



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3711

Introduced 1/21/2022, by Sen. Chapin Rose

SYNOPSIS AS INTRODUCED:

New Act

30 ILCS 500/20-60

30 ILCS 500/40-25

30 ILCS 500/25-45 rep.

Creates the Energy Performance Contracting Act. Requires each governmental unit to implement cost-effective conservation improvements and maintain efficient operation of its facilities in order to minimize energy consumption and related environmental impacts, and reduce operating costs. Provides that any governmental unit may enter into an energy performance contract with a qualified energy service provider to produce utility savings or operating and maintenance cost-savings. Designates the Smart Energy Design Assistance Center as the lead agency for the development and promotion of a program of performance contracts in governmental units under the Act, and provides requirements and duties for that agency. Provides for the selection process of qualified energy service providers. Provides for audits, payments, and term requirements for energy performance contracts entered into under the Act. Provides for the monitoring and reporting of energy consumption and cost-savings under an energy performance contract. Provides for the use of savings from performance contracts. Provides that the provisions of the Act shall prevail and control over conflicting provisions of law, and that any conflicting provisions of any statute enacted prior to the Act are hereby repealed. Defines terms. Amends the Illinois Procurement Code to make conforming changes. Effective immediately.

LRB102 23140 RJF 32300 b

1 AN ACT concerning finance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Energy
5 Performance Contracting Act.

6 Section 5. Purpose. The purpose of this Act is to obtain
7 long-term energy and cost-savings for all governmental units
8 by facilitating prompt incorporation of energy conservation
9 improvements or energy production equipment, or both, in
10 connection with buildings or facilities owned, operated, or
11 under the supervision and control of all governmental units,
12 in cooperation with providers of such services and associated
13 materials from the private sector. These arrangements will
14 improve and protect the health, safety, security, and welfare
15 of the people of this State by promoting energy conservation
16 and independence, developing alternate sources of energy, and
17 fostering business activity.

18 Section 10. Definitions. As used in this Act:

19 "Cost-effective" means that the present value to a
20 governmental unit of the energy reasonably expected to be
21 saved or produced by a facility, activity, measure, or piece
22 of equipment over its useful life, including any compensation

1 received from a utility, is greater than the net present value
2 of the costs of implementing, maintaining, and operating such
3 facility, activity, measure, or piece of equipment over its
4 useful life, when discounted at the cost of public borrowing.

5 "Cost-savings measure" means any facility improvement,
6 repair or alteration, or any equipment, fixture, or furnishing
7 to be added or used in any facility that is designed to reduce
8 energy consumption and operating costs or increase the
9 operating efficiency of facilities for their appointed
10 functions that are cost-effective. "Cost-savings measure"
11 includes, but is not limited to, one or more of the following:

12 (1) replacement or modification of lighting
13 components, fixtures, and systems;

14 (2) renewable energy and alternate energy systems;

15 (3) cogeneration systems that produce steam or forms
16 of energy, such as heat or electricity, for use primarily
17 within a building or complex of buildings;

18 (4) devices that reduce water consumption or sewer
19 charges, including water-conserving fixtures, appliances,
20 and equipment, water-conserving landscape irrigation
21 equipment, or the substitution of non-water using
22 fixtures, appliances, and equipment;

23 (5) landscaping measures that reduce watering demands
24 and capture and hold applied water and rainfall, including
25 landscape contouring, including the use of berms, swales,
26 and terraces, the use of soil amendments that increase the

1 water-holding capacity of the soil, including compost, and
2 rainwater harvesting equipment and equipment to make use
3 of water collected as part of a storm- water system
4 installed for water quality control;

5 (6) equipment for recycling or reuse of water
6 originating on the premises or from other sources,
7 including treated municipal effluent;

8 (7) equipment needed to capture water from
9 nonconventional, alternate sources, including air
10 conditioning condensate or graywater, for non-potable
11 uses;

12 (8) metering equipment needed to segregate water use
13 in order to identify water conservation opportunities or
14 verify water savings;

15 (9) changes in operation and maintenance practices;

16 (10) indoor air quality improvements that conform to
17 applicable building code requirements;

18 (11) daylighting systems;

19 (12) insulating the building structure or systems in
20 the building;

