

SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 2087

AN ACT

To repeal sections 640.651 and 640.653, RSMo, and to enact in lieu thereof three new sections relating to performance contracting for energy efficiency projects.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

Section A. Sections 640.651 and 640.653, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 8.235, 640.651 and 640.653, to read as follows:

8.235. 1. Notwithstanding any provision of subsection 3 of section 8.231 and section 34.040, RSMo, the division of design and construction is hereby authorized to contract for guaranteed energy cost savings contracts by selecting a bid for proposal from a contractor or team of contractors using the following criteria:

(1) The specialized experience and technical competence of the firm or team with respect to the type of services required;

(2) The capacity and capability of the firm or team to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project; and

(3) The past record of performance of the firm or team with respect to such factors as control of costs, quality of work and ability to meet schedules.

2. Each guaranteed energy cost saving contract, authorized

pursuant to this section, shall reduce the estimated energy consumption by a minimum of twelve percent or reduce the cost of energy and related savings by a minimum of twelve percent.

3. The guaranteed energy cost saving contract shall otherwise be in accordance with the provisions of section 8.231.

640.651. As used in sections 640.651 to 640.686, the following terms mean:

(1) "Applicant", any school, hospital, small business, local government or other energy-using sector or entity authorized by the department through administrative rule, which submits an application for loans or financial assistance to the department;

(2) "Application cycle", the period of time each year, as determined by the department, that the department shall accept and receive applications seeking loans or financial assistance under the provisions of sections 640.651 to 640.686;

(3) "Authority", the environmental improvement and energy resources authority;

(4) "Borrower", a recipient of loan or other financial assistance program funds subsequent to the execution of loan or financial assistance documents with the department or other applicable parties provided that a building owned by the state or an agency thereof, other than a state college or state university, shall not be eligible for loans or financial assistance pursuant to sections 640.651 to 640.686;

(5) "Building", including initial installation in a new building, any applicant-owned and -operated structure, group of closely situated structural units that are centrally metered or

served by a central utility plant, or an eligible portion thereof, which includes a heating or cooling system, or both;

(6) "Department", the department of natural resources;

(7) "Energy conservation loan account", an account to be established on the books of a borrower for purposes of tracking information related to the receipt or expenditure of the loan funds or financial assistance, and to be used to receive and remit energy cost savings for purposes of making payments on the loan or financial assistance;

(8) "Energy conservation measure" or "ECM", an installation or modification of an installation in a building or replacement or modification to an energy-consuming process or system which is primarily intended to maintain or reduce energy consumption and reduce energy costs, or allow the use of an alternative or renewable energy source;

(9) "Energy conservation project" or "project", the design, acquisition, installation, and implementation of one or more energy conservation measures;

(10) "Energy cost savings" or "savings", the value, in terms of dollars, that has or is estimated to accrue from energy savings or avoided costs due to implementation of an energy conservation project;

(11) "Estimated simple payback", the estimated cost of a project divided by the estimated energy cost savings;

(12) "Fund", the energy set-aside program fund established in section 640.665;

(13) "Hospital", a facility as defined in subsection 2 of section 197.020, RSMo, including any medical treatment or related

facility controlled by a hospital board;

(14) "Hospital board", the board of directors having general control of the property and affairs of the hospital facility;

(15) "Loan agreement", a document agreed to by the borrower's school, hospital or corporate board, principals of a business, the governing body of a local government or other authorized officials and the department or other applicable parties and signed by the authorized official thereof, that details all terms and requirements under which the loan is issued or other financial assistance granted, and describes the terms under which the loan or financial assistance repayment shall be made;

(16) "Payback score", a numeric value derived from the review of an application, calculated as prescribed by the department, which may include an estimated simple payback or life-cycle costing method of economic analysis and used solely for purposes of ranking applications for the selection of loan and financial assistance recipients within the balance of program funds available;

(17) "Project cost", all costs determined by the department to be directly related to the implementation of an energy conservation project, and, for initial installation in a new building, shall include the incremental cost of a high-efficiency system;

