



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB1337

Introduced 2/7/2019, by Sen. Chapin Rose

#### SYNOPSIS AS INTRODUCED:

New Act

30 ILCS 500/20-60

30 ILCS 500/40-25

30 ILCS 500/25-45 rep.

Creates the Energy Performance Contracting Act. Requires each governmental unit to implement cost-effective conservation improvements and maintain efficient operation of its facilities in order to minimize energy consumption and related environmental impacts, and reduce operating costs. Provides that any governmental unit may enter into an energy performance contract with a qualified energy service provider to produce utility savings or operating and maintenance cost-savings. Designates the Smart Energy Design Assistance Center as the lead agency for the development and promotion of a program of performance contracts in governmental units under the Act, and provides requirements and duties for that agency. Provides for the selection process of qualified energy service providers. Provides for audits, payments, and term requirements for energy performance contracts entered into under the Act. Provides for the monitoring and reporting of energy consumption and cost-savings under an energy performance contract. Provides for the use of savings from performance contracts. Provides that the provisions of the Act shall prevail and control over conflicting provisions of law, and that any conflicting provisions of any statute enacted prior to the Act are hereby repealed. Defines terms. Amends the Illinois Procurement Code to make conforming changes. Effective immediately.

LRB101 00173 RJF 45173 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning finance.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Energy  
5 Performance Contracting Act.

6 Section 5. Purpose. The purpose of this Act is to obtain  
7 long-term energy and cost-savings for all governmental units by  
8 facilitating prompt incorporation of energy conservation  
9 improvements or energy production equipment, or both, in  
10 connection with buildings or facilities owned, operated, or  
11 under the supervision and control of all governmental units, in  
12 cooperation with providers of such services and associated  
13 materials from the private sector. These arrangements will  
14 improve and protect the health, safety, security, and welfare  
15 of the people of this State by promoting energy conservation  
16 and independence, developing alternate sources of energy, and  
17 fostering business activity.

18 Section 10. Definitions. As used in this Act:

19 "Cost-effective" means that the present value to a  
20 governmental unit of the energy reasonably expected to be saved  
21 or produced by a facility, activity, measure, or piece of  
22 equipment over its useful life, including any compensation

1 received from a utility, is greater than the net present value  
2 of the costs of implementing, maintaining, and operating such  
3 facility, activity, measure, or piece of equipment over its  
4 useful life, when discounted at the cost of public borrowing.

5 "Cost-savings measure" means any facility improvement,  
6 repair or alteration, or any equipment, fixture, or furnishing  
7 to be added or used in any facility that is designed to reduce  
8 energy consumption and operating costs or increase the  
9 operating efficiency of facilities for their appointed  
10 functions that are cost effective. "Cost-savings measure"  
11 includes, but is not limited to, one or more of the following:

12 (1) replacement or modification of lighting  
13 components, fixtures, and systems;

14 (2) renewable energy and alternate energy systems;

15 (3) cogeneration systems that produce steam or forms of  
16 energy, such as heat or electricity, for use primarily  
17 within a building or complex of buildings;

18 (4) devices that reduce water consumption or sewer  
19 charges, including water-conserving fixtures, appliances,  
20 and equipment, water-conserving landscape irrigation  
21 equipment, or the substitution of non-water using  
22 fixtures, appliances, and equipment;

23 (5) landscaping measures that reduce watering demands  
24 and capture and hold applied water and rainfall, including  
25 landscape contouring, including the use of berms, swales,  
26 and terraces, the use of soil amendments that increase the

1 water-holding capacity of the soil, including compost, and  
2 rainwater harvesting equipment and equipment to make use of  
3 water collected as part of a storm- water system installed  
4 for water quality control;

5 (6) equipment for recycling or reuse of water  
6 originating on the premises or from other sources,  
7 including treated municipal effluent;

8 (7) equipment needed to capture water from  
9 nonconventional, alternate sources, including air  
10 conditioning condensate or graywater, for non-potable  
11 uses;

12 (8) metering equipment needed to segregate water use in  
13 order to identify water conservation opportunities or  
14 verify water savings;

15 (9) changes in operation and maintenance practices;

16 (10) indoor air quality improvements that conform to  
17 applicable building code requirements;

18 (11) daylighting systems;

19 (12) insulating the building structure or systems in  
20 the building;

