order to expedite communications with an energy services
13 company and facilitate the implementation of an energy savings
14 improvement program, a State contracting agency may designate or
15 appoint a representative or agent with decision-making authority to
16 coordinate with the energy services company and to address issues
17 associated with the implementation of an energy savings
18 improvement program as they arise.

19 (4) Except as provided in paragraph (5) of this subsection, a
20 subsidiary or wholly-owned or partially-owned affiliate of the
21 energy services company shall not be an eligible contractor or
22 subcontractor under an energy savings services contract.

23 **[(5)When the energy services company is the manufacturer of**
24 **direct digital control systems and contracts with the contracting**
25 **agency to provide a guaranteed energy savings option pursuant to**
26 **subsection f. of this section, the specification of such direct digital**
27 **control systems may be treated as proprietary goods and if so**
28 **treated, the bid specification shall set forth an allowance price for**
29 **its supply by the energy services company which shall be used by**
30 **all bidders in the public bidding process. Direct digital controls**
31 **shall be open protocol format and shall meet the interoperability**
32 **guidelines established by the American Society of Heating,**
33 **Refrigerating and Air-Conditioning Engineers.]**

34 c. In addition to existing authorization of a State agency to
35 enter into lease-purchase agreements or to issue obligations to
36 finance the costs of an energy savings improvement program, a
37 contracting agency is hereby authorized to finance the costs of an
38 energy savings improvement program by entering into a lease
39 purchase agreement. Any financing mechanism shall be
40 administered in a manner consistent with this subsection insofar as
41 it does not conflict with the provisions of other law that applies to
42 the contracting agency.

43 (1) An energy savings improvement program may be financed
44 through a lease-purchase agreement between a State contracting
45 agency and an energy services company or other public or private
46 entity. Under a lease-purchase agreement, ownership of the energy
47 savings equipment or improved facilities shall pass to the
48 contracting agency or the client agency responsible for the facility

1 when all lease payments have been made. Notwithstanding the
2 provisions of any other law to the contrary, the duration of such a
3 lease-purchase agreement shall not exceed 15 years, except that the
4 duration of a lease purchase agreement for a combined heat and
5 power or cogeneration project shall not exceed 20 years. For the
6 purposes of this paragraph, the duration of the repayment term of a
7 lease-purchase agreement shall commence on the date upon which
8 construction and installation of the energy savings equipment,
9 “combined heat and power facility” or “cogeneration facility,” as
10 those terms are defined pursuant to section 3 of P.L.1999, c.23
11 (C.48:3-51), or other energy conservation measures undertaken
12 pursuant to the energy savings plan, have been completed.

13 (2) Lease-purchase agreements and energy savings obligations
14 shall not be used to finance maintenance, guarantees, or verification
15 of guarantees of energy conservation measures. Lease-purchase
16 agreements may be used to finance the cost of an energy audit or
17 the cost of verification of energy savings as part of adopting an
18 energy savings plan. Maturity schedules of lease-purchase
19 agreements must exceed the estimated useful life of the individual
20 energy conservation measures.

21 d. (1) The energy audit component of an energy savings
22 improvement program shall be conducted either by the contracting
23 agency or by a qualified independent third party retained by the
24 contracting agency for that purpose. It shall not be conducted by an
25 energy services company subsequently hired to develop an energy
26 savings improvement program. The energy audit shall identify the
27 current energy use of any or all facilities and energy conservation
28 measures that can be implemented in which the energy savings and
29 energy efficiency could be realized and maximized.

30 (2) To implement an energy savings improvement program, a
31 contracting agency shall develop an energy savings plan that
32 consists of one or more energy conservation measures. The plan
33 shall:

34 (a) contain the results of an energy audit;

35 (b) describe the energy conservation measures that will
36 comprise the program;

37 (c) estimate greenhouse gas reductions resulting from those
38 energy savings;

39 (d) identify all design and compliance issues that require the
40 professional services of an architect or engineer and identify who
41 will provide these services;

42 (e) include an assessment of risks involved in the successful
43 implementation of the plan;

44 (f) identify the eligibility for, and costs and revenues associated
45 with the PJM Independent System Operator for demand response
46 and curtailable service activities;

1 (g) include schedules showing calculations of all costs of
2 implementing the proposed energy conservation measures and the
3 projected energy savings;

4 (h) identify maintenance requirements necessary to ensure
5 continued energy savings, and describe how they will be fulfilled;
6 and

7 (i) if developed by an energy services company, a description
8 of, and cost estimates of an energy savings guarantee.

9 All professionals providing engineering services under the plan
10 shall have errors and omissions insurance.

11 (3) Prior to the adoption of the plan, the contracting agency
12 shall contract with a qualified third party to verify the projected
13 energy savings to be realized from the proposed program have been
14 calculated as required by subsection e. of this section.

15 (4) Upon adoption, the plan shall be submitted to the Board of
16 Public Utilities, which shall post it on the Internet on a public
17 webpage maintained for such purpose. If the contracting agency
18 maintains its own website, it shall also post the plan on that site.
19 The Board of Public Utilities may require periodic reporting
20 concerning the implementation of the plan.

21 (5) Verification by a qualified third party shall be required when
22 energy conservation measures are placed in service or
23 commissioned, to ensure the savings projected in the energy savings
24 plan shall be achieved.

25 (6) Energy-related capital improvements that do not reduce
26 energy usage may be included in an energy savings improvement
27 program but the cost of such improvements shall not be financed as
28 a lease-purchase or through energy savings obligations authorized
29 by subsection c. of this section. Nothing herein is intended to
30 prevent financing of such capital improvements through otherwise
31 authorized means.

32 (7) A qualified third party when required by this subsection may
33 include an employee of the State contracting agency who is
34 properly trained and qualified to perform such work.

35 e. (1) (a) The calculation of energy savings for the purposes of
36 determining that the energy savings resulting from the program will
37 be sufficient to cover the cost of the program's energy conservation
38 measures, as provided in subsection a. of this section, shall involve
39 determination of the dollar amount saved through implementation
40 of an energy savings improvement program using the guidelines of
41 the International Performance Measurement and Verification
42 Protocol or other protocols approved by the Board of Public
43 Utilities and standards adopted by the Board of Public Utilities
44 pursuant to this section. The calculation shall include all applicable
45 State and federal rebates and tax credits, but shall not include the
46 cost of an energy audit and the cost of verifying energy savings.
47 The calculation shall state which party has made application for

1 rebates and credits and how these applications translate into energy
2 savings.

3 (b) During the procurement phase of a program, an energy
4 service company's proposal submitted in response to a request for
5 proposal shall not include a savings calculation that assumes,
6 includes, or references capital cost avoidance savings, the current or
7 projected value of a "solar renewable energy certificate," as defined
8 pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other
9 environmental or similar attributes or benefits of whatever nature
10 that derive from the generation of renewable energy, and any costs
11 or discounts associated with maintenance services, an energy
12 savings guarantee, or third party verification of energy conservation
13 measures and energy savings. The calculation of energy savings
14 shall utilize and specifically reference as a benchmark the actual
15 demand and energy components of the public utility tariff rate
16 applicable to the State contracting agency then in effect, and not a
17 blended rate that aggregates, combines, or restates in any manner
18 the distinct demand and energy components of the public utility
19 tariff rate into a single combined or restated tariff rate. If an energy
20 services company submits a proposal to a State contracting agency
21 that does not calculate projected energy savings in the manner
22 required by this subsection, such proposal shall be rejected by the
23 State contracting agency.

24 (2) For the purposes of this section, the Board of Public Utilities
25 shall adopt standards and uniform values for interest rates and
26 escalation of labor, electricity, oil, and gas, as well as standards for
27 presenting these costs in a life cycle and net present value format,
28 standards for the presentation of obligations for carbon reductions,
29 and other standards that the board may determine necessary.

