

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

772Z0455

## SENATE BILL NO. 113

Introduced by: Senators Rusch, Bolin, Cronin, Frerichs, Haverly, Kolbeck, Maher, Otten (Ernie), Peters, and Tidemann and Representatives Steinhauer, Campbell, Greenfield (Lana), Holmes, Johnson, McCleerey, Rasmussen, Reed, Ring, Schoenfish, and Smith

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding guaranteed energy  
2 savings contracts.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-33B-1 be amended to read:

5 1-33B-1. Terms used in this chapter mean:

6 (1) "Cost-effective" or "cost-effectiveness," that the sum of guaranteed cost savings are  
7 equal to or exceed any financing repayment obligation each year of a finance term;

8 (2) "Cost-saving measure," a cost-effective improvement, repair, or alteration of  
9 equipment fixtures, or furnishings added to or used in a facility that is designed to  
10 reduce energy consumption, water consumption, or operation and maintenance costs.

11 The term also includes vehicle acquisitions, changes to utility rate or tariff schedules,  
12 or fuel source changes that result in costs savings;

13 (3) "Energy conservation measure," a training program or facility alteration intended to  
14 reduce either energy consumption or operating costs, or both, or increase operating



1 revenues through the generation of energy, renewable energy, or improved metering  
2 technology, including the following:

- 3 (a) Insulation of the building or any structure associated with the building;
- 4 (b) Window or door replacement, weather stripping, or modifications that reduce  
5 energy consumption;
- 6 (c) Automated or computerized energy control systems;
- 7 (d) Replacement or modification to increase the energy efficiency of the lighting,  
8 heating, air conditioning, or ventilating systems;
- 9 (e) Energy recovery or cogeneration systems;
- 10 (f) Repair or maintenance items, when included in energy efficiency  
11 improvements of the building, if overall measures meet the twenty-five year  
12 payback as provided in § 1-33B-3.11;
- 13 (g) Energy source conversions which provide either operational or energy cost  
14 savings, or both; and
- 15 (h) Other energy or utility-related improvements in facilities, systems, or  
16 technology that improve energy or metering efficiency or increase operating  
17 revenues through the generation of energy, renewable energy, or improved  
18 metering technology.

19 The term does not include the relationship between an electric utility and the utility's  
20 customer under a proposed energy exchange contract, if the customer seeks status as  
21 a qualifying facility under the Public Utility Regulatory Policies Act of 1978, as  
22 defined by 18 CFR Part 292, Subpart B, as it existed on January 1, 2005;

- 23 (4) "Energy performance contract," a contract between a governmental unit and a  
24 qualified energy service provider for evaluation, recommendation, and

1 implementation of one or more cost-saving measures, evaluation of cost-  
2 effectiveness, and guaranteed cost savings;

3 ~~(4)~~(5) "Finance term," the length of time for repayment of funds borrowed for an energy  
4 performance contract;

5 ~~(5)~~(6) "Governmental unit," state government or any political subdivision of the state;

6 (7) "Guaranteed cost savings," a guaranteed annual measurable monetary reduction in  
7 utility, operating, and maintenance costs for each year of a guarantee period as a  
8 result of cost-saving measures;

9 (8) "Guaranteed energy savings contract," a contract for measures that provides that  
10 either energy or operational cost savings, or both, are guaranteed to the extent  
11 necessary to make payments for the measures recommended in the contract;

12 ~~(6)~~(9) "Guarantee period," the period of time from the effective date of a contract until  
13 guaranteed cost savings are achieved;

14 (10) "Investment-grade energy audit," a study of energy or water usage of a public  
15 building, including a detailed description of the improvements recommended for the  
16 project, the estimated cost of the improvements, and the utility, operation, and  
17 maintenance cost savings projected to result from the recommended improvements;

18 (11) "Measurement and verification," the methodology, measurements, inspections, and  
19 mathematical calculations to determine utility consumption before and after an  
20 energy performance contract is implemented;

21 ~~(7)~~(12) "Operation and maintenance cost savings," a measurable decrease in operation  
22 and maintenance costs as a direct result of cost-saving measures, calculated  
23 using baseline operation and maintenance costs. The term does not include the  
24 shifting of personnel costs or similar short-term cost savings that cannot be

1 definitively measured;

2 ~~(8)~~(13) "Qualified energy service provider" or "provider," a person, business, or state  
3 agency with experience in the design, implementation, or installation of cost  
4 saving measures, who can demonstrate the financial capabilities of completing  
5 the obligations stipulated to in an energy performance contract;

6 ~~(9)~~(14) "Utility cost savings," expenses for utilities that are eliminated or avoided on  
7 a long-term basis as a result of equipment installed or modified, or services  
8 performed by a qualified energy service provider. The term includes expenses  
9 for natural gas, propane or similar fuels, electricity, water, waste water, and  
10 waste disposal.

11 Section 2. That § 1-33B-3.1 be amended to read:

12 1-33B-3.1. ~~For the purposes of this chapter, the term, guaranteed cost savings, means a~~  
13 ~~guaranteed annual measurable monetary reduction in utility, operating, and maintenance costs~~  
14 ~~for each year of a guarantee period as a result of cost-saving measures. Guaranteed~~ The  
15 guaranteed cost savings for utility savings shall be calculated using the mutually agreed upon  
16 baseline utility rates in use at the time of an investment-grade energy audit. ~~Guaranteed~~ The  
17 guaranteed cost savings for operation and maintenance cost savings shall be calculated using  
18 mutually agreed upon baseline operation and maintenance costs at the time of an investment-  
19 grade energy audit.

