

CHAPTER 65

(SB 70)

AN ACT relating to energy conservation measures for state buildings and property.

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 **conservation**~~efficiency~~ measures taken together for a building;
- (2) "Building" means all contiguous land, structures, appurtenances, and improvements that use **utilities**~~energy~~;
- (3) "Cabinet" means the Finance and Administration Cabinet;
- (4) "Energy audit" means examination of a building's **utility-using**~~energy-using~~ systems, **utilities**~~energy~~ consumption and costs, occupancy patterns, and operation and maintenance procedures;
- (5) "Energy **conservation**~~efficiency~~ measure" means any construction, **process**, improvement, repair, alteration, or betterment of a building **or other state property** that is intended to reduce **utility**~~energy~~ consumption **or operational cost**; or any equipment, fixture, or furnishing to be added to or used in a building that will be a cost-effective **utility-related**~~energy-related~~ project that is intended to reduce **utility**~~energy~~ consumption **or operational costs**;
- (6) "Guaranteed energy savings performance contract" means an agreement for the provision of energy services or equipment,~~including energy efficiency measures,~~ energy conservation measures and alternate energy technologies for state government buildings **or other state property**, 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 **conservation**~~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 **conservation**~~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;
- (7) "High-performance building" means a public building that is designed, constructed, and capable of being operated in a manner that:
 - (a) Increases environmental performance and economic value over time;
 - (b) Safeguards the health of occupants;
 - (c) Enhances satisfaction and productivity of workers through energy-efficient systems;
 - (d) Incorporates environmentally friendly materials and products; and
 - (e) Reduces waste;
- (8) "High-performance building standards" means a set of standards developed by the cabinet pursuant to KRS 56.777;
- (9) "Engineering analysis" means a detailed cost-benefit analysis of energy efficiency investments including a review of potential cost savings through operation and maintenance changes;
- (10) "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;
- (11) "Low cost/no cost energy conservation measures" means those energy saving practices and energy **conservation**~~efficiency~~ measures, usually involving operation and maintenance practices, that can be accomplished by existing personnel within existing operating budgets;

- (12) "Simple payback period" means the number of years it takes to pay back, from estimated savings, the initial cost of an energy ~~conservation~~~~efficiency~~ measure with the simple payback period equal to the initial cost divided by the estimated annual savings;
- (13) "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 ~~conservation~~~~efficiency~~ measures;
- (14) "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 ~~conservation~~~~efficiency~~ measures provided by a guaranteed energy savings performance contract;
- (15) "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;
- (16) "Public building" has the same meaning as in KRS 318.010;
- (17) "ENERGY STAR" means the voluntary program administered by the United States Environmental Protection Agency and the United States Department of Energy that is designed to protect the environment through the promotion of energy-efficient products and practices;
- (18) "Green Globes rating system" means the on-line environmental assessment tool developed by the Green Building Initiative as of December, 2004, that allows designers, property owners, and managers to evaluate and rate buildings against best sustainable building design practices and integrate principles of sustainable architecture at every stage of project delivery in order to design and construct buildings that will be energy-efficient and resource-efficient, achieve operational savings, and provide healthier environments in which to live and work; and
- (19) "LEED" means the building rating systems developed on or after January 1, 2005, by the United States Green Building Council that allow designers, property owners, and managers to evaluate and rate buildings against best sustainable building design and practices and to integrate principles of sustainable architecture at every stage of project delivery in order to design and construct buildings that will be energy-efficient and resource-efficient using a whole-building approach in five (5) key areas of human and environmental health:
- (a) Sustainable site development;
 - (b) Water savings;
 - (c) Energy efficiency;
 - (d) Material selection; and
 - (e) Environmental quality.

➔Section 2. KRS 56.772 is amended to read as follows:

The General Assembly finds and declares it to be the public policy of the Commonwealth to maximize the use of energy ~~conservation~~~~efficiency~~ measures in the construction, renovation, and maintenance of buildings owned or leased by the Commonwealth. In furtherance of this policy, the cabinet shall administer an energy efficiency program, to be known as the Energy Efficiency Program for State Government Buildings.