30 f. (1) When an energy services company is awarded an energy
31 savings services contract, it shall offer the contracting agency the
32 option to purchase, for an additional amount, an energy savings
33 guarantee. The guarantee, if accepted by the contracting agency,
34 shall insure that the energy savings resulting from the energy
35 savings improvement program, determined periodically over the
36 duration of the guarantee, will be sufficient to defray all payments
37 required to be made pursuant to the lease-purchase agreement or
38 energy savings obligation, and if the savings are not sufficient, the
39 energy services company will reimburse the contracting agency for
40 any additional amounts. Annual costs of a guarantee shall not be
41 financed or included as costs in an energy savings plan but shall be
42 fully disclosed in an energy savings plan.

43 (2) When a guaranteed energy savings option is purchased, the
44 contract shall require a qualified third party to verify the energy
45 savings at intervals established by the parties.

46 (3) When an energy services company is awarded an energy
47 savings services contract to provide or perform goods or services
48 for the purpose of enabling a State contracting agency to conserve

1 energy through energy efficiency equipment, including a “combined
2 heat and power facility” as that term is defined pursuant to section 3
3 of P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
4 shall extend for a term of up to 15 years for energy efficiency
5 projects, and for up to 20 years for a combined heat and power
6 facility after construction completion. If a State contracting agency
7 shall elect to contract with an energy services company for an
8 energy savings guarantee in connection with a contract awarded
9 pursuant to this section, such guarantee may extend for a term of up
10 to 15 years for energy efficiency projects, or up to 20 years for a
11 combined heat and power facility after construction completion.

12 g. As used in this section:

13 "direct digital control systems" means the devices and
14 computerized control equipment that contain software and computer
15 interfaces that perform the logic that control a building's heating,
16 ventilating, and air conditioning system. Direct digital controls
17 shall be open protocol format and shall meet the interoperability
18 guidelines established by the American Society of Heating,
19 Refrigerating and Air-Conditioning Engineers;

20 "energy conservation measure" means an improvement that
21 results in reduced energy use, including, but not limited to,
22 installation of energy efficient equipment; demand response
23 equipment; combined heat and power systems; facilities for the
24 production of renewable energy; water conservation measures,
25 fixtures or facilities; building envelope improvements that are part
26 of an energy savings improvement program; and related control
27 systems for each of the foregoing;

28 "energy related capital improvement" means a capital
29 improvement that uses energy but does not result in a reduction of
30 energy use;

31 "energy savings" means a measured reduction in fuel, energy,
32 operating or maintenance costs resulting from the implementation
33 of one or more energy conservation measures services when
34 compared with an established baseline of previous fuel, energy,
35 operating or maintenance costs, including, but not limited to, future
36 capital replacement expenditures avoided as a result of equipment
37 installed or services performed as part of an energy savings plan;

38 "energy savings improvement program" means an initiative of a
39 State contracting agency to implement energy conservation
40 measures in existing facilities, provided that the value of the energy
41 savings resulting from the program will be sufficient to cover the
42 cost of the program's energy conservation measures;

43 "energy savings plan" means the document that describes the
44 actions to be taken to implement the energy savings improvement
45 program;

46 "energy savings services contract" means a contract with an
47 energy savings company to develop an energy savings plan, prepare
48 bid specifications, manage the performance, provision,

1 construction, and installation of energy conservation measures by
2 subcontractors, to offer a guarantee of energy savings derived from
3 the implementation of an energy savings plan, and may include a
4 provision to manage the bidding process;

5 "energy services company" means a commercial entity that is
6 qualified to develop and implement an energy savings plan in
7 accordance with the provisions of this section;

8 "public works activities" means any work subject to the
9 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.);

10 "State contracting agency" or "contracting agency" means any of
11 the principal departments in the Executive Branch of State
12 Government, and any division, board, bureau, office, commission or
13 other instrumentality created by a principal department; and

14 "water conservation measure" means an alteration to a facility or
15 equipment that reduces water consumption, maximizes the
16 efficiency of water use, or reduces water loss.

17 h. (1) The State Treasurer and the Board of Public Utilities may
18 take such action as is deemed necessary and consistent with the
19 intent of this section to implement its provisions.

20 (2) The State Treasurer and the Board of Public Utilities may
21 adopt implementation guidelines or directives, and adopt such
22 administrative rules, pursuant to the "Administrative Procedure
23 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
24 implementation of those agencies' respective responsibilities under
25 this section, except that notwithstanding any provision of P.L.1968,
26 c.410 (C.52:14B-1 et seq.) to the contrary, the State Treasurer, and
27 the Board of Public Utilities may adopt, immediately upon filing
28 with the Office of Administrative Law, such rules and regulations
29 as deemed necessary to implement the provisions of this act which
30 shall be effective for a period not to exceed 12 months and shall
31 thereafter be amended, adopted or re-adopted in accordance with
32 the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

33 (cf: P.L.2009, c.4, s.9)

34

35 4. Section 10 of P.L.2009, c.4 (C.52:35A-1) is amended to
36 read as follows:

37 10. a. A public agency, as defined in this section, may
38 implement an energy savings improvement program in the manner
39 provided by this section whenever it determines that the savings
40 generated from reduced energy use from the program will be
41 sufficient to cover the cost of the program's energy conservation
42 measures as set forth in an energy savings plan. Under such a
43 program, a public agency may enter into an energy savings services
44 contract with an energy services company to implement the
45 program or the public agency may authorize separate contracts to
46 implement the program. The provisions of any other law applicable
47 to a public agency shall apply to any contracts awarded pursuant to

1 this section to the extent that the provisions of such law are not
2 inconsistent with any provision of this section.

3 b. (1) To be eligible to enter into an energy savings services
4 contract, an energy services company shall be a commercial entity
5 that is qualified to provide public agencies with energy savings
6 services in accordance with the provisions of this section. A public
7 agency may determine to enter into an energy savings services
8 contract which shall be awarded through a procedure that results in
9 the award of a contract to a vendor determined by the public agency
10 to be the most advantageous, price and other factors considered.

11 (2) (a) Public works activities performed under an energy
12 savings improvement program shall be subject to all requirements
13 regarding public bidding, bid security, performance guarantees,
14 insurance and other public contracting requirements that are
15 applicable to public works contracts, to the extent not inconsistent
16 with this section. A general contractor, energy services company
17 serving as general contractor, or any subcontractor hired for the
18 furnishing of plumbing and gas fitting and all kindred work, and of
19 steam and hot water heating and ventilating apparatus, steam power
20 plants and kindred work, and electrical work, structural steel and
21 ornamental iron work shall be classified by the Division of Property
22 Management and Construction in the Department of the Treasury in
23 order to perform public works activities under an energy savings
24 improvement program.

25 (b) Individuals or organizations performing energy audits,
26 acting as commissioning agents, or conducting verification of
27 energy savings plans, implementation of energy conservation
28 measures, or verifying guarantees shall be prequalified by the
29 Division of Property Management and Construction in the
30 Department of the Treasury to perform their work under an energy
31 savings improvement program.

32 (3) (a) An energy services company may be designated as the
33 general contractor for improvements to be made pursuant to an
34 energy savings plan, provided that the hiring of subcontractors that
35 are required to be classified pursuant to subparagraph (a) of
36 paragraph (2) of this subsection shall be performed in accordance
37 with the procedures and requirements set forth pursuant to **the**
38 public bidding requirements of the public agency **subparagraph (b)**
39 of this paragraph. A contract with an energy savings company shall
40 include, but not be limited to: preparation of an energy savings
41 plan; the responsibilities of the parties for project schedules,
42 installations, performance and quality, payment of subcontractors,
43 project completion, commissioning, savings implementation; a
44 requirement that the savings to be achieved by energy conservation
45 measures be verified upon commissioning of the improvements;
46 allocation of State and federal rebates and tax credits; and any other
47 provisions deemed necessary by the parties.

