

**CHAPTER 35****(SB 61)**

AN ACT relating to energy savings in state government buildings.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 56.770 is amended to read as follows:

As used in KRS 56.770 to 56.784, unless the context requires otherwise:

- (1) "Aggregate simple payback period" means the simple payback period of a set of energy efficiency measures taken together for a building;
- (2) "Building" means all contiguous land, structures, appurtenances, and improvements that use energy;
- (3) "Energy audit" means examination of a building's energy-using systems, energy consumption and costs, occupancy patterns, and operation and maintenance procedures;
- (4) "Energy efficiency measure" means any construction, improvement, repair, alteration, or betterment of a building that is intended to reduce energy costs; or any equipment, fixture, or furnishing to be added to or used in a building that will be a cost-effective energy-related project that is intended to reduce energy costs;
- (5) "***Guaranteed energy savings***~~[Energy]~~ performance contract" means an agreement for the provision of energy services or equipment, including energy ***efficiency measures, energy conservation measures***~~[enhancing projects]~~ and alternate energy technologies for state government buildings, in which a person agrees to design, construct, install, maintain, operate, or manage energy systems or equipment to improve energy efficiency of, or produce energy in connection with, a state government building. ***Payments for a guaranteed energy savings performance contract shall be made from measured and verified savings generated from implementation of the energy efficiency measures financed by the contract. The term of a guaranteed energy savings performance contract shall not exceed the life of the energy savings generated from implementation of the energy efficiency measures financed by the contract. If the measured and verified savings are not sufficient to pay the financial obligations under the contract, the contractor is liable for the contract payments***~~[in exchange for a portion of the energy cost savings or specified revenues based on estimated or measured energy cost savings];~~
- (6) "Engineering analysis" means a detailed cost-benefit analysis of energy efficiency investments including a review of potential cost savings through operation and maintenance changes;
- ~~(7) "Guaranteed energy savings contract" means an energy performance contract;~~
- ~~(8)~~ "Life-cycle cost analysis" means a method for estimating the total cost of an energy-using component or building over its useful life, including cost factors such as purchase price or construction, renovation, or leasing costs, energy use, maintenance, interest, and inflation;
- ~~(8)~~~~(9)~~ "Low cost/no cost energy ***conservation***~~[efficiency]~~ measures" means those energy ***saving practices and energy*** efficiency measures, usually involving operation and maintenance practices, that can be accomplished by existing personnel within existing operating budgets;~~[ and]~~

- (9)~~(10)~~ "Simple payback period" means the number of years it takes to pay back, from estimated~~energy~~ savings, the initial cost of an energy efficiency *measure*~~investment,~~ with the simple payback period equal to the initial cost divided by the *estimated* annual ~~energy~~ savings;
- (10) "*Savings*" means the reduction in expenditures, excluding any state government and post-secondary education personnel expenditures, that are measured and verified, including but not limited to energy usage, operating costs, and capital cost avoidance that occur as a result of the implementation of energy efficiency measures;
- (11) "*Capital cost avoidance*" means savings generated when expenditures of appropriated capital construction or appropriated capital outlay funds are avoided because the budgeted capital improvements or items of equipment are contained within the energy efficiency measures provided by a guaranteed energy savings performance contract; and
- (12) "*Operating costs*" means expenditures associated with operating and maintaining a properly functioning building and its systems including, but not limited to, the heating, ventilation, cooling, lighting, plumbing, water heating, electrical, and laundry systems and their controls.

Section 2. KRS 56.774 is amended to read as follows:

- (1) The Energy Efficiency Program for State Government Buildings shall provide for implementation of low cost/no cost energy conservation measures, engineering analyses, energy *efficiency*~~conservation~~ measures, building improvements, and monitoring of results for state-owned *or state-leased* buildings.
- (2) Any engineering analysis conducted on a state-owned building shall assess the energy efficiency of the building and make recommendations for improving the efficient use of energy within the building. The analyses shall be performed by qualified engineers, architects, or other persons trained in energy efficiency who may be employees of the Finance and Administration Cabinet or employed pursuant to KRS Chapter 45A, except that any engineers, architects or other persons trained in energy efficiency and retained under a guaranteed energy savings *performance* contract, shall not be subject to the provisions of KRS 45A.800 to 45A.835.
- (3) Except as provided in subsection (5) of this section, measures to improve the energy efficiency of a state-owned building, which have an aggregate simple payback period of five (5) years or less, shall be implemented as general fund appropriations become available. No more than five percent (5%) of the cost of energy efficiency measures for a building may be utilized for monitoring the results.
- (4) If general fund appropriations are available for energy efficiency improvements, the Finance and Administration Cabinet shall prioritize projects among the various state-owned buildings to determine which projects shall be implemented to best utilize the available funding.
- (5) If general fund appropriations are unavailable, energy *efficiency*~~conservation~~ measures for a state-owned building may be financed by other means. These other means include, but are not limited to, *guaranteed energy savings performance contracts as defined under Section 1 of this Act*~~energy performance contracts and guaranteed energy savings contracts~~ entered into pursuant to KRS 45A.085 and KRS 45A.045(10). *Guaranteed energy savings*~~Energy~~ performance contracts~~and guaranteed energy savings contracts~~ shall not be subject to the

