

Montana Code Annotated 2019

TITLE 90. PLANNING, RESEARCH, AND DEVELOPMENT

CHAPTER 4. ENERGY DEVELOPMENT AND CONSERVATION

Part 11. Local Government and State Agency Energy Performance Contracts

Legislative Findings And Policy

90-4-1101. Legislative findings and policy. (1) The legislature finds that:

- (a) conserving energy in public buildings and vehicles will have a beneficial effect on the overall supply of energy and can result in cost savings for taxpayers;
- (b) conserving water can result in cost savings for taxpayers; and
- (c) energy performance contracts are a means by which governmental entities can economically and expeditiously achieve energy and water conservation.

(2) It is the policy of the state of Montana to promote efficient use of energy and water resources in public buildings and energy conservation in vehicles by authorizing governmental entities to enter into energy performance contracts.

History: En. Sec. 1, Ch. 162, L. 2005; amd. Sec. 4, Ch. 439, L. 2009; amd. Sec. 8, Ch. 344, L. 2015.

Definitions

90-4-1102. Definitions. As used in this part, the following definitions apply:

(1) "Cost-effective" or "cost-effectiveness" means that the sum of guaranteed cost savings and unguaranteed energy cost savings attributable to utility unit price escalation is equal to or greater than:

- (a) the energy performance contract financing repayment obligation, if any, each year of a finance term;
- (b) the total project cost of the cost-saving measures implemented divided by 20; or
- (c) the total project cost of the cost-saving measures implemented divided by the cost-weighted average useful life of the cost-saving measures.

(2) "Cost-saving measure" means a facility improvement, repair, or alteration or equipment, fixtures, or furnishings added to or used in a facility and designed to reduce energy or water consumption or operation and maintenance costs. The term also includes vehicle acquisitions, changes to utility rate or tariff schedules, or fuel source changes that result in cost savings.

(3) "Department" means the department of environmental quality provided for in [2-15-3501](#).

(4) "Energy performance contract" means a cost-effective contract between a governmental entity and a qualified energy service provider for implementation of one or more cost-saving measures and guaranteed cost savings.

(5) "Finance term" means the length of time for repayment of funds borrowed for an energy performance contract.

(6) "Governmental entity" means:

- (a) a department, board, commission, institution, or branch of state government;
 - (b) a county, consolidated city-county government, city, town, or school district;
 - (c) a special district, as defined in [2-2-102](#);
 - (d) the university system or a unit of the university system; or
 - (e) a community college district.
- (7) "Guarantee period" means the period of time from the effective date of the contract until guaranteed cost savings are achieved in accordance with [90-4-1114\(5\)](#).
- (8) "Guaranteed cost savings" means a guaranteed annual measurable monetary reduction in utility and operating and maintenance costs for each year of a guarantee period resulting from cost-saving measures. Guaranteed cost savings for utility cost savings must be calculated using mutually agreed on baseline utility rates in use at the time of an investment-grade energy audit. Guaranteed cost savings for operation and maintenance cost savings must be calculated using mutually agreed on baseline operation and maintenance costs at the time of an investment-grade energy audit.
- (9) "Investment-grade energy audit" means a study of energy or water usage of a public building performed by a qualified energy service provider utilizing a professional engineer licensed in the state of Montana. It includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements, and the operation and maintenance cost savings and utility cost savings projected to result from the recommended improvements. The study must contain all information required pursuant to [90-4-1113\(2\)](#).
- (10) "Measurement and verification" means the methodology, measurements, inspections, and mathematical calculations to determine utility consumption before and after an energy performance contract is implemented. The measurement and verification report may be for an individual cost-saving measure or an entire project.
- (11) "Operation and maintenance cost savings" means a measurable decrease in operation and maintenance costs as a direct result of cost-saving measures calculated using baseline operation and maintenance costs. The term does not include the shifting of personnel costs or similar short-term cost savings that cannot be definitively measured.
- (12) "Person" means an individual, corporation, partnership, firm, association, cooperative, limited liability company, limited liability partnership, or any other similar entity.
- (13) "Qualified energy service provider" means a person included on the department's list of qualified energy service providers.
- (14) "Total project cost" means the total cost of the project, including costs of the investment-grade energy audit, energy performance contract, measurement and verification, and financing.
- (15) "Utility cost savings" means expenses for utilities that are eliminated or avoided on a long-term basis as a result of equipment installed or modified or services performed by a qualified energy service provider. Utility cost savings include expenses for natural gas, propane or similar fuels, electricity, water, wastewater, and waste disposal.

History: En. Sec. 2, Ch. 162, L. 2005; amd. Sec. 5, Ch. 439, L. 2009; amd. Sec. 9, Ch. 344, L. 2015; amd. Sec. 1, Ch. 311, L. 2019.

