



Sen. Terry Link

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09700SB3802sam001

LRB097 20447 PJG 67104 a

1 AMENDMENT TO SENATE BILL 3802

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 3802 by replacing  
3 everything after the enacting clause with the following:

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

1 contracts, and including master contracts, contracts for  
2 financing through use of installment or lease-purchase  
3 arrangements, renegotiated contracts, amendments to contracts,  
4 and change orders.

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

7 (30 ILCS 500/20-60)

8 Sec. 20-60. Duration of contracts.

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

25 (b) Subject to appropriation. All contracts made or entered

1 into shall recite that they are subject to termination and  
2 cancellation in any year for which the General Assembly fails  
3 to make an appropriation to make payments under the terms of  
4 the contract.

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

1 subsection permits a chief procurement officer to enter into an  
2 extension or renewal in violation of subsection (a). By August  
3 1 each year, the Procurement Policy Board shall file a report  
4 with the General Assembly identifying for the previous fiscal  
5 year (i) the proposed extensions or renewals that were filed  
6 with the Board and whether the Board objected and (ii) the  
7 contracts exempt from this subsection.

8 (Source: P.A. 95-344, eff. 8-21-07; 96-15, eff. 6-22-09;  
9 96-795, eff. 7-1-10 (see Section 5 of P.A. 96-793 for the  
10 effective date of changes made by P.A. 96-795); 96-920, eff.  
11 7-1-10; 96-1478, eff. 8-23-10.)

12 (30 ILCS 500/40-25)

13 Sec. 40-25. Length of leases.

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

24 (b) Renewal. Leases may include a renewal option. An option  
25 to renew may be exercised only when a State purchasing officer

1 determines in writing that renewal is in the best interest of  
2 the State and notice of the exercise of the option is published  
3 in the appropriate volume of the Procurement Bulletin at least  
4 60 days prior to the exercise of the option.

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

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

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

17 (30 ILCS 500/Art. 34 heading new)

18 ARTICLE 34. PERFORMANCE AND GUARANTEED ENERGY SAVINGS

19 CONTRACTS

20 (30 ILCS 500/34-5 new)

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

23 "State agency" shall have the definition set forth in this  
24 Code. The Capital Development Board, created pursuant to 20

1 ILCS 3105, shall have the authority to act on behalf of any  
2 State agency in this Article.

3 (30 ILCS 500/34-10 new)

4 Sec. 34-10. Energy conservation measure.

5 "Energy conservation measure" means any improvement,  
6 repair, alteration, or betterment of any building or facility  
7 owned or operated by a State agency or any equipment, fixture,  
8 or furnishing to be added to or used in any such building or  
9 facility, that is designed to reduce energy consumption or  
10 operating costs, and may include, without limitation, one or  
11 more of the following:

12 (1) Insulation of the building structure or systems  
13 within the building.

14 (2) Storm windows or doors, caulking or  
15 weather-stripping, multi-glazed windows or doors, heat  
16 absorbing or heat reflective glazed and coated window or  
17 door systems, additional glazing, reductions in glass  
18 area, or other window and door system modifications that  
19 reduce energy consumption.

20 (3) Automated or computerized energy control systems.

21 (4) Heating, ventilating, or air conditioning system  
22 modifications or replacements.

23 (5) Replacement or modification of lighting fixtures  
24 to increase the energy efficiency of the lighting system  
25 without increasing the overall illumination of a facility,

1 unless an increase in illumination is necessary to conform  
2 to the applicable State or local building code for the  
3 lighting system after the proposed modifications are made.

4 (6) Energy recovery systems.

5 (7) Energy conservation measures that provide  
6 long-term operating cost reductions.

7 (30 ILCS 500/34-15 new)

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

1 (30 ILCS 500/34-20 new)

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

3 (a) Prequalification. The Capital Development Board shall  
4 establish procedures to prequalify firms or entities seeking to  
5 provide services for performance and guaranteed energy savings  
6 contracts, and insure such firms are qualified providers of  
7 such services.

