

108TH CONGRESS  
1ST SESSION

# S. 658

To extend the authority for Energy Savings Performance Contracts and  
for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 19, 2003

Mr. BINGAMAN (for himself and Mr. DORGAN) introduced the following bill;  
which was read twice and referred to the Committee on Energy and Nat-  
ural Resources

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## A BILL

To extend the authority for Energy Savings Performance  
Contracts and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Energy Savings Per-  
5 formance Contracts Amendments Act of 2003”.

6 **SEC. 2. PERMANENT EXTENSION.**

7 Section 801(c) of the National Energy Conservation  
8 Policy Act (42 U.S.C. 8287(c)) is repealed.

1 **SEC. 3. COST SAVINGS FROM REPLACEMENT FACILITIES.**

2 Section 801(a) of the National Energy Conservation  
3 Policy Act (42 U.S.C. 8287(a)) is amended by adding at  
4 the end the following new paragraph:

5 “(3)(A) In the case of an energy savings contract or  
6 energy savings performance contract providing for energy  
7 savings through the construction and operation of one or  
8 more buildings or facilities to replace one or more existing  
9 buildings or facilities, benefits ancillary to the purpose of  
10 such contract under paragraph (1) may include savings  
11 resulting from reduced costs of operation and maintenance  
12 at such replacement buildings or facilities when compared  
13 with costs of operation and maintenance at the buildings  
14 or facilities being replaced.

15 “(B) Notwithstanding paragraph (2)(B), aggregate  
16 annual payments by an agency under an energy savings  
17 contract or energy savings performance contract referred  
18 to in subparagraph (A) may take into account (through  
19 the procedures developed pursuant to this section) savings  
20 resulting from reduced costs of operation and maintenance  
21 as described in subparagraph (A).”

22 **SEC. 4. ENERGY SAVINGS.**

23 Section 804(2) of the National Energy Conservation  
24 Policy Act (42 U.S.C. 8287c(2)) is amended to read as  
25 follows:

26 “(2) The term ‘energy savings’ means—

1           “(A) a reduction in the cost of energy or  
2 water, from a base cost established through a  
3 methodology set forth in the contract, used in  
4 an existing federally owned building or build-  
5 ings or other federally owned facilities as a re-  
6 sult of—

7                   “(i) the lease or purchase of operating  
8 equipment, improvements, altered oper-  
9 ation and maintenance, or technical serv-  
10 ices;

11                   “(ii) the increased efficient use of ex-  
12 isting energy sources by cogeneration or  
13 heat recovery, excluding any cogeneration  
14 process for other than a federally owned  
15 building or buildings or other federally  
16 owned facilities; or

17                   “(iii) the increased efficient use of ex-  
18 isting water sources; or

19           “(B) in the case of a replacement building  
20 or facility described in section 801(a)(3), a re-  
21 duction in the cost of energy, from a base cost  
22 established through a methodology set forth in  
23 the contract, that would otherwise be utilized in  
24 one or more existing federally owned buildings  
25 or other federally owned buildings by reason of

1           the construction and operation of the replace-  
2           ment building or facility.”.

3 **SEC. 5. ENERGY SAVINGS CONTRACT.**

4           Section 804(3) of the National Energy Conservation  
5 Policy Act (42 U.S.C. 8287c(3)) is amended to read as  
6 follows:

7           “(3) The terms ‘energy savings contract’ and  
8           ‘energy savings performance contract’ mean a con-  
9           tract which provides for—

10                   “(A) the performance of services for the  
11                   design, acquisition, installation, testing, oper-  
12                   ation, and, where appropriate, maintenance and  
13                   repair, of an identified energy or water con-  
14                   servation measure or series of measures at one  
15                   or more locations; or

16                   “(B) energy savings through the construc-  
17                   tion and operation of one or more buildings or  
18                   facilities to replace one or more existing build-  
19                   ings or facilities.”.

20 **SEC. 6. ENERGY OR WATER CONSERVATION MEASURE.**

21           Section 804(4) of the National Energy Conservation  
22 Policy Act (42 U.S.C. 8287c(4)) is amended to read as  
23 follows:

24           “(4) The term ‘energy or water conservation  
25           measure’ means—

1           “(A) an energy conservation measure, as  
2           defined in section 551(4) (42 U.S.C. 8259(4));  
3           or

4           “(B) a water conservation measure that  
5           improves water efficiency, is life cycle cost effec-  
6           tive, and involves water conservation, water re-  
7           cycling or reuse, improvements in operation or  
8           maintenance efficiencies, retrofit activities or  
9           other related activities, not at a Federal hydro-  
10          electric facility.”.