21 (13) storm windows or doors, caulking or weather
22 stripping, multi-glazed windows or door systems,
23 heat-absorbing or heat-reflective glazed and coated window
24 and door systems, additional glazing, reductions in glass
25 area, or other window and door system modifications that
26 reduce energy consumption;

1 (14) automated or computerized energy control systems;

2 (15) heating, ventilation, or air conditioning system
3 modifications or replacements;

4 (16) indoor air quality improvements that conform to
5 applicable building code requirements;

6 (17) energy recovery systems;

7 (18) steam trap improvement programs that reduce
8 operating costs;

9 (19) building operation programs that reduce utility
10 and operating costs including, but not limited to,
11 computerized energy management and consumption tracking
12 programs, staff and occupant training, and other similar
13 activities;

14 (20) any life safety measures that provide long-term
15 operating cost reductions and are in compliance with State
16 and local statute;

17 (21) any life safety measures related to compliance
18 with the federal Americans with Disabilities Act that
19 provide long-term operating cost reductions and are in
20 compliance with State and local statute;

21 (22) a program to reduce energy costs through rate
22 adjustments, load shifting to reduce peak demand, and use
23 of alternative energy suppliers, such as, but not limited
24 to:

25 (A) changes to more favorable rate schedules; and

26 (B) negotiation of lower rates, same supplier or

1 new suppliers, where applicable; and

2 (C) auditing of energy service billing and meters;

3 (23) services to reduce utility costs by identifying
4 utility errors and optimizing existing rate schedules
5 under which service is provided; and

6 (24) any other installation, modification of
7 installation, or remodeling of building infrastructure
8 improvements that produce utility or operational cost
9 savings for their appointed functions in compliance with
10 applicable State and local building codes.

11 "Energy performance contract" or "energy services
12 agreement" means a contract between the governmental unit and
13 a qualified energy service provider for evaluation,
14 recommendation, and implementation of one or more cost-savings
15 measures. A performance contract may be structured as either:

16 (1) a guaranteed energy savings performance contract,
17 which shall include, at a minimum, the design and
18 installation of equipment, and, if applicable, operation
19 and maintenance of any of the measures implemented, and
20 guaranteed annual savings which must meet or exceed the
21 total annual contract payments made by the governmental
22 unit for that contract, including financing charges to be
23 incurred by the governmental unit over the life of the
24 contract; or

25 (2) a shared savings contract, which shall include
26 provisions mutually agreed upon by the governmental unit

1 and the qualified provider or qualified energy service
2 company as to the negotiated rate of payments based upon
3 energy and operational cost-savings and a stipulated
4 maximum energy consumption level over the life of the
5 contract.

6 "Governmental unit" means any State agency, authority, or
7 any political subdivision of the State, including public
8 institutions of higher education and public community colleges
9 located in this State. "Governmental unit" does not include
10 units of local government, including counties, cities,
11 townships, villages, municipal governments, or local school
12 districts. Nothing in this Act prevents the Smart Energy
13 Design Assistance Center as the lead agency for the
14 development and promotion of a program from contracting or
15 partnering with units of local government or local school
16 districts throughout the State on a voluntary basis.

17 "Investment grade audit" means a study by the qualified
18 energy services provider selected for a particular energy
19 performance contract project which includes detailed
20 descriptions of the improvements recommended for the project,
21 the estimated costs of the improvements, and the utility and
22 operations and maintenance cost-savings projected to result
23 from the recommended improvements.

24 "Operation and maintenance cost-savings" means a
25 measurable decrease in operation and maintenance costs, and
26 future replacement expenditures, that are a direct result of

1 the implementation of one or more utility cost-savings
2 measures. These savings shall be calculated in comparison with
3 an established baseline of operation and maintenance costs.

4 "Person" means any corporate or non-corporate entity or
5 individual of any type.

6 "Public building" means any structure, building, or
7 facility, including its equipment, furnishings, or appliances
8 that is owned or operated by a governmental unit.

9 "Qualified energy service provider" means a person with a
10 record of successful energy performance contract projects or a
11 person who: (1) is experienced in the design, implementation,
12 and installation of energy efficiency and facility improvement
13 measures; (2) has the technical capabilities to ensure such
14 measures generate energy and operational cost-savings; and (3)
15 has the ability to secure the financing necessary to support
16 energy savings guarantees.