21 (13) storm windows or doors, caulking or weather  
22 stripping, multi-glazed windows or door systems,  
23 heat-absorbing or heat-reflective glazed and coated window  
24 and door systems, additional glazing, reductions in glass  
25 area, or other window and door system modifications that  
26 reduce energy consumption;

- 1           (14) automated or computerized energy control systems;
- 2           (15) heating, ventilation, or air conditioning system  
3 modifications or replacements;
- 4           (16) indoor air quality improvements that conform to  
5 applicable building code requirements;
- 6           (17) energy recovery systems;
- 7           (18) steam trap improvement programs that reduce  
8 operating costs;
- 9           (19) building operation programs that reduce utility  
10 and operating costs including, but not limited to,  
11 computerized energy management and consumption tracking  
12 programs, staff and occupant training, and other similar  
13 activities;
- 14           (20) any life safety measures that provide long-term  
15 operating cost reductions and are in compliance with State  
16 and local statute;
- 17           (21) any life safety measures related to compliance  
18 with the federal Americans with Disabilities Act that  
19 provide long-term operating cost reductions and are in  
20 compliance with State and local statute;
- 21           (22) a program to reduce energy costs through rate  
22 adjustments, load shifting to reduce peak demand, and use  
23 of alternative energy suppliers, such as, but not limited  
24 to:
- 25                   (A) changes to more favorable rate schedules; and
- 26                   (B) negotiation of lower rates, same supplier or

1 new suppliers, where applicable; and

2 (C) auditing of energy service billing and meters;

3 (23) services to reduce utility costs by identifying  
4 utility errors and optimizing existing rate schedules  
5 under which service is provided; and

6 (24) any other installation, modification of  
7 installation, or remodeling of building infrastructure  
8 improvements that produce utility or operational cost  
9 savings for their appointed functions in compliance with  
10 applicable State and local building codes.

11 "Energy performance contract" or "energy services  
12 agreement" means a contract between the governmental unit and a  
13 qualified energy service provider for evaluation,  
14 recommendation, and implementation of one or more cost-savings  
15 measures. A performance contract may be structured as either:

16 (1) a guaranteed energy savings performance contract,  
17 which shall include, at a minimum, the design and  
18 installation of equipment, and, if applicable, operation  
19 and maintenance of any of the measures implemented, and  
20 guaranteed annual savings which must meet or exceed the  
21 total annual contract payments made by the governmental  
22 unit for that contract, including financing charges to be  
23 incurred by the governmental unit over the life of the  
24 contract; or

25 (2) a shared savings contract, which shall include  
26 provisions mutually agreed upon by the governmental unit

1 and the qualified provider or qualified energy service  
2 company as to the negotiated rate of payments based upon  
3 energy and operational cost-savings and a stipulated  
4 maximum energy consumption level over the life of the  
5 contract.

6 "Governmental unit" means any State agency, authority, or  
7 any political subdivision of State or local government,  
8 including, but not limited to, county, city, township, village  
9 or municipal government, local school districts and  
10 institutions of higher education, any State-supported  
11 institution, or a joint action agency composed of political  
12 subdivisions.

13 "Investment grade audit" means a study by the qualified  
14 energy services provider selected for a particular energy  
15 performance contract project which includes detailed  
16 descriptions of the improvements recommended for the project,  
17 the estimated costs of the improvements, and the utility and  
18 operations and maintenance cost-savings projected to result  
19 from the recommended improvements.

20 "Operation and maintenance cost-savings" means a  
21 measurable decrease in operation and maintenance costs, and  
22 future replacement expenditures, that are a direct result of  
23 the implementation of one or more utility cost-savings  
24 measures. These savings shall be calculated in comparison with  
25 an established baseline of operation and maintenance costs.

26 "Person" means any corporate or non-corporate entity or

1 individual of any type.

2 "Public building" means any structure, building, or  
3 facility, including its equipment, furnishings, or appliances  
4 that is owned or operated by a governmental unit.

5 "Qualified energy service provider" means a person with a  
6 record of successful energy performance contract projects or a  
7 person who: (1) is experienced in the design, implementation,  
8 and installation of energy efficiency and facility improvement  
9 measures; (2) has the technical capabilities to ensure such  
10 measures generate energy and operational cost-savings; and (3)  
11 has the ability to secure the financing necessary to support  
12 energy savings guarantees.

