



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1241

Introduced 2/2/2023, 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 reduce operating costs and minimize energy consumption and related environmental impacts. 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conflicting provisions of law, and that any conflicting provisions of any statute enacted prior to the Act are hereby repealed.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.

LRB103 04777 HLH 49787 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 savings and long-term cost savings for all
8 governmental units by facilitating prompt incorporation of
9 energy conservation improvements, energy production equipment,
10 or both, in buildings or facilities owned, operated, or under
11 the supervision and control of governmental units, in
12 cooperation with private-sector providers of such services and
13 associated materials. These arrangements will improve and
14 protect the health, safety, security, and welfare of the
15 people of this State by promoting energy conservation and
16 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-saving measure" means the improvement, repair, or
6 alteration of any facility or the addition of any equipment,
7 fixture, or furnishing to be used in any facility, if the
8 improvement, repair, alteration, or addition (i) is designed
9 to reduce energy consumption and operating costs of the
10 facility or increase the operating efficiency of the facility
11 for its appointed function and (ii) is cost-effective.

12 "Cost-saving measure" includes, but is not limited to, the
13 installation, modification, or replacement of one or more of
14 the following:

- 15 (1) lighting components, fixtures, and systems;
- 16 (2) renewable energy and alternate energy systems;
- 17 (3) cogeneration systems that produce steam or forms
18 of energy, such as heat or electricity, for use primarily
19 within a building or complex of buildings;
- 20 (4) devices that reduce water consumption or sewer
21 charges, including water-conserving fixtures, appliances,
22 and equipment, water-conserving landscape irrigation
23 equipment, or the substitution of non-water using
24 fixtures, appliances, and equipment;
- 25 (5) landscaping that reduces watering demands and
26 captures and holds applied water and rainfall, including

1 landscape contouring, including the use of berms, swales,
2 and terraces, the use of soil amendments that increase the
3 water-holding capacity of the soil, including compost, and
4 rainwater harvesting equipment and equipment to make use
5 of water collected as part of a storm-water system
6 installed for water quality control;

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

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

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

17 (9) changes in operation and maintenance practices;

18 (10) indoor air quality improvements that conform to
19 applicable building code requirements;

20 (11) daylighting systems;

21 (12) insulating the building structure or systems in
22 the building;

23 (13) storm windows or doors, caulking or weather
24 stripping, multi-glazed windows or door systems,
25 heat-absorbing or heat-reflective glazed and coated window
26 and door systems, additional glazing, reductions in glass

1 area, or other window and door system modifications that
2 reduce energy consumption;

3 (14) automated or computerized energy control systems;

4 (15) heating, ventilation, or air conditioning system
5 modifications or replacements;

6 (16) indoor air quality improvements that conform to
7 applicable building code requirements;

8 (17) energy recovery systems;

9 (18) steam trap improvement programs that reduce
10 operating costs;

11 (19) services to reduce utility costs by identifying
12 utility errors and optimizing existing rate schedules
13 under which service is provided; and

14 (20) any other installation, modification of
15 installation, or remodeling of building infrastructure
16 improvements that produce utility or operational cost
17 savings for their appointed functions in compliance with
18 applicable State and local building codes.

19 "Cost-saving measure" also includes one or more of the
20 following:

21 (i) building operation programs that reduce utility
22 and operating costs including, but not limited to,
23 computerized energy management and consumption tracking
24 programs, staff and occupant training, and other similar
25 activities;

26 (ii) any life safety measures that provide long-term

1 operating cost reductions and are in compliance with State
2 and local statute;

3 (iii) any life safety measures related to compliance
4 with the federal Americans with Disabilities Act that
5 provide long-term operating cost reductions and are in
6 compliance with State and local statute; and

7 (iv) a program to reduce energy costs through rate
8 adjustments, load shifting to reduce peak demand, and use
9 of alternative energy suppliers, such as, but not limited
10 to:

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

12 (B) negotiation of lower rates, same supplier, or
13 new suppliers, where applicable; and

14 (C) auditing of energy service billing and meters.

