

CHAPTER 55

AN ACT concerning energy savings improvement programs, amending various parts of the statutory law, and supplementing Title 52 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.2009, c.4 (C.18A:18A-4.6) is amended to read as follows:

C.18A:18A-4.6 Implementation of energy savings improvements program by board of education; definitions.

1. a. (1) A board of education, as defined in N.J.S.18A:18A-2, may implement an energy savings improvement program in the manner provided by this section whenever it determines that the savings generated from reduced energy use from the program will be sufficient to cover the cost of the program's energy conservation measures as set forth in an energy savings plan. Under such a program, a board of education may enter into an energy savings services contract with an energy services company to implement the program or the board may authorize separate contracts to implement the program. The provisions of N.J.S.18A:18A-1 et seq. shall apply to any contracts awarded pursuant to this section to the extent that the provisions of such law are not inconsistent with any provision of this section.

(2) A board of education facility alteration required to properly implement other energy efficiency or energy conservation measures, or both, may be included as part of an energy savings services contract, in which case, notwithstanding any other provision of law, rule, regulation, or order to the contrary, the facility alteration may be undertaken or supervised by the energy services company performing the energy savings services contract if:

(a) the total cost of the improvement does not exceed 15 percent of the total cost of the work to be performed under the energy savings services contract; and

(b) (i) the improvement is necessary to conform to a law, rule, or regulation, or order, or
(ii) an analysis within an approved proposal, or the board of education, at the time of the award of the proposal, demonstrates that there is an economic advantage to the board of education implementing the improvement as part of the energy savings services contract, and the savings rationale for the improvement is documented and supported by reasonable justification.

b. (1) To be eligible to enter into an energy savings services contract, an energy services company shall be a commercial entity that is qualified to provide energy savings services in accordance with the provisions of this section. A board of education may determine to enter into an energy savings services contract either through public advertising for bids and the receipt of bids therefor or through competitive contracting in lieu of public bidding in the manner provided by sections 45 through 49 of P.L.1999, c.440 (C.18A:18A-4.1 et seq.).

(2) (a) Public works activities performed under an energy savings improvement program shall be subject to all requirements regarding public bidding, bid security, performance guarantees, insurance and other public contracting requirements that are applicable to public works contracts, to the extent not inconsistent with this section. A general contractor, energy services company serving as general contractor, or any subcontractor hired for the furnishing of plumbing and gas fitting and all kindred work, and of steam and hot water heating and ventilating apparatus, steam power plants and kindred work, and electrical work, structural steel and ornamental iron work, shall be classified by the Division of Property Management and Construction in the Department of the Treasury in order to perform public works activities under an energy savings improvement program.

(b) Individuals or organizations performing energy audits, acting as commissioning agents, or conducting verification of energy savings plans, implementation of energy conservation measures, or verifying guarantees shall be prequalified by the Division of Property Management and Construction in the Department of the Treasury to perform their work under an energy savings improvement program.

(3) (a) An energy services company may be designated as the general contractor for improvements to be made pursuant to an energy savings plan, provided that the hiring of subcontractors that are required to be classified pursuant to subparagraph (a) of paragraph (2) of this subsection shall be performed in accordance with the procedures and requirements set forth pursuant to the public bidding requirements of the board of education. A contract with an energy savings company shall include, but not be limited to: preparation of an energy savings plan; the responsibilities of the parties for project schedules, installations, performance and quality, payment of subcontractors, project completion, commissioning, savings implementation; a requirement that the savings to be achieved by energy conservation measures be verified upon commissioning of the improvements; allocation of State and federal rebates and tax credits; and any other provisions deemed necessary by the parties.

(b) All workers performing public works activities for subcontractors awarded contracts by an energy services company pursuant to this section shall be paid prevailing wages in accordance with the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with the provisions of "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately classified as contractors by the Division of Property Management and Construction shall be eligible to be awarded a contract as a subcontractor of an energy services company under this section for performing public works activities pursuant to regulations adopted by the Division of Property Management and Construction.

(c) In order to expedite communications with an energy services company and facilitate the implementation of an energy savings improvement program, a board of education may designate or appoint an employee of the board of education with decision-making authority to coordinate with the energy services company and to address issues associated with the implementation of an energy savings improvement program as they arise, provided that any decision requiring a change order shall be made only upon the approval of the board of education.

(4) Except as provided in paragraph (5) of this subsection, a subsidiary or wholly-owned or partially-owned affiliate of the energy services company shall not be an eligible contractor or subcontractor under an energy savings services contract.

(5) When the energy services company is the manufacturer of direct digital control systems and contracts with the board of education to provide a guaranteed energy savings option pursuant to subsection f. of this section, the specification of such direct digital control systems may be treated as proprietary goods and if so treated, the bid specification shall set forth an allowance price for its supply by the energy services company which shall be used by all bidders in the public bidding process. Direct digital controls shall be open protocol format and shall meet the interoperability guidelines established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers. Each contract to be entered into pursuant to this section between a board of education and an energy services company that is the manufacturer of direct digital control systems where such direct digital control systems are treated as proprietary goods as part of the contract, shall first be reviewed and approved

by the Board of Public Utilities for the purpose of affirming the reasonableness of such allowance price. If the board does not disapprove of the contract within 14 days of receipt thereof, the contract shall be deemed approved.

c. An energy savings improvement program may be financed through a lease-purchase agreement or through the issuance of energy savings obligations pursuant to this subsection.

(1) An energy savings improvement program may be financed through a lease-purchase agreement between a board of education and an energy services company or other public or private entity. Under a lease-purchase agreement, ownership of the energy savings equipment or improved facilities shall pass to the board of education when all lease payments have been made. Notwithstanding the provisions of section 46 of P.L.1999, c.440 (C.18A:18A-4.2) or any other law to the contrary, the duration of such a lease-purchase agreement shall not exceed 15 years, except that the duration of a lease purchase agreement for a combined heat and power or cogeneration project shall not exceed 20 years. For the purposes of this paragraph, the duration of the repayment term of a lease-purchase agreement shall commence on the date upon which construction and installation of the energy savings equipment, "combined heat and power facility" or "cogeneration facility," as those terms are defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other energy conservation measures undertaken pursuant to the energy savings plan, have been completed.

(2) Any lease-purchase agreement entered into pursuant to this subsection may contain: a clause making it subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation; and a non-substitution clause maintaining that if the agreement is terminated for non-appropriation, the board of education may not replace the leased equipment or facilities with equipment or facilities that perform the same or similar functions.

(3) A board of education may arrange for incurring energy savings obligations to finance an energy savings improvement program. Energy savings obligations may be funded through appropriations for utility services in the annual budget of the board and may be issued as refunding bonds pursuant to P.L.1969, c.130 (C.18A:24-61.1 et seq.), including the issuance of bond anticipation notes as may be necessary, provided that all such bonds and notes mature within the periods authorized for such energy savings obligations. Energy savings obligations may be issued either through the board of education or another public agency authorized to undertake financing on behalf of the board.

(4) Lease-purchase agreements and energy savings obligations shall not be used to finance maintenance, guarantees, or verification of guarantees of energy conservation measures. Lease-purchase agreements and energy savings obligations may be used to finance the cost of an energy audit or the cost of verification of energy savings as part of adopting an energy savings plan. Notwithstanding any law to the contrary, lease-purchase agreements and energy savings certificates shall not be excepted from any budget or tax levy limitation otherwise provided by law. Maturity schedules of lease-purchase agreements or energy savings obligations shall not exceed the estimated average useful life of the energy conservation measures.

d. (1) The energy audit component of an energy savings improvement program shall be conducted either by the board of education or by a qualified third party retained by the board for that purpose. It shall not be conducted by an energy services company subsequently hired to develop an energy savings improvement program. The energy audit shall identify the current energy use of any or all facilities and energy conservation measures that can be

implemented in which the energy savings and energy efficiency could be realized and maximized.

(2) To implement an energy savings improvement program, a board of education shall develop an energy savings plan that consists of one or more energy conservation measures. The plan shall:

- (a) contain the results of an energy audit;
- (b) describe the energy conservation measures that will comprise the program;
- (c) estimate greenhouse gas reductions resulting from those energy savings;
- (d) identify all design and compliance issues that require the professional services of an architect or engineer and identify who will provide these services;
- (e) include an assessment of risks involved in the successful implementation of the plan;
- (f) identify the eligibility for, and costs and revenues associated with the PJM Independent System Operator for demand response and curtailable service activities;
- (g) include schedules showing calculations of all costs of implementing the proposed energy conservation measures and the projected energy savings;
- (h) identify maintenance requirements necessary to ensure continued energy savings, and describe how they will be fulfilled; and
- (i) if developed by an energy services company, a description of, and cost estimates of an energy savings guarantee.

All professionals providing engineering services under the plan shall have errors and omissions insurance.

(3) Prior to the adoption of the plan by the governing body, the board of education shall contract with a qualified third party to verify the projected energy savings to be realized from the proposed program have been calculated as required by subsection e. of this section.

(4) Upon adoption, the plan shall be submitted to the Board of Public Utilities, which shall post it on the Internet on a public webpage maintained for such purpose. If the board of education maintains its own website, it shall also post the plan on that site. The Board of Public Utilities may require periodic reporting concerning the implementation of the plan.

(5) Verification by a qualified third party shall be required when energy conservation measures are placed in service or commissioned, to ensure the savings projected in the energy savings plan shall be achieved.

(6) Energy-related capital improvements that do not reduce energy usage may be included in an energy savings improvement program but the cost of such improvements shall not be financed as a lease-purchase or through energy savings obligations authorized by subsection c. of this section. Nothing herein is intended to prevent financing of such capital improvements through otherwise authorized means.

(7) A qualified third party when required by this subsection may include an employee of the board of education who is properly trained and qualified to perform such work.

e. (1) (a) The calculation of energy savings for the purposes of determining that the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures, as provided in subsection a. of this section, shall involve determination of the dollar amount saved through implementation of an energy savings improvement program using the guidelines of the International Performance Measurement and Verification Protocol or other protocols approved by the Board of Public Utilities and standards adopted by the Board of Public Utilities pursuant to this section. The calculation shall include all applicable State and federal rebates and tax credits, but shall not include the cost of an energy audit and the cost of verifying energy savings. The calculation shall state

which party has made application for rebates and credits and how these applications translate into energy savings.

