

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 5. The Illinois Procurement Code is amended by
5 changing Sections 1-15.30, 20-60, and 40-25 and by adding the
6 heading of Article 34 and Sections 34-5, 34-10, 34-15, 34-20,
7 34-25, 34-30, 34-35, 34-40, 34-45, 34-50, 34-55, and 34-60 as
8 follows:

9 (30 ILCS 500/1-15.30)

10 Sec. 1-15.30. Contract. "Contract" means all types of State
11 agreements, including change orders and renewals, regardless
12 of what they may be called, for the procurement, use, or
13 disposal of supplies, services, professional or artistic
14 services, or construction or for leases of real property,
15 whether the State is lessor or lessee, or capital improvements,
16 or performance contracting, or guaranteed energy savings
17 contracts, and including master contracts, contracts for
18 financing through use of installment or lease-purchase
19 arrangements, renegotiated contracts, amendments to contracts,
20 and change orders.

21 (Source: P.A. 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793
22 for the effective date of changes made by P.A. 96-795).)

1 (30 ILCS 500/20-60)

2 Sec. 20-60. Duration of contracts.

3 (a) Maximum duration. A contract, other than a contract
4 entered into pursuant to the State University Certificates of
5 Participation Act, or guaranteed energy savings contract or a
6 performance contract that guarantees energy or operational
7 cost savings, may be entered into for any period of time deemed
8 to be in the best interests of the State but not exceeding 10
9 years inclusive, beginning January 1, 2010, of proposed
10 contract renewals. A guaranteed energy savings contract or
11 performance contract shall not be entered into for a period of
12 time exceeding 20 years, beginning July 1, 2012. The length of
13 a lease for real property or capital improvements shall be in
14 accordance with the provisions of Section 40-25. A contract for
15 bond or mortgage insurance awarded by the Illinois Housing
16 Development Authority, however, may be entered into for any
17 period of time less than or equal to the maximum period of time
18 that the subject bond or mortgage may remain outstanding.

19 (b) Subject to appropriation. All contracts made or entered
20 into shall recite that they are subject to termination and
21 cancellation in any year for which the General Assembly fails
22 to make an appropriation to make payments under the terms of
23 the contract.

24 (c) The chief procurement officer shall file a proposed
25 extension or renewal of a contract with the Procurement Policy
26 Board prior to entering into any extension or renewal if the

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

1 (Source: P.A. 95-344, eff. 8-21-07; 96-15, eff. 6-22-09;
2 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793 for the
3 effective date of changes made by P.A. 96-795); 96-920, eff.
4 7-1-10; 96-1478, eff. 8-23-10.)

5 (30 ILCS 500/40-25)

6 Sec. 40-25. Length of leases.

7 (a) Maximum term. Except for installment payment
8 performance contracts and guaranteed energy savings contracts
9 and performance-based lease purchase agreements, leases ~~Leases~~
10 shall be for a term not to exceed 10 years inclusive, beginning
11 January, 1, 2010, of proposed contract renewals and shall
12 include a termination option in favor of the State after 5
13 years. Installment payment performance contracts and
14 guaranteed energy savings contracts and performance-based
15 lease purchase agreements that guarantee energy or operational
16 cost savings shall be for a term not to exceed 20 years.

17 (b) Renewal. Leases may include a renewal option. An option
18 to renew may be exercised only when a State purchasing officer
19 determines in writing that renewal is in the best interest of
20 the State and notice of the exercise of the option is published
21 in the appropriate volume of the Procurement Bulletin at least
22 60 days prior to the exercise of the option.

23 (c) Subject to appropriation. All leases shall recite that
24 they are subject to termination and cancellation in any year
25 for which the General Assembly fails to make an appropriation

1 to make payments under the terms of the lease.

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

7 (Source: P.A. 96-15, eff. 6-22-09; 96-795, eff. 7-1-10 (see
8 Section 5 of P.A. 96-793 for the effective date of changes made
9 by P.A. 96-795).)