1 **(b) Notwithstanding any other law or regulation to the contrary,**
2 **an energy services company shall procure any required**
3 **subcontractors through a competitive contracting procedure. An**
4 **energy services company, competitively selected through a public**
5 **request for proposal process by a public agency to develop an**
6 **energy savings improvement program pursuant to P.L.2009, c.4**
7 **(C.18A:18A-4.6 et al.), shall define appropriate scopes of work for**
8 **the energy savings plan approved by the public agency and shall**
9 **advertise requests for proposal to procure such services in a local**
10 **newspaper of general circulation for a period of not less than five**
11 **business days. The requests for proposal may be for installation**
12 **labor only, or for combined labor and equipment, depending upon**
13 **which approach is most economical for the public agency. The**
14 **energy services company shall use its best efforts to procure a**
15 **minimum of three quotations from subcontractors that have been**
16 **duly classified by the Division of Property Management and**
17 **Construction, and shall provide the quotations received to the public**
18 **agency. The energy services company shall award the contract to**
19 **the subcontractor based upon price and other factors, which shall**
20 **include, without limitation, the subcontractor's relevant experience,**
21 **resources, bonding and insurance capability, ability to meet project**
22 **deadlines, and references. Where an award is not based solely upon**
23 **price, the energy services company shall justify the award to the**
24 **public agency. If the public agency does not approve the award, the**
25 **energy services company shall continue to select subcontractors**
26 **until one is approved by the public agency. Upon approval in**
27 **writing of the subcontractor by the public agency, the energy**
28 **services company shall finalize a contract with the subcontractor**
29 **that includes the agreed scope of work and price. All**
30 **subcontractors awarded contracts by an energy services company**
31 **pursuant to this section shall be paid prevailing wages in**
32 **accordance with the "New Jersey Prevailing Wage Act," P.L.1963,**
33 **c.150 (C.34:11-56.25 et seq.), and shall be appropriately classified**
34 **as contractors by the Division of Property Management and**
35 **Construction.**

36 **(c) In order to expedite communications with an energy services**
37 **company and facilitate the implementation of an energy savings**
38 **improvement program, a public agency may designate or appoint a**
39 **representative or agent with decision-making authority to**
40 **coordinate with the energy services company and to address issues**
41 **associated with the implementation of an energy savings**
42 **improvement program as they arise.**

43 (4) Except as provided in paragraph (5) of this subsection, a
44 subsidiary or wholly-owned or partially-owned affiliate of the
45 energy services company shall not be an eligible contractor or
46 subcontractor under an energy savings services contract.

47 (5) When the energy services company is the manufacturer of
48 direct digital control systems and contracts with the public agency

1 to provide a guaranteed energy savings option pursuant to
2 subsection f. of this section, the specification of such direct digital
3 control systems may be treated as proprietary goods and if so
4 treated, the bid specification shall set forth an allowance price for
5 its supply by the energy services company which shall be used by
6 all bidders in the public bidding process. Direct digital controls
7 shall be open protocol format and shall meet the interoperability
8 guidelines established by the American Society of Heating,
9 Refrigerating and Air-Conditioning Engineers. Each contract to be
10 entered into pursuant to this section between a public agency and an
11 energy services company that is the manufacturer of direct digital
12 control systems where such direct digital control systems are treated
13 as proprietary goods as part of the contract, shall first be reviewed
14 and approved by the State Comptroller for the purpose of affirming
15 the reasonableness of such allowance price.

16 c. In addition to existing authorization of a public agency to
17 enter into lease-purchase agreements or to issue obligations to
18 finance the costs of an energy savings improvement program, a
19 public agency is hereby authorized to finance the costs of an energy
20 savings improvement program by entering into a lease purchase
21 agreement or by issuing energy savings obligations pursuant to this
22 subsection. Any financing mechanism shall be administered in a
23 manner consistent with this subsection insofar as it does not conflict
24 with the provisions of other law that applies to the public agency.

25 (1) An energy savings improvement program may be financed
26 through a lease-purchase agreement between a public agency and an
27 energy services company or other public or private entity. Under a
28 lease-purchase agreement, ownership of the energy savings
29 equipment or improved facilities shall pass to the public agency
30 when all lease payments have been made. Notwithstanding the
31 provisions of any other law to the contrary, the duration of such a
32 lease-purchase agreement shall not exceed 15 years, except that the
33 duration of a lease purchase agreement for a combined heat and
34 power or cogeneration project shall not exceed 20 years. For the
35 purposes of this paragraph, the duration of the repayment term of a
36 lease-purchase agreement shall commence on the date upon which
37 construction and installation of the energy savings equipment,
38 “combined heat and power facility” or “cogeneration facility,” as
39 those terms are defined pursuant to section 3 of P.L.1999, c.23
40 (C.48:3-51), or other energy conservation measures undertaken
41 pursuant to the energy savings plan, have been completed.

42 (2) A public agency may arrange for incurring energy savings
43 obligations to finance an energy savings improvement program.
44 Energy savings obligations may be funded through appropriations
45 for utility services in the annual budget of the public agency and
46 may be issued as refunding bonds, including the issuance of bond
47 anticipation notes as may be necessary, provided that all such bonds
48 and notes mature within the periods authorized for such energy

1 savings obligations. Energy savings obligations may be issued
2 either through the public agency or another public agency
3 authorized to undertake financing on behalf of the public agency.

4 (3) Lease-purchase agreements and energy savings obligations
5 shall not be used to finance maintenance, guarantees, or verification
6 of guarantees of energy conservation measures. Lease-purchase
7 agreements and energy savings obligations may be used to finance
8 the cost of an energy audit or the cost of verification of energy
9 savings as part of adopting an energy savings plan.
10 Notwithstanding any law to the contrary, lease-purchase agreements
11 and energy savings certificates shall not be excepted from any
12 budget or tax levy limitation otherwise provided by law. Maturity
13 schedules of lease-purchase agreements or energy savings
14 obligations must exceed the estimated useful life of the individual
15 energy conservation measures.

16 d. (1) The energy audit component of an energy savings
17 improvement program shall be conducted either by the public
18 agency or by a qualified independent third party retained by the
19 board for that purpose. It shall not be conducted by an energy
20 services company subsequently hired to develop an energy savings
21 improvement program. The energy audit shall identify the current
22 energy use of any or all facilities and energy conservation measures
23 that can be implemented in which the energy savings and energy
24 efficiency could be realized and maximized.

25 (2) To implement a program, a public agency shall develop an
26 energy savings plan that consists of one or more energy
27 conservation measures. The plan shall: (a) contain the
28 results of an energy audit;

29 (b) describe the energy conservation measures that will
30 comprise the program;

31 (c) estimate greenhouse gas reductions resulting from those
32 energy savings;

33 (d) identify all design and compliance issues that require the
34 professional services of an architect or engineer and identify who
35 will provide these services;

36 (e) include an assessment of risks involved in the successful
37 implementation of the plan;

38 (f) identify the eligibility for, and costs and revenues associated
39 with the PJM Independent System Operator for demand response
40 and curtailable service activities;

41 (g) include schedules showing calculations of all costs of
42 implementing the proposed energy conservation measures and the
43 projected energy savings;

44 (h) identify maintenance requirements necessary to ensure
45 continued energy savings, and describe how they will be fulfilled;
46 and

47 (i) if developed by an energy services company, a description
48 of, and cost estimates of an energy savings guarantee.

1 All professionals providing engineering services under the plan
2 shall have errors and omissions insurance.

3 (3) Prior to the adoption of the plan, the public agency shall
4 contract with a qualified third party to verify the projected energy
5 savings to be realized from the proposed program have been
6 calculated as required by subsection e. of this section.

7 (4) Upon adoption, the plan shall be submitted to the Board of
8 Public Utilities, which shall post it on the Internet on a public
9 webpage maintained for such purpose. If the public agency
10 maintains its own website, it shall also post the plan on that site.
11 The board may require periodic reporting concerning the
12 implementation of the plan.

13 (5) Verification by a qualified third party shall be required when
14 energy conservation measures are placed in service or
15 commissioned, to ensure the savings projected in the energy savings
16 plan shall be achieved.

17 (6) Energy-related capital improvements that do not reduce
18 energy usage may be included in an energy savings improvement
19 program but the cost of such improvements shall not be financed as
20 a lease-purchase or through energy savings obligations authorized
21 by subsection c. of this section. Nothing herein is intended to
22 prevent financing of such capital improvements through otherwise
23 authorized means.