(b) During the procurement phase of an energy savings improvement program, an energy services company's proposal submitted in response to a request for proposal shall not include a savings calculation that assumes, includes, or references capital cost avoidance savings, the current or projected value of a "solar renewable energy certificate," as defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other environmental or similar attributes or benefits of whatever nature that derive from the generation of renewable energy, and any costs or discounts associated with maintenance services, an energy savings guarantee, or third party verification of energy conservation measures and energy savings. The calculation of energy savings shall utilize and specifically reference as a benchmark the actual demand and energy components of the public utility tariff rate applicable to the board of education then in effect, and not a blended rate that aggregates, combines, or restates in any manner the distinct demand and energy components of the public utility tariff rate into a single combined or restated tariff rate. If an energy services company submits a proposal to a board of education that does not calculate projected energy savings in the manner required by this subsection, such proposal shall be rejected by the board of education.

(2) For the purposes of this section, the Board of Public Utilities shall adopt standards and uniform values for interest rates and escalation of labor, electricity, oil, and gas, as well as standards for presenting these costs in a life cycle and net present value format, standards for the presentation of obligations for carbon reductions, and other standards that the board may determine necessary.

f. (1) When an energy services company is awarded an energy savings services contract, it shall offer the board of education the option to purchase, for an additional amount, an energy savings guarantee. The guarantee, if accepted by a separate vote of the board of education, shall insure that the energy savings resulting from the energy savings improvement program, determined periodically over the duration of the guarantee, will be sufficient to defray all payments required to be made pursuant to the lease-purchase agreement or energy savings obligation, and if the savings are not sufficient, the energy services company will reimburse the board for any additional amounts. Annual costs of a guarantee shall not be financed or included as costs in an energy savings plan but shall be fully disclosed in an energy savings plan.

(2) When a guaranteed energy savings option is purchased, the contract shall require a qualified third party to verify the energy savings at intervals established by the parties.

(3) When an energy services company is awarded an energy savings services contract to provide or perform goods or services for the purpose of enabling a board of education to conserve energy through energy efficiency equipment, including a "combined heat and power facility" as that term is defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract shall extend for a term of up to 15 years for energy efficiency projects, and for up to 20 years for a combined heat and power facility after construction completion. If a board of education shall elect to contract with an energy services company for an energy savings guarantee in connection with a contract awarded pursuant to this section, such guarantee may extend for a term of up to 15 years for energy efficiency projects, or up to 20 years for a combined heat and power facility after construction completion.

g. As used in this section:

"direct digital control systems" means the devices and computerized control equipment that contain software and computer interfaces that perform the logic that control a building's heating, ventilating, and air conditioning system. Direct digital controls shall be open protocol format and shall meet the interoperability guidelines established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers;

"energy conservation measure" means an improvement that results in reduced energy use, including, but not limited to, installation of energy efficient equipment; demand response equipment; combined heat and power systems; facilities for the production of renewable energy; water conservation measures, fixtures or facilities; building envelope improvements that are part of an energy savings improvement program; and related control systems for each of the foregoing;

"energy related capital improvement" means a capital improvement that uses energy but does not result in a reduction of energy use;

"energy saving obligation" means a bond, note or other agreement evidencing the obligation to repay borrowed funds incurred in order to finance energy saving improvements;

"energy savings" means a measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of one or more energy conservation measures services when compared with an established baseline of previous fuel, energy, operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed as part of an energy savings plan;

"energy savings improvement program" means an initiative of a board of education to implement energy conservation measures in existing facilities, provided that the value of the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures;

"energy savings plan" means the document that describes the actions to be taken to implement the energy savings improvement program;

"energy savings services contract" means a contract with an energy savings company to develop an energy savings plan, prepare bid specifications, manage the performance, provision, construction, and installation of energy conservation measures by subcontractors, to offer a guarantee of energy savings derived from the implementation of an energy savings plan, and may include a provision to manage the bidding process;

"energy services company" means a commercial entity that is qualified to develop and implement an energy savings plan in accordance with the provisions of this section;

"public works activities" means any work subject to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

"water conservation measure" means an alteration to a facility or equipment that reduces water consumption, maximizes the efficiency of water use, or reduces water loss.

h. (1) The Director of the Division of Local Government Services in the Department of Community Affairs, the State Treasurer, and the Board of Public Utilities may take such action as is deemed necessary and consistent with the intent of this section to implement its provisions.

(2) The Director of the Division of Local Government Services in the Department of Community Affairs, the State Treasurer and the Board of Public Utilities may adopt implementation guidelines or directives, and adopt such administrative rules, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the implementation of those agencies' respective responsibilities under this section, except

that notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Director of the Division of Local Government Services in the Department of Community Affairs, the State Treasurer, and the Board of Public Utilities may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as deemed necessary to implement the provisions of this act which shall be effective for a period not to exceed 12 months and shall thereafter be amended, adopted or re-adopted in accordance with the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

2. Section 4 of P.L.2009, c.4 (C.18A:65A-1) is amended to read as follows:

C.18A:65A-1 Implementation of energy savings improvement program by public institution of higher education; definitions.

4. a. (1) The board of trustees of a public institution of higher education may implement an energy savings improvement program in the manner provided by this section whenever it determines that the savings generated from reduced energy use from the program will be sufficient to cover the cost of the program's energy conservation measures as set forth in an energy savings plan. Under such a program, a board of trustees may enter into an energy savings services contract with an energy services company to implement the program or the board may authorize separate contracts to implement the program. The provisions of: N.J.S.18A:64-1 et seq., in the case of any State college; P.L.1995, c.400 (C.18A:64E-12 et seq.), in the case of the New Jersey Institute of Technology; N.J.S.18A:65-1 et seq., in the case of Rutgers, the State University; P.L.2012, c.45 (C.18A:64M-1 et al.), in the case of Rowan University; and N.J.S.18A:64A-1 et seq., in the case of the county colleges; shall apply to any contracts awarded pursuant to this section to the extent that the provisions of such law are not inconsistent with any provision of this section.

In the case of Rutgers, the State University, references in this section to the board of trustees shall mean the Rutgers board of governors.

(2) An educational facility alteration required to properly implement other energy efficiency or energy conservation measures, or both, may be included as part of an energy savings services contract, in which case, notwithstanding any other provision of law, rule, regulation, or order to the contrary, the facility alteration may be undertaken or supervised by the energy services company performing the energy savings services contract if:

(a) the total cost of the improvement does not exceed 15 percent of the total cost of the work to be performed under the energy savings services contract; and

(b) (i) the improvement is necessary to conform to a law, rule, or regulation, or order, or (ii) an analysis within an approved proposal, or the board of trustees, at the time of the award of the proposal, demonstrates that there is an economic advantage to the board of trustees implementing the improvement as part of the energy savings services contract, and the savings rationale for the improvement is documented and supported by reasonable justification.

b. (1) To be eligible to enter into an energy savings services contract, an energy services company shall be a commercial entity that is qualified to provide energy savings services in accordance with the provisions of this section. A public institution of higher education may enter into an energy savings services contract through public advertising for bids and the receipt of bids therefor.

(2) (a) Public works activities performed under an energy savings improvement program shall be subject to all requirements regarding public bidding, bid security, performance

guarantees, insurance and other public contracting requirements that are applicable to public works contracts, to the extent not inconsistent with this section. A general contractor, energy services company serving as general contractor, or any subcontractor hired for the furnishing of plumbing and gas fitting and all kindred work, and of steam and hot water heating and ventilating apparatus, steam power plants and kindred work, and electrical work, structural steel and ornamental iron work, shall be classified by the Division of Property Management and Construction in the Department of the Treasury in order to perform public works activities under an energy savings improvement program.

(b) Individuals or organizations performing energy audits, acting as commissioning agents, or conducting verification of energy savings plans, implementation of energy conservation measures, or verifying guarantees shall be prequalified by the Division of Property Management and Construction in the Department of the Treasury to perform their work under an energy savings improvement program.

(c) Where there is a need for compatibility of a direct digital control system with previously installed control systems and equipment, the bid specifications may include a requirement for proprietary goods, and if so included, the bid specification shall set forth an allowance price for its supply which shall be used by all bidders in the public bidding process.

(3) (a) An energy services company may be designated as the general contractor for improvements to be made pursuant to an energy savings plan, provided that the hiring of subcontractors that are required to be classified pursuant to subparagraph (a) of paragraph (2) of this subsection shall be performed in accordance with the procedures and requirements set forth pursuant to the public bidding requirements of the board of trustees. A contract with an energy savings company shall include, but not be limited to: preparation of an energy savings plan; the responsibilities of the parties for project schedules, installations, performance and quality, payment of subcontractors, project completion, commissioning, savings implementation; a requirement that the savings to be achieved by energy conservation measures be verified upon commissioning of the improvements; allocation of State and federal rebates and tax credits; and any other provisions deemed necessary by the parties.

(b) All workers performing public works activities for subcontractors awarded contracts by an energy services company pursuant to this section shall be paid prevailing wages in accordance with the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with the provisions of "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately classified as contractors by the Division of Property Management and Construction shall be eligible to be awarded a contract as a subcontractor of an energy services company under this section for performing public works activities pursuant to regulations adopted by the Division of Property Management and Construction.

(c) In order to expedite communications with an energy services company and facilitate the implementation of an energy savings improvement program, a board of trustees may designate or appoint an employee of the public institution of higher education with decision-making authority to coordinate with the energy services company and to address issues associated with the implementation of an energy savings improvement program as they arise, provided that any decision requiring a change order shall be made only upon the approval of the board of trustees of the public institution of higher education.

(4) A subsidiary or wholly-owned or partially-owned affiliate of the energy services company shall not be an eligible contractor or subcontractor under an energy savings services contract.

c. An energy savings improvement program may be financed through a lease-purchase agreement or through the issuance of energy savings obligations pursuant to this subsection.