20 Section 3. That § 1-33B-3.2 be amended to read:

21 1-33B-3.2. ~~For the purposes of this chapter, the term, investment-grade energy audit, means~~  
22 ~~a study of energy or water usage of a public building, including a detailed description of the~~  
23 ~~improvements recommended for the project, the estimated cost of the improvements, and the~~  
24 ~~utility, operation, and maintenance cost savings projected to result from the recommended~~

1 ~~improvements. The study~~ An investment-grade energy audit shall contain all of the information  
2 required pursuant to § 1-33B-3.

3 Section 4. That § 1-33B-3.3 be amended to read:

4 1-33B-3.3. ~~For the purposes of this chapter, the term, measurement and verification, means~~  
5 ~~the methodology, measurements, inspections, and mathematical calculations to determine utility~~  
6 ~~consumption before and after an energy performance contract is implemented.~~ The measurement  
7 and verification report may be for an individual cost-saving measure or an entire project. The  
8 governmental unit shall determine which measurement and verification method to utilize.

9 Section 5. That § 1-33B-3.6 be amended to read:

10 1-33B-3.6. The governmental unit may negotiate and enter into a contract with the most  
11 qualified energy service provider at a price that the governmental unit determines fair and  
12 reasonable, taking into account the scope of the services rendered. The provider selected is not  
13 required to have submitted the proposal with the lowest cost. If the governmental unit is unable  
14 to negotiate a satisfactory contract with the provider, negotiations with that provider shall be  
15 formally terminated, and the governmental unit may select the next provider until an agreement  
16 is reached or the process is terminated. The governmental unit may choose to reject all  
17 proposals.

18 Section 6. That § 1-33B-3.11 be amended to read:

19 1-33B-3.11. All permissible sources, including utility incentives, grants, operating costs, or  
20 capital budgets, may be used to reduce the amount of financing.

21 An energy performance contract may extend beyond the current fiscal year, but may not  
22 exceed ~~fifteen~~ twenty-five years, the cost-weighted average useful life of the cost-saving  
23 measure, or the term of financing, whichever is shortest.

24 During the guarantee period, a qualified energy service provider shall measure and verify

1 reductions in energy consumption and costs attributable to cost-saving measures implemented  
2 pursuant to an energy performance contract and prepare and provide a measurement and  
3 verification report to the governmental unit at least once a year.

4 Section 7. That § 1-33B-3.12 be amended to read:

5 1-33B-3.12. Costs for measurement and verification shall be included in an energy  
6 performance contract and paid by the governmental unit during an initial monitoring period of  
7 no less than three years.

8 The energy performance contract shall provide that, if guaranteed cost savings are not  
9 achieved during any year in the initial monitoring period, the qualified energy service provider  
10 shall pay be responsible for the costs for measurement and verification reports ~~until guaranteed~~  
11 ~~cost savings are achieved for all consecutive years equal to the initial monitoring period~~ for that  
12 year.

13 Section 8. That § 1-33B-8 be amended to read:

14 1-33B-8. The contract shall include a written guarantee of the qualified provider that either  
15 the energy or operating cost savings, or both, will meet or exceed the costs of the energy  
16 efficiency measure within ~~fifteen~~ twenty-five years. A qualified provider shall provide a  
17 sufficient bond to the governmental unit for the installation and the faithful performance of all  
18 the measures included in the contract covering the first two years of the contract. The guaranteed  
19 energy savings, projected for any additional year of the contract, shall be guaranteed by the  
20 qualified provider. The qualified provider shall reimburse the governmental entity for any  
21 shortfall of guaranteed energy savings projected in the contract. The guaranteed energy savings  
22 contract may provide for payments over a period not exceeding ~~fifteen~~ twenty-five years.

23 Section 9. That § 1-33B-2 be repealed.

24 ~~1-33B-2. For the purposes of this chapter, the term, energy conservation measure, means a~~

1 training program or facility alteration intended to reduce either energy consumption or operating  
2 costs, or both, or increase operating revenues through the generation of energy, renewable  
3 energy, or improved metering technology, including the following:

4 ~~— (1) — Insulation of the building or any structure associated with the building;~~

5 ~~— (2) — Window or door replacement, weather stripping, or modifications that reduce energy  
6 consumption;~~

7 ~~— (3) — Automated or computerized energy control systems;~~

8 ~~— (4) — Replacement or modification to increase the energy efficiency of the lighting,  
9 heating, air conditioning, or ventilating systems;~~

10 ~~— (5) — Energy recovery or cogeneration systems;~~

11 ~~— (6) — Repair or maintenance items, when included in energy efficiency improvements of  
12 the building, if overall measures meet the fifteen-year payback as provided in § 1-  
13 33B-7;~~

14 ~~— (7) — Energy source conversions which provide either operational or energy cost savings,  
15 or both; and~~

16 ~~— (8) — Other energy or utility-related improvements in facilities, systems, or technology that  
17 improve energy or metering efficiency or increase operating revenues through the  
18 generation of energy, renewable energy, or improved metering technology.~~

19 ~~— Nothing in this section addresses the relationship between an electric utility and its customer  
20 under a proposed energy exchange contract, where the customer seeks status as a qualifying  
21 facility under the Public Utility Regulatory Policies Act of 1978, as defined by 18 CFR Part 292,  
22 Subpart B, as it existed on January 1, 2005.~~

23 Section 10. That § 1-33B-4.1 be repealed.

24 ~~— 1-33B-4.1. Notwithstanding § 9-25-16 or any other provision of law, the Governor's Office~~

1 ~~of Energy Policy may make loans, leases, or grants to any municipality or county from the~~  
2 ~~energy conservation loan special revenue fund. The terms and conditions of loans, leases, or~~  
3 ~~grants made pursuant to this section shall be agreed to by the municipality or county by~~  
4 ~~resolution and the Governor's Office of Energy Policy.~~