17 "Utility cost-savings" means any utility expenses that are
18 eliminated or avoided on a long-term basis as a result of
19 equipment installed or modified, or services performed by a
20 qualified energy service provider. "Utility cost-savings" does
21 not include merely shifting personnel costs or similar
22 short-term cost-savings.

23 Section 15. Authorization.

24 (a) Each governmental unit shall implement cost-effective
25 conservation improvements and maintain efficient operation of

1 its facilities in order to minimize energy consumption and
2 related environmental impacts, and reduce operating costs.
3 Each governmental unit shall undertake an energy audit and
4 implement cost-effective conservation measures. Energy
5 performance contracting shall be the preferred method for
6 completing energy audits and implementing cost-effective
7 conservation measures.

8 (b) Any governmental unit may enter into an energy
9 performance contract with a qualified energy service provider
10 to produce utility savings or operating and maintenance cost
11 savings. Cost-savings measures implemented under such
12 contracts shall comply with State or local building codes. Any
13 governmental unit may implement other capital improvements in
14 conjunction with a performance contract so long as the
15 measures that are being implemented to achieve energy and
16 operations and maintenance cost-savings are a significant
17 portion of an overall project. A governmental unit may enter
18 into an energy savings performance contract for a period of
19 more than one year only if the governmental unit finds that the
20 amount the governmental unit would spend on the energy or
21 water conservation measures will not exceed the amount to be
22 saved in energy, water, wastewater, and operating costs over 8
23 years from the date of installation.

24 Section 20. Smart Energy Design Assistance Center (SEDAC).

25 (a) The Smart Energy Design Assistance Center (SEDAC)

1 based at the University of Illinois at Urbana-Champaign is
2 hereby designated to be the lead agency for the development
3 and promotion of a program of performance contracts in
4 governmental units. SEDAC will coordinate its activities with
5 the Capital Development Board. SEDAC, under the direction of
6 the Governor, will have the following duties with respect to
7 this program:

8 (1) assistance to the Capital Development Board to
9 assemble a list of qualified energy service providers and
10 to negotiate master service contracts and pricing
11 schedules with such qualified energy service providers;

12 (2) development of a standardized energy performance
13 contract process and standard energy performance contract
14 documents, including request for qualifications, request
15 for proposals, investment grade audit contract, energy
16 services agreement, including the form of the project
17 savings guarantee, and project financing agreement; and

18 (3) promotion of the energy performance contract
19 program to all governmental units.

20 (b) SEDAC shall establish guidelines and an approval
21 process for awarding energy performance contracts. The
22 guidelines adopted under this subsection (b) must require that
23 the cost-savings projected by a qualified provider be reviewed
24 by a licensed professional engineer who has a minimum of 3
25 years of experience in energy calculation and review, is not
26 an officer or employee of a qualified provider for the

1 contract under review, and is not otherwise associated with
2 the contract. In conducting the review, the engineer shall
3 focus primarily on the proposed improvements from an
4 engineering perspective, the methodology and calculations
5 related to cost savings, increases in revenue, and, if
6 applicable, efficiency or accuracy of metering equipment. An
7 engineer who reviews a contract shall maintain the
8 confidentiality of any proprietary information the engineer
9 acquires while reviewing the contract.

10 (c) SEDAC shall assist governmental units in identifying,
11 evaluating, and implementing cost-effective conservation
12 projects at their facilities. The assistance shall include:
13 (1) notifying governmental units of their responsibilities
14 under this Act; (2) apprising governmental units of
15 opportunities to develop and finance energy performance
16 contracting projects; (3) providing technical and analytical
17 support, including procurement energy performance contracting
18 services; (4) reviewing verification procedures for energy
19 savings; and (5) assisting in the structuring and arranging of
20 financing for energy performance contracting projects.

21 (d) SEDAC is authorized to fix, charge, and collect
22 reasonable fees, not to exceed 2% of the total cost of the
23 energy performance contract project, for any administrative
24 support and resources or other services provided by SEDAC, or
25 its designee, under this subsection (d) from the governmental
26 units that use its technical support services. Governmental

1 units are authorized to add the costs of these fees to the
2 total cost of the energy performance contract.

3 (e) The Governor is encouraged to develop and submit to
4 the General Assembly a regular or supplemental budget request
5 for the additional funds and staffing required by the Smart
6 Energy Design Assistance Center to fulfill the duties required
7 under this Section.