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

18 (30 ILCS 500/34-25 new)

19 Sec. 34-25. Request for proposals.

20 "Request for proposals" means a competitive selection  
21 achieved by negotiated procurement. The request for proposals  
22 shall be administered by the Capital Development Board and  
23 notification of the procurement will be accordance with this  
24 Code, but in no case shall the Board provide less than a 30 day  
25 notice of the request for proposals. Proposals submitted shall



1 be sealed. The request for proposals shall include all of the  
2 following:

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

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

6 (3) Notice indicating that the State agency is  
7 requesting qualified providers to propose energy  
8 conservation measures through a performance or guaranteed  
9 energy savings contract.

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

12 (5) The evaluation criteria for assessing the  
13 proposals.

14 (6) Any other stipulations and clarifications the  
15 State agency may require.

16 (30 ILCS 500/34-30 new)

17 Sec. 34-30. Evaluation of proposal. Before entering into a  
18 performance or guaranteed energy savings contract, a State  
19 agency shall submit a request for proposals. The Capital  
20 Development Board shall evaluate any sealed proposal from a  
21 qualified provider on behalf of the State agency. The  
22 evaluation shall analyze the estimates of all costs of  
23 installations, modifications or remodeling, including, without  
24 limitation, costs of a pre-installation energy audit or  
25 analysis, design, engineering, installation, maintenance,

1 repairs, debt service, conversions to a different energy or  
2 fuel source, or post-installation project monitoring, data  
3 collection, and reporting. The evaluation shall include a  
4 detailed analysis of whether either the energy consumed or the  
5 operating costs, or both, will be reduced. The evaluation of  
6 the proposal shall be done by a registered professional  
7 engineer or architect, who is retained by the Capital  
8 Development Board or State agency, and selected in accordance  
9 with the Architectural, Engineering and Land Surveying  
10 Qualifications Based Selection Act. A licensed architect or  
11 registered professional engineer evaluating a proposal under  
12 this Section must not have any financial or contractual  
13 relationship with a qualified provider or other source that  
14 would constitute a conflict of interest.

15 (30 ILCS 500/34-35 new)

16 Sec. 34-35. Award of performance or guaranteed energy  
17 savings contract.

18 (a) Sealed proposals must be opened by the Capital  
19 Development Board, at a public opening at which the contents of  
20 the proposals must be announced. Each person or entity  
21 submitting a sealed proposal must receive at least 14 days  
22 notice of the time and place of the opening. The Capital  
23 Development Board shall select the qualified provider that best  
24 meets the needs of the State agency. After evaluating the  
25 proposals under Section 34-30, the Capital Development Board or

1 the Capital Development Board acting on behalf of the State  
2 agency may enter into a performance or guaranteed energy  
3 savings contract with a qualified provider if it finds that the  
4 amount it would spend on the energy conservation measures  
5 recommended in the proposal would not exceed the amount to be  
6 saved in either energy or operational costs, or both, within a  
7 20-year period from the date of installation, if the  
8 recommendations in the proposal are followed. Contracts let or  
9 awarded must be published in the Procurement Bulletin.

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

1       (c) The request for proposals shall require that each and  
2 every contractor, subcontractor, architectural, engineering  
3 and land surveying firm or entity shall be listed and the  
4 quotation or price for such services shall also be listed. In  
5 the event that prior to or after award, any of the listed firms  
6 shall have a reduction in their listed price, the performance  
7 or guaranteed energy savings contract shall be modified and  
8 such savings shall be for the benefit of the State agency with  
9 a corresponding reduction in the contract amount. The  
10 information in the request for proposals shall be considered  
11 confidential and only for the use of the State agency.

