

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2000

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Legislative Document

No. 2446

H.P. 1740

House of Representatives, January 10, 2000

### **An Act to Encourage Energy Efficiency in Government Facilities.**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative DAVIDSON of Brunswick.

Be it enacted by the People of the State of Maine as follows:

2  
4       Sec. 1. 5 MRSA §1767, as enacted by PL 1985, c. 128, is repealed.

6       Sec. 2. 5 MRSA c. 153, sub-c. I-B is enacted to read:

8                                   SUBCHAPTER I-B

10                                   STATE FACILITIES ENERGY SAVINGS ACT

12       §1770. Short title

14               This chapter may be known and cited as the "State Facilities Energy Savings Act."

16       §1770-A. Definitions

18               As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

22               1. Cost-savings measure. "Cost-savings measure" means a facility improvement, repair or alteration or equipment, a fixture or furnishings added or used in a facility that are designed to reduce energy consumption and operating costs or increase the operating efficiency of a facility for its appointed functions that are cost effective. "Cost-savings measure" includes, but is not limited to:

30                   A. Procurement of low-cost energy supplies of all types;

32                   B. Insulation of a building structure or a system in a building;

34                   C. Installation of storm windows or doors, caulking or weather stripping, multi-glazed windows or door systems, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing or other window and door system modifications that reduce energy consumption or reduction of glass area;

42                   D. Automation or computerization of an energy control system;

44                   E. Modification or replacement of a heating, ventilation or air conditioning system;

46                   F. Modification or replacement of lighting fixtures to increase the energy efficiency of the lighting system;

50

2 G. Improvement of indoor air quality to conform it to  
applicable building code requirements;

4 H. Installation of an energy recovery system;

6 I. Installation of a cogeneration system that produces  
8 steam or forms of energy such as heat, as well as  
10 electricity, for use primarily within a building or complex  
12 of buildings;

14 J. Installation of a new or modification of an existing  
16 day-lighting system;

18 K. Institution of a building operation program, including,  
20 but not limited to, a computerized program, training and  
22 other similar activity;

24 L. Installation of a steam trap improvement program;

26 M. Installation of a device that reduces water consumption;  
28 and

30 N. Installation of any additional infrastructure  
32 improvement that improves safety and is in compliance with  
34 applicable state and local building codes.

36 2. Department. "Department" means the Department of  
38 Administrative and Financial Services.

40 3. Energy and operational cost savings. "Energy and  
42 operational cost savings" means expenses that are eliminated or  
44 avoided on a long-term basis as a result of equipment installed  
46 or modified or services performed by a qualified energy service  
48 company but does not include shifting personnel costs or similar  
50 short-term strategies for cost savings.

4. Facility or facilities. "Facility" or "facilities"  
means any structure or building, including its equipment,  
furnishings and appliances, that is owned or operated by a  
governmental unit.

5. Financial-grade energy audit. "Financial-grade energy  
audit" means a detailed energy survey with sufficient information  
to allow for project value determination with respect to  
financing.

6. Governmental unit. "Governmental unit" means a state  
agency or authority, including an institution of higher  
education, a state-supported institution or a joint action agency  
comprised of political subdivisions.

2           **7. Performance-based contract.**       "Performance-based  
4 contract" means a contract between a governmental unit and a  
6 qualified energy service company for evaluation, recommendation  
and implementation of one or more cost-savings measures. A  
performance-based contract may be structured as either a:

8           A. Guaranteed energy savings performance contract that  
10 includes, at a minimum, the design and installation of  
12 equipment and, if applicable, operation and maintenance of  
14 any of the cost-savings measures implemented and guarantees  
16 annual savings that must meet or exceed the total annual  
contract payments made by a governmental unit for such a  
contract, including financing charges to be incurred by the  
governmental unit over the life of the contract; or

18           B. Shared savings contract that includes provisions  
20 mutually agreed upon by the governmental unit and the  
22 qualified energy service company as to the negotiated rate  
of payments based upon energy and operational cost savings  
and a stipulated maximum energy consumption level over the  
life of the contract.