13 "Utility cost-savings" means any utility expenses that are  
14 eliminated or avoided on a long-term basis as a result of  
15 equipment installed or modified, or services performed by a  
16 qualified energy service provider. "Utility cost-savings" does  
17 not include merely shifting personnel costs or similar  
18 short-term cost-savings.

19 Section 15. Authorization.

20 (a) Each governmental unit shall implement cost-effective  
21 conservation improvements and maintain efficient operation of  
22 its facilities in order to minimize energy consumption and  
23 related environmental impacts, and reduce operating costs.  
24 Each governmental unit shall undertake an energy audit and  
25 implement cost-effective conservation measures. Energy



1 performance contracting shall be the preferred method for  
2 completing energy audits and implementing cost-effective  
3 conservation measures.

4 (b) Any governmental unit may enter into an energy  
5 performance contract with a qualified energy service provider  
6 to produce utility savings or operating and maintenance cost  
7 savings. Cost-savings measures implemented under such  
8 contracts shall comply with State or local building codes. Any  
9 governmental unit may implement other capital improvements in  
10 conjunction with a performance contract so long as the measures  
11 that are being implemented to achieve energy and operations and  
12 maintenance cost-savings are a significant portion of an  
13 overall project. A governmental unit may enter into an energy  
14 savings performance contract for a period of more than one year  
15 only if the governmental unit finds that the amount the  
16 governmental unit would spend on the energy or water  
17 conservation measures will not exceed the amount to be saved in  
18 energy, water, wastewater, and operating costs over 20 years  
19 from the date of installation.

20 Section 20. Smart Energy Design Assistance Center (SEDAC).

21 (a) The Smart Energy Design Assistance Center (SEDAC) based  
22 at the University of Illinois at Urbana-Champaign is hereby  
23 designated to be the lead agency for the development and  
24 promotion of a program of performance contracts in governmental  
25 units. SEDAC will coordinate its activities with the Capital

1 Development Board. SEDAC, under the direction of the Governor,  
2 will have the following duties with respect to this program:

3 (1) assistance to the Capital Development Board to  
4 assemble a list of qualified energy service providers and  
5 to negotiate master service contracts and pricing  
6 schedules with such qualified energy service providers;

7 (2) development of a standardized energy performance  
8 contract process and standard energy performance contract  
9 documents, including request for qualifications, request  
10 for proposals, investment grade audit contract, energy  
11 services agreement, including the form of the project  
12 savings guarantee, and project financing agreement; and

13 (3) promotion of the energy performance contract  
14 program to all governmental units.

15 (b) SEDAC shall establish guidelines and an approval  
16 process for awarding energy performance contracts. The  
17 guidelines adopted under this subsection (b) must require that  
18 the cost-savings projected by a qualified provider be reviewed  
19 by a licensed professional engineer who has a minimum of 3  
20 years of experience in energy calculation and review, is not an  
21 officer or employee of a qualified provider for the contract  
22 under review, and is not otherwise associated with the  
23 contract. In conducting the review, the engineer shall focus  
24 primarily on the proposed improvements from an engineering  
25 perspective, the methodology and calculations related to cost  
26 savings, increases in revenue, and, if applicable, efficiency

1 or accuracy of metering equipment. An engineer who reviews a  
2 contract shall maintain the confidentiality of any proprietary  
3 information the engineer acquires while reviewing the  
4 contract.

5 (c) SEDAC shall assist governmental units in identifying,  
6 evaluating, and implementing cost-effective conservation  
7 projects at their facilities. The assistance shall include: (1)  
8 notifying governmental units of their responsibilities under  
9 this Act; (2) apprising governmental units of opportunities to  
10 develop and finance energy performance contracting projects;  
11 (3) providing technical and analytical support, including  
12 procurement energy performance contracting services; (4)  
13 reviewing verification procedures for energy savings; and (5)  
14 assisting in the structuring and arranging of financing for  
15 energy performance contracting projects.

16 (d) SEDAC is authorized to fix, charge, and collect  
17 reasonable fees, not to exceed 2% of the total cost of the  
18 energy performance contract project, for any administrative  
19 support and resources or other services provided by SEDAC, or  
20 its designee, under this subsection (d) from the governmental  
21 units that use its technical support services. Governmental  
22 units are authorized to add the costs of these fees to the  
23 total cost of the energy performance contract.