8 Section 25. Selection of a qualified energy service
9 provider. The State process of implementing energy performance
10 contracts for governmental units shall be as provided in this
11 Section.

12 (a) Regarding requests for qualifications, the Capital
13 Development Board is authorized to assemble a list of
14 qualified energy service providers, in accordance with the
15 provisions of the Illinois Procurement Code. The Capital
16 Development Board shall attempt to use objective criteria in
17 the selection process. The criteria for evaluation shall
18 include substantive factors to assess the capability of the
19 qualified energy service company or qualified provider in the
20 areas of design, engineering, installation, maintenance, and
21 repairs associated with performance contracts. The substantive
22 factors shall be as follows: (1) experience in conversions to
23 a different energy or fuel source, so long as it is associated
24 with a comprehensive energy efficiency retrofit; (2)
25 post-installation project monitoring, data collection, and

1 reporting of savings; (3) overall project experience and
2 qualifications; (4) management capability; (5) ability to
3 access long-term financing; (6) experience with projects of
4 similar size and scope; and (7) other factors determined by
5 the governmental unit to be relevant and appropriate and
6 relate to the ability to perform the project.

7 (b) Regarding requests for proposals, before entering into
8 a performance contract under this Section, a governmental unit
9 shall issue a request for proposals from a minimum of 3
10 qualified energy service providers. A governmental unit may
11 thereafter award the performance contract to the qualified
12 energy service company or qualified provider that best meets
13 the needs of the governmental unit, which need not be the
14 lowest cost provided. A cost-effective feasibility analysis
15 shall be prepared in response to the request for proposals.
16 The feasibility analysis included in the response to the
17 request for proposals shall serve as the selection document
18 for purposes of selecting a qualified energy service provider
19 to engage in final contract negotiations. Factors to be
20 included in selecting among the selected energy service
21 providers include contract terms, comprehensiveness of the
22 proposal, comprehensiveness of cost-savings measures,
23 experience, quality of technical approach, and overall
24 benefits to the governmental unit.

25 Section 30. Investment grade audit and contract execution.

1 (a) One qualified energy service provider selected as a
2 result of the process provided under subsection (b) of Section
3 25 shall prepare an investment grade energy audit, which, upon
4 acceptance, shall be part of the final energy performance
5 contract or energy services agreement which shall be executed
6 with the governmental unit. The investment grade energy audit
7 shall include estimates of the amounts by which utility
8 cost-savings and operation and maintenance cost-savings would
9 increase and estimates of all costs of such utility
10 cost-savings measures or energy-savings measures, including,
11 but not limited to, itemized costs of design, engineering,
12 equipment, materials, installation, maintenance, repairs, and
13 debt service.

14 (b) Notwithstanding the provisions of subsection (a), if
15 after preparation of the investment grade energy audit the
16 governmental unit decides not to execute an energy services
17 agreement, and the costs and benefits described in the energy
18 audit are not materially different from those described in the
19 feasibility study submitted in response to the request for
20 proposals, then the costs incurred in preparing the investment
21 grade energy audit shall be paid to the qualified energy
22 service provider by the governmental unit. Otherwise, the
23 costs of the investment grade energy audit shall be deemed
24 part of the costs of the energy performance contract or energy
25 services agreement.

1 Section 35. Installment payment and lease-purchase
2 agreements.

3 (a) A governmental unit may use designated funds, bonds,
4 or master lease for any energy performance contract, including
5 purchases using installment payment contracts or
6 lease-purchase agreements, so long as that use is consistent
7 with the purpose of the appropriation.

8 (b) A guaranteed energy performance savings contract shall
9 provide for financing, including tax-exempt financing, by a
10 third party. The contract for third party financing may be
11 separate from the energy performance contract. A separate
12 contract for third party financing must include a provision
13 that the third party financier must not be granted rights or
14 privileges that exceed the rights and privileges available to
15 the guaranteed energy performance savings contractor.

16 Section 40. Payment schedule and savings. Each performance
17 contract shall provide that all payments between parties,
18 except obligations on termination of the contract before its
19 expiration, shall be made over time, and the objective of each
20 energy performance contract is implementation of cost-savings
21 measures and energy and operational cost-savings.