(18) ["Repayment period", unless otherwise negotiated as required under section 640.660, the period in years required to repay a loan or financial assistance as determined by the

projects' estimated simple payback or life-cycle costing analysis, and rounded to the next year in cases where the estimated simple payback or life-cycle costing analysis is in a fraction of a year;

(19)] "School", an institution operated by a state college or state university, public agency, political subdivision or a public or private nonprofit organization tax exempt under section 501(c)(3) of the Internal Revenue Code which:

(a) Provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis;

(b) Provides and is legally authorized to provide a program of education beyond secondary education, on a day or residential basis; admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate; is accredited by a nationally recognized accrediting agency or association; and provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the preceding requirements and which provides such a program; or

(c) Provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation; provides and is legally authorized to provide a program of education beyond secondary education, on a day or residential basis; admits as students only persons having a certificate of graduation from a school providing secondary

education, or the recognized equivalent of such certificate; and is accredited by a nationally recognized accrediting agency or association;

[(20)] (19) "School board", the board of education having general control of the property and affairs of any school as defined in this section;

[(21)] (20) "Technical assistance report", a specialized engineering report that identifies and specifies the quantity of energy savings and related energy cost savings that are likely to result from the implementation of one or more energy conservation measures;

[(22)] (21) "Unobligated balance", that amount in the fund that has not been dedicated to any projects at the end of each state fiscal year.

640.653. 1. An application for loan funds or other financial assistance may be submitted to the department for the purpose of financing all or a portion of the costs incurred in implementing an energy conservation project. The application shall be accompanied by a technical assistance report. The application and the technical assistance report shall be in such form and contain such information, financial or otherwise, as prescribed by the department. This section shall not preclude any applicant or borrower from joining in a cooperative project with any other local government or with any state or federal agency or entity in an energy conservation project; provided that, all other requirements of sections 640.651 to 640.686 are met.

2. Eligible applications shall be assigned a payback score

derived from the application review performed by the department. Applications shall be selected for loans and financial assistance beginning with the lowest payback score and continuing in ascending order to the highest payback score until all available program funds have been obligated within any given application cycle. The selection criteria may be applied per sector or entity to assure equity pursuant to section 640.674. In no case shall a loan or financial assistance be made to finance an energy project with a payback score of less than six months or more than [eight] ten years or eighty percent of the expected useful life of the energy conservation measures when the expected useful life exceeds ten years. Repayment periods are to be determined by the department. Applications may be approved for loans or financial assistance only in those instances where the applicant has furnished the department information satisfactory to assure that the project cost will be recovered through energy cost savings during the repayment period of the loan or financial assistance. In no case shall a loan or financial assistance be made to an applicant unless the approval of the governing board or body of the applicant to the loan agreement is obtained and a written certification of such approval is provided, where applicable.

3. The department shall approve or disapprove all applications for loans or financial assistance which are sent by certified or registered mail or hand delivered and received by the department's division of energy on, or prior to, the ninetieth day following the date of application cycle closing. Any applications which are not acted upon by the department by such date shall be deemed to be approved as submitted.

4. The department of elementary and secondary education shall be provided a summary of all proposed public elementary and secondary school projects for review within fifteen days from the application deadline. Once projects have been reviewed and selected for loans or financial assistance by the department, the department of elementary and secondary education shall have thirty days to certify that those projects selected for loans or financial assistance are consistent with related state programs for public education facilities.

5. The department of health and senior services shall be provided a summary of all proposed hospital projects for review within fifteen days from the application deadline. Once projects have been reviewed and selected for loans or financial assistance by the department of natural resources, the department of health and senior services shall have thirty days to certify that those projects selected for loans or financial assistance are consistent with related health requirements for hospital facilities.

6. The coordinating board for higher education shall be provided a summary of all proposed public higher education facility projects for review within fifteen days from the application deadline. Once projects have been reviewed and selected for loans and financial assistance by the department, the coordinating board for higher education shall have thirty days to certify that those projects selected for loans or financial assistance are consistent with related state programs for education facilities.