(1) An energy savings improvement program may be financed through a lease-purchase agreement between a board of trustees and an energy services company or other public or private entity. Under a lease-purchase agreement, ownership of the energy savings equipment or improved facilities shall pass to the board of trustees when all lease payments have been made. Notwithstanding the provisions of any other law to the contrary, the duration of such a lease-purchase agreement shall not exceed 15 years, except that the duration of a lease purchase agreement for a combined heat and power or cogeneration project shall not exceed 20 years. For the purposes of this paragraph, the duration of the repayment term of a lease-purchase agreement shall commence on the date upon which construction and installation of the energy savings equipment, "combined heat and power facility" or "cogeneration facility," as those terms are defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other energy conservation measures undertaken pursuant to the energy savings plan, have been completed.

(2) Any lease-purchase or other agreement entered into in connection with an energy savings improvement program may be a general obligation of the public institution of higher education pursuant to this subsection, and may contain: a clause making it subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation; and a non-substitution clause maintaining that if the agreement is terminated for non-appropriation, the board of trustees may not replace the leased equipment or facilities with equipment or facilities that perform the same or similar functions.

(3) A board of trustees may arrange for incurring energy savings obligations to finance an energy savings improvement program and may enter into any agreement with the New Jersey Educational Facilities Authority or other persons in connection with the issuance by the authority of its obligations on behalf of the public institution of higher education in order to finance the institution's energy savings improvement program. Energy savings obligations may be funded through appropriations for utility services in the annual budget of the board, or incurred as a general obligation of the public institution of higher education in connection with the issuance by the New Jersey Educational Facilities Authority of bonds or notes pursuant to N.J.S.18A:72A-2 et seq., or, in the case of a county college, by a sponsoring county as a refunding bond pursuant to N.J.S.40A:2-52 et seq., including the issuance of bond anticipation notes as may be necessary, provided that all such bonds and notes mature within the periods authorized for such energy savings obligations.

(4) Lease-purchase agreements and energy savings obligations shall not be used to finance maintenance, guarantees, or verification of guarantees of energy conservation measures. Lease-purchase agreements and energy savings obligations may be used to finance the cost of an energy audit or the cost of verification of energy savings as part of adopting an energy savings plan. Maturity schedules of lease-purchase agreements or energy savings obligations shall not exceed the estimated average useful life of the energy conservation measures.

d. (1) The energy audit component of an energy savings improvement program shall be conducted either by the board of trustees or by a qualified third party retained by the board for that purpose. It shall not be conducted by an energy services company subsequently

hired to develop an energy savings improvement program. The energy audit shall identify the current energy use of any or all facilities and energy conservation measures that can be implemented in which the energy savings and energy efficiency could be realized and maximized.

(2) To implement an energy savings improvement program, a board of trustees shall develop an energy savings plan that consists of one or more energy conservation measures. The plan shall:

- (a) contain the results of an energy audit;
- (b) describe the energy conservation measures that will comprise the program;
- (c) estimate greenhouse gas reductions resulting from those energy savings;
- (d) identify all design and compliance issues that require the professional services of an architect or engineer and identify who will provide these services;
- (e) include an assessment of risks involved in the successful implementation of the plan;
- (f) identify the eligibility for, and costs and revenues associated with the PJM Independent System Operator for demand response and curtailable service activities;
- (g) include schedules showing calculations of all costs of implementing the proposed energy conservation measures and the projected energy savings;
- (h) identify maintenance requirements necessary to ensure continued energy savings, and describe how they will be fulfilled; and
- (i) if developed by an energy services company, a description of, and cost estimates of an energy savings guarantee.

All professionals providing engineering services under the plan shall have errors and omissions insurance.

(3) Prior to the adoption of the plan, the board of trustees shall contract with a qualified third party to verify the projected energy savings to be realized from the proposed program have been calculated as required by subsection e. of this section.

(4) Upon adoption, the plan shall be submitted to the Board of Public Utilities, which shall post it on the Internet on a public webpage maintained for such purpose. If the board of trustees maintains its own website, it shall also post the plan on that site. The Board of Public Utilities may require periodic reporting concerning the implementation of the plan.

(5) Verification by a qualified third party shall be required when energy conservation measures are placed in service or commissioned, to ensure the savings projected in the energy savings plan shall be achieved.

(6) Energy-related capital improvements that do not reduce energy usage may be included in an energy savings improvement program but the cost of such improvements shall not be financed as a lease-purchase or through energy savings obligations authorized by subsection c. of this section. Nothing herein is intended to prevent the financing of such capital improvements through otherwise authorized means.

(7) A qualified third party when required by this subsection may include an employee of the public institution of higher education who is properly trained and qualified to perform such work.

e. (1) (a) The calculation of energy savings for the purposes of determining that the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures, as provided in subsection a. of this section, shall involve determination of the dollar amount saved through implementation of an energy savings improvement program using the guidelines of the International Performance Measurement and Verification Protocol or other protocols approved by the Board of Public Utilities and

standards adopted by the Board of Public Utilities pursuant to this section. The calculation shall include all applicable State and federal rebates and tax credits, but shall not include the cost of an energy audit and the cost of verifying energy savings. The calculation shall state which party has made application for rebates and credits and how these applications translate into energy savings.

(b) During the procurement phase of an energy savings improvement program, an energy services company's proposal submitted in response to a request for proposal shall not include a savings calculation that assumes, includes, or references capital cost avoidance savings, the current or projected value of a "solar renewable energy certificate," as defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other environmental or similar attributes or benefits of whatever nature that derive from the generation of renewable energy, and any costs or discounts associated with maintenance services, an energy savings guarantee, or third party verification of energy conservation measures and energy savings. The calculation of energy savings shall utilize and specifically reference as a benchmark the actual demand and energy components of the public utility tariff rate applicable to the board of trustees then in effect, and not a blended rate that aggregates, combines, or restates in any manner the distinct demand and energy components of the public utility tariff rate into a single combined or restated tariff rate. If an energy services company submits a proposal to a board of trustees that does not calculate projected energy savings in the manner required by this subsection, such proposal shall be rejected by the board of trustees.

(2) For the purposes of this section, the Board of Public Utilities shall adopt standards and uniform values for interest rates and escalation of labor, electricity, oil, and gas, as well as standards for presenting these costs in a life cycle and net present value format, standards for the presentation of obligations for carbon reductions, and other standards that the board may determine necessary.

f. (1) When an energy services company is awarded an energy savings services contract, it shall offer the board of trustees the option to purchase, for an additional amount, an energy savings guarantee. The guarantee, if accepted by a separate vote of the board of trustees, shall insure that the energy savings resulting from the energy savings improvement program, determined periodically over the duration of the guarantee, will be sufficient to defray all payments required to be made pursuant to the lease-purchase agreement or energy savings obligation, and if the savings are not sufficient, the energy services company will reimburse the board of trustees for any additional amounts. Annual costs of a guarantee shall not be financed or included as costs in an energy savings plan but shall be fully disclosed in an energy savings plan.

(2) When a guaranteed energy savings option is purchased, the contract shall require a qualified third party to verify the energy savings at intervals established by the parties.

(3) When an energy services company is awarded an energy savings services contract to provide or perform goods or services for the purpose of enabling a board of trustees to conserve energy through energy efficiency equipment, including a "combined heat and power facility" as that term is defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract shall extend for a term of up to 15 years for energy efficiency projects, and for up to 20 years for a combined heat and power facility after construction completion. If a board of trustees shall elect to contract with an energy services company for an energy savings guarantee in connection with a contract awarded pursuant to this section, such guarantee may extend for a term of up to 15 years for energy efficiency

projects, or up to 20 years for a combined heat and power facility after construction completion.

g. As used in this section:

"direct digital control systems" means the devices and computerized control equipment that contain software and computer interfaces that perform the logic that control a building's heating, ventilating, and air conditioning system. Direct digital controls shall be open protocol format and shall meet the interoperability guidelines established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers;

"educational facility" means a structure suitable for use as a dormitory, dining hall, student union, administrative building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, teaching hospital, and parking, maintenance, storage or utility facility or energy conservation measures and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher education, and public libraries, and the necessary and usual attendant and related facilities and equipment, but shall not include any facility used or to be used for sectarian instruction or as a place for religious worship;

"energy conservation measure" means an improvement that results in reduced energy use, including, but not limited to, installation of energy efficient equipment; demand response equipment; combined heat and power systems; facilities for the production of renewable energy; water conservation measures, fixtures or facilities; building envelope improvements that are part of an energy savings improvement program; and related control systems for each of the foregoing;

"energy related capital improvement" means a capital improvement that uses energy but does not result in a reduction of energy use;

"energy saving obligation" means a bond, note or other agreement evidencing the obligation to repay borrowed funds incurred in order to finance energy saving improvements;

"energy savings" means a measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of one or more energy conservation measures services when compared with an established baseline of previous fuel, energy, operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed as part of an energy savings plan;

"energy savings improvement program" means an initiative of a public institution of higher education to implement energy conservation measures in existing facilities, provided that the value of the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures;

"energy savings plan" means the document that describes the actions to be taken to implement the energy savings improvement program;

"energy savings services contract" means a contract with an energy savings company to develop an energy savings plan, prepare bid specifications, manage the performance, provision, construction, and installation of energy conservation measures by subcontractors, to offer a guarantee of energy savings derived from the implementation of an energy savings plan, and may include a provision to manage the bidding process;

"energy services company" means a commercial entity that is qualified to develop and implement an energy savings plan in accordance with the provisions of this section;

"public works activities" means any work subject to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

"water conservation measure" means an alteration to a facility or equipment that reduces water consumption, maximizes the efficiency of water use, or reduces water loss.

h. (1) The State Treasurer and the Board of Public Utilities may take such action as is deemed necessary and consistent with the intent of this section to implement its provisions.