Authority To Enter Into Energy Performance Contracts

90-4-1103. Authority to enter into energy performance contracts. (1) A governmental entity may enter into an energy performance contract. A governmental entity that enters into an energy performance contract shall do so in accordance with this part.

(2) Nothing in this part prevents a governmental entity from entering into a contract that is not an energy performance contract for conservation measures under any other legal authority.

History: En. Sec. 3, Ch. 162, L. 2005; amd. Sec. 6, Ch. 439, L. 2009; amd. Sec. 10, Ch. 344, L. 2015.

Repealed

90-4-1104. Repealed. Sec. 12, Ch. 344, L. 2015.

History: En. Sec. 4, Ch. 162, L. 2005; amd. Sec. 7, Ch. 439, L. 2009.

Repealed

90-4-1105. Repealed. Sec. 12, Ch. 344, L. 2015.

History: En. Sec. 5, Ch. 162, L. 2005; amd. Sec. 8, Ch. 439, L. 2009.

Repealed

90-4-1106. Repealed. Sec. 12, Ch. 344, L. 2015.

History: En. Sec. 6, Ch. 162, L. 2005; amd. Sec. 9, Ch. 439, L. 2009.

Repealed

90-4-1107. Repealed. Sec. 12, Ch. 344, L. 2015.

History: En. Sec. 7, Ch. 162, L. 2005; amd. Sec. 10, Ch. 439, L. 2009.

Repealed

90-4-1108. Repealed. Sec. 12, Ch. 344, L. 2015.

History: En. Sec. 8, Ch. 162, L. 2005; amd. Sec. 11, Ch. 439, L. 2009.

Contracts And Agreements Not General Obligation Of Governmental Entity

90-4-1109. Contracts and agreements not general obligation of governmental entity. Except as provided in [90-4-1114](#)(1), payment obligations of a governmental entity pursuant to an energy performance contract are not general obligations of the governmental entity and are collectible only from guaranteed cost savings provided in the energy performance contract and other revenue, if any, pledged in the energy performance contract.

History: En. Sec. 9, Ch. 162, L. 2005; amd. Sec. 12, Ch. 439, L. 2009; amd. Sec. 11, Ch. 344, L. 2015.

Duties And Authority Of Department

90-4-1110. Duties and authority of department. (1) The department shall establish an energy performance contract program for governmental entities. The department shall:

(a) solicit, evaluate, and maintain a list of qualified energy service providers;

- (b) develop a process to disqualify and remove from the list energy service providers who do not comply with qualifications established;
 - (c) enter into agreements with qualified energy service providers to provide services in accordance with this part;
 - (d) establish reporting requirements for qualified energy service providers;
 - (e) develop a model energy performance contract process and documents; and
 - (f) assist governmental entities interested in pursuing energy performance contracts by providing technical assistance and educational programs and by maintaining a website.
- (2) The department may develop recommended best practices for:
- (a) evaluating energy performance proposals and awarding energy performance contracts;
 - (b) measuring and verifying guaranteed cost savings and cost-effectiveness;
 - (c) identifying a variety of options to determine the amount of project costs to be covered by guaranteed cost savings;
 - (d) calculating guaranteed cost savings;
 - (e) measuring energy cost savings and verification;
 - (f) determining the cost-effectiveness of the energy performance contract when using an unguaranteed utility unit price escalation rate; and
 - (g) determining an unguaranteed utility unit price escalation rate.
- (3) The department may adopt rules for the implementation of this part.

History: En. Sec. 1, Ch. 344, L. 2015; amd. Sec. 2, Ch. 311, L. 2019.

List Of Qualified Energy Service Providers Eligible For Energy Performance Contracts

90-4-1111. List of qualified energy service providers eligible for energy performance contracts.

- (1) At least every 5 years, the department shall issue a request for qualifications for energy service providers interested in entering into energy performance contracts with governmental entities. An energy service provider may submit qualifications to the department at any time, and the department shall review the submission for potential inclusion on its list of qualified energy service providers.
- (2) The department shall evaluate qualifications for qualified energy service providers on the basis of:
 - (a) knowledge and experience with:
 - (i) design, engineering, installation, maintenance, and repairs associated with energy performance contracts;
 - (ii) conversion to a different fuel source associated with a comprehensive energy efficiency retrofit;
 - (iii) postinstallation project monitoring, data collection, and reporting of guaranteed cost savings;
 - (iv) overall project management; and

- (v) projects of similar size and scope;
 - (b) ability to guarantee cost-effectiveness and to access long-term financing;
 - (c) financial stability; and
 - (d) other factors determined by the department.
- (3) The department shall maintain a list of qualified energy service providers who meet the requirements of subsection (2).
- (4) The department shall notify energy service providers who submitted qualifications in accordance with subsection (1) whether they meet the requirements of this part and are qualified energy service providers.