24 (7) A qualified third party when required by this subsection may
25 include an employee of the public agency who is properly trained
26 and qualified to perform such work.

27 e. (1) (a) The calculation of energy savings for the purposes of
28 determining that the energy savings resulting from the program will
29 be sufficient to cover the cost of the program's energy conservation
30 measures, as provided in subsection a. of this section, shall involve
31 determination of the dollar amount saved through implementation
32 of an energy savings improvement program using the guidelines of
33 the International Performance Measurement and Verification
34 Protocol or other protocols approved by the Board of Public
35 Utilities and standards adopted by the Board of Public Utilities
36 pursuant to this section. The calculation shall include all applicable
37 State and federal rebates and tax credits, but shall not include the
38 cost of an energy audit and the cost of verifying energy savings.
39 The calculation shall state which party has made application for
40 rebates and credits and how these applications translate into energy
41 savings.

42 (b) During the procurement phase of a program, an energy
43 service company's proposal submitted in response to a request for
44 proposal shall not include a savings calculation that assumes,
45 includes, or references capital cost avoidance savings, the current or
46 projected value of a "solar renewable energy certificate," as defined
47 pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other
48 environmental or similar attributes or benefits of whatever nature

1 that derive from the generation of renewable energy, and any costs
2 or discounts associated with maintenance services, an energy
3 savings guarantee, or third party verification of energy conservation
4 measures and energy savings. The calculation of energy savings
5 shall utilize and specifically reference as a benchmark the actual
6 demand and energy components of the public utility tariff rate
7 applicable to the public agency then in effect, and not a blended rate
8 that aggregates, combines, or restates in any manner the distinct
9 demand and energy components of the public utility tariff rate into
10 a single combined or restated tariff rate. If an energy services
11 company submits a proposal to a public agency that does not
12 calculate projected energy savings in the manner required by this
13 subsection, such proposal shall be rejected by the public agency.

14 (2) For the purposes of this section, the Board of Public Utilities
15 shall adopt standards and uniform values for interest rates and
16 escalation of labor, electricity, oil, and gas, as well as standards for
17 presenting these costs in a life cycle and net present value format,
18 standards for the presentation of obligations for carbon reductions,
19 and other standards that the board may determine necessary.

20 f. (1) When an energy services company is awarded an energy
21 savings services contract, it shall offer the public agency the option
22 to purchase, for an additional amount, an energy savings guarantee.
23 The guarantee, if accepted by a separate vote of the governing body
24 of the public agency, shall insure that the energy savings of the
25 public agency resulting from the energy savings improvement
26 program, determined periodically over the duration of the
27 guarantee, will be sufficient to defray all payments required to be
28 made pursuant to the lease-purchase agreement or energy savings
29 obligation, and if the savings are not sufficient, the energy services
30 company will reimburse the public agency for any additional
31 amounts. Annual costs of a guarantee shall not be financed or
32 included as costs in an energy savings plan but shall be fully
33 disclosed in an energy savings plan.

34 (2) When a guaranteed energy savings option is purchased, the
35 contract shall require a qualified third party to verify the energy
36 savings at intervals established by the parties.

37 (3) When a guaranteed energy savings option is not purchased,
38 the energy savings services contract shall not include maintenance
39 services provided by the energy services company.

40 (4) When an energy services company is awarded an energy
41 savings services contract to provide or perform goods or services
42 for the purpose of enabling a public agency to conserve energy
43 through energy efficiency equipment, including a “combined heat
44 and power facility” as that term is defined pursuant to section 3 of
45 P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract
46 shall extend for a term of up to 15 years for energy efficiency
47 projects, and for up to 20 years for a combined heat and power
48 facility after construction completion. If a public agency shall elect

1 to contract with an energy services company for an energy savings
2 guarantee in connection with a contract awarded pursuant to this
3 section, such guarantee may extend for a term of up to 15 years for
4 energy efficiency projects, or up to 20 years for a combined heat
5 and power facility after construction completion.

6 g. As used in this section:

7 "direct digital control systems" means the devices and
8 computerized control equipment that contain software and computer
9 interfaces that perform the logic that control a building's heating,
10 ventilating, and air conditioning system. Direct digital controls
11 shall be open protocol format and shall meet the interoperability
12 guidelines established by the American Society of Heating,
13 Refrigerating and Air-Conditioning Engineers;

14 "energy conservation measure" means an improvement that
15 results in reduced energy use, including, but not limited to,
16 installation of energy efficient equipment; demand response
17 equipment; combined heat and power systems; facilities for the
18 production of renewable energy; water conservation measures,
19 fixtures or facilities; building envelope improvements that are part
20 of an energy savings improvement program; and related control
21 systems for each of the foregoing;

22 "energy related capital improvement" means a capital
23 improvement that uses energy but does not result in a reduction of
24 energy use;

25 "energy saving obligation" means a bond, note or other
26 agreement evidencing the obligation to repay borrowed funds
27 incurred in order to finance energy saving improvements;

28 "energy savings" means a measured reduction in fuel, energy,
29 operating or maintenance costs resulting from the implementation
30 of one or more energy conservation measures services when
31 compared with an established baseline of previous fuel, energy,
32 operating or maintenance costs, including, but not limited to, future
33 capital replacement expenditures avoided as a result of equipment
34 installed or services performed as part of an energy savings plan;

35 "energy savings improvement program" means an initiative of a
36 public agency to implement energy conservation measures in
37 existing facilities, provided that the value of the energy savings
38 resulting from the program will be sufficient to cover the cost of the
39 program's energy conservation measures;

40 "energy savings plan" means the document that describes the
41 actions to be taken to implement the energy savings improvement
42 program;

43 "energy savings services contract" means a contract with an
44 energy savings company to develop an energy savings plan, prepare
45 bid specifications, manage the performance, provision,
46 construction, and installation of energy conservation measures by
47 subcontractors, to offer a guarantee of energy savings derived from

1 the implementation of an energy savings plan, and may include a
2 provision to manage the bidding process;

3 "energy services company" means a commercial entity that is
4 qualified to develop and implement an energy savings plan in
5 accordance with the provisions of this section;

6 "public agency" means any government entity that is authorized
7 to expend public funds and enter into contracts which is not
8 otherwise authorized to implement an energy savings improvement
9 program pursuant to section 1, 4, 6, or 9 of P.L.2009, c.4
10 (C.18A:18A-4.6, C.18A:65A-1, C.40A:11-4.6, or C.52:34-25).

11 "public works activities" means any work subject to the
12 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

13 "water conservation measure" means an alteration to a facility or
14 equipment that reduces water consumption, maximizes the
15 efficiency of water use, or reduces water loss.

16 h. (1) The State Treasurer and the Board of Public Utilities
17 may take such action as is deemed necessary and consistent with the
18 intent of this section to implement its provisions.

19 (2) The State Treasurer and the Board of Public Utilities may
20 adopt implementation guidelines or directives, and adopt such
21 administrative rules, pursuant to the "Administrative Procedure
22 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the
23 implementation of those agencies' respective responsibilities under
24 this section, except that notwithstanding any provision of P.L.1968,
25 c.410 (C.52:14B-1 et seq.) to the contrary, the Director of the
26 Division of Local Government Services in the Department of
27 Community Affairs, the State Treasurer, and the Board of Public
28 Utilities may adopt, immediately upon filing with the Office of
29 Administrative Law, such rules and regulations as deemed
30 necessary to implement the provisions of this act which shall be
31 effective for a period not to exceed 12 months and shall thereafter
32 be amended, adopted or re-adopted in accordance with the
33 provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

34 (cf: P.L.2009, c.4, s.10)

35

36 5. (New section) a. Notwithstanding the provisions to the
37 contrary of R.S.52:32-2 or any other law, or any rule or regulation
38 adopted pursuant thereto, where a State contracting agency
39 implements an energy savings improvement program pursuant to
40 section 9 of P.L.2009, c.4 (C.52:34-25), the State contracting
41 agency, prior to entering into an energy savings services contract,
42 shall use a competitive selection process that ensures that the award
43 is made to the responsible bidder whose proposal is determined to
44 be the most advantageous to the State.