10 (30 ILCS 500/Art. 34 heading new)

11 ARTICLE 34. PERFORMANCE AND GUARANTEED ENERGY SAVINGS

12 CONTRACTS

13 (30 ILCS 500/34-5 new)

14 Sec. 34-5. Definitions. In this Article, the words and
15 phrases have the meanings set forth in this Code.

16 "State agency" shall have the definition set forth in this
17 Code. The Capital Development Board, created pursuant to 20
18 ILCS 3105, shall have the authority to act on behalf of any
19 State agency in this Article.

20 (30 ILCS 500/34-10 new)

21 Sec. 34-10. Energy conservation measure.

22 "Energy conservation measure" means any improvement,
23 repair, alteration, or betterment of any building or facility

1 owned or operated by a State agency or any equipment, fixture,
2 or furnishing to be added to or used in any such building or
3 facility that is designed to reduce energy consumption or
4 operating costs, and may include, without limitation, one or
5 more of the following:

6 (1) Insulation of the building structure or systems
7 within the building.

8 (2) Storm windows or doors, caulking or
9 weather-stripping, multiglazed windows or doors, heat
10 absorbing or heat reflective glazed and coated window or
11 door systems, additional glazing, reductions in glass
12 area, or other window and door system modifications that
13 reduce energy consumption.

14 (3) Automated or computerized energy control systems.

15 (4) Heating, ventilating, or air conditioning system
16 modifications or replacements.

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

23 (6) Energy recovery systems.

24 (7) Energy conservation measures that provide
25 long-term operating cost reductions.

1 (30 ILCS 500/34-15 new)

2 Sec. 34-15. Performance and guaranteed energy savings
3 contract. "Guaranteed energy savings contract" or "performance
4 contract" means a contract for: (i) the implementation of an
5 energy audit, data collection, and other related analyses
6 preliminary to the undertaking of energy conservation
7 measures; (ii) the evaluation and recommendation of energy
8 conservation measures; (iii) the implementation of one or more
9 energy conservation measures; and (iv) the implementation of
10 project monitoring and data collection to verify
11 post-installation energy consumption and energy-related
12 operating costs. The contract shall provide that all payments,
13 except obligations on termination of the contract before its
14 expiration, are to be made over time and that the savings are
15 guaranteed to the extent necessary to pay the costs of the
16 energy conservation measures. Energy saving may include energy
17 reduction and offsetting sources of renewable energy funds
18 including renewable energy credits and carbon credits.

19 (30 ILCS 500/34-20 new)

20 Sec. 34-20. Prequalification/qualified providers.

21 (a) Prequalification. The Capital Development Board shall
22 establish procedures to prequalify firms or entities seeking to
23 provide services for performance and guaranteed energy savings
24 contracts, and insure such firms are qualified providers of
25 such services.

1 (b) Qualified provider. "Qualified provider" means a
2 person or business whose employees are experienced and trained
3 in the design, implementation, or installation of energy
4 conservation measures. The minimum training required for any
5 person or employee under this Section shall be the satisfactory
6 completion of at least 40 hours of course instruction dealing
7 with energy conservation measures. A qualified provider to whom
8 the contract is awarded shall give a sufficient bond to the
9 State agency or area vocational center for its faithful
10 performance.

11 (30 ILCS 500/34-25 new)

12 Sec. 34-25. Request for proposals.

13 "Request for proposals" means a competitive selection
14 achieved by negotiated procurement. The request for proposals
15 shall be administered by the Capital Development Board and
16 notification of the procurement will be in accordance with this
17 Code, but in no case shall the Board provide less than a 30 day
18 notice of the request for proposals. Proposals submitted shall
19 be sealed. The request for proposals shall include all of the
20 following:

21 (1) The name and address of the proposed project.

22 (2) The name, address, title, and phone number of a
23 contact person.

24 (3) Notice indicating that the State agency is
25 requesting qualified providers to propose energy

1 conservation measures through a performance or guaranteed
2 energy savings contract.

3 (4) The date, time, and place where proposals must be
4 received.

5 (5) The evaluation criteria for assessing the
6 proposals.

7 (6) Any other stipulations and clarifications the
8 State agency may require.