15 "Energy performance contract" or "energy services
16 agreement" means a contract between a governmental unit and a
17 qualified energy service provider for evaluation,
18 recommendation, and implementation of one or more cost-saving
19 measures. A performance contract may be structured as either:

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

1 incurred by the governmental unit over the life of the
2 contract; or

3 (2) a shared savings contract, which shall include
4 provisions mutually agreed upon by the governmental unit
5 and the qualified provider or qualified energy service
6 company as to the negotiated rate of payments based upon
7 energy and operational cost savings and a stipulated
8 maximum energy consumption level over the life of the
9 contract.

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

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

1 from the recommended improvements.

2 "Operation and maintenance cost savings" means a
3 measurable decrease in operation and maintenance costs and
4 future replacement expenditures if that decrease is a direct
5 result of the implementation of one or more utility
6 cost-saving measures. These savings shall be calculated in
7 comparison with an established baseline of operation and
8 maintenance costs.

9 "Person" means any corporate or non-corporate entity or
10 individual of any type.

11 "Public building" means any structure, building, or
12 facility, including its equipment, furnishings, or appliances
13 that is owned or operated by a governmental unit.

14 "Qualified energy service provider" means a person with a
15 record of successful energy performance contract projects or a
16 person who:

17 (1) is experienced in the design, implementation, and
18 installation of energy efficiency and facility improvement
19 measures;

20 (2) has the technical capabilities to ensure such
21 measures generate energy and operational cost savings; and

22 (3) has the ability to secure the financing necessary
23 to support energy savings guarantees.

24 "Utility cost savings" means any utility expenses that are
25 eliminated or avoided on a long-term basis as a result of
26 equipment installed or modified, or services performed by a

1 qualified energy service provider. "Utility cost savings" does
2 not include merely shifting personnel costs or similar
3 short-term cost savings.

4 Section 15. Authorization.

5 (a) Each governmental unit shall implement cost-effective
6 conservation improvements and maintain efficient operation of
7 its facilities in order to minimize energy consumption and
8 related environmental impacts, and reduce operating costs.
9 Each governmental unit shall undertake an energy audit and
10 implement cost-effective conservation measures. Energy
11 performance contracting shall be the preferred method for
12 completing energy audits and implementing cost-effective
13 conservation measures.

14 (b) Any governmental unit may enter into an energy
15 performance contract with a qualified energy service provider
16 to produce utility savings or operating and maintenance cost
17 savings. Cost-saving measures implemented under such contracts
18 shall comply with State or local building codes. Any
19 governmental unit may implement other capital improvements in
20 conjunction with a performance contract so long as the
21 measures that are being implemented to achieve energy and
22 operations and maintenance cost savings are a significant
23 portion of an overall project. A governmental unit may enter
24 into an energy savings performance contract for a period of
25 more than one year only if the governmental unit finds that the

1 amount the governmental unit would spend on the energy or
2 water conservation measures will not exceed the amount to be
3 saved in energy, water, wastewater, and operating costs over 8
4 years from the date of installation.

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

6 (a) The Smart Energy Design Assistance Center (SEDAC)
7 based at the University of Illinois at Urbana-Champaign is
8 hereby designated to be the lead agency for the development
9 and promotion of a program of performance contracts in
10 governmental units. SEDAC will coordinate its activities with
11 the Capital Development Board. SEDAC, under the direction of
12 the Governor, will have the following duties with respect to
13 this program:

14 (1) assistance to the Capital Development Board to
15 assemble a list of qualified energy service providers and
16 to negotiate master service contracts and pricing
17 schedules with such qualified energy service providers;

18 (2) development of a standardized energy performance
19 contract process and standard energy performance contract
20 documents, including request for qualifications, request
21 for proposals, investment grade audit contract, energy
22 services agreement, including the form of the project
23 savings guarantee, and project financing agreement; and

24 (3) promotion of the energy performance contract
25 program to all governmental units.