45 b. Nothing in this section shall preclude a State contracting
46 agency from using procurement processes other than those
47 prescribed herein and in section 9 of P.L.2009, c.4 (C.52:34-25), if
48 those processes have been approved by the federal government

1 under section 801 of the “National Energy Conservation Policy
2 Act” (42 U.S.C. s.8287).

3

4 6. (New section) The State Comptroller, in consultation with
5 the Board of Public Utilities, shall establish a standard request for
6 proposal to be used for all energy savings improvement program
7 projects to be undertaken by any contracting unit authorized to
8 implement an energy savings improvement program pursuant to the
9 provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.).

10

11 7. This act shall take effect immediately.

12

13

14

STATEMENT

15

16 This bill makes changes to the statute authorizing the State’s
17 public entities to participate in an energy savings improvement
18 program (“ESIP”) under the provisions of P.L.2009, c.4
19 (C.18A:18A-4.6 et al.). Specifically, the bill provides that: 1)
20 concerning the duration of the repayment term of a lease-purchase
21 agreement with an energy services company (“ESCO”), the
22 agreement shall be deemed to commence on the date upon which
23 construction and installation of the energy savings equipment,
24 “combined heat and power facility” or “cogeneration facility,” as
25 those terms are defined pursuant to section 3 of P.L.1999, c.23
26 (C.48:3-51), or other energy conservation measures undertaken
27 pursuant to the energy savings plan, have been completed; and 2)
28 during the procurement phase of an ESIP, an ESCO’s proposal
29 submitted in response to a public entity’s request for proposal shall
30 not include a savings calculation that assumes, includes, or
31 references capital cost avoidance savings, the current or projected
32 value of a “solar renewable energy certificate,” as defined pursuant
33 to section 3 of P.L.1999, c.23 (C.48:3-51), or other environmental
34 or similar attributes or benefits of whatever nature that derive from
35 the generation of renewable energy, and any costs or discounts
36 associated with maintenance services, an energy savings guarantee,
37 or third party verification of energy conservation measures and
38 energy savings. The calculation of energy savings shall utilize and
39 specifically reference as a benchmark the actual demand and energy
40 components of the public utility tariff rate applicable to the public
41 agency then in effect, and not a blended rate that aggregates,
42 combines, or restates in any manner the distinct demand and energy
43 components of the public utility tariff rate into a single combined or
44 restated tariff rate. If an ESCO submits a proposal to a public
45 agency that does not calculate projected energy savings in the
46 manner required by this subsection, such proposal shall be rejected
47 by the public agency.

1 The bill provides that a State contracting agency, in
2 implementing an ESIP, shall use a competitive selection process
3 that ensures that the award is made to the responsible bidder whose
4 proposal is determined to be the most advantageous to the State.
5 The bill does not preclude the State contracting agency from using
6 procurement processes other than those prescribed herein and in
7 section 6 of P.L.2009, c.4 (C.52:34-25), if those processes have
8 been approved by the federal government in the National Energy
9 Conservation Policy Act (42 U.S.C. s.8287 as amended).

10 The bill requires the State Comptroller, in consultation with the
11 Board of Public Utilities, to establish a standard request for
12 proposal to be used for all ESIP projects to be undertaken by any
13 public entity authorized to implement an ESIP. Further, the bill
14 requires each contract between a board of education, contracting
15 unit, or public agency, and an ESCO that is the manufacturer of
16 direct digital control systems, where such control systems are
17 treated as proprietary goods as part of the contract, to first be
18 reviewed and approved by the State Comptroller for the purpose of
19 affirming the reasonableness of an allowance price by the ESCO.

20 Finally, the bill removes from the ESIP law applicable to State
21 agencies the requirement that, when an ESCO requires potential
22 subcontractors bidding on a guaranteed energy savings option
23 contract to use a direct digital control system of the ESCO's own
24 manufacture, the bid specification must set forth an allowance price
25 for that system, to be used by all bidders for the subcontract. An
26 identical provision in the ESIP statutes applicable to school boards,
27 local government contracting agencies, and other public agencies is
28 retained in those statutes.

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 1753

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 15, 2012

The Senate Economic Growth Committee reports favorably Senate Bill No. 1753 with committee amendments.

This bill, as amended, makes changes to the statute authorizing the State's public entities (i.e., State agencies, authorities, and institutions of higher education, county colleges, local boards of education, counties, and municipalities) to participate in an energy savings improvement program ("ESIP") under the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.) ("ESIP law"). Specifically, the amended bill provides that: 1) concerning the duration of the repayment term of a lease-purchase agreement with an energy services company ("ESCO"), the agreement shall be deemed to commence on the date upon which construction and installation of the energy savings equipment, "combined heat and power facility" or "cogeneration facility," as those terms are defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other energy conservation measures undertaken pursuant to the energy savings plan, have been completed; and 2) during the procurement phase of an ESIP, an ESCO's proposal submitted in response to a public entity's request for proposal shall not include a savings calculation that assumes, includes, or references capital cost avoidance savings, the current or projected value of a "solar renewable energy certificate," as defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other environmental or similar attributes or benefits of whatever nature that derive from the generation of renewable energy, and any costs or discounts associated with maintenance services, an energy savings guarantee, or third party verification of energy conservation measures and energy savings. The calculation of energy savings shall utilize and specifically reference as a benchmark the actual demand and energy components of the public utility tariff rate applicable to the public agency then in effect. If an ESCO submits a proposal to a public agency that does not calculate projected energy savings of an amount that, at a minimum, covers the costs of the ESIP's energy conservation measures, such proposal shall be rejected by the public agency.

The amended bill provides that a State contracting agency, in implementing an ESIP, shall use a competitive selection process that ensures that the award is made to the responsible bidder whose proposal is determined to be the most advantageous to the State. The amended bill does not preclude the State contracting agency from using procurement processes other than those prescribed herein and in section 9 of P.L.2009, c.4 (C.52:34-25), if those processes have been approved by the federal government in the National Energy Conservation Policy Act (42 U.S.C. s.8287 as amended).

The amended bill requires the Board of Public Utilities, in consultation with the State Comptroller, to establish a standard request for proposal to be used for all ESIP projects to be undertaken by any public entity authorized to implement an ESIP. Further, the amended bill requires each contract between a board of education, contracting unit, or public agency, and an ESCO that is the manufacturer of direct digital control systems, where such control systems are treated as proprietary goods as part of the contract, to first be reviewed and approved by the Board of Public Utilities (“BPU”) for the purpose of affirming the reasonableness of an allowance price by the ESCO.

Finally, the amended bill removes from the ESIP law applicable to State agencies, institutions of higher education, and county colleges the requirement that, when an ESCO requires potential subcontractors bidding on a guaranteed energy savings option contract to use a direct digital control system of the ESCO’s own manufacture, the bid specification must set forth an allowance price for that system, to be used by all bidders for the subcontract.

The committee amended the bill to: 1) have the BPU, instead of the State Comptroller, establish a standard request for proposal to be used for all ESIP projects to be undertaken by any public agency authorized to implement an ESIP; 2) designate the BPU as the agency of the State Government responsible for implementing and enforcing the provisions of the ESIP law and for responding to requests for assistance from public entities authorized to implement and ESIP; 3) require the BPU to undertake a study of the effectiveness of ESIPs and report its findings to the Governor and the Legislature within three years after the effective date of the bill; 4) prohibit the Division of Property Management and Construction in the Department of the Treasury from charging any fee for the review or approval of an ESIP implemented by a State contracting agency; 5) have the provisions of the bill affecting State contracting agencies also apply to State institutions of higher education and county colleges; 6) eliminate, for local boards of education, local contracting units and public agencies, the proposed selection of subcontractors through a competitive contracting procedure and restore existing provisions requiring the use of public bidding; 7) clarify that workmen performing public works activities shall be paid prevailing wages; 8) provide that if the BPU does not disapprove of those direct digital control system contracts

within 30 days of their receipt, the contract is approved; 9) provide that a general contractor, ESCO serving as general contractor, or any subcontractor hired for the furnishing of electrical work under an ESIP contract with a State contracting agency shall use only electrical contractors licensed by the State to perform electrical work under the ESIP contract; and 10) eliminate, in the bill's provisions affecting ESIPs with a State contracting agency, the provisions for the selection of subcontractors by an ESCO through a competitive contracting procedure, and instead provide that a minimum of three subcontractors be selected through a request for proposal process based on criteria approved by the State contracting agency and ESCO, that any such proposal shall include a certification that all employees of the subcontractor have completed a registered apprenticeship program, and that the ESCO shall then select from the eligible pool of subcontractors.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1753

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 7, 2012

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1753 (1R) with committee amendments.