24 (e) The Governor is encouraged to develop and submit to the  
25 General Assembly a regular or supplemental budget request for  
26 the additional funds and staffing required by the Smart Energy

1 Design Assistance Center to fulfill the duties required under  
2 this Section.

3 Section 25. Selection of a qualified energy service  
4 provider. The State process of implementing energy performance  
5 contracts for governmental units shall be as provided in this  
6 Section.

7 (a) Regarding requests for qualifications, the Capital  
8 Development Board is authorized to assemble a list of qualified  
9 energy service providers, in accordance with the provisions of  
10 the Illinois Procurement Code. The Capital Development Board  
11 shall attempt to use objective criteria in the selection  
12 process. The criteria for evaluation shall include substantive  
13 factors to assess the capability of the qualified energy  
14 service company or qualified provider in the areas of design,  
15 engineering, installation, maintenance, and repairs associated  
16 with performance contracts. The substantive factors shall be as  
17 follows: (1) experience in conversions to a different energy or  
18 fuel source, so long as it is associated with a comprehensive  
19 energy efficiency retrofit; (2) post-installation project  
20 monitoring, data collection, and reporting of savings; (3)  
21 overall project experience and qualifications; (4) management  
22 capability; (5) ability to access long-term financing; (6)  
23 experience with projects of similar size and scope; and (7)  
24 other factors determined by the governmental unit to be  
25 relevant and appropriate and relate to the ability to perform

1 the project.

2 (b) Regarding requests for proposals, before entering into  
3 a performance contract under this Section, a governmental unit  
4 shall issue a request for proposals from up to 3 qualified  
5 energy service providers. A governmental unit may thereafter  
6 award the performance contract to the qualified energy service  
7 company or qualified provider that best meets the needs of the  
8 governmental unit, which need not be the lowest cost provided.  
9 A cost-effective feasibility analysis shall be prepared in  
10 response to the request for proposals. The feasibility analysis  
11 included in the response to the request for proposals shall  
12 serve as the selection document for purposes of selecting a  
13 qualified energy service provider to engage in final contract  
14 negotiations. Factors to be included in selecting among the  
15 selected energy service providers include contract terms,  
16 comprehensiveness of the proposal, comprehensiveness of  
17 cost-savings measures, experience, quality of technical  
18 approach, and overall benefits to the governmental unit.

19 Section 30. Investment grade audit and contract execution.

20 (a) One qualified energy service provider selected as a  
21 result of the process provided under subsection (b) of Section  
22 25 shall prepare an investment grade energy audit, which, upon  
23 acceptance, shall be part of the final energy performance  
24 contract or energy services agreement which shall be executed  
25 with the governmental unit. The investment grade energy audit

1 shall include estimates of the amounts by which utility  
2 cost-savings and operation and maintenance cost-savings would  
3 increase and estimates of all costs of such utility  
4 cost-savings measures or energy-savings measures, including,  
5 but not limited to, itemized costs of design, engineering,  
6 equipment, materials, installation, maintenance, repairs, and  
7 debt service.

8 (b) Notwithstanding the provisions of subsection (a), if  
9 after preparation of the investment grade energy audit the  
10 governmental unit decides not to execute an energy services  
11 agreement, and the costs and benefits described in the energy  
12 audit are not materially different from those described in the  
13 feasibility study submitted in response to the request for  
14 proposals, then the costs incurred in preparing the investment  
15 grade energy audit shall be paid to the qualified energy  
16 service provider by the governmental unit. Otherwise, the costs  
17 of the investment grade energy audit shall be deemed part of  
18 the costs of the energy performance contract or energy services  
19 agreement.

20 Section 35. Installment payment and lease-purchase  
21 agreements.

22 (a) A governmental unit may use designated funds, bonds, or  
23 master lease for any energy performance contract, including  
24 purchases using installment payment contracts or  
25 lease-purchase agreements, so long as that use is consistent

1 with the purpose of the appropriation.

2 (b) A guaranteed energy performance savings contract may  
3 provide for financing, including tax-exempt financing, by a  
4 third party. The contract for third party financing may be  
5 separate from the energy performance contract. A separate  
6 contract for third party financing must include a provision  
7 that the third party financier must not be granted rights or  
8 privileges that exceed the rights and privileges available to  
9 the guaranteed energy performance savings contractor.

10 Section 40. Payment schedule and savings. Each performance  
11 contract shall provide that all payments between parties,  
12 except obligations on termination of the contract before its  
13 expiration, shall be made over time, and the objective of each  
14 energy performance contract is implementation of cost-savings  
15 measures and energy and operational cost-savings.

