

SENATE BILL NO. 195

INTRODUCED BY J. COHENOUR, C. BOLAND, M. MACDONALD, E. MCCLAFFERTY, M. MCNALLY,  
J. POMNICHOWSKI, D. SANDS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO ENERGY PERFORMANCE CONTRACTING; REVISING THE DEPARTMENT OF ENVIRONMENTAL QUALITY'S RELATED DUTIES AND RULEMAKING; AMENDING SECTIONS 90-4-1102, 90-4-1110, 90-4-1112, 90-4-1113, AND 90-4-1114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 90-4-1102, MCA, is amended to read:

**"90-4-1102. Definitions.** As used in this part, the following definitions apply:

(1) "Cost-effective" or "cost-effectiveness" means that the sum of guaranteed cost savings and, ~~if and to the extent allowed by rules adopted pursuant to 90-4-1110(3)(d),~~ unguaranteed energy cost savings attributable to utility unit price escalation ~~are~~ is equal to or ~~exceed any greater than:~~

(a) the energy performance contract financing repayment obligation, if any, each year of a finance term;

(b) the total project cost of the cost-saving measures implemented divided by 20; or

(c) the total project cost of the cost-saving measures implemented divided by the cost-weighted average useful life of the cost-saving measures.

(2) "Cost-saving measure" means a ~~cost-effective~~ facility improvement, repair, or alteration or equipment, fixtures, or furnishings added to or used in a facility and designed to reduce energy or water consumption or operation and maintenance costs. The term also includes vehicle acquisitions, changes to utility rate or tariff schedules, or fuel source changes that result in cost savings.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Energy performance contract" means a cost-effective contract between a governmental entity and a qualified energy service provider for ~~evaluation, recommendation, and implementation of one or more cost-saving measures; evaluation of cost-effectiveness, and guaranteed cost savings~~ and guaranteed cost savings.

(5) "Finance term" means the length of time for repayment of funds borrowed for an energy performance

1 contract.

2 (6) "Governmental entity" means:

3 (a) a department, board, commission, institution, or branch of state government;

4 (b) a county, consolidated city-county government, city, town, or school district;

5 (c) a special district, as defined in 2-2-102;

6 (d) the university system or a unit of the university system; or

7 (e) a community college district.

8 (7) "Guarantee period" means the period of time from the effective date of the contract until guaranteed  
9 cost savings are achieved in accordance with 90-4-1114(5).

10 (8) "Guaranteed cost savings" means a guaranteed annual measurable monetary reduction in utility and  
11 operating and maintenance costs for each year of a guarantee period resulting from cost-saving measures.  
12 Guaranteed cost savings for utility cost savings must be calculated using mutually agreed on baseline utility rates  
13 in use at the time of an investment-grade energy audit. Guaranteed cost savings for operation and maintenance  
14 cost savings must be calculated using mutually agreed on baseline operation and maintenance costs at the time  
15 of an investment-grade energy audit.

16 (9) "Investment-grade energy audit" means a study of energy or water usage of a public building  
17 performed by a qualified energy service provider utilizing a professional engineer licensed in the state of Montana.  
18 It includes detailed descriptions of the improvements recommended for the project, the estimated costs of the  
19 improvements, and the operation and maintenance cost savings and utility cost savings projected to result from  
20 the recommended improvements. The study must contain all information required pursuant to 90-4-1113(2).

21 (10) "Measurement and verification" means the methodology, measurements, inspections, and  
22 mathematical calculations to determine utility consumption before and after an energy performance contract is  
23 implemented. The measurement and verification report may be for an individual cost-saving measure or an entire  
24 project.

25 (11) "Operation and maintenance cost savings" means a measurable decrease in operation and  
26 maintenance costs as a direct result of cost-saving measures calculated using baseline operation and  
27 maintenance costs. The term does not include the shifting of personnel costs or similar short-term cost savings  
28 that cannot be definitively measured.

29 (12) "Person" means an individual, corporation, partnership, firm, association, cooperative, limited liability  
30 company, limited liability partnership, or any other similar entity.

1 (13) "Qualified energy service provider" means a person included on the department's list of qualified  
2 energy service providers.

3 (14) "Total project cost" means the total cost of the project, including costs of the investment-grade  
4 energy audit, energy performance contract, measurement and verification, and financing.