(2) The State Treasurer and the Board of Public Utilities may adopt implementation guidelines or directives, and adopt such administrative rules, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the implementation of those agencies' respective responsibilities under this section, except that notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the State Treasurer and the Board of Public Utilities may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as deemed necessary to implement the provisions of this act which shall be effective for a period not to exceed 12 months and shall thereafter be amended, adopted or re-adopted in accordance with the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

3. Section 6 of P.L.2009, c.4 (C.40A:11-4.6) is amended to read as follows:

C.40A:11-4.6 Implementation of energy savings improvement program by contracting unit; definitions.

6. a. (1) A contracting unit, as defined in P.L.1971, c.198 (C.40A:11-1 et seq.), may implement an energy savings improvement program in the manner provided by this section whenever it determines that the savings generated from reduced energy use from the program will be sufficient to cover the cost of the program's energy conservation measures as set forth in an energy savings plan. Under such a program, a contracting unit may enter into an energy savings services contract with an energy services company to implement the program or the contracting unit may authorize separate contracts to implement the program. The provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) shall apply to any contracts awarded pursuant to this section to the extent that the provisions of such law are not inconsistent with any provision of this section.

(2) A contracting unit facility alteration required to properly implement other energy efficiency or energy conservation measures, or both, may be included as part of an energy savings services contract, in which case, notwithstanding any other provision of law, rule, regulation, or order to the contrary, the facility alteration may be undertaken or supervised by the energy services company performing the energy savings services contract if:

(a) the total cost of the improvement does not exceed 15 percent of the total cost of the work to be performed under the energy savings services contract; and

(b) (i) the improvement is necessary to conform to a law, rule, or regulation, or order, or (ii) an analysis within an approved proposal, or the contracting unit, at the time of the award of the proposal, demonstrates that there is an economic advantage to the contracting unit implementing the improvement as part of the energy savings services contract, and the savings rationale for the improvement is documented and supported by reasonable justification.

b. (1) To be eligible to enter into an energy savings services contract, an energy services company shall be a commercial entity that is qualified to provide energy savings services in accordance with the provisions of this section. A contracting unit may determine to enter

into an energy savings services contract either through public advertising for bids and the receipt of bids therefor or through competitive contracting in lieu of public bidding in the manner provided by sections 1 through 5 of P.L.1999, c.440 (C.40A:11-4.1 et seq.).

(2) (a) Public works activities performed under an energy savings improvement program shall be subject to all requirements regarding public bidding, bid security, performance guarantees, insurance and other public contracting requirements that are applicable to public works contracts, to the extent not inconsistent with this section. A general contractor, energy services company serving as general contractor, or any subcontractor hired for the furnishing of plumbing and gas fitting and all kindred work, and of steam and hot water heating and ventilating apparatus, steam power plants and kindred work, and electrical work, structural steel and ornamental iron work, shall be classified by the Division of Property Management and Construction in the Department of the Treasury in order to perform public works activities under an energy savings improvement program.

(b) Individuals or organizations performing energy audits, acting as commissioning agents, or conducting verification of energy savings plans, implementation of energy conservation measures, or verifying guarantees shall be prequalified by the Division of Property Management and Construction in the Department of the Treasury to perform their work under an energy savings improvement program.

(3) (a) An energy services company may be designated as the general contractor for improvements to be made pursuant to an energy savings plan, provided that the hiring of subcontractors that are required to be classified pursuant to subparagraph (a) of paragraph (2) of this subsection shall be performed in accordance with the procedures and requirements set forth pursuant to the public bidding requirements of the contracting unit. A contract with an energy savings company shall include, but not be limited to: preparation of an energy savings plan; the responsibilities of the parties for project schedules, installations, performance and quality, payment of subcontractors, project completion, commissioning, savings implementation; a requirement that the savings to be achieved by energy conservation measures be verified upon commissioning of the improvements; allocation of State and federal rebates and tax credits; and any other provisions deemed necessary by the parties.

(b) All workers performing public works activities for subcontractors awarded contracts by an energy services company pursuant to this section shall be paid prevailing wages in accordance with the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with the provisions of "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately classified as contractors by the Division of Property Management and Construction shall be eligible to be awarded a contract as a subcontractor of an energy services company under this section for performing public works activities pursuant to regulations adopted by the Division of Property Management and Construction.

(c) In order to expedite communications with an energy services company and facilitate the implementation of an energy savings improvement program, a contracting unit may designate or appoint an employee of the contracting unit with decision-making authority to coordinate with the energy services company and to address issues associated with the implementation of an energy savings improvement program as they arise, provided that any decision requiring a change order shall be made only upon the approval of the contracting unit.

(4) Except as provided in paragraph (5) of this subsection, a subsidiary or wholly-owned or partially-owned affiliate of the energy services company shall not be an eligible contractor or subcontractor under an energy savings services contract.

(5) When the energy services company is the manufacturer of direct digital control systems and contracts with the contracting unit to provide a guaranteed energy savings option pursuant to subsection f. of this section, the specification of such direct digital control systems may be treated as proprietary goods and if so treated, the bid specification shall set forth an allowance price for its supply by the energy services company which shall be used by all bidders in the public bidding process. Direct digital controls shall be open protocol format and shall meet the interoperability guidelines established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers. Each contract to be entered into pursuant to this section between a contracting unit and an energy services company that is the manufacturer of direct digital control systems where such direct digital control systems are treated as proprietary goods as part of the contract, shall first be reviewed and approved by the Board of Public Utilities for the purpose of affirming the reasonableness of such allowance price. If the board does not disapprove of the contract within 14 days of receipt thereof, the contract shall be deemed approved.

c. An energy savings improvement program may be financed through a lease-purchase agreement or through the issuance of energy savings obligations pursuant to this subsection.

(1) An energy savings improvement program may be financed through a lease-purchase agreement between a contracting unit and an energy services company or other public or private entity. Under a lease-purchase agreement, ownership of the energy savings equipment or improved facilities shall pass to the contracting unit when all lease payments have been made. Notwithstanding the provisions of any other law to the contrary, the duration of such a lease-purchase agreement shall not exceed 15 years, except that the duration of a lease purchase agreement for a combined heat and power or cogeneration project shall not exceed 20 years. For the purposes of this paragraph, the duration of the repayment term of a lease-purchase agreement shall commence on the date upon which construction and installation of the energy savings equipment, "combined heat and power facility" or "cogeneration facility," as those terms are defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other energy conservation measures undertaken pursuant to the energy savings plan, have been completed.

(2) Any lease-purchase agreement entered into pursuant to this subsection, may contain: a clause making it subject to the availability and appropriation annually of sufficient funds as may be required to meet the extended obligation; and a non-substitution clause maintaining that if the agreement is terminated for non-appropriation, the contracting unit may not replace the leased equipment or facilities with equipment or facilities that perform the same or similar functions.

(3) A contracting unit may arrange for incurring energy savings obligations to finance an energy savings improvement program. Energy savings obligations may be funded through appropriations for utility services in the annual budget of the contracting unit and may be issued as refunding bonds pursuant to N.J.S.40A:2-52 et seq., including the issuance of bond anticipation notes as may be necessary, provided that all such bonds and notes mature within the periods authorized for such energy savings obligations. Energy savings obligations may be issued either through the contracting unit or another public agency authorized to undertake financing on behalf of the unit.

(4) Lease-purchase agreements and energy savings obligations shall not be used to finance maintenance, guarantees, or verification of guarantees of energy conservation measures. Lease-purchase agreements and energy savings obligations may be used to finance the cost of an energy audit or the cost of verification of energy savings as part of adopting an energy savings plan. Notwithstanding any law to the contrary, lease-purchase agreements and energy savings certificates shall not be excepted from any budget or tax levy limitation otherwise provided by law. Maturity schedules of lease-purchase agreements or energy savings obligations shall not exceed the estimated average useful life of the energy conservation measures.

d. (1) The energy audit component of an energy savings improvement program shall be conducted either by the contracting unit or by a qualified independent third party retained by the governing body for that purpose. It shall not be conducted by an energy services company subsequently hired to develop an energy savings improvement program. The energy audit shall identify the current energy use of any or all facilities and energy conservation measures that can be implemented in which the energy savings and energy efficiency could be realized and maximized.

(2) To implement an energy savings improvement program, a contracting unit shall develop a plan that consists of one or more energy conservation measures. The plan shall:

- (a) contain the results of an energy audit;
- (b) describe the energy conservation measures that will comprise the program;
- (c) estimate greenhouse gas reductions resulting from those energy savings;
- (d) identify all design and compliance issues that require the professional services of an architect or engineer and identify who will provide these services;
- (e) include an assessment of risks involved in the successful implementation of the plan;
- (f) identify the eligibility for, and costs and revenues associated with the PJM Independent System Operator for demand response and curtailable service activities;
- (g) include schedules showing calculations of all costs of implementing the proposed energy conservation measures and the projected energy savings;
- (h) identify maintenance requirements necessary to ensure continued energy savings, and describe how they will be fulfilled; and
- (i) if developed by an energy services company, a description of, and cost estimates of an energy savings guarantee.

All professionals providing engineering services under the plan shall have errors and omissions insurance.

(3) Prior to the adoption of the plan, the contracting unit shall contract with a qualified third party to verify the projected energy savings to be realized from the proposed program have been calculated as required by subsection e. of this section.

(4) Upon adoption, the plan shall be submitted to the Board of Public Utilities, which shall post it on the Internet on a public webpage maintained for such purpose. If the contracting unit maintains its own website, it shall also post the plan on that site. The board may require periodic reporting concerning the implementation of the plan.

(5) Verification by a qualified third party shall be required when energy conservation measures are placed in service or commissioned, to ensure the savings projected in the energy savings plan shall be achieved.

(6) Energy-related capital improvements that do not reduce energy usage may be included in an energy savings improvement program but the cost of such improvements shall not be financed as a lease-purchase or through energy savings obligations authorized by

subsection c. of this section. Nothing herein is intended to prevent financing of such capital improvements through otherwise authorized means.