1 (b) SEDAC shall establish guidelines and an approval
2 process for awarding energy performance contracts. The
3 guidelines adopted under this subsection must require that the
4 cost savings projected by a qualified provider be reviewed by
5 a licensed professional engineer who has a minimum of 3 years
6 of experience in energy calculation and review, is not an
7 officer or employee of a qualified provider for the contract
8 under review, and is not otherwise associated with the
9 contract. In conducting the review, the engineer shall focus
10 primarily on the proposed improvements from an engineering
11 perspective, the methodology and calculations related to cost
12 savings, increases in revenue, and, if applicable, efficiency
13 or accuracy of metering equipment. An engineer who reviews a
14 contract shall maintain the confidentiality of any proprietary
15 information the engineer acquires while reviewing the
16 contract.

17 (c) SEDAC shall assist governmental units in identifying,
18 evaluating, and implementing cost-effective conservation
19 projects at their facilities. The assistance shall include:

20 (1) notifying governmental units of their
21 responsibilities under this Act;

22 (2) apprising governmental units of opportunities to
23 develop and finance energy performance contracting
24 projects;

25 (3) providing technical and analytical support,
26 including procurement energy performance contracting

1 services;

2 (4) reviewing verification procedures for energy
3 savings; and

4 (5) assisting in the structuring and arranging of
5 financing for energy performance contracting projects.

6 (d) SEDAC is authorized to fix, charge, and collect
7 reasonable fees, not to exceed 2% of the total cost of the
8 energy performance contract project, for any administrative
9 support and resources or other services provided by SEDAC, or
10 its designee, under this subsection from the governmental
11 units that use its technical support services. Governmental
12 units are authorized to add the costs of these fees to the
13 total cost of the energy performance contract.

14 (e) The Governor is encouraged to develop and submit to
15 the General Assembly a regular or supplemental budget request
16 for the additional funds and staffing required by SEDAC to
17 fulfill the duties required under this Section.

18 Section 25. Selection of a qualified energy service
19 provider. The State process of implementing energy performance
20 contracts for governmental units shall be as provided in this
21 Section.

22 (a) Regarding requests for qualifications, the Capital
23 Development Board is authorized to assemble a list of
24 qualified energy service providers, in accordance with the
25 provisions of the Illinois Procurement Code. The Capital

1 Development Board shall attempt to use objective criteria in
2 the selection process. The criteria for evaluation shall
3 include substantive factors to assess the capability of the
4 qualified energy service company or qualified provider in the
5 areas of design, engineering, installation, maintenance, and
6 repairs associated with performance contracts. The substantive
7 factors shall be as follows:

8 (1) experience in conversions to a different energy or
9 fuel source, so long as it is associated with a
10 comprehensive energy efficiency retrofit;

11 (2) post-installation project monitoring, data
12 collection, and reporting of savings;

13 (3) overall project experience and qualifications;

14 (4) management capability;

15 (5) ability to access long-term financing;

16 (6) experience with projects of similar size and
17 scope; and

18 (7) other factors determined by the governmental unit
19 to be relevant and appropriate and relate to the ability
20 to perform the project.

21 (b) Regarding requests for proposals, before entering into
22 a performance contract under this Section, a governmental unit
23 shall issue a request for proposals from a minimum of 3
24 qualified energy service providers. A governmental unit may
25 thereafter award the performance contract to the qualified
26 energy service company or qualified provider that best meets

1 the needs of the governmental unit, which need not be the
2 lowest cost provided. A cost-effective feasibility analysis
3 shall be prepared in response to the request for proposals.
4 The feasibility analysis included in the response to the
5 request for proposals shall serve as the selection document
6 for purposes of selecting a qualified energy service provider
7 to engage in final contract negotiations. Factors to be
8 included in selecting among the selected energy service
9 providers include contract terms, comprehensiveness of the
10 proposal, comprehensiveness of cost-saving measures,
11 experience, quality of technical approach, and overall
12 benefits to the governmental unit.