➔Section 3. 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~~~~conservation~~ measures, engineering analyses, energy efficiency 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 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 *conservation*~~[efficiency]~~ measures for a building may be utilized for monitoring the results.
- (4) If general fund appropriations are available for energy *conservation*~~[efficiency]~~ improvements, the 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 *conservation*~~[efficiency]~~ 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 KRS 56.770 entered into pursuant to KRS 45A.085 and KRS 45A.045(10). Guaranteed energy savings performance contracts shall not be subject to the provisions of KRS 45A.800 to 45A.835. These energy *conservation*~~[efficiency]~~ measures shall not be limited to those that 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 *conservation*~~[efficiency]~~ measures shall be transferred to 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 *conservation*~~[efficiency]~~ measures under the guaranteed energy savings performance contract shall 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 *conservation*~~[efficiency]~~ measures, and may be used to repay expenses incurred by the cabinet to reimburse the cabinet for expenses related to the guaranteed energy savings performance contract, including but not limited to staff time for monitoring, overseeing, and managing the project. Notwithstanding KRS 45.229, remaining savings shall remain in the state agency account and shall not lapse. All savings projected under a 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 cabinet.

➔Section 4. KRS 56.780 is amended to read as follows:

- (1) Any building which the Finance and Administration Cabinet considers for leasing or purchase shall be evaluated for cost-effective energy use and energy efficiency. This evaluation shall be considered in choosing between competing leases or building purchases. The cabinet shall consider the energy costs of operating a building to ensure the selection of a cost-effective lease, and the cabinet shall compare life-cycle energy cost analyses for competing leases.
- (2) A lease may be structured so that both the lessor and the state agency as lessee may share energy cost savings that can be accomplished by energy-efficient lease arrangements. The lease may incorporate financial incentives to make energy efficiency improvements that are cost effective in reducing the operating cost of the building. The lease may provide for the state agency to make lease payments which may be used to help fund the costs of energy *conservation*~~[efficiency]~~ measures in the building, if the costs are amortized and returned to the state agency over a period of years not to exceed the useful life of the energy *conservation*~~[efficiency]~~ measures. Thereafter, the state agency shall be entitled to a reduction in the lease amount based on any continued savings resulting from the energy *conservation*~~[efficiency]~~ measures. The amount of reduction shall be negotiated between the lessor and the state agency.

➔Section 5. KRS 42.580 is amended to read as follows:

As used in KRS 42.580 to 42.588:

- (1) "Cabinet" means the Finance and Administration Cabinet;
- (2) "Demand-side management" has the same meaning as in KRS 278.010;
- (3) "Energy audit" has the same meaning as in KRS 56.770;
- (4) "Energy-efficient heating, cooling, ventilation, or hot water system" has the same meaning as in KRS 141.435;

- (5) "Energy-efficient interior lighting system" has the same meaning as in KRS 141.435;
- (6) "Energy-efficient windows and storm doors" has the same meaning as in KRS 141.435;
- (7) "Engineered demand-side management project" means a project undertaken to reduce the amount of energy consumed in an existing structure, including but not limited to:
 - (a) Energy-efficient heating, cooling, ventilation, or hot water systems;
 - (b) Energy-efficient interior lighting systems;
 - (c) Energy-efficient windows and storm doors;
 - (d) Qualified energy property;
 - (e) Upgraded insulation;
 - (f) Solar water-heating systems; and
 - (g) Any other energy *conservation*~~[efficiency]~~ measures that will reduce energy costs, including those that will use solar power, either active or passive;
- (8) "Private sector building" means a building owned by a private retail, commercial, or industrial business;
- (9) "Public sector building" means a building owned by the Commonwealth of Kentucky, any public university of the Commonwealth, or any public community college of the Commonwealth;
- (10) "Qualified energy property" has the same meaning as in KRS 141.435;
- (11) "Simple payback period" has the same meaning as in KRS 56.770;
- (12) "Solar water-heating system" has the same meaning as in KRS 141.435; and
- (13) "Upgraded insulation" has the same meaning as in KRS 141.435.

Signed by Governor April 9, 2014.