

116TH CONGRESS
1ST SESSION

S. 1706

To amend the National Energy Conservation Policy Act to encourage the increased use of performance contracting in Federal facilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 4, 2019

Mr. GARDNER (for himself and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the National Energy Conservation Policy Act to encourage the increased use of performance contracting in Federal facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Energy Savings
5 Through Public-Private Partnerships Act of 2019”.

1 **SEC. 2. USE OF ENERGY AND WATER EFFICIENCY MEAS-**
2 **URES IN FEDERAL BUILDINGS.**

3 (a) ENERGY MANAGEMENT REQUIREMENTS.—Sec-
4 tion 543(f)(4) of the National Energy Conservation Policy
5 Act (42 U.S.C. 8253(f)(4)) is amended—

6 (1) by striking subparagraph (B);

7 (2) in the matter preceding subparagraph (A),
8 by striking “may” and all that follows through “the
9 Federal” in subparagraph (A) and inserting the fol-
10 lowing: “shall implement any energy- or water-sav-
11 ing measure that—

12 “(i) the Federal”;

13 (3) in the matter preceding clause (i) (as so
14 designated), by striking “Not later” and inserting
15 the following:

16 “(A) IN GENERAL.—Not later”;

17 (4) in subparagraph (A) (as so designated)—

18 (A) in clause (i), by striking “paragraph
19 (3) that is” and inserting the following: “para-
20 graph (3); and

21 “(ii) is”; and

22 (B) in clause (ii) (as so designated), by
23 striking “; and” and inserting “, as determined
24 by evaluating an individual measure or a bundle
25 of measures with varying paybacks.”; and

26 (5) by adding at the end the following:

1 “(B) PERFORMANCE CONTRACTING.—Each
2 Federal agency shall use performance con-
3 tracting to address at least ½ of the measures
4 identified under subparagraph (A)(i).”.

5 (b) REPORTS.—Section 548(b) of the National En-
6 ergy Conservation Policy Act (42 U.S.C. 8258(b)) is
7 amended—

8 (1) in paragraph (3), by striking “and” at the
9 end;

10 (2) in paragraph (4), by striking the period at
11 the end and inserting “; and”; and

12 (3) by adding at the end the following:

13 “(5)(A) the status of the energy savings per-
14 formance contracts and utility energy service con-
15 tracts of each agency, to the extent that the infor-
16 mation is not duplicative of information provided to
17 the Secretary under a separate authority;

18 “(B) the quantity and investment value of the
19 contracts for the previous year;

20 “(C) the guaranteed energy savings, or for con-
21 tracts without a guarantee, the estimated energy
22 savings, for the previous year, as compared to the
23 measured energy savings for the previous year;

1 “(D) a forecast of the estimated quantity and
2 investment value of contracts anticipated in the fol-
3 lowing year for each agency; and

4 “(E)(i) a comparison of the information de-
5 scribed in subparagraph (B) and the forecast de-
6 scribed in subparagraph (D) in the report of the
7 previous year; and

8 “(ii) if applicable, the reasons for any dif-
9 ferences in the data compared under clause (i).”.

10 (c) DEFINITION OF ENERGY CONSERVATION MEAS-
11 URES.—Section 551(4) of the National Energy Conserva-
12 tion Policy Act (42 U.S.C. 8259(4)) is amended by strik-
13 ing “or retrofit activities” and inserting “retrofit activi-
14 ties, or energy consuming devices and required support
15 structures”.

16 (d) AUTHORITY TO ENTER INTO CONTRACTS.—Sec-
17 tion 801(a)(2)(F) of the National Energy Conservation
18 Policy Act (42 U.S.C. 8287(a)(2)(F)) is amended—

19 (1) in clause (i), by striking “or” at the end;

20 (2) in clause (ii), by striking the period at the
21 end and inserting “; or”; and

22 (3) by adding at the end the following:

23 “(iii) limit the recognition of oper-
24 ation and maintenance savings associated
25 with systems modernized or replaced with

1 the implementation of energy conservation
2 measures, water conservation measures, or
3 any combination of energy conservation
4 measures and water conservation meas-
5 ures.”.

6 (e) MISCELLANEOUS AUTHORITY; EXCLUDED CON-
7 TRACTS.—Section 801(a)(2) of the National Energy Con-
8 servation Policy Act (42 U.S.C. 8287(a)(2)) is amended
9 by adding at the end the following:

10 “(H) MISCELLANEOUS AUTHORITY.—Not-
11 withstanding subtitle I of title 40, United
12 States Code, a Federal agency may accept, re-
13 tain, sell, or transfer, and apply the proceeds of
14 the sale or transfer of, any energy and water
15 incentive, rebate, grid services revenue, or cred-
16 it (including a renewable energy certificate) to
17 fund a contract under this title.

18 “(I) EXCLUDED CONTRACTS.—A contract
19 entered into under this title may not be for
20 work performed—

21 “(i) at a Federal hydroelectric facility
22 that provides power marketed by a Power
23 Marketing Administration; or

24 “(ii) at a hydroelectric facility owned
25 and operated by the Tennessee Valley Au-

1 thority established under the Tennessee
2 Valley Authority Act of 1933 (16 U.S.C.
3 831 et seq.).”.

4 (f) PAYMENT OF COSTS.—Section 802 of the Na-
5 tional Energy Conservation Policy Act (42 U.S.C. 8287a)
6 is amended by striking “(and related operation and main-
7 tenance expenses)” and inserting “, including related op-
8 erations and maintenance expenses”.

9 (g) DEFINITION OF ENERGY SAVINGS.—Section
10 804(2) of the National Energy Conservation Policy Act
11 (42 U.S.C. 8287c(2)) is amended—

12 (1) in subparagraph (A), by striking “federally
13 owned building or buildings or other federally owned
14 facilities” and inserting “Federal building (as de-
15 fined in section 551)” each place it appears;

16 (2) in subparagraph (C), by striking “; and”
17 and inserting a semicolon;

18 (3) in subparagraph (D), by striking the period
19 at the end and inserting a semicolon; and

20 (4) by adding at the end the following:

21 “(E) the use, sale, or transfer of any en-
22 ergy and water incentive, rebate, grid services
23 revenue, or credit (including a renewable energy
24 certificate); and

1 “(F) any revenue generated from a reduc-
2 tion in energy or water use, more efficient
3 waste recycling, or additional energy generated
4 from more efficient equipment.”.

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