16 Section 45. Term of Contracts. An energy performance  
17 contract, and payments provided thereunder, may extend beyond  
18 the fiscal year in which the energy performance contract became  
19 effective, subject to appropriation of moneys, if required by  
20 law, for costs incurred in future fiscal years. The energy  
21 performance contract may extend for a term not to exceed 25  
22 years. The allowable length of the contract may also reflect  
23 the useful life of the cost-savings measures. Energy  
24 performance contracts may provide for payments over a period of

1 time not to exceed deadlines specified in the energy  
2 performance contract from the date of the final installation of  
3 the cost-saving measures.

4 Section 50. Allocation of obligations. Subject to  
5 appropriations as provided in Sections 30 and 35 of this Act,  
6 each governmental unit shall allocate sufficient moneys for  
7 each fiscal year to make payment of any amounts payable by the  
8 governmental unit under performance contracts during that  
9 fiscal year.

10 Section 55. Use of moneys; reconciliation.

11 (a) The governmental unit engaging in the performance  
12 contract shall retain the savings achieved by entering into the  
13 performance contract. In no event shall the governmental unit  
14 utilize those savings to supplant otherwise appropriated funds  
15 for the governmental unit.

16 (b) Unless otherwise provided by law or ordinance, a  
17 governmental unit may use funds designated for operating and  
18 capital expenditures or utilities for any performance  
19 contract, including, without limitation, contracts entered  
20 into under Section 25 of this Act.

21 (c) The energy performance contract may provide that  
22 reconciliation of the amounts owed under an energy performance  
23 contract shall occur in a period beyond one year with final  
24 reconciliation occurring within the term of the performance



1 contract.

2 (d) The energy performance contract shall require the  
3 qualified provider to provide to the governmental unit an  
4 annual reconciliation of the guaranteed energy cost-savings.  
5 If the reconciliation reveals a shortfall in annual energy cost  
6 savings, the qualified provider is liable for that shortfall.  
7 If the reconciliation reveals an excess in annual energy cost  
8 savings, the excess savings may be used to cover potential  
9 energy cost-savings shortages in subsequent contract years.

10 Section 60. Monitoring; reports.

11 (a) During the term of each energy performance contract,  
12 the qualified energy service company or qualified provider  
13 shall monitor the reductions in energy consumption and  
14 cost-savings attributable to the cost-savings measures  
15 installed under the performance contract, and shall, no less  
16 than annually, prepare and provide a report to the governmental  
17 unit documenting the performance of the cost-savings measures  
18 to the governmental unit.

19 (b) The qualified provider or qualified energy service  
20 company and governmental unit may agree to make modifications  
21 in calculating savings based on any of the following  
22 occurrences:

23 (1) subsequent material change to the baseline energy  
24 consumption identified at the beginning of the performance  
25 contract;

- 1           (2) changes in utility rates;
- 2           (3) changes in the number of days in the utility  
3 billing cycle;
- 4           (4) changes in the total square footage of the  
5 building;
- 6           (5) changes in the operational schedule of the  
7 facility;
- 8           (6) changes in facility temperature;
- 9           (7) material change in the weather;
- 10          (8) material changes in the amount of equipment or  
11 lighting used at the facility; or
- 12          (9) any other change which reasonably would be expected  
13 to modify energy use or energy costs.

14          (c) For all projects carried out under this Act, the  
15 governmental unit shall report the name of the project, the  
16 project host, the investment on the project, and the expected  
17 energy savings to the Illinois Commerce Commission, and shall  
18 file with the Illinois Commerce Commission a copy of all  
19 reconciliation reports delivered under this subsection (c).  
20 The Illinois Commerce Commission may report energy savings from  
21 these projects to the federal Energy Information  
22 Administration under the Energy Policy Act of 1992 reporting  
23 standards.

24          Section 65. Contingency provisions. Performance contracts  
25 shall include contingency provisions in the event that actual

1 savings do not meet predicted savings

2 Section 70. Use of savings from performance contracts.  
3 Governmental units may direct savings realized under the  
4 performance contract to contract payment and other expenses as  
5 they deem necessary. Governmental units are encouraged to  
6 reinvest savings whenever practical into cost-savings  
7 measures, so long as the governmental unit is satisfying all  
8 obligations under the performance contract.