9 (30 ILCS 500/34-30 new)

10 Sec. 34-30. Evaluation of proposal. Before entering into a
11 performance or guaranteed energy savings contract, a State
12 agency shall submit a request for proposals. The Capital
13 Development Board shall evaluate any sealed proposal from a
14 qualified provider on behalf of the State agency. The
15 evaluation shall analyze the estimates of all costs of
16 installations, modifications or remodeling, including, without
17 limitation, costs of a pre-installation energy audit or
18 analysis, design, engineering, installation, maintenance,
19 repairs, debt service, conversions to a different energy or
20 fuel source, or post-installation project monitoring, data
21 collection, and reporting. The evaluation shall include a
22 detailed analysis of whether either the energy consumed or the
23 operating costs, or both, will be reduced. The evaluation of
24 the proposal shall be done by a registered professional
25 engineer or architect, who is retained by the Capital

1 Development Board or State agency, and selected in accordance
2 with the Architectural, Engineering and Land Surveying
3 Qualifications Based Selection Act. A licensed architect or
4 registered professional engineer evaluating a proposal under
5 this Section must not have any financial or contractual
6 relationship with a qualified provider or other source that
7 would constitute a conflict of interest.

8 (30 ILCS 500/34-35 new)

9 Sec. 34-35. Award of performance or guaranteed energy
10 savings contract.

11 (a) Sealed proposals must be opened by the Capital
12 Development Board, at a public opening at which the contents of
13 the proposals must be announced. Each person or entity
14 submitting a sealed proposal must receive at least 14 days
15 notice of the time and place of the opening. The Capital
16 Development Board shall select the qualified provider that best
17 meets the needs of the State agency. After evaluating the
18 proposals under Section 34-30, the Capital Development Board or
19 the Capital Development Board acting on behalf of the State
20 agency may enter into a performance or guaranteed energy
21 savings contract with a qualified provider if it finds that the
22 amount it would spend on the energy conservation measures
23 recommended in the proposal would not exceed the amount to be
24 saved in either energy or operational costs, or both, within a
25 20-year period from the date of installation, if the

1 recommendations in the proposal are followed. Contracts let or
2 awarded must be published in the Procurement Bulletin.

3 (b) The request for proposals and any contracts awarded to
4 a qualified provider shall require that any subsequent need for
5 architectural, engineering, and land surveying services which
6 arise after the submittal of the request for qualifications,
7 the request for proposals, or contract award shall be procured
8 by the provider using a qualifications based selection process
9 consisting of publication of notice of availability of such
10 services, a statement of desired qualifications, an evaluation
11 based on such desired qualifications, and the development of a
12 shortlist ranking the firms in order of qualifications, and
13 then negotiations with such ranked firms for a fair and
14 reasonable fee. Compliance with the Architectural,
15 Engineering, and Land Surveying Qualifications Based Selection
16 Act, 30 ILCS 535, shall be deemed prima facie compliance with
17 these provisions. Every performance or guaranteed energy
18 savings contract shall include the requirements of this
19 paragraph.

20 (c) The request for proposals shall require that each and
21 every contractor, subcontractor, architectural, engineering
22 and land surveying firm or entity shall be listed and the
23 quotation or price for such services shall also be listed. In
24 the event that prior to or after award, any of the listed firms
25 shall have a reduction in their listed price, the performance
26 or guaranteed energy savings contract shall be modified and

1 such savings shall be for the benefit of the State agency with
2 a corresponding reduction in the contract amount. The
3 information in the request for proposals shall be considered
4 confidential and only for the use of the State agency.

5 (30 ILCS 500/34-40 new)

6 Sec. 34-40. Guarantee. The performance or guaranteed
7 energy savings contract shall include a written guarantee of
8 the qualified provider that either the energy or operational
9 cost savings, or both, will meet or exceed within 20 years the
10 costs of the energy conservation measures. The qualified
11 provider shall reimburse the State agency for any shortfall of
12 guaranteed energy savings projected in the contract. A
13 qualified provider shall provide a sufficient bond to the State
14 agency for the installation and the faithful performance of all
15 the measures included in the contract. The performance or
16 guaranteed energy savings contract may provide for payments
17 over a period of time, not to exceed 20 years from the date of
18 final installation of the measures.