(7) A qualified third party when required by this subsection may include an employee of the contracting unit who is properly trained and qualified to perform such work.

e. (1) (a) The calculation of energy savings for the purposes of determining that the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures, as provided in subsection a. of this section, shall involve determination of the dollar amount saved through implementation of an energy savings improvement program using the guidelines of the International Performance Measurement and Verification Protocol or other protocols approved by the Board of Public Utilities and standards adopted by the Board of Public Utilities pursuant to this section. The calculation shall include all applicable State and federal rebates and tax credits, but shall not include the cost of an energy audit and the cost of verifying energy savings. The calculation shall state which party has made application for rebates and credits and how these applications translate into energy savings.

(b) During the procurement phase of an energy savings improvement program, an energy services company's proposal submitted in response to a request for proposal shall not include a savings calculation that assumes, includes, or references capital cost avoidance savings, the current or projected value of a "solar renewable energy certificate," as defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other environmental or similar attributes or benefits of whatever nature that derive from the generation of renewable energy, and any costs or discounts associated with maintenance services, an energy savings guarantee, or third party verification of energy conservation measures and energy savings. The calculation of energy savings shall utilize and specifically reference as a benchmark the actual demand and energy components of the public utility tariff rate applicable to the contracting unit then in effect, and not a blended rate that aggregates, combines, or restates in any manner the distinct demand and energy components of the public utility tariff rate into a single combined or restated tariff rate. If an energy services company submits a proposal to a contracting unit that does not calculate projected energy savings in the manner required by this subsection, such proposal shall be rejected by the contracting unit.

(2) For the purposes of this section, the Board of Public Utilities shall adopt standards and uniform values for interest rates and escalation of labor, electricity, oil, and gas, as well as standards for presenting these costs in a life cycle and net present value format, standards for the presentation of obligations for carbon reductions, and other standards that the board may determine necessary.

f. (1) When an energy services company is awarded an energy savings services contract, it shall offer the contracting unit the option to purchase, for an additional amount, an energy savings guarantee. The guarantee, if accepted by a separate vote of the governing body of the contracting unit, shall insure that the energy savings resulting from the energy savings improvement program, determined periodically over the duration of the guarantee, will be sufficient to defray all payments required to be made pursuant to the lease-purchase agreement or energy savings obligation, and if the savings are not sufficient, the energy services company will reimburse the contracting unit for any additional amounts. Annual costs of a guarantee shall not be financed or included as costs in an energy savings plan but shall be fully disclosed in an energy savings plan.

(2) When a guaranteed energy savings option is purchased, the contract shall require a qualified third party to verify the energy savings at intervals established by the parties.

(3) When an energy services company is awarded an energy savings services contract to provide or perform goods or services for the purpose of enabling a contracting unit to conserve energy through energy efficiency equipment, including a “combined heat and power facility” as that term is defined pursuant to section 3 of P.L.1999, c.23 (C48:3-51), on a self-funded basis, such contract shall extend for a term of up to 15 years for energy efficiency projects, and for up to 20 years for a combined heat and power facility after construction completion. If a contracting unit shall elect to contract with an energy services company for an energy savings guarantee in connection with a contract awarded pursuant to this section, such guarantee may extend for a term of up to 15 years for energy efficiency projects, or up to 20 years for a combined heat and power facility after construction completion.

g. As used in this section:

"direct digital control systems" means the devices and computerized control equipment that contain software and computer interfaces that perform the logic that control a building's heating, ventilating, and air conditioning system. Direct digital controls shall be open protocol format and shall meet the interoperability guidelines established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers;

"energy conservation measure" means an improvement that results in reduced energy use, including, but not limited to, installation of energy efficient equipment; demand response equipment; combined heat and power systems; facilities for the production of renewable energy; water conservation measures, fixtures or facilities; building envelope improvements that are part of an energy savings improvement program; and related control systems for each of the foregoing;

"energy related capital improvement" means a capital improvement that uses energy but does not result in a reduction of energy use;

"energy saving obligation" means a bond, note or other agreement evidencing the obligation to repay borrowed funds incurred in order to finance energy saving improvements;

"energy savings" means a measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of one or more energy conservation measures services when compared with an established baseline of previous fuel, energy, operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed as part of an energy savings plan;

"energy savings improvement program" means an initiative of a contracting unit to implement energy conservation measures in existing facilities, provided that the value of the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures;

"energy savings plan" means the document that describes the actions to be taken to implement the energy savings improvement program;

"energy savings services contract" means a contract with an energy savings company to develop an energy savings plan, prepare bid specifications, manage the performance, provision, construction, and installation of energy conservation measures by subcontractors, to offer a guarantee of energy savings derived from the implementation of an energy savings plan, and may include a provision to manage the bidding process;

"energy services company" means a commercial entity that is qualified to develop and implement an energy savings plan in accordance with the provisions of this section;

"public works activities" means any work subject to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

"water conservation measure" means an alteration to a facility or equipment that reduces water consumption, maximizes the efficiency of water use, or reduces water loss.

h. (1) The Director of the Division of Local Government Services in the Department of Community Affairs, the State Treasurer, and the Board of Public Utilities may take such action as is deemed necessary and consistent with the intent of this section to implement its provisions.

(2) The Director of the Division of Local Government Services in the Department of Community Affairs, the State Treasurer, and the Board of Public Utilities may adopt implementation guidelines or directives, and adopt such administrative rules, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the implementation of those agencies' respective responsibilities under this section, except that notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Director of the Division of Local Government Services in the Department of Community Affairs, the State Treasurer, and the Board of Public Utilities may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as deemed necessary to implement the provisions of this act which shall be effective for a period not to exceed 12 months and shall thereafter be amended, adopted or re-adopted in accordance with the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

4. Section 9 of P.L.2009, c.4 (C.52:34-25) is amended to read as follows:

C.52:34-25 Implementation of energy savings improvement program by State contracting agency; definitions.

9. a. (1) A State contracting agency, as defined in this section, may implement an energy savings improvement program in the manner provided by this section whenever it determines that the savings generated from reduced energy use from the program will be sufficient to cover the cost of the program's energy conservation measures as set forth in an energy savings plan. Under such a program, a contracting agency may enter into an energy savings services contract with an energy services company to implement the program or the contracting agency may authorize separate contracts to implement the program. The provisions of Title 52 of the Revised Statutes shall apply to any contracts awarded pursuant to this section to the extent that the provisions of such law are not inconsistent with any provision of this section.

(2) A State contracting agency facility alteration required to properly implement other energy efficiency or energy conservation measures, or both, may be included as part of an energy savings services contract, in which case, notwithstanding any other provision of law, rule, regulation, or order to the contrary, the facility alteration may be undertaken or supervised by the energy services company performing the energy savings services contract if:

(a) the total cost of the improvement does not exceed 15 percent of the total cost of the work to be performed under the energy savings services contract; and

(b) (i) the improvement is necessary to conform to a law, rule, or regulation, or order, or
(ii) an analysis within an approved proposal, or the State contracting agency, at the time of the award of the proposal, demonstrates that there is an economic advantage to the State contracting agency implementing the improvement as part of the energy savings services

contract, and the savings rationale for the improvement is documented and supported by reasonable justification.

b. (1) To be eligible to enter into an energy savings services contract, an energy services company shall be a commercial entity that is qualified to provide energy savings services in accordance with the provisions of this section. A State contracting agency may determine to enter into an energy savings services contract through public advertising for bids and the receipt of bids therefor.

(2) (a) Public works activities performed under an energy savings improvement program shall be subject to all requirements regarding public bidding, bid security, performance guarantees, insurance and other public contracting requirements that are applicable to public works contracts, to the extent not inconsistent with this section. A general contractor, energy services company serving as general contractor, or any subcontractor hired for the furnishing of plumbing and gas fitting and all kindred work, and of steam and hot water heating and ventilating apparatus, steam power plants and kindred work, and electrical work, structural steel and ornamental iron work, shall be classified by the Division of Property Management and Construction in the Department of the Treasury in order to perform public works activities under an energy savings improvement program. A general contractor, energy services company serving as general contractor, or any subcontractor hired for the furnishing of electrical work shall use only electrical contractors licensed by the State, pursuant to P.L.1962, c.162 (C.45:5A-1 et seq.), to perform electrical work under an energy savings improvement program. Electrical work shall include, but not be limited to, the wiring of temperature and energy management controls, the installation of control systems, and the retrofitting of any lighting equipment.

(b) Individuals or organizations performing energy audits, acting as commissioning agents, or conducting verification of energy savings plans, implementation of energy conservation measures, or verifying guarantees shall be prequalified by the Division of Property Management and Construction in the Department of the Treasury to perform their work under an energy savings improvement program.

(3) (a) An energy services company may be designated as the general contractor for improvements to be made pursuant to an energy savings plan, provided that the hiring of subcontractors that are required to be classified pursuant to subparagraph (a) of paragraph (2) of this subsection shall be performed in accordance with the procedures and requirements set forth pursuant to subparagraph (b) of this paragraph. A contract with an energy savings company shall include, but not be limited to: preparation of an energy savings plan, the responsibilities of the parties for project schedules, installations, performance and quality, payment of subcontractors, project completion, commissioning, savings implementation; a requirement that the savings to be achieved by energy conservation measures be verified upon commissioning of the improvements; allocation of State and federal rebates and tax credits; and any other provisions deemed necessary by the parties.

(b) Notwithstanding any other law or regulation to the contrary, an energy services company shall select, in accordance with the procedures and requirements set forth pursuant to the public bidding process of the State contracting agency, only those subcontractors that have been pre-qualified by the Division of Property Management and Construction as eligible to submit bids. In pre-qualifying subcontractors for eligibility, the division shall create one or more pools of subcontractors based on the value and complexity of the work to be undertaken under an energy savings improvement program. The pre-qualification pools shall include subcontractors having the following qualifications:

- (i) the financial means and ability to complete the required work;
- (ii) the experience, capability, and skills necessary to complete the work required of energy savings improvement program projects; and
- (iii) a record of experience conducting similar work in a timely fashion.

Each subcontractor chosen by the energy services company shall certify that all employees have completed a registered apprenticeship program that provided each trainee with combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeable trade, registered by the Office of Apprenticeship of the United States Department of Labor and meeting the standards established by the office, or registered by a State apprenticeship agency recognized by the office. The energy services company shall then select from the eligible pools of prequalified subcontractors. All workers performing public works activities for subcontractors awarded contracts by an energy services company pursuant to this section shall be paid prevailing wages in accordance with the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with the provisions of "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately classified as contractors by the Division of Property Management and Construction shall be eligible to be awarded a contract as a subcontractor of an energy services company under this section for performing public works activities pursuant to regulations adopted by the Division of Property Management and Construction.