22 Section 45. Term of Contracts. An energy performance
23 contract, and payments provided thereunder, may extend beyond
24 the fiscal year in which the energy performance contract

1 became effective, subject to appropriation of moneys, if
2 required by law, for costs incurred in future fiscal years.
3 The energy performance contract may extend for a term not to
4 exceed 25 years. The allowable length of the contract may also
5 reflect the useful life of the cost-savings measures. Energy
6 performance contracts may provide for payments over a period
7 of time not to exceed deadlines specified in the energy
8 performance contract from the date of the final installation
9 of the cost-saving measures.

10 Section 50. Allocation of obligations. Subject to
11 appropriations as provided in Sections 30 and 35 of this Act,
12 each governmental unit shall allocate sufficient moneys for
13 each fiscal year to make payment of any amounts payable by the
14 governmental unit under performance contracts during that
15 fiscal year.

16 Section 55. Use of moneys; reconciliation.

17 (a) The governmental unit engaging in the performance
18 contract shall retain the savings achieved by entering into
19 the performance contract. In no event shall the governmental
20 unit utilize those savings to supplant otherwise appropriated
21 funds for the governmental unit.

22 (b) Unless otherwise provided by law or ordinance, a
23 governmental unit may use funds designated for operating and
24 capital expenditures or utilities for any performance

1 contract, including, without limitation, contracts entered
2 into under Section 25 of this Act.

3 (c) The energy performance contract may provide that
4 reconciliation of the amounts owed under an energy performance
5 contract shall occur in a period beyond one year with final
6 reconciliation occurring within the term of the performance
7 contract.

8 (d) The energy performance contract shall require the
9 qualified provider to provide to the governmental unit an
10 annual reconciliation of the guaranteed energy cost-savings.
11 If the reconciliation reveals a shortfall in annual energy
12 cost savings, the qualified provider is liable for that
13 shortfall. If the reconciliation reveals an excess in annual
14 energy cost savings, the excess savings may be used to cover
15 potential energy cost-savings shortages in subsequent contract
16 years.

17 Section 60. Monitoring; reports.

18 (a) During the term of each energy performance contract,
19 the qualified energy service company or qualified provider
20 shall monitor the reductions in energy consumption and
21 cost-savings attributable to the cost-savings measures
22 installed under the performance contract, and shall, no less
23 than annually, prepare and provide a report to the
24 governmental unit documenting the performance of the
25 cost-savings measures to the governmental unit.

1 (b) The qualified provider or qualified energy service
2 company and governmental unit may agree to make modifications
3 in calculating savings based on any of the following
4 occurrences:

5 (1) subsequent material change to the baseline energy
6 consumption identified at the beginning of the performance
7 contract;

8 (2) changes in utility rates;

9 (3) changes in the number of days in the utility
10 billing cycle;

11 (4) changes in the total square footage of the
12 building;

13 (5) changes in the operational schedule of the
14 facility;

15 (6) changes in facility temperature;

16 (7) material change in the weather;

17 (8) material changes in the amount of equipment or
18 lighting used at the facility; or

19 (9) any other change which reasonably would be
20 expected to modify energy use or energy costs.

21 (c) For all projects carried out under this Act, the
22 governmental unit shall report the name of the project, the
23 project host, the investment on the project, and the expected
24 energy savings to the Illinois Commerce Commission, and shall
25 file with the Illinois Commerce Commission a copy of all
26 reconciliation reports delivered under this subsection (c).

1 The Illinois Commerce Commission may report energy savings
2 from these projects to the federal Energy Information
3 Administration under the Energy Policy Act of 1992 reporting
4 standards.

5 Section 65. Contingency provisions. Performance contracts
6 shall include contingency provisions if actual savings do not
7 meet predicted savings.

8 Section 70. Use of savings from performance contracts.
9 Governmental units may direct savings realized under the
10 performance contract to contract payment and other expenses as
11 they deem necessary. Governmental units are encouraged to
12 reinvest savings whenever practical into cost-savings
13 measures, so long as the governmental unit is satisfying all
14 obligations under the performance contract.

15 Section 75. Act takes precedence; repeal of prior
16 conflicting statutes. In case of any conflict between the
17 provisions of this Act and any other law, the provisions of
18 this Act shall prevail and control. The provisions of any
19 statute enacted prior to this Act which are inconsistent with
20 this Act are hereby repealed. The Attorney General shall
21 consult with the Smart Energy Design Assistance Center (SEDAC)
22 in construing this Section.