12       (30 ILCS 500/34-40 new)

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

1 (30 ILCS 500/34-45 new)

2 Sec. 34-45. Installment payment contract; lease purchase  
3 agreement. A State agency may enter into an installment payment  
4 contract or lease purchase agreement with a qualified provider  
5 or with a third party, as authorized by law, for the funding or  
6 financing of the purchase and installation of energy  
7 conservation measures by a qualified provider. Any such  
8 contract or agreement shall be valid whether or not an  
9 appropriation with respect thereto is first included in any  
10 annual or supplemental budget adopted by the Illinois General  
11 Assembly, but only for a term of two years after such funding  
12 ceases. Each contract or agreement entered into by a State  
13 agency shall be authorized by official action of the State  
14 agency or Capital Development Board.

15 If an energy audit is performed by an energy services  
16 contractor for the State agency within the 3 years immediately  
17 preceding the solicitation, then the State agency must publish  
18 as a reference document in the solicitation for energy  
19 conservation measures the following:

20 (1) an executive summary of the energy audit provided  
21 that the State agency may exclude any proprietary or  
22 trademarked information or practices; or

23 (2) the energy audit provided that the State agency may  
24 redact any proprietary or trademarked information or  
25 practices.

1       A State agency may not withhold the disclosure of  
2 information related to (I) the State agency's consumption of  
3 energy, (ii) the physical condition of the State agency's  
4 facilities, and (iii) any limitations prescribed by the State  
5 agency.

6       In accordance with 30 ILCS 500/50-10.5, no energy services  
7 contractor that participated in the preparation of the  
8 specifications issued by the State agency shall be permitted to  
9 respond to the solicitation or be awarded a contract for the  
10 performance or guaranteed energy savings contract. The  
11 solicitation must include a written disclosure that no energy  
12 services contractor participated in the preparation of the  
13 specifications. The written disclosure shall be published in  
14 the Capital Development Board Procurement Bulletin with the  
15 Request for Proposal.

16       (30 ILCS 500/34-50 new)

17       Sec. 34-50. Operational and energy cost savings. The State  
18 agency or the Capital Development Board shall document the  
19 operational and energy cost savings specified in the  
20 performance or guaranteed energy savings contract and  
21 designate and appropriate that amount for an annual payment of  
22 the contract. If the annual energy savings are less than  
23 projected under the guaranteed energy savings contract the  
24 qualified provider shall pay the difference as provided in  
25 Section 34-40.

1 (30 ILCS 500/34-55 new)

2 Sec. 34-55. Bonding. A qualified provider shall provide a  
3 sufficient bond to the State agency for the installation and  
4 the faithful performance of all the measures included in the  
5 contract, in accordance with the Public Construction Bond Act,  
6 30 ILCS 550. Such bond shall be in effect for the entire term  
7 of the contract, installment payment contract or lease purchase  
8 agreement.

9 (30 ILCS 500/34-60 new)

10 Sec. 34-60. Applicable laws. Other State laws and related  
11 administrative requirements apply to this Article, including,  
12 but not limited to, the following laws and related  
13 administrative requirements: the Illinois Human Rights Act,  
14 Business Enterprise for Minorities, Females, and Persons with  
15 Disabilities Act, the Prevailing Wage Act, the Public  
16 Construction Bond Act, the Public Works Preference Act  
17 (repealed on June 16, 2010 by Public Act 96-929), the  
18 Employment of Illinois Workers on Public Works Act, the Freedom  
19 of Information Act, the Open Meetings Act, the Illinois  
20 Architecture Practice Act of 1989, the Professional  
21 Engineering Practice Act of 1989, the Structural Engineering  
22 Practice Act of 1989, the Architectural, Engineering and Land  
23 Surveying Qualifications Based Selection Act, and the  
24 Contractor Unified License and Permit Bond Act, Procurement of

1 Domestic Products Act, Public Purchases in Other States Act,  
2 Governmental Joint Purchasing Act, Design-Build Procurement  
3 Act, State Prompt Payment Act, Public Contract Fraud Act,  
4 Public Construction Contract Act, Airport and Correctional  
5 Facility Land Disclosure Act, State Real Property Leasing Act,  
6 Real Estate Leasing Act, Project Labor Agreements Act, and the  
7 provisions of Article 50 of this Code.

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law.".