(c) In order to expedite communications with an energy services company and facilitate the implementation of an energy savings improvement program, a State contracting agency may designate or appoint an employee of the State contracting agency with decision-making authority to coordinate with the energy services company and to address issues associated with the implementation of an energy savings improvement program as they arise, provided that any decision requiring a change order shall be made only upon the approval of the State contracting agency.

(4) A subsidiary or wholly-owned or partially-owned affiliate of the energy services company shall not be an eligible contractor or subcontractor under an energy savings services contract.

c. In addition to existing authorization of a State agency to enter into lease-purchase agreements or to issue obligations to finance the costs of an energy savings improvement program, a contracting agency is hereby authorized to finance the costs of an energy savings improvement program by entering into a lease purchase agreement. Any financing mechanism shall be administered in a manner consistent with this subsection insofar as it does not conflict with the provisions of other law that applies to the contracting agency.

(1) An energy savings improvement program may be financed through a lease-purchase agreement between a State contracting agency and an energy services company or other public or private entity. Under a lease-purchase agreement, ownership of the energy savings equipment or improved facilities shall pass to the contracting agency or the client agency responsible for the facility when all lease payments have been made. Notwithstanding the provisions of any other law to the contrary, the duration of such a lease-purchase agreement shall not exceed 15 years, except that the duration of a lease purchase agreement for a combined heat and power or cogeneration project shall not exceed 20 years. For the purposes of this paragraph, the duration of the repayment term of a lease-purchase agreement shall commence on the date upon which construction and installation of the energy savings equipment, "combined heat and power facility" or "cogeneration facility," as those terms are

defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other energy conservation measures undertaken pursuant to the energy savings plan, have been completed.

(2) Lease-purchase agreements and energy savings obligations shall not be used to finance maintenance, guarantees, or verification of guarantees of energy conservation measures. Lease-purchase agreements may be used to finance the cost of an energy audit or the cost of verification of energy savings as part of adopting an energy savings plan. Maturity schedules of lease-purchase agreements shall not exceed the estimated average useful life of the energy conservation measures.

d. (1) The energy audit component of an energy savings improvement program shall be conducted either by the contracting agency or by a qualified independent third party retained by the contracting agency for that purpose. It shall not be conducted by an energy services company subsequently hired to develop an energy savings improvement program. The energy audit shall identify the current energy use of any or all facilities and energy conservation measures that can be implemented in which the energy savings and energy efficiency could be realized and maximized.

(2) To implement an energy savings improvement program, a contracting agency shall develop an energy savings plan that consists of one or more energy conservation measures. The plan shall:

- (a) contain the results of an energy audit;
- (b) describe the energy conservation measures that will comprise the program;
- (c) estimate greenhouse gas reductions resulting from those energy savings;
- (d) identify all design and compliance issues that require the professional services of an architect or engineer and identify who will provide these services;
- (e) include an assessment of risks involved in the successful implementation of the plan;
- (f) identify the eligibility for, and costs and revenues associated with the PJM Independent System Operator for demand response and curtailable service activities;
- (g) include schedules showing calculations of all costs of implementing the proposed energy conservation measures and the projected energy savings;
- (h) identify maintenance requirements necessary to ensure continued energy savings, and describe how they will be fulfilled; and
- (i) if developed by an energy services company, a description of, and cost estimates of an energy savings guarantee.

All professionals providing engineering services under the plan shall have errors and omissions insurance.

(3) Prior to the adoption of the plan, the contracting agency shall contract with a qualified third party to verify the projected energy savings to be realized from the proposed program have been calculated as required by subsection e. of this section.

(4) Upon adoption, the plan shall be submitted to the Board of Public Utilities, which shall post it on the Internet on a public webpage maintained for such purpose. If the contracting agency maintains its own website, it shall also post the plan on that site. The Board of Public Utilities may require periodic reporting concerning the implementation of the plan.

(5) Verification by a qualified third party shall be required when energy conservation measures are placed in service or commissioned, to ensure the savings projected in the energy savings plan shall be achieved.

(6) Energy-related capital improvements that do not reduce energy usage may be included in an energy savings improvement program but the cost of such improvements shall

not be financed as a lease-purchase or through energy savings obligations authorized by subsection c. of this section. Nothing herein is intended to prevent financing of such capital improvements through otherwise authorized means.

(7) A qualified third party when required by this subsection may include an employee of the State contracting agency who is properly trained and qualified to perform such work.

e. (1) (a) The calculation of energy savings for the purposes of determining that the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures, as provided in subsection a. of this section, shall involve determination of the dollar amount saved through implementation of an energy savings improvement program using the guidelines of the International Performance Measurement and Verification Protocol or other protocols approved by the Board of Public Utilities and standards adopted by the Board of Public Utilities pursuant to this section. The calculation shall include all applicable State and federal rebates and tax credits, but shall not include the cost of an energy audit and the cost of verifying energy savings. The calculation shall state which party has made application for rebates and credits and how these applications translate into energy savings.

(b) During the procurement phase of an energy savings improvement program, an energy services company's proposal submitted in response to a request for proposal shall not include a savings calculation that assumes, includes, or references capital cost avoidance savings, the current or projected value of a "solar renewable energy certificate," as defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other environmental or similar attributes or benefits of whatever nature that derive from the generation of renewable energy, and any costs or discounts associated with maintenance services, an energy savings guarantee, or third party verification of energy conservation measures and energy savings. The calculation of energy savings shall utilize and specifically reference as a benchmark the actual demand and energy components of the public utility tariff rate applicable to the State contracting agency then in effect, and not a blended rate that aggregates, combines, or restates in any manner the distinct demand and energy components of the public utility tariff rate into a single combined or restated tariff rate. If an energy services company submits a proposal to a State contracting agency that does not calculate projected energy savings in the manner required by this subsection, such proposal shall be rejected by the State contracting agency.

(2) For the purposes of this section, the Board of Public Utilities shall adopt standards and uniform values for interest rates and escalation of labor, electricity, oil, and gas, as well as standards for presenting these costs in a life cycle and net present value format, standards for the presentation of obligations for carbon reductions, and other standards that the board may determine necessary.

f. (1) When an energy services company is awarded an energy savings services contract, it shall offer the contracting agency the option to purchase, for an additional amount, an energy savings guarantee. The guarantee, if accepted by the contracting agency, shall insure that the energy savings resulting from the energy savings improvement program, determined periodically over the duration of the guarantee, will be sufficient to defray all payments required to be made pursuant to the lease-purchase agreement or energy savings obligation, and if the savings are not sufficient, the energy services company will reimburse the contracting agency for any additional amounts. Annual costs of a guarantee shall not be financed or included as costs in an energy savings plan but shall be fully disclosed in an energy savings plan.

(2) When a guaranteed energy savings option is purchased, the contract shall require a qualified third party to verify the energy savings at intervals established by the parties.

(3) When an energy services company is awarded an energy savings services contract to provide or perform goods or services for the purpose of enabling a State contracting agency to conserve energy through energy efficiency equipment, including a "combined heat and power facility" as that term is defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), on a self-funded basis, such contract shall extend for a term of up to 15 years for energy efficiency projects, and for up to 20 years for a combined heat and power facility after construction completion. If a State contracting agency shall elect to contract with an energy services company for an energy savings guarantee in connection with a contract awarded pursuant to this section, such guarantee may extend for a term of up to 15 years for energy efficiency projects, or up to 20 years for a combined heat and power facility after construction completion.

g. As used in this section:

"energy conservation measure" means an improvement that results in reduced energy use, including, but not limited to, installation of energy efficient equipment; demand response equipment; combined heat and power systems; facilities for the production of renewable energy; water conservation measures, fixtures or facilities; building envelope improvements that are part of an energy savings improvement program; and related control systems for each of the foregoing;

"energy related capital improvement" means a capital improvement that uses energy but does not result in a reduction of energy use;

"energy savings" means a measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of one or more energy conservation measures services when compared with an established baseline of previous fuel, energy, operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed as part of an energy savings plan;

"energy savings improvement program" means an initiative of a State contracting agency to implement energy conservation measures in existing facilities, provided that the value of the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures;

"energy savings plan" means the document that describes the actions to be taken to implement the energy savings improvement program;

"energy savings services contract" means a contract with an energy savings company to develop an energy savings plan, prepare bid specifications, manage the performance, provision, construction, and installation of energy conservation measures by subcontractors, to offer a guarantee of energy savings derived from the implementation of an energy savings plan, and may include a provision to manage the bidding process;

"energy services company" means a commercial entity that is qualified to develop and implement an energy savings plan in accordance with the provisions of this section;

"public works activities" means any work subject to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.);

"State contracting agency" or "contracting agency" means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality created by a principal department; and

"water conservation measure" means an alteration to a facility or equipment that reduces water consumption, maximizes the efficiency of water use, or reduces water loss.

h. (1) The State Treasurer and the Board of Public Utilities may take such action as is deemed necessary and consistent with the intent of this section to implement its provisions.

(2) The State Treasurer and the Board of Public Utilities may adopt implementation guidelines or directives, and adopt such administrative rules, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the implementation of those agencies' respective responsibilities under this section, except that notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the State Treasurer, and the Board of Public Utilities may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as deemed necessary to implement the provisions of this act which shall be effective for a period not to exceed 12 months and shall thereafter be amended, adopted or re-adopted in accordance with the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

5. Section 10 of P.L.2009, c.4 (C.52:35A-1) is amended to read as follows:

C.52:35A-1 Implementation of energy savings improvement by public agency; definitions.