1 Section 100. The Illinois Procurement Code is amended by
2 changing Sections 20-60 and 40-25 as follows:

3 (30 ILCS 500/20-60)

4 (Text of Section before amendment by P.A. 101-657, Article
5 40, Section 40-125)

6 Sec. 20-60. Duration of contracts.

7 (a) Maximum duration. A contract may be entered into for
8 any period of time deemed to be in the best interests of the
9 State but not exceeding 10 years inclusive, beginning January
10 1, 2010, of proposed contract renewals. Third parties may
11 lease State-owned dark fiber networks for any period of time
12 deemed to be in the best interest of the State, but not
13 exceeding 20 years. The length of a lease for real property or
14 capital improvements shall be in accordance with the
15 provisions of Section 40-25. The length of energy conservation
16 program contracts or energy savings contracts or leases shall
17 be in accordance with the provisions of Section 25-45. A
18 contract for bond or mortgage insurance awarded by the
19 Illinois Housing Development Authority, however, may be
20 entered into for any period of time less than or equal to the
21 maximum period of time that the subject bond or mortgage may
22 remain outstanding.

23 (b) Subject to appropriation. All contracts made or
24 entered into shall recite that they are subject to termination
25 and cancellation in any year for which the General Assembly

1 fails to make an appropriation to make payments under the
2 terms of the contract.

3 (c) The chief procurement officer shall file a proposed
4 extension or renewal of a contract with the Procurement Policy
5 Board prior to entering into any extension or renewal if the
6 cost associated with the extension or renewal exceeds
7 \$249,999. The Procurement Policy Board may object to the
8 proposed extension or renewal within 30 calendar days and
9 require a hearing before the Board prior to entering into the
10 extension or renewal. If the Procurement Policy Board does not
11 object within 30 calendar days or takes affirmative action to
12 recommend the extension or renewal, the chief procurement
13 officer may enter into the extension or renewal of a contract.
14 This subsection does not apply to any emergency procurement,
15 any procurement under Article 40, or any procurement exempted
16 by Section 1-10(b) of this Code. If any State agency contract
17 is paid for in whole or in part with federal-aid funds, grants,
18 or loans and the provisions of this subsection would result in
19 the loss of those federal-aid funds, grants, or loans, then
20 the contract is exempt from the provisions of this subsection
21 in order to remain eligible for those federal-aid funds,
22 grants, or loans, and the State agency shall file notice of
23 this exemption with the Procurement Policy Board prior to
24 entering into the proposed extension or renewal. Nothing in
25 this subsection permits a chief procurement officer to enter
26 into an extension or renewal in violation of subsection (a).

1 By August 1 each year, the Procurement Policy Board shall file
2 a report with the General Assembly identifying for the
3 previous fiscal year (i) the proposed extensions or renewals
4 that were filed with the Board and whether the Board objected
5 and (ii) the contracts exempt from this subsection.

6 (d) Notwithstanding the provisions of subsection (a) of
7 this Section, the Department of Innovation and Technology may
8 enter into leases for dark fiber networks for any period of
9 time deemed to be in the best interests of the State but not
10 exceeding 20 years inclusive. The Department of Innovation and
11 Technology may lease dark fiber networks from third parties
12 only for the primary purpose of providing services (i) to the
13 offices of Governor, Lieutenant Governor, Attorney General,
14 Secretary of State, Comptroller, or Treasurer and State
15 agencies, as defined under Section 5-15 of the Civil
16 Administrative Code of Illinois or (ii) for anchor
17 institutions, as defined in Section 7 of the Illinois Century
18 Network Act. Dark fiber network lease contracts shall be
19 subject to all other provisions of this Code and any
20 applicable rules or requirements, including, but not limited
21 to, publication of lease solicitations, use of standard State
22 contracting terms and conditions, and approval of vendor
23 certifications and financial disclosures.

24 (e) As used in this Section, "dark fiber network" means a
25 network of fiber optic cables laid but currently unused by a
26 third party that the third party is leasing for use as network

1 infrastructure.