9 Section 75. Act takes precedence; repeal of prior  
10 conflicting statutes. In case of any conflict between the  
11 provisions of this Act and any other law, the provisions of  
12 this Act shall prevail and control. The provisions of any  
13 statute enacted prior to this Act which are inconsistent with  
14 this Act are hereby repealed. The Attorney General shall  
15 consult with the Smart Energy Design Assistance Center (SEDAC)  
16 in construing this Section.

17 Section 100. The Illinois Procurement Code is amended by  
18 changing Sections 20-60 and 40-25 as follows:

19 (30 ILCS 500/20-60)

20 Sec. 20-60. Duration of contracts.

21 (a) Maximum duration. A contract may be entered into for  
22 any period of time deemed to be in the best interests of the

1 State but not exceeding 10 years inclusive, beginning January  
2 1, 2010, of proposed contract renewals. Third parties may lease  
3 State-owned dark fiber networks for any period of time deemed  
4 to be in the best interest of the State, but not exceeding 20  
5 years. The length of a lease for real property or capital  
6 improvements shall be in accordance with the provisions of  
7 Section 40-25. The length of energy conservation program  
8 contracts or energy savings contracts or leases shall be in  
9 accordance with the provisions of Section 45 of the Energy  
10 Performance Contracting Act ~~25-45~~. A contract for bond or  
11 mortgage insurance awarded by the Illinois Housing Development  
12 Authority, however, may be entered into for any period of time  
13 less than or equal to the maximum period of time that the  
14 subject bond or mortgage may remain outstanding.

15 (b) Subject to appropriation. All contracts made or entered  
16 into shall recite that they are subject to termination and  
17 cancellation in any year for which the General Assembly fails  
18 to make an appropriation to make payments under the terms of  
19 the contract.

20 (c) The chief procurement officer shall file a proposed  
21 extension or renewal of a contract with the Procurement Policy  
22 Board prior to entering into any extension or renewal if the  
23 cost associated with the extension or renewal exceeds \$249,999.  
24 The Procurement Policy Board may object to the proposed  
25 extension or renewal within 30 calendar days and require a  
26 hearing before the Board prior to entering into the extension

1 or renewal. If the Procurement Policy Board does not object  
2 within 30 calendar days or takes affirmative action to  
3 recommend the extension or renewal, the chief procurement  
4 officer may enter into the extension or renewal of a contract.  
5 This subsection does not apply to any emergency procurement,  
6 any procurement under Article 40, or any procurement exempted  
7 by Section 1-10(b) of this Code. If any State agency contract  
8 is paid for in whole or in part with federal-aid funds, grants,  
9 or loans and the provisions of this subsection would result in  
10 the loss of those federal-aid funds, grants, or loans, then the  
11 contract is exempt from the provisions of this subsection in  
12 order to remain eligible for those federal-aid funds, grants,  
13 or loans, and the State agency shall file notice of this  
14 exemption with the Procurement Policy Board prior to entering  
15 into the proposed extension or renewal. Nothing in this  
16 subsection permits a chief procurement officer to enter into an  
17 extension or renewal in violation of subsection (a). By August  
18 1 each year, the Procurement Policy Board shall file a report  
19 with the General Assembly identifying for the previous fiscal  
20 year (i) the proposed extensions or renewals that were filed  
21 with the Board and whether the Board objected and (ii) the  
22 contracts exempt from this subsection.

23 (d) Notwithstanding the provisions of subsection (a) of  
24 this Section, the Department of Innovation and Technology may  
25 enter into leases for dark fiber networks for any period of  
26 time deemed to be in the best interests of the State but not

1 exceeding 20 years inclusive. The Department of Innovation and  
2 Technology may lease dark fiber networks from third parties  
3 only for the primary purpose of providing services ~~to~~ (i) to  
4 the offices of Governor, Lieutenant Governor, Attorney  
5 General, Secretary of State, Comptroller, or Treasurer and  
6 State agencies, as defined under Section 5-15 of the Civil  
7 Administrative Code of Illinois or (ii) for anchor  
8 institutions, as defined in Section 7 of the Illinois Century  
9 Network Act. Dark fiber network lease contracts shall be  
10 subject to all other provisions of this Code and any applicable  
11 rules or requirements, including, but not limited to,  
12 publication of lease solicitations, use of standard State  
13 contracting terms and conditions, and approval of vendor  
14 certifications and financial disclosures.