10. a. (1) A public agency, as defined in this section, may implement an energy savings improvement program in the manner provided by this section whenever it determines that the savings generated from reduced energy use from the program will be sufficient to cover the cost of the program's energy conservation measures as set forth in an energy savings plan. Under such a program, a public agency may enter into an energy savings services contract with an energy services company to implement the program or the public agency may authorize separate contracts to implement the program. The provisions of any other law applicable to a public agency shall apply to any contracts awarded pursuant to this section to the extent that the provisions of such law are not inconsistent with any provision of this section.

(2) A public agency facility alteration required to properly implement other energy efficiency or energy conservation measures, or both, may be included as part of an energy savings services contract, in which case, notwithstanding any other provision of law, rule, regulation, or order to the contrary, the facility alteration may be undertaken or supervised by the energy services company performing the energy savings services contract if:

(a) the total cost of the improvement does not exceed 15 percent of the total cost of the work to be performed under the energy savings services contract; and

(b) (i) the improvement is necessary to conform to a law, rule, or regulation, or order, or
(ii) an analysis within an approved proposal, or the public agency, at the time of the award of the proposal, demonstrates that there is an economic advantage to the public agency implementing the improvement as part of the energy savings services contract, and the savings rationale for the improvement is documented and supported by reasonable justification.

b. (1) To be eligible to enter into an energy savings services contract, an energy services company shall be a commercial entity that is qualified to provide public agencies with energy savings services in accordance with the provisions of this section. A public agency may determine to enter into an energy savings services contract which shall be awarded through a procedure that results in the award of a contract to a vendor determined by the public agency to be the most advantageous, price and other factors considered.

(2) (a) Public works activities performed under an energy savings improvement program shall be subject to all requirements regarding public bidding, bid security, performance guarantees, insurance and other public contracting requirements that are applicable to public works contracts, to the extent not inconsistent with this section. A general contractor, energy services company serving as general contractor, or any subcontractor hired for the furnishing of plumbing and gas fitting and all kindred work, and of steam and hot water heating and ventilating apparatus, steam power plants and kindred work, and electrical work, structural steel and ornamental iron work shall be classified by the Division of Property Management and Construction in the Department of the Treasury in order to perform public works activities under an energy savings improvement program.

(b) Individuals or organizations performing energy audits, acting as commissioning agents, or conducting verification of energy savings plans, implementation of energy conservation measures, or verifying guarantees shall be prequalified by the Division of Property Management and Construction in the Department of the Treasury to perform their work under an energy savings improvement program.

(3) (a) An energy services company may be designated as the general contractor for improvements to be made pursuant to an energy savings plan, provided that the hiring of subcontractors that are required to be classified pursuant to subparagraph (a) of paragraph (2) of this subsection shall be performed in accordance with the procedures and requirements set forth pursuant to the public bidding requirements of the public agency. A contract with an energy savings company shall include, but not be limited to: preparation of an energy savings plan; the responsibilities of the parties for project schedules, installations, performance and quality, payment of subcontractors, project completion, commissioning, savings implementation; a requirement that the savings to be achieved by energy conservation measures be verified upon commissioning of the improvements; allocation of State and federal rebates and tax credits; and any other provisions deemed necessary by the parties.

(b) All workers performing public works activities for subcontractors awarded contracts by an energy services company pursuant to this section shall be paid prevailing wages in accordance with the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.). All subcontractors shall comply with the provisions of "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.). Only firms appropriately classified as contractors by the Division of Property Management and Construction shall be eligible to be awarded a contract as a subcontractor of an energy services company under this section for performing public works activities pursuant to regulations adopted by the Division of Property Management and Construction.

(c) In order to expedite communications with an energy services company and facilitate the implementation of an energy savings improvement program, a public agency may designate or appoint an employee of the public agency with decision-making authority to coordinate with the energy services company and to address issues associated with the implementation of an energy savings improvement program as they arise, provided that any decision requiring a change order shall be made only upon the approval of the public agency.

(4) Except as provided in paragraph (5) of this subsection, a subsidiary or wholly-owned or partially-owned affiliate of the energy services company shall not be an eligible contractor or subcontractor under an energy savings services contract.

(5) When the energy services company is the manufacturer of direct digital control systems and contracts with the public agency to provide a guaranteed energy savings option pursuant to subsection f. of this section, the specification of such direct digital control

systems may be treated as proprietary goods and if so treated, the bid specification shall set forth an allowance price for its supply by the energy services company which shall be used by all bidders in the public bidding process. Direct digital controls shall be open protocol format and shall meet the interoperability guidelines established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers. Each contract to be entered into pursuant to this section between a public agency and an energy services company that is the manufacturer of direct digital control systems where such direct digital control systems are treated as proprietary goods as part of the contract, shall first be reviewed and approved by the Board of Public Utilities for the purpose of affirming the reasonableness of such allowance price. If the board does not disapprove of the contract within 14 days of receipt thereof, the contract shall be deemed approved.

c. In addition to existing authorization of a public agency to enter into lease-purchase agreements or to issue obligations to finance the costs of an energy savings improvement program, a public agency is hereby authorized to finance the costs of an energy savings improvement program by entering into a lease purchase agreement or by issuing energy savings obligations pursuant to this subsection. Any financing mechanism shall be administered in a manner consistent with this subsection insofar as it does not conflict with the provisions of other law that applies to the public agency.

(1) An energy savings improvement program may be financed through a lease-purchase agreement between a public agency and an energy services company or other public or private entity. Under a lease-purchase agreement, ownership of the energy savings equipment or improved facilities shall pass to the public agency when all lease payments have been made. Notwithstanding the provisions of any other law to the contrary, the duration of such a lease-purchase agreement shall not exceed 15 years, except that the duration of a lease purchase agreement for a combined heat and power or cogeneration project shall not exceed 20 years. For the purposes of this paragraph, the duration of the repayment term of a lease-purchase agreement shall commence on the date upon which construction and installation of the energy savings equipment, "combined heat and power facility" or "cogeneration facility," as those terms are defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other energy conservation measures undertaken pursuant to the energy savings plan, have been completed.

(2) A public agency may arrange for incurring energy savings obligations to finance an energy savings improvement program. Energy savings obligations may be funded through appropriations for utility services in the annual budget of the public agency and may be issued as refunding bonds, including the issuance of bond anticipation notes as may be necessary, provided that all such bonds and notes mature within the periods authorized for such energy savings obligations. Energy savings obligations may be issued either through the public agency or another public agency authorized to undertake financing on behalf of the public agency.

(3) Lease-purchase agreements and energy savings obligations shall not be used to finance maintenance, guarantees, or verification of guarantees of energy conservation measures. Lease-purchase agreements and energy savings obligations may be used to finance the cost of an energy audit or the cost of verification of energy savings as part of adopting an energy savings plan. Notwithstanding any law to the contrary, lease-purchase agreements and energy savings certificates shall not be excepted from any budget or tax levy limitation otherwise provided by law. Maturity schedules of lease-purchase agreements or

energy savings obligations shall not exceed the estimated average useful life of the energy conservation measures.

d. (1) The energy audit component of an energy savings improvement program shall be conducted either by the public agency or by a qualified independent third party retained by the board for that purpose. It shall not be conducted by an energy services company subsequently hired to develop an energy savings improvement program. The energy audit shall identify the current energy use of any or all facilities and energy conservation measures that can be implemented in which the energy savings and energy efficiency could be realized and maximized.

(2) To implement a program, a public agency shall develop an energy savings plan that consists of one or more energy conservation measures. The plan shall: (a) contain the results of an energy audit;

(b) describe the energy conservation measures that will comprise the program;

(c) estimate greenhouse gas reductions resulting from those energy savings;

(d) identify all design and compliance issues that require the professional services of an architect or engineer and identify who will provide these services;

(e) include an assessment of risks involved in the successful implementation of the plan;

(f) identify the eligibility for, and costs and revenues associated with the PJM Independent System Operator for demand response and curtailable service activities;

(g) include schedules showing calculations of all costs of implementing the proposed energy conservation measures and the projected energy savings;

(h) identify maintenance requirements necessary to ensure continued energy savings, and describe how they will be fulfilled; and

(i) if developed by an energy services company, a description of, and cost estimates of an energy savings guarantee.

All professionals providing engineering services under the plan shall have errors and omissions insurance.

(3) Prior to the adoption of the plan, the public agency shall contract with a qualified third party to verify the projected energy savings to be realized from the proposed program have been calculated as required by subsection e. of this section.

(4) Upon adoption, the plan shall be submitted to the Board of Public Utilities, which shall post it on the Internet on a public webpage maintained for such purpose. If the public agency maintains its own website, it shall also post the plan on that site. The board may require periodic reporting concerning the implementation of the plan.

(5) Verification by a qualified third party shall be required when energy conservation measures are placed in service or commissioned, to ensure the savings projected in the energy savings plan shall be achieved.

(6) Energy-related capital improvements that do not reduce energy usage may be included in an energy savings improvement program but the cost of such improvements shall not be financed as a lease-purchase or through energy savings obligations authorized by subsection c. of this section. Nothing herein is intended to prevent financing of such capital improvements through otherwise authorized means.

(7) A qualified third party when required by this subsection may include an employee of the public agency who is properly trained and qualified to perform such work.

e. (1) (a) The calculation of energy savings for the purposes of determining that the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures, as provided in subsection a. of this section, shall involve

determination of the dollar amount saved through implementation of an energy savings improvement program using the guidelines of the International Performance Measurement and Verification Protocol or other protocols approved by the Board of Public Utilities and standards adopted by the Board of Public Utilities pursuant to this section. The calculation shall include all applicable State and federal rebates and tax credits, but shall not include the cost of an energy audit and the cost of verifying energy savings. The calculation shall state which party has made application for rebates and credits and how these applications translate into energy savings.

(b) During the procurement phase of an energy savings improvement program, an energy services company's proposal submitted in response to a request for proposal shall not include a savings calculation that assumes, includes, or references capital cost avoidance savings, the current or projected value of a "solar renewable energy certificate," as defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), or other environmental or similar attributes or benefits of whatever nature that derive from the generation of renewable energy, and any costs or discounts associated with maintenance services, an energy savings guarantee, or third party verification of energy conservation measures and energy savings. The calculation of energy savings shall utilize and specifically reference as a benchmark the actual demand and energy components of the public utility tariff rate applicable to the public agency then in effect, and not a blended rate that aggregates, combines, or restates in any manner the distinct demand and energy components of the public utility tariff rate into a single combined or restated tariff rate. If an energy services company submits a proposal to a public agency that does not calculate projected energy savings in the manner required by this subsection, such proposal shall be rejected by the public agency.