11 **SEC. 7. REVIEW.**

12          Within 180 days after the date of the enactment of  
13 this Act, the Secretary of Energy shall complete a review  
14 of the Energy Savings Performance Contract program to  
15 identify statutory, regulatory, and administration obsta-  
16 cles that prevent Federal agencies from fully utilizing the  
17 program. In addition, this review shall identify all areas  
18 for increasing program flexibility and effectiveness, includ-  
19 ing audit and measurement verification requirements, ac-  
20 counting for energy use in determining savings, con-  
21 tracting requirements, and energy efficiency services cov-  
22 ered. The Secretary shall report these findings to the  
23 Committee on Energy and Commerce of the House of  
24 Representatives and the Committee on Energy and Nat-  
25 ural Resources of the Senate, and shall implement identi-

1 fied administrative and regulatory changes to increase  
2 program flexibility and effectiveness to the extent that  
3 such changes are consistent with statutory authority.

4 **SEC. 8. PILOT PROGRAM TO EXPAND ENERGY SAVINGS**  
5 **PERFORMANCE CONTRACTS TO NON-BUILD-**  
6 **ING PROJECTS.**

7 Title VIII of the National Energy Conservation Pol-  
8 icy Act (42 U.S.C. 8287–8287c) is amended by adding  
9 at the end the following:

10 **“SEC. 805. PILOT PROGRAM FOR ENERGY SAVINGS PER-**  
11 **FORMANCE CONTRACT INVESTMENTS IN**  
12 **NON-BUILDING ENERGY SAVINGS PROJECTS.**

13 “(a) AUTHORIZATION.—The Secretary of Defense  
14 and the heads of other interested Federal agencies are au-  
15 thorized, on a pilot basis, to enter into up to ten energy  
16 savings performance contracts under this Title for the  
17 purpose of achieving savings, secondary savings, and bene-  
18 fits incidental to those purposes, in non-building energy  
19 efficiency improvement projects.

20 “(b) SELECTION OF PROJECTS.—The Secretary of  
21 Energy, in consultation with the Secretary of Defense and  
22 the heads of other interested Federal agencies, shall select  
23 up to ten contract projects for this pilot program. The  
24 projects shall be selected to demonstrate the applicability  
25 and benefit of energy savings performance contracting to

1 a range of non-building energy efficiency improvement  
2 projects.

3 “(c) DEFINITIONS.—For the purposes of this section:

4 “(1) The term ‘non-building’ means any vehicle,  
5 device, or equipment that is transportable under its  
6 own power by land, sea, or air and consumes energy  
7 from any fuel source for the purpose of such trans-  
8 portability, or to maintain a controlled environment  
9 within such vehicle, device or equipment; or any  
10 Federally owned equipment used to generate elec-  
11 tricity or transport water.

12 “(2) The term ‘secondary savings’, means addi-  
13 tional energy or cost savings that are a direct con-  
14 sequence of the energy savings that result from the  
15 energy efficiency improvements that were financed  
16 and implemented pursuant to the energy savings  
17 performance contract. Such ‘secondary savings’ may  
18 include, but are not limited to, energy and cost sav-  
19 ings that result from a reduction in the need for fuel  
20 delivery and logistical support. In the case of electric  
21 generation equipment, secondary savings may in-  
22 clude the benefits of increased efficiency in the pro-  
23 duction of electricity.

24 “(d) REPORT.—No later than three years after the  
25 enactment of this section, the Secretary of Energy shall

1 report to the Congress on the progress and results of this  
2 program. Such report shall include: a description of all  
3 projects undertaken; the energy and cost savings, sec-  
4 ondary savings, other benefits and problems resulting  
5 from such projects; and the overall cost-benefit of such  
6 projects. The report shall also include recommendations,  
7 developed in consultation with those agencies that under-  
8 took projects under the program, as to whether the au-  
9 thorization to enter into energy savings performance con-  
10 tract for non-building projects should be extended, ex-  
11 panded, or otherwise modified.”.

12 **SEC. 9. UTILITY INCENTIVE PROGRAMS.**

13 Section 546(c)(3) of the National Energy Conserva-  
14 tion Policy Act (42 U.S.C. 8256(c)(3)) is amended by  
15 striking “facilities” and inserting “facilities, equipment  
16 and vehicles”.

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