13 Section 30. Investment-grade audit and contract execution.

14 (a) One qualified energy service provider selected as a
15 result of the process provided under subsection (b) of Section
16 25 shall prepare an investment-grade energy audit, which, upon
17 acceptance, shall be part of the final energy performance
18 contract or energy services agreement which shall be executed
19 with the governmental unit. The investment-grade energy audit
20 shall include estimates of the amounts by which utility cost
21 savings and operation and maintenance cost savings would
22 increase and estimates of all costs of such utility
23 cost-saving measures or energy-saving measures, including, but
24 not limited to, itemized costs of design, engineering,
25 equipment, materials, installation, maintenance, repairs, and

1 debt service.

2 (b) Notwithstanding the provisions of subsection (a), if
3 after preparation of the investment-grade energy audit the
4 governmental unit decides not to execute an energy services
5 agreement, and the costs and benefits described in the energy
6 audit are not materially different from those described in the
7 feasibility study submitted in response to the request for
8 proposals, then the costs incurred in preparing the
9 investment-grade energy audit shall be paid to the qualified
10 energy service provider by the governmental unit. Otherwise,
11 the costs of the investment-grade energy audit shall be deemed
12 part of the costs of the energy performance contract or energy
13 services agreement.

14 Section 35. Installment payment and lease-purchase
15 agreements.

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

21 (b) A guaranteed energy performance savings contract shall
22 provide for financing, including tax-exempt financing, by a
23 third party. The contract for third party financing may be
24 separate from the energy performance contract. A separate
25 contract for third party financing must include a provision

1 that the third party financier must not be granted rights or
2 privileges that exceed the rights and privileges available to
3 the guaranteed energy performance savings contractor.

4 Section 40. Payment schedule and savings. Each performance
5 contract shall provide that all payments between parties,
6 except obligations on termination of the contract before its
7 expiration, shall be made over time, and the objective of each
8 energy performance contract is implementation of cost-saving
9 measures and energy and operational cost savings.

10 Section 45. Term of Contracts. An energy performance
11 contract, and payments provided thereunder, may extend beyond
12 the fiscal year in which the energy performance contract
13 became effective, subject to appropriation of moneys, if
14 required by law, for costs incurred in future fiscal years.
15 The energy performance contract may extend for a term not to
16 exceed 25 years. The allowable length of the contract may also
17 reflect the useful life of the cost-saving measures. Energy
18 performance contracts may provide for payments over a period
19 of time not to exceed deadlines specified in the energy
20 performance contract from the date of the final installation
21 of the cost-saving measures.

22 Section 50. Allocation of obligations. Subject to
23 appropriations as provided in Sections 30 and 35, each

1 governmental unit shall allocate sufficient moneys for each
2 fiscal year to make payment of any amounts payable by the
3 governmental unit under performance contracts during that
4 fiscal year.

5 Section 55. Use of moneys; reconciliation.

6 (a) The governmental unit engaging in the performance
7 contract shall retain the savings achieved by entering into
8 the performance contract. In no event shall the governmental
9 unit use those savings to supplant otherwise appropriated
10 funds for the governmental unit.

11 (b) Unless otherwise provided by law or ordinance, a
12 governmental unit may use funds designated for operating and
13 capital expenditures or utilities for any performance
14 contract, including, but not limited to, contracts entered
15 into under Section 25.

16 (c) The energy performance contract may provide that
17 reconciliation of the amounts owed under an energy performance
18 contract shall occur in a period beyond one year with final
19 reconciliation occurring within the term of the performance
20 contract.

21 (d) The energy performance contract shall require the
22 qualified provider to provide to the governmental unit an
23 annual reconciliation of the guaranteed energy cost savings.
24 If the reconciliation reveals a shortfall in annual energy
25 cost savings, the qualified provider is liable for that

1 shortfall. If the reconciliation reveals an excess in annual
2 energy cost savings, the excess savings may be used to cover
3 potential energy cost-saving shortages in subsequent contract
4 years.