(2) For the purposes of this section, the Board of Public Utilities shall adopt standards and uniform values for interest rates and escalation of labor, electricity, oil, and gas, as well as standards for presenting these costs in a life cycle and net present value format, standards for the presentation of obligations for carbon reductions, and other standards that the board may determine necessary.

f. (1) When an energy services company is awarded an energy savings services contract, it shall offer the public agency the option to purchase, for an additional amount, an energy savings guarantee. The guarantee, if accepted by a separate vote of the governing body of the public agency, shall insure that the energy savings of the public agency resulting from the energy savings improvement program, determined periodically over the duration of the guarantee, will be sufficient to defray all payments required to be made pursuant to the lease-purchase agreement or energy savings obligation, and if the savings are not sufficient, the energy services company will reimburse the public agency for any additional amounts. Annual costs of a guarantee shall not be financed or included as costs in an energy savings plan but shall be fully disclosed in an energy savings plan.

(2) When a guaranteed energy savings option is purchased, the contract shall require a qualified third party to verify the energy savings at intervals established by the parties.

(3) When a guaranteed energy savings option is not purchased, the energy savings services contract shall not include maintenance services provided by the energy services company.

(4) When an energy services company is awarded an energy savings services contract to provide or perform goods or services for the purpose of enabling a public agency to conserve energy through energy efficiency equipment, including a "combined heat and power facility" as that term is defined pursuant to section 3 of P.L.1999, c.23 (C.48:3-51), on a self-funded

basis, such contract shall extend for a term of up to 15 years for energy efficiency projects, and for up to 20 years for a combined heat and power facility after construction completion. If a public agency shall elect to contract with an energy services company for an energy savings guarantee in connection with a contract awarded pursuant to this section, such guarantee may extend for a term of up to 15 years for energy efficiency projects, or up to 20 years for a combined heat and power facility after construction completion.

g. As used in this section:

"direct digital control systems" means the devices and computerized control equipment that contain software and computer interfaces that perform the logic that control a building's heating, ventilating, and air conditioning system. Direct digital controls shall be open protocol format and shall meet the interoperability guidelines established by the American Society of Heating, Refrigerating and Air-Conditioning Engineers;

"energy conservation measure" means an improvement that results in reduced energy use, including, but not limited to, installation of energy efficient equipment; demand response equipment; combined heat and power systems; facilities for the production of renewable energy; water conservation measures, fixtures or facilities; building envelope improvements that are part of an energy savings improvement program; and related control systems for each of the foregoing;

"energy related capital improvement" means a capital improvement that uses energy but does not result in a reduction of energy use;

"energy saving obligation" means a bond, note or other agreement evidencing the obligation to repay borrowed funds incurred in order to finance energy saving improvements;

"energy savings" means a measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of one or more energy conservation measures services when compared with an established baseline of previous fuel, energy, operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed as part of an energy savings plan;

"energy savings improvement program" means an initiative of a public agency to implement energy conservation measures in existing facilities, provided that the value of the energy savings resulting from the program will be sufficient to cover the cost of the program's energy conservation measures;

"energy savings plan" means the document that describes the actions to be taken to implement the energy savings improvement program;

"energy savings services contract" means a contract with an energy savings company to develop an energy savings plan, prepare bid specifications, manage the performance, provision, construction, and installation of energy conservation measures by subcontractors, to offer a guarantee of energy savings derived from the implementation of an energy savings plan, and may include a provision to manage the bidding process;

"energy services company" means a commercial entity that is qualified to develop and implement an energy savings plan in accordance with the provisions of this section;

"public agency" means any government entity that is authorized to expend public funds and enter into contracts which is not otherwise authorized to implement an energy savings improvement program pursuant to section 1, 4, 6, or 9 of P.L.2009, c.4 (C.18A:18A-4.6, C.18A:65A-1, C.40A:11-4.6, or C.52:34-25).

"public works activities" means any work subject to the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.); and

"water conservation measure" means an alteration to a facility or equipment that reduces water consumption, maximizes the efficiency of water use, or reduces water loss.

h. (1) The State Treasurer and the Board of Public Utilities may take such action as is deemed necessary and consistent with the intent of this section to implement its provisions.

(2) The State Treasurer and the Board of Public Utilities may adopt implementation guidelines or directives, and adopt such administrative rules, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary for the implementation of those agencies' respective responsibilities under this section, except that notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Director of the Division of Local Government Services in the Department of Community Affairs, the State Treasurer, and the Board of Public Utilities may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as deemed necessary to implement the provisions of this act which shall be effective for a period not to exceed 12 months and shall thereafter be amended, adopted or re-adopted in accordance with the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

C.52:34-25.1 State contracting agency, competitive selection process.

6. a. Notwithstanding the provisions to the contrary of R.S.52:32-2 or any other law, or any rule or regulation adopted pursuant thereto, where a State contracting agency implements an energy savings improvement program pursuant to section 9 of P.L.2009, c.4 (C.52:34-25), the State contracting agency, prior to entering into an energy savings services contract, shall use a competitive selection process that ensures that the award is made to the responsible bidder whose proposal is determined to be the most advantageous to the State.

b. Nothing in this section shall preclude a State contracting agency from using procurement processes other than those prescribed herein and in section 9 of P.L.2009, c.4 (C.52:34-25), if those processes have been approved by the federal government under section 801 of the "National Energy Conservation Policy Act" (42 U.S.C. s.8287).

c. The Division of Property Management and Construction in the Department of the Treasury shall not charge any fee for the review or approval of an energy savings improvement program implemented by a State contracting agency pursuant to section 9 of P.L.2009, c.4 (C.52:34-25).

C.48:3-108 Standard request for proposal.

7. a. The Board of Public Utilities, in consultation with the State Treasurer and the Commissioner of the Department of Community Affairs, shall establish, in a form similar to that prescribed by the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), a standard request for proposal to be used for all energy savings improvement program projects to be undertaken by any State contracting agency or public agency authorized to implement an energy savings improvement program pursuant to the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.), provided, however, that a State contracting agency or public agency may use its own request for proposal upon the submission of the request for proposal to the board. Unless the board disapproves the request for proposal within 14 days of its receipt from a State contracting agency or public agency, the request for proposal shall be deemed approved. No single category contained in the evaluation criteria of a request for proposal shall weigh more than 25 percent.

b. Within 90 days after the effective date of P.L.2012, c.55 (C.52:34-25.1 et al.), the Board of Public Utilities, in consultation with the State Treasurer and the Commissioner of

the Department of Community Affairs, shall establish, in a form similar to that prescribed by the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), a standard request for proposal to be used for all energy savings improvement program projects to be undertaken by any board of education, board of trustees, or contracting unit authorized to implement an energy savings improvement program pursuant to the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.), provided, however, that a board of education, board of trustees, or contracting unit may use its own request for proposal upon the submission of the request for proposal to the Board of Public Utilities. Unless the board disapproves the request for proposal within 14 days of its receipt from a board of education, board of trustees, or contracting unit, the request for proposal shall be deemed approved. No single category contained in the evaluation criteria of a request for proposal shall weigh more than 25 percent.

C.48:3-109 BPU designated as responsible agency.

8. a. The Board of Public Utilities is designated as the agency of the State Government responsible for implementing and enforcing the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.) and for responding to requests for assistance from public entities, including boards of education, boards of trustees of public institutions of higher education, contracting units, and public agencies, authorized to implement an energy savings improvement program pursuant to P.L.2009, c.4 (C.18A:18A-4.6 et al.).

b. The board is authorized to investigate, review and take appropriate action with respect to procurements for energy savings projects conducted by public agencies, other than State contracting agencies, pursuant to P.L.2009, c.4 (C.18A:18A-4.6 et al.).

c. The board shall take such actions as it deems necessary and appropriate, consistent with the purposes of this section, to implement and enforce the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.). The authority granted to the board pursuant to this section to enforce compliance with P.L.2009, c.4 shall include, but not be limited to:

(1) modifying a non-conforming request for proposal and any attachment thereto, whereby the board shall provide written comments to the public entity when it chooses to modify a non-conforming request for proposal, outlining any issues and providing the opportunity for the issues to be remedied;

(2) (a) modifying or canceling a procurement by a public entity for an energy savings project, whereby the board, within 14 days of its receipt of a procurement by a public entity after the procurement award, may modify or cancel the procurement, otherwise the procurement shall be deemed approved, and (b) if modifying a procurement, the board shall provide written comments to the public entity when it chooses to do so, outlining any issues and providing the opportunity for the issues to be remedied; and

(3) withholding State and federal renewable energy and energy efficiency incentives from an energy savings project.

d. The board may grant limited exceptions to a local housing authority, established pursuant to the "Local Housing Authorities Law," P.L.1938, c.19 or the "Local Redevelopment and Housing Law," P.L.1992, c.79 (C.40A:12A-1 et al.), to use an energy performance contracting process developed by the United States Department of Housing and Urban Development for selecting an energy services company subject to United States Department of Housing and Urban Development and board review and approval. The exception shall permit such process to be followed for the selection of an energy services company, the preparation of the energy savings improvement program, the selection of

energy savings projects, and third party verification requirements. All other requirements for bidding and construction shall be consistent with the provisions of P.L.2009, c.4 (C.18A:18A-4.6 et al.). This limited exception shall permit the preparation of an investment grade energy savings improvement program audit to replace the requirement for the traditional energy audit component performed in advance.

e. The board shall undertake a study of the effectiveness of energy savings improvement programs implemented pursuant to P.L.2009, c.4 (C.18A:18A-4.6 et al.). Within three years after the effective date of P.L.2012, c.55 (C.52:34-25.1 et al.), the board shall prepare a report of its study and shall provide a copy thereof to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature.

9. This act shall take effect immediately.

Approved September 19, 2012.