15 (e) As used in this Section, "dark fiber network" means a  
16 network of fiber optic cables laid but currently unused by a  
17 third party that the third party is leasing for use as network  
18 infrastructure.

19 (Source: P.A. 100-23, eff. 7-6-17; 100-611, eff. 7-20-18;  
20 revised 10-11-18.)

21 (30 ILCS 500/40-25)

22 (Text of Section before amendment by P.A. 100-1047)

23 Sec. 40-25. Length of leases.

24 (a) Maximum term. Leases shall be for a term not to exceed  
25 10 years inclusive, beginning January, 1, 2010, of proposed

1 contract renewals and shall include a termination option in  
2 favor of the State after 5 years. The length of energy  
3 conservation program contracts or energy savings contracts or  
4 leases shall be in accordance with the provisions of Section  
5 25-45.

6 (b) Renewal. Leases may include a renewal option. An option  
7 to renew may be exercised only when a State purchasing officer  
8 determines in writing that renewal is in the best interest of  
9 the State and notice of the exercise of the option is published  
10 in the appropriate volume of the Procurement Bulletin at least  
11 60 calendar days prior to the exercise of the option.

12 (c) Subject to appropriation. All leases shall recite that  
13 they are subject to termination and cancellation in any year  
14 for which the General Assembly fails to make an appropriation  
15 to make payments under the terms of the lease.

16 (d) Holdover. Beginning January 1, 2010, no lease may  
17 continue on a month-to-month or other holdover basis for a  
18 total of more than 6 months. Beginning July 1, 2010, the  
19 Comptroller shall withhold payment of leases beyond this  
20 holdover period.

21 (Source: P.A. 100-23, eff. 7-6-17.)

22 (Text of Section after amendment by P.A. 100-1047)

23 Sec. 40-25. Length of leases.

24 (a) Maximum term. Except as otherwise provided under  
25 subsection (a-5), leases shall be for a term not to exceed 10

1 years inclusive, beginning January, 1, 2010, of proposed  
2 contract renewals and shall include a termination option in  
3 favor of the State after 5 years. The length of energy  
4 conservation program contracts or energy savings contracts or  
5 leases shall be in accordance with the provisions of Section 45  
6 of the Energy Performance Contracting Act ~~25-45~~.

7 (a-5) Extended term. A lease for real property owned by the  
8 University of Illinois to be used by the University of Illinois  
9 at Chicago for an ambulatory surgical center, which would  
10 include both clinical services and retail space, may exceed 10  
11 years in length where: (i) the lease requires the lessor to  
12 make capital improvements in excess of \$100,000; and (ii) the  
13 Board of Trustees of the University of Illinois determines a  
14 term of more than 10 years is necessary and is in the best  
15 interest of the University. A lease under this subsection (a-5)  
16 may not exceed 30 years in length.

17 (b) Renewal. Leases may include a renewal option. An option  
18 to renew may be exercised only when a State purchasing officer  
19 determines in writing that renewal is in the best interest of  
20 the State and notice of the exercise of the option is published  
21 in the appropriate volume of the Procurement Bulletin at least  
22 60 calendar days prior to the exercise of the option.

23 (c) Subject to appropriation. All leases shall recite that  
24 they are subject to termination and cancellation in any year  
25 for which the General Assembly fails to make an appropriation  
26 to make payments under the terms of the lease.



1           (d) Holdover. Beginning January 1, 2010, no lease may  
2 continue on a month-to-month or other holdover basis for a  
3 total of more than 6 months. Beginning July 1, 2010, the  
4 Comptroller shall withhold payment of leases beyond this  
5 holdover period.

6           (Source: P.A. 100-23, eff. 7-6-17; 100-1047, eff. 1-1-19.)

7           (30 ILCS 500/25-45 rep.)

8           Section 105. The Illinois Procurement Code is amended by  
9 repealing Section 25-45.

10           Section 995. No acceleration or delay. Where this Act makes  
11 changes in a statute that is represented in this Act by text  
12 that is not yet or no longer in effect (for example, a Section  
13 represented by multiple versions), the use of that text does  
14 not accelerate or delay the taking effect of (i) the changes  
15 made by this Act or (ii) provisions derived from any other  
16 Public Act.

17           Section 999. Effective date. This Act takes effect upon  
18 becoming law.