5 Section 60. Monitoring; reports.

6 (a) During the term of each energy performance contract,
7 the qualified energy service company or qualified provider
8 shall monitor the reductions in energy consumption and cost
9 savings attributable to the cost-saving measures installed
10 under the performance contract, and shall, no less than
11 annually, prepare and provide a report to the governmental
12 unit documenting the performance of the cost-saving measures
13 to the governmental unit.

14 (b) The qualified provider or qualified energy service
15 company and governmental unit may agree to make modifications
16 in calculating savings based on any of the following
17 occurrences:

18 (1) subsequent material change to the baseline energy
19 consumption identified at the beginning of the performance
20 contract;

21 (2) changes in utility rates;

22 (3) changes in the number of days in the utility
23 billing cycle;

24 (4) changes in the total square footage of the
25 building;

1 (5) changes in the operational schedule of the
2 facility;

3 (6) changes in facility temperature;

4 (7) material change in the weather;

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

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

9 (c) For all projects carried out under this Act, the
10 governmental unit shall report the name of the project, the
11 project host, the investment on the project, and the expected
12 energy savings to the Illinois Commerce Commission, and shall
13 file with the Illinois Commerce Commission a copy of all
14 reconciliation reports delivered under this subsection. The
15 Illinois Commerce Commission may report energy savings from
16 these projects to the federal Energy Information
17 Administration under the Energy Policy Act of 1992 reporting
18 standards.

19 Section 65. Contingency provisions. Performance contracts
20 shall include contingency provisions if actual savings do not
21 meet predicted savings.

22 Section 70. Use of savings from performance contracts.
23 Governmental units may direct savings realized under the
24 performance contract to contract payment and other expenses as

1 they deem necessary. Governmental units are encouraged to
2 reinvest savings whenever practical into cost-saving measures,
3 so long as the governmental unit is satisfying all obligations
4 under the performance contract.

5 Section 75. Act takes precedence; repeal of prior
6 conflicting statutes. In case of any conflict between the
7 provisions of this Act and any other law, the provisions of
8 this Act shall prevail and control. The provisions of any
9 statute enacted prior to this Act which are inconsistent with
10 this Act are hereby repealed. The Attorney General shall
11 consult with the Smart Energy Design Assistance Center (SEDAC)
12 in construing this Section.

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

15 (30 ILCS 500/20-60)

16 Sec. 20-60. Duration of contracts.

17 (a) Maximum duration. A contract may be entered into for
18 any period of time deemed to be in the best interests of the
19 State but not exceeding 10 years inclusive, beginning January
20 1, 2010, of proposed contract renewals. Third parties may
21 lease State-owned dark fiber networks for any period of time
22 deemed to be in the best interest of the State, but not
23 exceeding 20 years. The length of a lease for real property or

1 capital improvements shall be in accordance with the
2 provisions of Section 40-25. The length of energy conservation
3 program contracts or energy savings contracts or leases shall
4 be in accordance with the provisions of Section 45 of the
5 Energy Performance Contracting Act ~~25-45~~. A contract for bond
6 or mortgage insurance awarded by the Illinois Housing
7 Development Authority, however, may be entered into for any
8 period of time less than or equal to the maximum period of time
9 that the subject bond or mortgage may remain outstanding.

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

15 (c) The chief procurement officer shall file a proposed
16 extension or renewal of a contract with the Procurement Policy
17 Board and the Commission on Equity and Inclusion prior to
18 entering into any extension or renewal if the cost associated
19 with the extension or renewal exceeds \$249,999. The
20 Procurement Policy Board or the Commission on Equity and
21 Inclusion may object to the proposed extension or renewal
22 within 14 calendar days and require a hearing before the Board
23 or the Commission on Equity and Inclusion prior to entering
24 into the extension or renewal. If the Procurement Policy Board
25 or the Commission on Equity and Inclusion does not object
26 within 14 calendar days or takes affirmative action to

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

23 (d) Notwithstanding the provisions of subsection (a) of
24 this Section, the Department of Innovation and Technology may
25 enter into leases for dark fiber networks for any period of
26 time deemed to be in the best interests of the State but not