History: En. Sec. 2, Ch. 344, L. 2015.

Selection Of Qualified Energy Service Providers

90-4-1112. Selection of qualified energy service providers. (1) Before selecting an energy service provider, a governmental entity shall solicit a request for proposals from a minimum of three qualified energy service providers. The governmental entity may select the qualified energy service provider determined by the governmental entity to best meet the needs of the governmental entity. The qualified energy service provider selected is not required to have submitted the proposal with the lowest cost.

(2) In selecting a qualified energy service provider, a governmental entity shall consider:

- (a) experience with:
 - (i) design, engineering, and installation of cost-saving measures;
 - (ii) overall project management;
 - (iii) projects of similar size and scope;
 - (iv) postinstallation measurement and verification of guaranteed cost savings;
 - (v) in-state projects and Montana-based subcontractors;
 - (vi) commissioning of projects;
 - (vii) training of building operators; and
 - (viii) conversions to a different fuel source; and
- (b) quality of technical approach.

History: En. Sec. 3, Ch. 344, L. 2015; amd. Sec. 3, Ch. 311, L. 2019.

Investment-Grade Energy Audits

90-4-1113. Investment-grade energy audits. (1) The qualified energy service provider selected by a governmental entity in accordance with [90-4-1112](#) shall prepare an investment-grade energy audit. The audit must be incorporated into an energy performance contract.

(2) An investment-grade energy audit must include estimates of all costs and guaranteed cost savings for the proposed energy performance contract including:

- (a) design;
- (b) engineering;

- (c) equipment;
- (d) materials;
- (e) installation;
- (f) maintenance;
- (g) repairs;
- (h) monitoring and verification;
- (i) commissioning;
- (j) training; and
- (k) debt service.

(3) (a) A qualified energy service provider and the governmental entity shall agree on the cost of an investment-grade energy audit before it is conducted.

(b) If an investment-grade energy audit is completed and the governmental entity does not execute an energy performance contract, the governmental entity shall pay the full cost of the investment-grade energy audit.

(c) If the governmental entity executes the energy performance contract, the cost of the investment-grade energy audit may be included in the costs of an energy performance contract or, at the discretion of the governmental entity, be paid for by the governmental entity.

History: En. Sec. 4, Ch. 344, L. 2015; amd. Sec. 4, Ch. 311, L. 2019.

Energy Performance Contracts

90-4-1114. Energy performance contracts. (1) A governmental entity may pay for an energy performance contract with:

- (a) funds designated for operating costs, capital expenditures, utility costs, or lease payments;
- (b) installment payment contracts or lease purchase agreements;
- (c) bonds issued in accordance with other bonding provisions as provided by law; or
- (d) other financing through a third party, including tax-exempt financing.

(2) Utility incentives, grants, operating costs, capital budgets, or other permissible sources may be used to reduce the amount of financing.

(3) (a) An energy performance contract may extend beyond the fiscal year for which the contract is effective.

(b) An energy performance contract may not exceed 20 years, the cost-weighted average useful life of the cost-saving measure, or the term of financing, whichever is shortest.

(4) During the guarantee period, a qualified energy service provider shall:

- (a) measure and verify reductions in energy consumption and costs attributable to cost-saving measures implemented pursuant to an energy performance contract; and
- (b) not less than annually, prepare and provide a measurement and verification report to the governmental entity and to the department documenting the performance of cost-saving measures.

(5) (a) Costs for measurement and verification must be included in an energy performance contract and paid by the governmental entity during an initial monitoring period that is not less than 3 years.

(b) The energy performance contract must provide that, if guaranteed cost savings are not achieved during any year in the initial monitoring period, the qualified energy service provider shall pay the costs for measurement and verification reports until guaranteed cost savings are achieved for all years in a term of consecutive years equal to the initial monitoring period.

(6) (a) Except as provided in subsection (6)(b), the qualified energy service provider shall pay the governmental entity the amount of any verified annual guaranteed cost savings shortfall each year until guaranteed cost savings are achieved for all years in an initial monitoring period established in accordance with subsection (5). The amount of cost savings achieved during a year must be determined using the mutually agreed on baseline rates referenced in guaranteed cost savings and any unguaranteed energy cost savings attributable to utility unit price escalation rates.

(b) In the case of a shortfall, the governmental entity and qualified energy service provider may negotiate the terms of measurement and verification reports and the shortfall payment for the remainder of the energy performance contract finance term.

(c) If an excess in guaranteed cost savings in any year of the guarantee period is revealed in a measurement and verification report, the guaranteed cost savings remain with the governmental entity. Guaranteed cost savings may not be used to cover potential shortfalls in subsequent years or actual guaranteed cost savings shortages in previous years of a guarantee period.

History: En. Sec. 5, Ch. 344, L. 2015; amd. Sec. 5, Ch. 311, L. 2019.