This bill, as amended, makes changes to the statute authorizing the State's public entities (i.e., State agencies and authorities; public institutions of higher education; local boards of education; counties, municipalities, and other local units; and any other public contracting agency) to participate in an energy savings improvement program ("ESIP") under the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.) ("ESIP law"). Specifically, the amended bill provides that:

1) for purposes of defining the duration of the repayment term of a lease-purchase agreement with an energy services company ("ESCO"), the agreement shall be deemed to commence on the date upon which construction and installation of the energy savings equipment, combined heat and power facility or cogeneration facility, or other energy conservation measures undertaken pursuant to the energy savings plan, is completed;

2) during the procurement phase of an ESIP, an ESCO's proposal submitted in response to a public entity's request for proposal ("RFP") shall not include a savings calculation that assumes, includes, or references capital cost avoidance savings, the current or projected value of a "solar renewable energy certificate," or other environmental or similar attributes or benefits of whatever nature that derive from the generation of renewable energy, and any costs or discounts associated with maintenance services, an energy savings guarantee, or third party verification of energy conservation measures and energy savings. The calculation of energy savings shall utilize and specifically reference as a benchmark the actual demand and energy components of the public utility tariff rate applicable to the public agency then in effect. If an ESCO submits a proposal to a public entity that does not calculate projected energy savings of an amount that, at a minimum, covers the costs of the ESIP's energy conservation measures, such proposal shall be rejected by the public entity;

3) the Board of Public Utilities (“BPU”), in consultation with the State Treasurer and Department of Community Affairs, shall establish a standard RFP to be used for all ESIP projects to be undertaken by any public entity authorized to implement an ESIP. A public entity wishing to use its own RFP must first submit the nonstandard RFP to the BPU. Unless the BPU disapproves the RFP within 14 days of its receipt from the public entity, the RFP is deemed approved. Further, the amended bill requires each contract between a board of education, contracting unit, or public agency, and an ESCO that is the manufacturer of direct digital control systems, where such control systems are treated as proprietary goods as part of the contract, to first be reviewed and approved by the BPU for the purpose of affirming the reasonableness of an allowance price by the ESCO;

4) the BPU is designated as the agency of the State government responsible for implementing and enforcing the provisions of the ESIP law and for responding to requests for assistance from public entities. The BPU is authorized to investigate, review, and take appropriate action with respect to procurements for energy savings projects conducted by public entities pursuant to the ESIP law. Under the amended bill, the BPU’s implementation and enforcement power shall include, but not be limited to: 1) rejecting or modifying a non-conforming RFP and any attachment thereto; 2) modifying, suspending, or canceling a procurement by a public entity for an energy savings project; and 3) withholding State and federal renewable energy and energy efficiency incentives from an energy savings project;

5) the BPU is required to undertake a study of the effectiveness of ESIPs implemented pursuant to the ESIP law and, within three years after the effective date of the bill, prepare a report of its study and provide a copy thereof to the Governor and to the Legislature; and

6) a State contracting agency, in implementing an ESIP, shall use a public bidding process to have the ESCO hire only those subcontractors having been pre-qualified by the Division of Property Management and Construction (“DPMC”) to be eligible to submit bids for qualified work. In pre-qualifying subcontractors for eligibility, the DPMC shall create one or more pools of subcontractors based on the value and complexity of the work to be undertaken under an ESIP. The pre-qualification pools shall include subcontractors having the following qualifications: (a) the financial means and ability to complete the required work, (b) the experience, capability, and skills necessary to complete the work required of energy savings improvement program projects; and (c) a record of experience conducting similar work in a timely fashion.

Finally, the amended bill removes from the ESIP law provisions applicable to State agencies and institutions of higher education the requirement that, when an ESCO requires potential subcontractors bidding on a guaranteed energy savings option contract to use a direct

digital control system of the ESCO's own manufacture, the bid specification must set forth an allowance price for that system, to be used by all bidders for the subcontract.

COMMITTEE AMENDMENTS:

The committee amendments to the bill:

1) direct the BPU to consult with the State Treasurer and Department of Community Affairs, rather than the State Comptroller, when establishing the standard RFP form for ESIP projects;

2) allow a public entity to use its own RFP, subject to the BPU's approval;

3) authorize the BPU to investigate, review, and take appropriate action with respect to procurements for energy savings projects conducted by public entities pursuant to the ESIP law;

4) allow an improvement that is not directly related to an energy efficiency or energy conservation measure to be included in a energy savings services contract if (a) the total cost of the improvement does not exceed 15 percent of the total cost of the work to be performed under the energy savings services contract and (b) the improvement is necessary to conform to a law, rule, regulation, or order, or provides both a demonstrated economic advantage to the public entity implementing the improvement as part of the energy savings services contract and savings documented by industry engineering standards;

5) permit a public entity facility alteration required to properly implement other energy efficiency or energy conservation measures, or both, to be included as part of a energy savings services contract;

6) require all subcontractors to comply with the provisions of "The Public Works Contractor Registration Act";

7) allow a public entity to designate or appoint an employee of the public entity with decision-making authority, rather than a representative or agent, to coordinate with the ESCO and to address issues associated with the implementation of an ESIP, provided that any decision requiring a change order shall be made only upon the approval of the public entity;

8) clarify that maturity schedules of lease-purchase agreements or energy savings obligations involving a public entity shall not, rather than must, exceed the estimated useful life of the individual energy conservation measures;

9) change the process for the selection of subcontractors by an ESCO doing ESIP work for a State contracting agency from a negotiated to a modified public bidding process where an ESCO would be able to hire only those subcontractors submitting bids that have been pre-qualified by the DPMC as stated above;

10) change from 30 to 14 days, the period of time the BPU has to review a contract an ESCO enters into with a board of education, contracting unit, and public agency where the ESCO is a manufacturer of direct digital control systems; and

11) remove the definition of direct digital control systems in section 4 of the bill which concerns State contracting agencies.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that:

- The BPU would face additional costs now that it is tasked with the creation of a new standard RFP form for public entities to use when issuing RFPs for ESIP projects. The standardized form may result in savings for other public entities participating in an ESIP by reducing the labor cost of any staff that would have otherwise been required to develop their own RFP from internal resources. The BPU will also face additional administrative costs now that it must review any RFPs issued by public entities that do not conform to the new BPU template for RFPs. This cost will be dependant upon how many public entities choose to use an RFP format of their own choosing.
- The bill adds to the scope of the ESIP by including institutions of higher education, including county colleges, and by including combined heat and power facilities as eligible ESIP projects. These expansions of ESIP create more possibilities for public entities to realize cost savings; however, the data is not available to estimate the size of that market for savings.
- The bill also adds potential costs to the ESIP by requiring ESCOs to pay all subcontracted employees prevailing wages. It is not clear how much of the labor in projects under an ESIP are currently performed by individuals not receiving a prevailing wage, but any increased labor costs will be partially included in the bids of ESCOs and as a result, decrease the profitability of these projects for the ESCO and decrease the cost savings realized by the public entities.
- The Division of Property Management and Construction will face increased administrative cost in prequalifying ESIP subcontractors and organizing prequalified subcontractors into various pools. The increase or decrease in costs realized by the State contracting agencies participating in the ESIP depends largely on whether allowing qualified subcontractors to bid for work will result in higher or lower prices than the contractor would have been able to negotiate individually with subcontractors. That will not be known until the subcontractor bidding process has begun.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1753