2 (f) No vendor shall be eligible for renewal of a contract
3 when that vendor has failed to meet the goals agreed to in the
4 vendor's utilization plan unless the State agency has
5 determined that the vendor made good faith efforts toward
6 meeting the contract goals and has issued a waiver or that
7 vendor is not otherwise excused from compliance by the chief
8 procurement officer in consultation with the purchasing State
9 agency. The form and content of the waiver shall be prescribed
10 by each chief procurement officer who shall maintain on his or
11 her official website a database of waivers granted under this
12 Section with respect to contracts under his or her
13 jurisdiction. The database shall be updated periodically and
14 shall be searchable by contractor name and by contracting
15 State agency or public institution of higher education.

16 (Source: P.A. 100-23, eff. 7-6-17; 100-611, eff. 7-20-18;
17 101-81, eff. 7-12-19; 101-657, Article 5, Section 5-5, eff.
18 7-1-21 (See Section 25 of P.A. 102-29 for effective date of
19 P.A. 101-657, Article 5, Section 5-5); 102-29, eff. 6-25-21.)

20 (Text of Section after amendment by P.A. 101-657, Article
21 40, Section 40-125)

22 Sec. 20-60. Duration of contracts.

23 (a) Maximum duration. A contract may be entered into for
24 any period of time deemed to be in the best interests of the
25 State but not exceeding 10 years inclusive, beginning January

1 1, 2010, of proposed contract renewals. Third parties may
2 lease State-owned dark fiber networks for any period of time
3 deemed to be in the best interest of the State, but not
4 exceeding 20 years. The length of a lease for real property or
5 capital improvements shall be in accordance with the
6 provisions of Section 40-25. The length of energy conservation
7 program contracts or energy savings contracts or leases shall
8 be in accordance with the provisions of 45 of the Energy
9 Performance Contracting Act ~~Section 25-45~~. A contract for bond
10 or mortgage insurance awarded by the Illinois Housing
11 Development Authority, however, may be entered into for any
12 period of time less than or equal to the maximum period of time
13 that the subject bond or mortgage may remain outstanding.

14 (b) Subject to appropriation. All contracts made or
15 entered into shall recite that they are subject to termination
16 and cancellation in any year for which the General Assembly
17 fails to make an appropriation to make payments under the
18 terms of the contract.

19 (c) The chief procurement officer shall file a proposed
20 extension or renewal of a contract with the Procurement Policy
21 Board and the Commission on Equity and Inclusion prior to
22 entering into any extension or renewal if the cost associated
23 with the extension or renewal exceeds \$249,999. The
24 Procurement Policy Board or the Commission on Equity and
25 Inclusion may object to the proposed extension or renewal
26 within 30 calendar days and require a hearing before the Board

1 or the Commission on Equity and Inclusion prior to entering
2 into the extension or renewal. If the Procurement Policy Board
3 or the Commission on Equity and Inclusion does not object
4 within 30 calendar days or takes affirmative action to
5 recommend the extension or renewal, the chief procurement
6 officer may enter into the extension or renewal of a contract.
7 This subsection does not apply to any emergency procurement,
8 any procurement under Article 40, or any procurement exempted
9 by Section 1-10(b) of this Code. If any State agency contract
10 is paid for in whole or in part with federal-aid funds, grants,
11 or loans and the provisions of this subsection would result in
12 the loss of those federal-aid funds, grants, or loans, then
13 the contract is exempt from the provisions of this subsection
14 in order to remain eligible for those federal-aid funds,
15 grants, or loans, and the State agency shall file notice of
16 this exemption with the Procurement Policy Board or the
17 Commission on Equity and Inclusion prior to entering into the
18 proposed extension or renewal. Nothing in this subsection
19 permits a chief procurement officer to enter into an extension
20 or renewal in violation of subsection (a). By August 1 each
21 year, the Procurement Policy Board and the Commission on
22 Equity and Inclusion shall each file a report with the General
23 Assembly identifying for the previous fiscal year (i) the
24 proposed extensions or renewals that were filed and whether
25 such extensions and renewals were objected to and (ii) the
26 contracts exempt from this subsection.

1 (d) Notwithstanding the provisions of subsection (a) of
2 this Section, the Department of Innovation and Technology may
3 enter into leases for dark fiber networks for any period of
4 time deemed to be in the best interests of the State but not
5 exceeding 20 years inclusive. The Department of Innovation and
6 Technology may lease dark fiber networks from third parties
7 only for the primary purpose of providing services (i) to the
8 offices of Governor, Lieutenant Governor, Attorney General,
9 Secretary of State, Comptroller, or Treasurer and State
10 agencies, as defined under Section 5-15 of the Civil
11 Administrative Code of Illinois or (ii) for anchor
12 institutions, as defined in Section 7 of the Illinois Century
13 Network Act. Dark fiber network lease contracts shall be
14 subject to all other provisions of this Code and any
15 applicable rules or requirements, including, but not limited
16 to, publication of lease solicitations, use of standard State
17 contracting terms and conditions, and approval of vendor
18 certifications and financial disclosures.