24           **8. Qualified energy service company.** "Qualified energy  
26 service company" means an energy service company approved by the  
28 department as a qualified energy service company. The company  
30 must have a record of projects demonstrating technical,  
32 operational, financial and managerial capabilities to implement  
34 performance-based contracts that result in energy and operational  
cost savings. The company must be experienced in the design,  
implementation and installation of energy efficiency and facility  
improvement measures and have the ability to secure necessary  
financial measures to support energy savings guarantees and the  
technical capabilities to ensure such measures generate energy  
and operational cost savings.

36           **§1770-B. Reduction goal**

38           This chapter sets a goal for governmental units of a 25%  
40 reduction in energy consumption, relative to baseline consumption  
42 in 1998, by 2010 by encouraging performance-based contracting to  
improve the energy efficiency of governmental units.

44           **§1770-C. Qualified energy service company approval process**

46           1. Department approval. Within 120 days of the effective  
48 date of this chapter, the department shall develop and issue the  
criteria an energy service company must meet before being  
50 approved as a qualified energy service company by the  
department. An energy service company meeting the criteria

2 established by the department must be approved. The department  
3 shall maintain a list of those approved qualified energy service  
4 companies and their qualifications, updated at least annually.  
5 Approval of a qualified energy service company is valid for a  
6 period of 3 years following the date of notification of approval  
7 by the department.

8 2. Criteria. The criteria for approval under subsection 1  
9 must include the following substantive factors to assess an  
10 energy service company's qualifications:

12 A. Capability in the areas of design, engineering  
13 installation, maintenance and repairs associated with  
14 performance-based contracts;

16 B. Experience in conversions to a different energy or fuel  
17 source, as long as the experience is associated with a  
18 comprehensive energy efficiency retrofit;

20 C. Postinstallation project monitoring, data collection and  
21 reporting of savings and overall project experience and  
22 qualifications;

24 D. Management capability;

26 E. Ability to access long-term financing;

28 F. Experience with projects of similar size and scope; and

30 G. Other factors determined by the department to be  
31 relevant and appropriate and that relate to the ability to  
32 achieve energy and operational cost savings.

34 **§1770-D. Authorization**

36 1. Performance-based contract. Any governmental unit may  
37 enter into a performance-based contract with a qualified energy  
38 service company to reduce energy consumption or operating costs.  
39 Any cost-savings measure implemented under such a contract must  
40 comply with state and local building codes. A governmental unit  
41 may implement other capital improvements in conjunction with a  
42 performance-based contract as long as the measures that are being  
43 implemented to achieve energy and operational cost savings are a  
44 significant portion of an overall project.

46 2. Solicit proposals. Before entering into a  
47 performance-based contract under this section, a governmental  
48 unit may solicit proposals from qualified energy service  
49 companies and may receive proposals from qualified energy service  
50 companies. A governmental unit may award the performance-based

2 contract to the qualified energy service company that best meets  
3 the needs of the governmental unit, which need not be the  
4 lowest-cost provider.

6 3. Feasibility analysis. When a governmental unit solicits  
7 proposals, up to 3 qualified energy service companies may be  
8 selected from the list of qualified energy service companies  
9 maintained by the department pursuant to section 1770-C,  
10 subsection 1. A cost-effective feasibility analysis must be  
11 prepared by each qualified energy service company in response to  
12 the request for proposals. The feasibility analysis included in  
13 the response to the request for proposals must serve as the  
14 selection document for purposes of selecting a qualified energy  
15 service company to engage in final contract negotiations.  
16 Factors to be included in selecting among qualified energy  
17 service companies are contract terms, comprehensiveness of the  
18 proposal, comprehensiveness of cost-savings measures, experience,  
19 quality of technical approach and overall benefits to the  
20 governmental unit.

22 4. Financial grade audit and contract execution. The  
23 qualified energy service company selected by the governmental  
24 unit as a result of the process set forth in this section shall  
25 prepare a financial-grade energy audit, which, upon acceptance,  
26 must be part of the final performance-based contract. If after  
27 preparation of the financial-grade energy audit the governmental  
28 unit decides not to execute a performance-based contract, then  
29 the costs incurred in preparing that financial-grade energy audit  
30 must be paid to the qualified energy service company by the  
31 governmental unit; otherwise, the costs of the financial-grade  
32 energy audit are considered part of the costs of the  
33 performance-based contract.

