

118TH CONGRESS  
2D SESSION

# S. 3753

To amend the Energy Policy and Conservation Act to provide financial assistance to States to implement expanded energy savings performance contracting programs, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2024

Mr. WELCH (for himself, Mr. COONS, Mrs. SHAHEEN, Mr. VAN HOLLEN, and Ms. SMITH) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To amend the Energy Policy and Conservation Act to provide financial assistance to States to implement expanded energy savings performance contracting programs, 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 “Improving State and  
5 Local Government Access to Performance Contracting Act  
6 of 2024”.

1 **SEC. 2. STATE ENERGY SAVINGS PERFORMANCE CON-**  
 2 **TRACTING PROGRAM EXPANSION.**

3 (a) IN GENERAL.—Part D of title III of the Energy  
 4 Policy and Conservation Act (42 U.S.C. 6321 et seq.) is  
 5 amended by adding at the end the following:

6 **“SEC. 367. STATE ENERGY SAVINGS PERFORMANCE CON-**  
 7 **TRACTING PROGRAM EXPANSION.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) ENERGY SAVINGS PERFORMANCE CON-  
 10 TRACT.—The term ‘energy savings performance con-  
 11 tract’ means a contract that provides for the per-  
 12 formance of services for the design, acquisition, in-  
 13 stallation, testing, and, as appropriate, operation,  
 14 maintenance, and repair, of an energy conservation  
 15 measure, water conservation measure, resiliency-re-  
 16 lated measure, utility cost savings measure, or series  
 17 of such measures at 1 or more locations.

18 “(2) STATE ENERGY SAVINGS PERFORMANCE  
 19 CONTRACTING PROGRAM.—The term ‘State energy  
 20 savings performance contracting program’ means a  
 21 State program—

22 “(A) to support the design and implemen-  
 23 tation of energy savings performance contracts,  
 24 including, to the extent authorized by law, en-  
 25 ergy savings performance contracts entered into  
 26 by State or local governments, public edu-

1           cational institutions, and other public, govern-  
2           mental, and quasigovernmental entities in the  
3           State;

4           “(B) part of which is to support efficiency  
5           improvements in rural and underserved commu-  
6           nities; and

7           “(C) that may include—

8           “(i) the development and provision of  
9           model, template, or standardized contracts,  
10          guidelines, procedures, manuals, and other  
11          related documents;

12          “(ii) a State program for  
13          prequalification and certification of energy  
14          savings performance contractors;

15          “(iii) provision of technical and ad-  
16          ministrative assistance; and

17          “(iv) monitoring, tracking, and report-  
18          ing of energy savings performance con-  
19          tracts, including identifying the number  
20          and value of contracts, energy savings,  
21          water savings, and financial performance.

22          “(3) WATER CONSERVATION MEASURE.—The  
23          term ‘water conservation measure’ means a measure  
24          that—

25          “(A) improves the efficiency of water use;

1           “(B) is life-cycle cost-effective; and

2           “(C) involves water conservation, water re-  
3           cycling or reuse, more efficient treatment of  
4           wastewater or stormwater, improvements in op-  
5           eration or maintenance efficiencies, retrofit ac-  
6           tivities, or other related activities that do not  
7           occur at a Federal hydroelectric facility.

8           “(b) FINANCIAL ASSISTANCE.—On request of the  
9           Governor of a State by not later than 1 year after the  
10          date of enactment of this section, the Secretary shall pro-  
11          vide, subject to the availability of funds, financial assist-  
12          ance to the State energy agency (as defined in section  
13          391) for the implementation, improvement, or expansion  
14          of a State energy savings performance contracting pro-  
15          gram.

16          “(c) USE OF FUNDS.—

17                 “(1) SUPPLEMENT.—Financial assistance pro-  
18                 vided to a State under subsection (b) shall be used  
19                 to supplement, not supplant, any other Federal,  
20                 State, or other funds made available to that State  
21                 under—

22                         “(A) this part; or

23                         “(B) the weatherization assistance pro-  
24                         gram established under part A of title IV of the

1 Energy Conservation and Production Act (42  
2 U.S.C. 6861 et seq.).

3 “(2) OTHER SOURCES.—To the maximum ex-  
4 tent practicable, a State receiving financial assist-  
5 ance under subsection (b) shall implement, improve,  
6 or expand a State energy savings performance con-  
7 tracting program by primarily using private financ-  
8 ing, public financing, or any other source of Federal  
9 or non-Federal funds.