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: JUNE 13, 2012

SUMMARY

- Synopsis:** Clarifies requests for proposals of public entities implementing energy savings improvement program contracts.
- Type of Impact:** Possible Local and State costs
- Agencies Affected:** Board of Public Utilities (BPU), Local Governments, Higher Education Institutions, State Agencies and Authorities

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost		Indeterminate	
Local Cost		Indeterminate	

- The BPU faces additional costs now that it is tasked with the creation of a new standard Request for Proposal (RFP) form for public entities to use when issuing RFP's for Energy Savings Improvement Program (ESIP) projects. The standardized form may result in savings for other public entities participating in the ESIP by reducing the labor cost of any staff that would have otherwise been required to develop their own RFP from internal resources.
- The bill adds to the scope of the ESIP by including public institutions of higher education including county colleges, and by including Combined Heat and Power (CHP) facilities as eligible ESIP projects. These expansions of the ESIP create more possibilities for public entities to realize cost savings; however, the data is not available to estimate the size of that market for savings.
- The bill also adds potential costs to the ESIP by requiring an energy services company (ESCO) to pay all subcontracted employees prevailing wages. It is not clear how much of the labor in projects under the ESIP are currently performed by individuals not receiving a prevailing wage, but any increased labor costs will be partially included in the bids of ESCO's and as a result, decrease the profitability of these projects for the ESCO and decrease the cost savings realized by the public entities.

BILL DESCRIPTION

Senate Bill No. 1753 (1R) of 2012 makes changes to the statute authorizing the State's public entities (i.e., State agencies, authorities, and public institutions of higher education, county colleges, local boards of education, counties, and municipalities) to participate in ESIP under the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.) ("Energy Savings Improvement Program" law). Specifically, the amended bill provides that: 1) concerning the duration of the repayment term of a lease-purchase agreement with an ESCO, the agreement shall be deemed to commence on the date upon which construction and installation of the energy savings equipment, "combined heat and power facility" or "cogeneration facility," as those terms are defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other energy conservation measures undertaken pursuant to the energy savings plan, have been completed; and 2) during the procurement phase of an ESIP, an ESCO's proposal submitted in response to a public entity's RFP shall not include a savings calculation that assumes, includes, or references capital cost avoidance savings, the current or projected value of a "solar renewable energy certificate," as defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other environmental or similar attributes or benefits of whatever nature that derive from the generation of renewable energy, and any costs or discounts associated with maintenance services, an energy savings guarantee, or third party verification of energy conservation measures and energy savings. The calculation of energy savings shall utilize and specifically reference as a benchmark the actual demand and energy components of the public utility tariff rate applicable to the public entity then in effect. If an ESCO submits a proposal to a public entity that does not calculate projected energy savings of an amount that, at a minimum, covers the costs of the ESIP's energy conservation measures, such proposal shall be rejected by the public entity.

The amended bill provides that a State contracting agency, in implementing an ESIP, shall use a competitive selection process that ensures that the award is made to the responsible bidder whose proposal is determined to be the most advantageous to the State. The amended bill does not preclude the State contracting agency from using procurement processes other than those prescribed herein and in section 9 of P.L.2009, c.4 (C.52:34-25), if those processes have been approved by the federal government in the National Energy Conservation Policy Act (42 U.S.C. s.8287 as amended).

The amended bill requires the BPU, in consultation with the State Comptroller, to establish a standard request for proposal to be used for all ESIP projects to be undertaken by any public entity authorized to implement an ESIP. Further, the amended bill requires each contract between a board of education, contracting unit, or public agency, and an ESCO that is the manufacturer of direct digital control systems, where such control systems are treated as proprietary goods as part of the contract, to first be reviewed and approved by the BPU for the purpose of affirming the reasonableness of an allowance price by the ESCO.

Finally, the amended bill removes from the ESIP law applicable to State agencies, institutions of higher education, and county colleges the requirement that, when an ESCO requires potential subcontractors bidding on a guaranteed energy savings option contract to use a direct digital control system of the ESCO's own manufacture, the bid specification must set forth an allowance price for that system, to be used by all bidders for the subcontract.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services finds that the fiscal impact of this bill is indeterminate at this point in time. The changes made to the ESIP expand the number of public entities that can participate to include public institutions of higher education and expand the types of improvements to include CHP facilities. The office does not have data from public entities available to it that would be necessary to calculate the potential for additional savings due to these changes. It is also that case that not all public entities that could benefit from an ESIP will participate, diluting the total amount of savings at the State and local level that will eventually be realized. The public entities that do participate will very likely realize cost savings.

The provision of this bill that requires the BPU to create a standardized RFP form for an ESIP will result in costs to the BPU for the initial development of the form; however those costs will be offset by continuing savings that will be realized by local and State government entities that will be able to reduce their own administrative costs by using the standardized RFP, rather than having to develop their own RFP internally.

The bill also has a provision that requires ESCO's that utilize subcontracted labor to ensure that all subcontracted labor is paid a prevailing wage for work on an ESIP. This provision has the potential to increase the cost of improvements made under the ESIP. Information is not currently available about the amount of labor paid below prevailing wage rates on current projects under the program, so it is not possible to determine the additional costs. To the extent that there are subcontractors paying employees less than the prevailing wage, those increased costs will likely be shared between ESCO's that will now face higher labor costs and the State and local government entities that will now receive bids from ESCO's that have included higher labor rates due to the provision. It is not expected that the ESCO would be able to pass along the full cost of the increased labor rate due to the competitive bid process. It is also possible that there will be some RFP's that would have resulted in marginal savings but now will not because higher wages would eliminate those savings, making the project unprofitable for the ESCO's.

The overall impact of this bill would likely result in slightly lower cost savings on individual projects for State and local public entities due to the changes in prevailing wages for subcontractors; however the establishment of a standardized RFP form is likely to partially offset that reduction in savings by reducing administrative costs for participation in an ESIP. Additionally, expansions to the ESIP create additional opportunities for savings and new projects which will result in net positive cost savings across State and local governments.

S1753 [1R]

4

Section: Authorities, Utilities, Transportation and Communications

*Analyst: Patrick Brennan
Assistant Fiscal Analyst II*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

STATEMENT TO
[Second Reprint]
SENATE, No. 1753

with Senate Floor Amendments
(Proposed by Senator SARLO)

ADOPTED: JUNE 21, 2012

These Senate amendments:

1) replace the provisions concerning public entity facility alterations required to properly implement other energy efficiency or energy conservation measures, or both, with provisions that allow the facility alteration to be undertaken or supervised by the energy services company (“ESCO”) performing the energy savings services contract if: a) the total cost of the improvement does not exceed 15 percent of the total cost of the work to be performed under the energy savings services contract; and b) the improvement is necessary to conform to a law, rule, or regulation, or order, or an analysis within an approved proposal, or the public entity, at the time of the award of the proposal, demonstrates that there is an economic advantage to the public entity implementing the improvement as part of the energy savings services contract, and the savings rationale for the improvement is documented and supported by reasonable justification;

2) clarify that maturity schedules of lease-purchase agreements or energy savings obligations shall not exceed the estimated average useful life of the energy conservation measures;

3) concerning a request for proposal (“RFP”) developed by the Board of Public Utilities (“BPU”) or a public entity, provide that no single category contained in the evaluation criteria of the RFP shall weigh more than 25 percent;

4) remove State contracting agencies from the provision designating the BPU as the agency of the State Government responsible for responding to requests for assistance from public entities;

5) provide that, in enforcing compliance with the energy savings improvement program (“ESIP”) under the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.) (“ESIP law”), the BPU, when: a) modifying a non-conforming RFP and any attachment thereto, the BPU shall provide written comments to the public entity when it chooses to modify a non-conforming RFP, outlining any issues and providing the opportunity for the issues to be remedied; and b) modifying or canceling a procurement by a public entity for an energy savings project, the BPU, within 14 days of its receipt of a procurement by a public entity after the procurement award, may modify or cancel the procurement, otherwise the procurement shall be deemed approved, and, if modifying a procurement, the BPU is to provide written

comments to the public entity when it chooses to do so, outlining any issues and providing the opportunity for the issues to be remedied; and

6) specify that the BPU may grant limited exceptions to a local housing authority to use an energy performance contracting process developed by the U.S. Department of Housing and Urban Development (“HUD”) for selecting an energy service company subject to HUD and BPU review and approval. The exception shall permit such process to be followed for the selection of an ESCO, the preparation of the ESIP, the selection of energy savings projects, and third party verification requirements. All other requirements for bidding and construction shall be consistent with the provisions of the ESIP law. This limited exception shall permit the preparation of an investment grade ESIP audit to replace the requirement for the traditional energy audit component performed in advance.

LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

SENATE, No. 1753

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: AUGUST 3, 2012

SUMMARY

- Synopsis:** Clarifies requests for proposals of public entities implementing energy savings improvement program contracts.
- Type of Impact:** Possible Local and State costs
- Agencies Affected:** Board of Public Utilities (BPU), Local Governments, Higher Education Institutions, State Agencies and Authorities

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost		Indeterminate	
Local Cost		Indeterminate	

- The BPU faces additional costs now that it is tasked with the creation of a new standard Request for Proposal (RFP) form for public entities to use when issuing RFPs for Energy Savings Improvement Program (ESIP) projects and the review of non-conforming RFPs. The Division of Property Management and Construction (DPMC) faces additional costs as a result of the need to prequalify and organize subcontractors that work on ESIP projects into various pools.
- The bill adds to the scope of the ESIP by including public institutions of higher education including county colleges, and by including Combined Heat and Power (CHP) facilities as eligible ESIP projects. These expansions of the ESIP create more possibilities for public entities to realize cost savings; however, the data is not available to estimate the size of that market for savings.
- The bill also adds potential costs to the ESIP by requiring Energy Services Companies (ESCOs) to pay all subcontracted employees prevailing wages. It is not clear how much of the labor in projects under the ESIP are currently performed by individuals not receiving a prevailing wage, but any increased labor costs will be partially included in the bids of ESCOs

and as a result, decrease the profitability of these projects for the ESCO and decrease the cost savings realized by the public entities.

BILL DESCRIPTION

Senate Bill No. 1753 (3R) of 2012 makes changes to the statute authorizing the State's public entities (i.e., State agencies, authorities, and public institutions of higher education, county colleges, local boards of education, counties, and municipalities) to participate in an ESIP under the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.) ESIP law. Specifically, the amended bill provides that: 1) concerning the duration of the repayment term of a lease-purchase agreement with an ESCO, the agreement shall be deemed to commence on the date upon which construction and installation of the energy savings equipment, combined heat and power facility or cogeneration facility, or other energy conservation measures undertaken pursuant to the energy savings plan, have been completed; and 2) during the procurement phase of an ESIP, an ESCO's proposal submitted in response to a public entity's RFP shall not include a savings calculation that assumes, includes, or references capital cost avoidance savings, the current or projected value of a solar renewable energy certificate, or other environmental or similar attributes or benefits of whatever nature that derive from the generation of renewable energy, and any costs or discounts associated with maintenance services, an energy savings guarantee, or third party verification of energy conservation measures and energy savings. The calculation of energy savings shall utilize and specifically reference as a benchmark the actual demand and energy components of the public utility tariff rate applicable to the public entity then in effect. If an ESCO submits a proposal to a public entity that does not calculate projected energy savings of an amount that, at a minimum, covers the costs of the ESIP's energy conservation measures, such proposal shall be rejected by the public entity.

The bill provides that a State contracting agency, in implementing an ESIP, shall use a public bidding process to have the ESCO hire only those subcontractors having been pre-qualified by the DPMC to be eligible to submit bids for qualified work. In pre-qualifying subcontractors for eligibility, the DPMC shall create one or more pools of subcontractors based on the value and complexity of the work to be undertaken under an ESIP. The pre-qualification pools shall include subcontractors having the following qualifications: (a) the financial means and ability to complete the required work, (b) the experience, capability, and skills necessary to complete the work required of energy savings improvement program projects; and (c) a record of experience conducting similar work in a timely fashion.

The bill requires the BPU, in consultation with the State Treasurer and Department of Community Affairs, to establish a standard RFP to be used for all ESIP projects to be undertaken by any public entity authorized to implement an ESIP. Further, the amended bill requires each contract between a board of education, contracting unit, or public agency, and an ESCO that is the manufacturer of direct digital control systems, where such control systems are treated as proprietary goods as part of the contract, to first be reviewed and approved by the BPU for the purpose of affirming the reasonableness of an allowance price by the ESCO. The BPU is required to review any RFPs that deviate from the standard established by the BPU. If the BPU modifies a non-conforming RFP during its review process, the BPU must notify the government entity of the changes, the reason for the changes, and provide an opportunity for the government entity to address any issues. The bill also provides the BPU with the authority to grant limited exemptions to local housing authorities to use an energy performance contracting process developed by the US Department of Housing and Urban Development (HUD), subject to BPU and HUD approval

Finally, the amended bill removes from the ESIP law applicable to State agencies, institutions of higher education, and county colleges the requirement that, when an ESCO requires potential subcontractors bidding on a guaranteed energy savings option contract to use a direct digital control system of the ESCO's own manufacture, the bid specification must set forth an allowance price for that system, to be used by all bidders for the subcontract.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) finds that the fiscal impact of this bill is indeterminate at this point in time. The changes made to the ESIP expand the number of public entities that can participate to include public institutions of higher education and expand the types of improvements to include CHP facilities. The office does not have data from public entities available to it that would be necessary to calculate the potential for additional savings due to these changes. It is also the case that not all public entities that could benefit from an ESIP will participate, diluting the total amount of savings at the State and local level that will eventually be realized. The public entities that do participate will be highly likely to realize cost savings.

The provision of this bill that requires the BPU to create a standardized RFP form for an ESIP will result in costs to the BPU for the initial development of the form; however those costs will be offset by continuing savings that will be realized by local and State government entities that will be able to reduce their own administrative costs by using the standardized RFP, rather than having to develop their own RFP internally. The DPMC will face high administrative costs in prequalifying ESIP subcontractors and organizing prequalified subcontractors into various eligibility pools. The increase or decrease in costs realized by the State contracting agencies participating in the ESIP depends as a result of these prequalification activities and allowing subcontractors to bid on projects will depend upon whether the price of subcontracted labor will increase or decrease as compared to having contractors to negotiate and secure subcontracted labor directly. An open bidding process is typically expected to produce lower prices; however by limiting the number of eligible subcontractors, it is possible that fewer low cost subcontractors will be available for ESIP projects.

The bill also has a provision that requires ESCOs that utilize subcontracted labor to ensure that all subcontracted labor is paid a prevailing wage for work on an ESIP. This provision has the potential to increase the cost of improvements made under the ESIP. Information is not currently available about the amount of labor paid below prevailing wage on current projects under the program, so it is not possible to determine the amount of possible additional costs. To the extent that there are subcontractors paying employees less than the prevailing wage, those increased costs will likely be shared between ESCOs that will now face higher labor costs and the public entities that will now receive bids from ESCOs that have included higher labor rates due to the provision. It is not expected that the ESCO would be able to pass along the full cost of the increased labor rate due to the competitive bid process. It is also possible that there will be

some RFPs that would have resulted in marginal savings that now will not happen because higher wages would eliminate those savings, making the project unprofitable for the ESCOs.

The overall impact of this bill is likely to be slightly lower cost savings on individual projects for public entities due to the changes in prevailing wages for subcontractors; however the establishment of a standardized RFP form is likely to partially offset that lower savings by reducing administrative costs for participation in an ESIP. Additionally, expansions to the ESIP create additional opportunities for savings and new projects which will result in net positive cost savings across State and local government.

Section: Authorities, Utilities, Transportation and Communications

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This legislative fiscal estimate has been produced by the OLS due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).