19 (30 ILCS 500/34-45 new)

20 Sec. 34-45. Installment payment contract; lease purchase
21 agreement. A State agency may enter into an installment payment
22 contract or lease purchase agreement with a qualified provider
23 or with a third party, as authorized by law, for the funding or
24 financing of the purchase and installation of energy

1 conservation measures by a qualified provider. Any such
2 contract or agreement shall be valid whether or not an
3 appropriation with respect thereto is first included in any
4 annual or supplemental budget adopted by the Illinois General
5 Assembly, but only for a term of two years after such funding
6 ceases. Each contract or agreement entered into by a State
7 agency shall be authorized by official action of the State
8 agency or Capital Development Board.

9 If an energy audit is performed by an energy services
10 contractor for the State agency within the 3 years immediately
11 preceding the solicitation, then the State agency must publish
12 as a reference document in the solicitation for energy
13 conservation measures the following:

14 (1) an executive summary of the energy audit provided
15 that the State agency may exclude any proprietary or
16 trademarked information or practices; or

17 (2) the energy audit provided that the State agency may
18 redact any proprietary or trademarked information or
19 practices.

20 A State agency may not withhold the disclosure of
21 information related to (i) the State agency's consumption of
22 energy, (ii) the physical condition of the State agency's
23 facilities, and (iii) any limitations prescribed by the State
24 agency.

25 In accordance with 30 ILCS 500/50-10.5, no energy services
26 contractor that participated in the preparation of the

1 specifications issued by the State agency shall be permitted to
2 respond to the solicitation or be awarded a contract for the
3 performance or guaranteed energy savings contract. The
4 solicitation must include a written disclosure that no energy
5 services contractor participated in the preparation of the
6 specifications. The written disclosure shall be published in
7 the Capital Development Board Procurement Bulletin with the
8 Request for Proposal.

9 (30 ILCS 500/34-50 new)

10 Sec. 34-50. Operational and energy cost savings. The State
11 agency or the Capital Development Board shall document the
12 operational and energy cost savings specified in the
13 performance or guaranteed energy savings contract and
14 designate and appropriate that amount for an annual payment of
15 the contract. If the annual energy savings are less than
16 projected under the guaranteed energy savings contract, the
17 qualified provider shall pay the difference as provided in
18 Section 34-40.

19 (30 ILCS 500/34-55 new)

20 Sec. 34-55. Bonding. A qualified provider shall provide a
21 sufficient bond to the State agency for the installation and
22 the faithful performance of all the measures included in the
23 contract, in accordance with the Public Construction Bond Act,
24 30 ILCS 550. Such bond shall be in effect for the entire term

1 of the contract, installment payment contract or lease purchase
2 agreement.

3 (30 ILCS 500/34-60 new)

4 Sec. 34-60. Applicable laws. Other State laws and related
5 administrative requirements apply to this Article, including,
6 but not limited to, the following laws and related
7 administrative requirements: the Illinois Human Rights Act,
8 Business Enterprise for Minorities, Females, and Persons with
9 Disabilities Act, the Prevailing Wage Act, the Public
10 Construction Bond Act, the Public Works Preference Act
11 (repealed on June 16, 2010 by Public Act 96-929), the
12 Employment of Illinois Workers on Public Works Act, the Freedom
13 of Information Act, the Open Meetings Act, the Illinois
14 Architecture Practice Act of 1989, the Professional
15 Engineering Practice Act of 1989, the Structural Engineering
16 Practice Act of 1989, the Architectural, Engineering and Land
17 Surveying Qualifications Based Selection Act, and the
18 Contractor Unified License and Permit Bond Act, Procurement of
19 Domestic Products Act, Public Purchases in Other States Act,
20 Governmental Joint Purchasing Act, Design-Build Procurement
21 Act, State Prompt Payment Act, Public Contract Fraud Act,
22 Public Construction Contract Act, Airport and Correctional
23 Facility Land Disclosure Act, State Real Property Leasing Act,
24 Real Estate Leasing Act, Project Labor Agreements Act, and the
25 provisions of Article 50 of this Code.

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.