provisions of KRS 45A.800 to 45A.835. These energy *efficiency*~~[conservation]~~ measures shall not be limited to those *that*~~[which]~~ have an aggregate simple payback period of five (5) years or less, but shall result in reasonable economic benefit to the Commonwealth. Ownership of the energy *efficiency*~~[conservation]~~ measures shall *be transferred to*~~[remain with]~~ the Commonwealth *upon completion of the guaranteed energy savings performance contract or as otherwise agreed upon in the contract. Savings from the implementation of the energy efficiency measures under the guaranteed energy savings performance contract shall*~~[Energy cost savings may]~~ be used to *satisfy the obligations under the guaranteed energy savings performance contract and to* repay the cost of the other means used to finance *the energy efficiency*~~[conservation]~~ measures, *and may be used to repay expenses incurred by*~~[with any remaining savings paid to]~~ the Finance and Administration Cabinet to reimburse the cabinet for~~[all its]~~ expenses related to the *guaranteed energy savings performance contract*~~[energy conservation measure]~~, including but not limited to, staff time for monitoring, overseeing, and managing the project. *Notwithstanding KRS 45.229*, remaining savings shall *remain*~~[be deposited]~~ in the state agency account *and shall not lapse*. All~~[energy cost]~~ savings *projected*~~[estimated]~~ under *a*~~[an energy performance contract or]~~ guaranteed energy savings *performance* contract shall be guaranteed to the Commonwealth.

- (6) *The savings in reduced expenditures that are specified as payment sources shall be documented in the guaranteed energy savings performance contract. Savings shall be determined by using one (1) of the measurement and verification methodologies listed in the United States Department of Energy's "International Performance Measurement and Verification Protocol." If specific data limitations or documented unique characteristics of the project prevent use of the "International Performance Measurement and Verification Protocol," an alternative method that is compatible shall be adopted upon documentation and approval of the secretary of the Finance and Administration Cabinet.*

Section 3. KRS 56.784 is amended to read as follows:

- (1) The Finance and Administration Cabinet may implement the provisions of KRS 56.770 to 56.784 through the promulgation of administrative regulations pursuant to KRS Chapter 13A.
- (2) *By July 15, 2002, the secretary of the Finance and Administration Cabinet shall promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A establishing a process for procurement of energy savings performance contracts, including required contract language. The following entities shall adhere to these regulations when procuring services under a guaranteed energy savings performance contract:*
- (a) *Any governing body of a postsecondary institution that manages its capital construction program under KRS 164A.580; or*
- (b) *Any public corporation as defined by KRS 45.750(2)(c) or as created under the Kentucky Revised Statutes as a governmental agency and instrumentality of the Commonwealth that manages its capital construction program.*
- (3) *All state agencies, including those identified in subsection (2) of this section, shall submit proposed guaranteed energy savings performance contracts to the Office of Financial Management for review and approval prior to contract execution.*

- (4) *The secretary shall report all authorized guaranteed energy savings performance contracts to the Capital Projects and Bond Oversight Committee for its review.*

SECTION 4. A NEW SECTION OF KRS 56.770 to 56.784 IS CREATED TO READ AS FOLLOWS:

- (1) *A special fund in the State Treasury is hereby created which shall be known as the energy efficiency in state government buildings revolving loan fund. The fund shall be used to provide financial assistance to state government agencies for the purposes of KRS 56.770 to 56.784.*
- (2) *The fund may receive state appropriations, gifts, grants, and federal funds and shall include earnings from the investment of moneys in the fund. Any fund balance at the close of the fiscal year shall not lapse but shall carry forward to the next fiscal year and shall remain available solely for the purposes of this section.*
- (3) *Administration of this fund shall be the responsibility of the Finance and Administration Cabinet. The cabinet shall establish terms and conditions for loans from the fund including the application and repayment process. The cabinet shall establish and implement fiscal controls and accounting periods for payments received and disbursements made by the fund and for fund balances at the beginning and end of each accounting period.*
- (4) *All repayments of loans made under this section shall be paid into the fund. Balances, or portions thereof, in the fund shall not revert to the general fund.*

Section 5. The goal of the Commonwealth shall be to achieve a ten percent (10%) reduction in energy usage in state government buildings over the next four (4) years. The report required to be filed in accordance with KRS 56.782 shall document the State's success in accomplishing that goal.

**Approved March 12, 2002**