19 (e) As used in this Section, "dark fiber network" means a
20 network of fiber optic cables laid but currently unused by a
21 third party that the third party is leasing for use as network
22 infrastructure.

23 (f) No vendor shall be eligible for renewal of a contract
24 when that vendor has failed to meet the goals agreed to in the
25 vendor's utilization plan, as defined in Section 2 of the
26 Business Enterprise for Minorities, Women, and Persons with

1 Disabilities Act, unless the State agency has determined that
2 the vendor made good faith efforts toward meeting the contract
3 goals. If the State agency determines that the vendor made
4 good faith efforts, the agency may issue a waiver after
5 concurrence by the chief procurement officer. The form and
6 content of the waiver shall be prescribed by each chief
7 procurement officer who shall maintain on his or her official
8 website a database of waivers granted under this Section with
9 respect to contracts under his or her jurisdiction. The
10 database shall be updated periodically and shall be searchable
11 by contractor name and by contracting State agency or public
12 institution of higher education.

13 (Source: P.A. 101-81, eff. 7-12-19; 101-657, Article 5,
14 Section 5-5, eff. 7-1-21 (See Section 25 of P.A. 102-29 for
15 effective date of P.A. 101-657, Article 5, Section 5-5);
16 101-657, Article 40, Section 40-125, eff. 1-1-22; 102-29, eff.
17 6-25-21.)

18 (30 ILCS 500/40-25)

19 Sec. 40-25. Length of leases.

20 (a) Maximum term. Except as otherwise provided under
21 subsection (a-5), leases shall be for a term not to exceed 10
22 years inclusive, beginning January, 1, 2010, of proposed
23 contract renewals and shall include a termination option in
24 favor of the State after 5 years. The length of energy
25 conservation program contracts or energy savings contracts or

1 leases shall be in accordance with the provisions of Section
2 45 of the Energy Performance Contracting Act ~~25-45~~.

3 (a-5) Extended term. A lease for real property owned by
4 the University of Illinois to be used by the University of
5 Illinois at Chicago for an ambulatory surgical center, which
6 would include both clinical services and retail space, may
7 exceed 10 years in length where: (i) the lease requires the
8 lessor to make capital improvements in excess of \$100,000; and
9 (ii) the Board of Trustees of the University of Illinois
10 determines a term of more than 10 years is necessary and is in
11 the best interest of the University. A lease under this
12 subsection (a-5) may not exceed 30 years in length.

13 (b) Renewal. Leases may include a renewal option. An
14 option to renew may be exercised only when a State purchasing
15 officer determines in writing that renewal is in the best
16 interest of the State and notice of the exercise of the option
17 is published in the appropriate volume of the Procurement
18 Bulletin at least 30 calendar days prior to the exercise of the
19 option.

20 (c) Subject to appropriation. All leases shall recite that
21 they are subject to termination and cancellation in any year
22 for which the General Assembly fails to make an appropriation
23 to make payments under the terms of the lease.

24 (d) Holdover. Beginning January 1, 2010, no lease may
25 continue on a month-to-month or other holdover basis for a
26 total of more than 6 months. Beginning July 1, 2010, the

1 Comptroller shall withhold payment of leases beyond this
2 holdover period.

3 (Source: P.A. 100-23, eff. 7-6-17; 100-1047, eff. 1-1-19;
4 101-426, eff. 1-1-20.)

5 (30 ILCS 500/25-45 rep.)

6 Section 105. The Illinois Procurement Code is amended by
7 repealing Section 25-45.

8 Section 995. No acceleration or delay. Where this Act
9 makes changes in a statute that is represented in this Act by
10 text that is not yet or no longer in effect (for example, a
11 Section represented by multiple versions), the use of that
12 text does not accelerate or delay the taking effect of (i) the
13 changes made by this Act or (ii) provisions derived from any
14 other Public Act.

15 Section 999. Effective date. This Act takes effect upon
16 becoming law.