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

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

19 (f) No vendor shall be eligible for renewal of a contract
20 when that vendor has failed to meet the goals agreed to in the
21 vendor's utilization plan, as defined in Section 2 of the
22 Business Enterprise for Minorities, Women, and Persons with
23 Disabilities Act, unless the State agency or public
24 institution of higher education has determined that the vendor
25 made good faith efforts toward meeting the contract goals. If
26 the State agency or public institution of higher education

1 determines that the vendor made good faith efforts, the agency
2 or public institution of higher education may issue a waiver
3 after concurrence by the chief procurement officer, which
4 shall not be unreasonably withheld or impair a State agency
5 determination to execute the renewal. The form and content of
6 the waiver shall be prescribed by each chief procurement
7 officer, but shall not impair a State agency or public
8 institution of higher education determination to execute the
9 renewal. The chief procurement officer shall post the
10 completed form on his or her official website within 5
11 business days after receipt from the State agency or public
12 institution of higher education. The chief procurement officer
13 shall maintain on his or her official website a database of
14 waivers granted under this Section with respect to contracts
15 under his or her jurisdiction. The database shall be updated
16 periodically and shall be searchable by contractor name and by
17 contracting State agency or public institution of higher
18 education.

19 (Source: P.A. 101-81, eff. 7-12-19; 101-657, Article 5,
20 Section 5-5, eff. 7-1-21 (See Section 25 of P.A. 102-29 for
21 effective date of P.A. 101-657, Article 5, Section 5-5);
22 101-657, Article 40, Section 40-125, eff. 1-1-22; 102-29, eff.
23 6-25-21; 102-721, eff. 1-1-23.)

24 (30 ILCS 500/40-25)

25 Sec. 40-25. Length of leases.

1 (a) Maximum term. Except as otherwise provided under
2 subsection (a-5), leases shall be for a term not to exceed 10
3 years inclusive, beginning January, 1, 2010, of proposed
4 contract renewals and shall include a termination option in
5 favor of the State after 5 years. The length of energy
6 conservation program contracts or energy savings contracts or
7 leases shall be in accordance with the provisions of Section
8 45 of the Energy Performance Contracting Act 25-45.

9 (a-5) Extended term. A lease for real property owned by a
10 public institution of higher education to be used for
11 healthcare uses, academic facilities, dormitory facilities, or
12 other support uses may exceed 10 years in length when: (i) the
13 lease requires the lessor to make capital improvements in
14 excess of \$100,000; and (ii) the Board of Trustees of the
15 public institution of higher education determines a term of
16 more than 10 years is necessary and is in the best interest of
17 the institution. A lease under this subsection (a-5) may not
18 exceed 30 years in length.

19 (b) Renewal. Leases may include a renewal option. An
20 option to renew may be exercised only when a State purchasing
21 officer determines in writing that renewal is in the best
22 interest of the State and notice of the exercise of the option
23 is published in the appropriate volume of the Procurement
24 Bulletin at least 30 calendar days prior to the exercise of the
25 option.

26 (c) Subject to appropriation. All leases shall recite that

1 they are subject to termination and cancellation in any year
2 for which the General Assembly fails to make an appropriation
3 to make payments under the terms of the lease.

4 (d) Holdover. Beginning January 1, 2010, no lease may
5 continue on a month-to-month or other holdover basis for a
6 total of more than 6 months. Beginning July 1, 2010, the
7 Comptroller shall withhold payment of leases beyond this
8 holdover period.

9 (e) On December 31, 2023, and every year thereafter, any
10 institution of higher education that enters into a lease under
11 this Section shall file with both houses of the General
12 Assembly a report outlining each lease entered into under this
13 Section that is current as of the date of the report.

14 (Source: P.A. 101-426, eff. 1-1-20; 102-721, eff. 1-1-23.)

15 (30 ILCS 500/25-45 rep.)

16 Section 105. The Illinois Procurement Code is amended by
17 repealing Section 25-45.

18 Section 999. Effective date. This Act takes effect upon
19 becoming law.