5 ~~(14)~~(15) "Utility cost savings" means expenses for utilities that are eliminated or avoided on a long-term  
6 basis as a result of equipment installed or modified or services performed by a qualified energy service provider.  
7 Utility cost savings include expenses for natural gas, propane or similar fuels, electricity, water, wastewater, and  
8 waste disposal."

9

10 **Section 2.** Section 90-4-1110, MCA, is amended to read:

11 **"90-4-1110. Duties and authority of department --rulemaking.** (1) The department shall establish  
12 an energy performance contract program for governmental entities. The department shall:

13 (a) solicit, evaluate, and maintain a list of qualified energy service providers;

14 (b) ~~pursuant to rules adopted by the department, develop a process to~~ disqualify and remove from the  
15 list energy service providers who do not comply with qualifications established;

16 (c) enter into agreements with qualified energy service providers ~~and require qualified energy service~~  
17 ~~providers to contract and~~ to provide services in accordance with this part;

18 ~~(d) establish guidelines for awarding energy performance contracts;~~

19 ~~\_\_\_\_\_ (e) develop a standardized energy performance contract process and documents;~~

20 ~~\_\_\_\_\_ (f) assist governmental entities interested in pursuing energy performance contracts by providing~~  
21 ~~technical assistance and educational programs and by maintaining a website;~~

22 ~~\_\_\_\_\_ (g) establish a process for measuring and verifying guaranteed cost savings and cost-effectiveness; and~~

23 ~~(h)~~(d) establish reporting requirements for qualified energy service providers;:-

24 ~~\_\_\_\_\_ (2) The department may adopt rules for:~~

25 ~~(a) the review of investment-grade energy audits; and~~

26 ~~\_\_\_\_\_ (b) implementation of this part.~~

27 ~~(3) The department may adopt rules establishing criteria for:~~

28 ~~\_\_\_\_\_ (a) the amount of project costs covered by guaranteed cost savings;~~

29 ~~\_\_\_\_\_ (b) guaranteed cost savings;~~

30 ~~\_\_\_\_\_ (c) measurement of energy cost savings and verification; and~~

1 ~~\_\_\_\_\_ (d) use in determining cost-saving measure cost-effectiveness of an unguaranteed utility unit price~~  
 2 ~~escalation rate determined in the rules.~~

3 (e) develop a model energy performance contract process and documents; and

4 (f) assist governmental entities interested in pursuing energy performance contracts by providing  
 5 technical assistance and educational programs and by maintaining a website.

6 (2) The department may develop recommended best practices for:

7 (a) evaluating energy performance proposals and awarding energy performance contracts;

8 (b) measuring and verifying guaranteed cost savings and cost-effectiveness;

9 (c) identifying a variety of options to determine the amount of project costs to be covered by guaranteed  
 10 cost savings;

11 (d) calculating guaranteed cost savings;

12 (e) measuring energy cost savings and verification;

13 (f) determining the cost-effectiveness of the energy performance contract when using an unguaranteed  
 14 utility unit price escalation rate; and

15 (g) determining an unguaranteed utility unit price escalation rate.

16 (3) The department may adopt rules for the implementation of this part."

17

18 **Section 3.** Section 90-4-1112, MCA, is amended to read:

19 **"90-4-1112. Selection of qualified energy service providers.** (1) Before ~~entering into~~ selecting an  
 20 ~~energy performance contract service provider,~~ a governmental entity shall solicit a request for proposals from a  
 21 minimum of three qualified energy service providers. The governmental entity may ~~award the performance~~  
 22 ~~contract to~~ select the qualified energy service provider determined by the governmental entity to best meet the  
 23 needs of the governmental entity. The qualified energy service provider selected is not required to have submitted  
 24 the proposal with the lowest cost.

25 (2) In selecting a qualified energy service provider, a governmental entity shall consider:

26 (a) experience with:

27 (i) design, engineering, and installation of cost-saving measures;

28 (ii) overall project management;

29 (iii) projects of similar size and scope;

30 (iv) postinstallation measurement and verification of guaranteed cost savings;

- 1 (v) in-state projects and Montana-based subcontractors;  
 2 (vi) commissioning of projects;  
 3 (vii) training of building operators; and  
 4 (viii) conversions to a different fuel source; and  
 5 (b) quality of technical approach."  
 6

7 **Section 4.** Section 90-4-1113, MCA, is amended to read:

8 **"90-4-1113. Investment-grade energy audits.** (1) ~~An energy performance contractor~~ The qualified  
 9 energy service provider selected by a governmental entity in accordance with 90-4-1112 shall prepare an  
 10 investment-grade energy audit. The audit must be incorporated into an energy performance contract.