10 “(3) RETURN OF UNUSED FUNDS.—A State  
11 that receives financial assistance under subsection  
12 (b) but does not expend those funds within 5 years  
13 of receipt of the funds shall return the unexpended  
14 funds to the Secretary.

15 “(d) ALLOCATION.—In providing financial assistance  
16 to States under subsection (b), the Secretary shall—

17 “(1) to the maximum extent practicable, allo-  
18 cate funds made available for that purpose—

19 “(A) in accordance with the formula de-  
20 scribed in section 420.11 of title 10, Code of  
21 Federal Regulations (as in effect on January 1,  
22 2021); and

23 “(B) during the fiscal year for which the  
24 allocation is made; and

1           “(2) reallocate, to the maximum extent prac-  
2           ticable, any funds returned under subsection (e)(3)  
3           in accordance with the formula described in para-  
4           graph (1)(A).

5           “(e) TECHNICAL ASSISTANCE.—On request of a  
6           State agency, the Secretary shall provide information and  
7           technical assistance in the development and implementa-  
8           tion of a State energy savings performance contracting  
9           program.

10          “(f) PROJECT FACILITATOR CERTIFICATION PRO-  
11          GRAM.—

12                 “(1) IN GENERAL.—The Secretary, in consulta-  
13                 tion with States and the private sector, shall estab-  
14                 lish a national project facilitator certification pro-  
15                 gram to expand the availability of individuals, in-  
16                 cluding State and local government employees and  
17                 independent private sector professionals, who are  
18                 trained and certified to work on behalf of a State or  
19                 local government to be project facilitators who will—

20                         “(A) ensure that a project carried out  
21                         under an energy savings performance contract  
22                         under a State energy savings performance con-  
23                         tracting program achieves the energy cost sav-  
24                         ings and performance requirements set forth in  
25                         the contract; and

1           “(B) otherwise assist with the oversight of  
2           projects described in subparagraph (A).

3           “(2) ACTIVITIES.—In carrying out the program  
4           established under paragraph (1), the Secretary  
5           may—

6           “(A) train and certify individuals as  
7           project facilitators described in paragraph (1);

8           “(B) develop model criteria for the certifi-  
9           cation and training of individuals to become  
10          project facilitators described in paragraph (1);  
11          and

12          “(C) transition, over a 4-year period, the  
13          training and certification activities of the Sec-  
14          retary described in subparagraph (A) to a non-  
15          profit entity funded with fees generated through  
16          the certification process.

17          “(g) FUNDING.—

18          “(1) AUTHORIZATION OF APPROPRIATIONS.—In  
19          addition to funds authorized to be appropriated  
20          under section 365(f), there is authorized to be ap-  
21          propriated to the Secretary to carry out this section  
22          (except for subsections (e) and (f)) \$35,000,000 for  
23          each of fiscal years 2024 through 2028.

24          “(2) AVAILABLE AMOUNTS.—Of amounts made  
25          available to carry out the programs and activities of

1 the Federal Energy Management Program of the  
2 Department of Energy each fiscal year, the Sec-  
3 retary shall use not more than \$2,000,000 each fis-  
4 cal year to carry out subsections (e) and (f).”.

5 (b) CONFORMING AMENDMENT.—Section  
6 362(d)(5)(A) of the Energy Policy and Conservation Act  
7 (42 U.S.C. 6322(d)(5)(A)) is amended by inserting “, in-  
8 cluding State energy savings performance contracting pro-  
9 grams under section 367,” after “performance contracting  
10 programs”.

11 (c) TECHNICAL AMENDMENT.—The table of contents  
12 for the Energy Policy and Conservation Act (Public Law  
13 94–163; 89 Stat. 872) is amended by inserting after the  
14 item relating to section 366 the following:

“Sec. 367. State energy savings performance contracting program expansion.”.

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