34 5. Bond. A qualified energy service company to whom a  
35 performance-based contract is awarded shall give a sufficient  
36 bond to the governmental unit for its faithful performance in  
37 accordance with Public Works Contractors' Surety Bond Law of 1971.

38 **§1770-E. Installment payment and lease-purchase agreement**

40 A governmental unit may enter into a performance-based  
41 contract structured as an installment payment contract or  
42 lease-purchase agreement for the purchase and installation of  
43 cost-savings measures. Financing implemented through a person  
44 other than the qualified energy service company is authorized.

46 **§1770-F. Payment schedule and savings**

48 Each performance-based contract must provide that all  
49 payments between parties, except obligations on termination of  
50 payments between parties, except obligations on termination of

2 the contract before its expiration, must be made over time and  
3 the objective of that performance-based contract is  
4 implementation of cost-savings measures and energy and  
5 operational cost savings.

6 **§1770-G. Term of contract; payments**

8 1. Term. A performance-based contract, and payments  
9 provided under a performance-based contract, may extend beyond  
10 the fiscal year in which the performance-based contract becomes  
11 effective, subject to appropriation of money if required by law  
12 for costs incurred in future fiscal years. The performance-based  
13 contract may extend for a term not to exceed 25 years. The  
14 length of the contract may also reflect the useful life of the  
15 cost-savings measures.

16 2. Payments. A performance-based contract may provide for  
17 payments over a period of time not to exceed deadlines specified  
18 in the performance-based contract from the date of the final  
19 installation of the cost-savings measures.

22 **§1770-H. Contingency provisions**

24 Performance-based contracts must include contingency  
25 provisions in the event that actual savings do not meet predicted  
26 savings.

28 **§1770-I. Use of savings from performance-based contracts**

30 A governmental unit may direct savings realized under a  
31 performance-based contract to pay expenses as the governmental  
32 unit determines necessary. A governmental unit may reinvest  
33 savings whenever practical into cost-savings measures as long as  
34 the governmental unit is satisfying all obligations under the  
35 performance-based contract.

36 **§1770-J. Allocation of obligations**

38 Subject to appropriations as provided in sections 1770-F and  
39 1770-G, each governmental unit shall allocate sufficient money  
40 for each fiscal year to make payment of any amounts payable by  
41 the governmental unit under a performance-based contract during  
42 that fiscal year.

44 **§1770-K. Use of money; reconciliation**

46 1. Retain savings. A governmental unit engaging in a  
47 performance-based contract shall retain the savings achieved by  
48 entering into the performance-based contract. The governmental



unit may not utilize the savings to supplant  
2 otherwise-appropriated funds for the governmental unit.

4 2. Use funds. Unless otherwise provided by law, a  
governmental unit may use funds designated for operating and  
6 capital expenditures or utilities for any performance-based  
contract, including, without limitation, a contract entered into  
8 subject to section 1408-A.

10 3. Reconciliation. A performance-based contract may  
provide that reconciliation of the amounts owed under a  
12 performance-based contract must occur in a period beyond one year  
with final reconciliation occurring within the term of the  
14 performance-based contract.

16 **§1770-L. Monitoring; reports**

18 1. Monitor reductions. During the term of a  
performance-based contract, a qualified energy service company  
20 shall monitor the reduction in energy consumption and cost  
savings attributable to the cost-savings measures installed  
22 pursuant to the performance-based contract and shall annually  
provide a report to the governmental unit documenting the  
24 performance of the cost-savings measures.

26 2. Modifications. A qualified energy service company and  
governmental unit may agree to make modifications in calculating  
28 cost savings based on the following:

30 A. A subsequent material change to the baseline energy  
consumption identified at the beginning of the  
32 performance-based contract;

34 B. Changes in utility rates;

36 C. Changes in the number of days in a utility billing cycle;

38 D. Changes in the total square footage of a building;

40 E. Changes in the operational schedule of a facility;

42 F. Changes in facility temperature;

44 G. A material change in the weather;

46 H. A material change in the amount of equipment or lighting  
used at a facility; or

48 I. Any other change that reasonably would be expected to  
50 modify energy use or energy costs.