11 (2) An investment-grade energy audit must include estimates of all costs and guaranteed cost savings  
 12 for the proposed energy performance contract including:

- 13 (a) design;  
 14 (b) engineering;  
 15 (c) equipment;  
 16 (d) materials;  
 17 (e) installation;  
 18 (f) maintenance;  
 19 (g) repairs;  
 20 (h) monitoring and verification;  
 21 (i) commissioning;  
 22 (j) training; and  
 23 (k) debt service.

24 (3) (a) A qualified energy service provider and the governmental entity shall agree on the cost of an  
 25 investment-grade energy audit before it is conducted.

26 (b) If an investment-grade energy audit is completed and the governmental entity does not execute an  
 27 energy performance contract, the governmental entity shall pay the full cost of the investment-grade energy audit.

28 (c) If the governmental entity executes the energy performance contract, the cost of the investment-grade  
 29 energy audit may be included in the costs of an energy performance contract or, at the discretion of the  
 30 governmental entity, be paid for by the governmental entity."

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2           **Section 5.** Section 90-4-1114, MCA, is amended to read:  
3           **"90-4-1114. Energy performance contracts.** (1) A governmental entity may pay for an energy  
4 performance contract with:  
5           (a) funds designated for operating costs, capital expenditures, utility costs, or lease payments;  
6           (b) installment payment contracts or lease purchase agreements;  
7           (c) bonds issued in accordance with other bonding provisions as provided by law; or  
8           (d) other financing through a third party, including tax-exempt financing.  
9           (2) Utility incentives, grants, operating costs, capital budgets, or other permissible sources may be used  
10 to reduce the amount of financing.  
11           (3) (a) An energy performance contract may extend beyond the fiscal year for which the contract is  
12 effective.  
13           (b) An energy performance contract may not exceed 20 years, the cost-weighted average useful life of  
14 the cost-saving measure, or the term of financing, whichever is shortest.  
15           (4) During the guarantee period, a qualified energy service provider shall:  
16           (a) measure and verify reductions in energy consumption and costs attributable to cost-saving measures  
17 implemented pursuant to an energy performance contract; and  
18           (b) not less than annually, prepare and provide a measurement and verification report to the  
19 governmental entity and to the department documenting the performance of cost-saving measures.  
20           (5) (a) Costs for measurement and verification must be included in an energy performance contract and  
21 paid by the governmental entity during an initial monitoring period that is not less than 3 years.  
22           (b) The energy performance contract must provide that, if guaranteed cost savings are not achieved  
23 during any year in the initial monitoring period, the qualified energy service provider shall pay the costs for  
24 measurement and verification reports until guaranteed cost savings are achieved for all years in a term of  
25 consecutive years equal to the initial monitoring period.  
26           (6) (a) Except as provided in subsection (6)(b), the qualified energy service provider shall pay the  
27 governmental entity the amount of any verified annual guaranteed cost savings shortfall each year until  
28 guaranteed cost savings are achieved for all years in an initial monitoring period established in accordance with  
29 subsection (5). The amount of cost savings achieved during a year must be determined using the mutually agreed  
30 on baseline rates referenced in guaranteed cost savings and any unguaranteed energy cost savings attributable

1 to utility unit price escalation rates ~~allowed pursuant to rules adopted by the department pursuant to~~  
2 ~~90-4-1110(3)(d).~~

3 (b) In the case of a shortfall, the governmental entity and qualified energy service provider may negotiate  
4 the terms of measurement and verification reports and the shortfall payment for the remainder of the energy  
5 performance contract finance term.

6 (c) If an excess in guaranteed cost savings in any year of the guarantee period is revealed in a  
7 measurement and verification report, the guaranteed cost savings remain with the governmental entity.  
8 Guaranteed cost savings may not be used to cover potential shortfalls in subsequent years or actual guaranteed  
9 cost savings shortages in previous years of a guarantee period."

10

11 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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