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REPORT
113–627

ENERGY SAVINGS THROUGH PUBLIC-PRIVATE PARTNERSHIPS ACT OF 2014

NOVEMBER 19, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 2689]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2689) to amend the National Energy Conservation Policy Act to encourage the increased use of performance contracting in Federal facilities, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	3
Background and Need for Legislation	3
Hearings	4
Committee Consideration	4
Committee Votes	5
Committee Oversight Findings	5
Statement of General Performance Goals and Objectives	5
New Budget Authority, Entitlement Authority, and Tax Expenditures	5
Earmark, Limited Tax Benefits, and Limited Tariff Benefits	5
Committee Cost Estimate	5
Congressional Budget Office Estimate	5
Federal Mandates Statement	11
Duplication of Federal Programs	11
Disclosure of Directed Rule Makings	11
Advisory Committee Statement	11
Applicability to Legislative Branch	11
Section-by-Section Analysis of the Legislation	12
Changes in Existing Law Made by the Bill, as Reported	13

The amendment is as follows:

Strike all after the enacting clause and insert the following:

49–006

SECTION 1. SHORT TITLE.

This Act may be cited as the "Energy Savings Through Public-Private Partnerships Act of 2014".

SEC. 2. FINDINGS.

Congress finds the following:

(1) Private sector funding and expertise can help address the energy efficiency challenges facing the United States.

(2) The Federal Government spends more than $6 billion annually in energy costs.

(3) Reducing Federal energy costs can help save money, create jobs, and reduce waste.

(4) Energy savings performance contracts and utility energy service contracts are tools for utilizing private sector investment to upgrade Federal facilities without any up-front cost to the taxpayer.

(5) Performance contracting is a way to retrofit Federal buildings using private sector investment in the absence of appropriated dollars.

(6) Retrofits that reduce energy use also improve infrastructure, protect national security, and cut facility operations and maintenance costs.

SEC. 3. USE OF ENERGY AND WATER EFFICIENCY MEASURES IN FEDERAL BUILDINGS.

(a) ENERGY MANAGEMENT REQUIREMENTS.—Section 543(f)(4) of the National Energy Conservation Policy Act (42 U.S.C. 8253(f)(4)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively and by moving the margins 2 ems to the right;

(2) by striking "Not later than" and inserting the following:

"(A) IN GENERAL.—Not later than"; and

(3) by adding at the end the following new subparagraph:

"(B) MEASURES NOT IMPLEMENTED.—Each energy manager, as part of the certification system under paragraph (7) and using guidelines developed by the Secretary, shall provide an explanation regarding any life-cycle cost-effective measures described in subparagraph (A)(i) that have not been implemented.".

(b) REPORTS.—Section 548(b) of the National Energy Conservation Policy Act (42 U.S.C. 8258(b)) is amended—

(1) in paragraph (3), by striking "and" at the end;

(2) in paragraph (4), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(5) the status of each agency's energy savings performance contracts and utility energy service contracts, the investment value of such contracts, the guaranteed energy savings for the previous year as compared to the actual energy savings for the previous year, the plan for entering into such contracts in the coming year, and information explaining why any previously submitted plans for such contracts were not implemented.".

(c) FEDERAL ENERGY MANAGEMENT DEFINITIONS.—Section 551(4) of the National Energy Conservation Policy Act (42 U.S.C. 8259(4)) is amended by striking "or retrofit activities" and inserting "retrofit activities, or energy consuming devices and required support structures".

(d) AUTHORITY TO ENTER INTO CONTRACTS.—Section 801(a)(2)(F) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)(2)(F)) is amended—

(1) in clause (i), by striking "or" at the end;

(2) in clause (ii), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following new clause:

"(iii) limit the recognition of operation and maintenance savings associated with systems modernized or replaced with the implementation of energy conservation measures, water conservation measures, or any series of energy conservation measures and water conservation measures.".

(e) MISCELLANEOUS AUTHORITY.—Section 801(a)(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287(a)) is amended by adding at the end the following:

"(H) MISCELLANEOUS AUTHORITY.—Notwithstanding any other provision of law, a Federal agency may sell or transfer energy savings and apply the proceeds of such sale or transfer to fund a contract under this title.".

(f) PAYMENT OF COSTS.—Section 802 of the National Energy Conservation Policy Act (42 U.S.C. 8287a) is amended by striking "(and related operation and maintenance expenses)" and inserting ", including related operations and maintenance expenses".

(g) ENERGY SAVINGS PERFORMANCE CONTRACTS DEFINITIONS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended—

(1) in subparagraph (A), by striking "federally owned building or buildings or other federally owned facilities" and inserting "Federal building (as defined in section 551 (42 U.S.C. 8259))" each place it appears;

(2) in subparagraph (C) , by striking "; and" and inserting a semicolon;

(3) in subparagraph (D), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following new subparagraphs:

"(E) the use, sale, or transfer of energy incentives, rebates, or credits (including renewable energy credits) from Federal, State, or local governments or utilities; and

"(F) any revenue generated from a reduction in energy or water use, more efficient waste recycling, or additional energy generated from more efficient equipment.".

PURPOSE AND SUMMARY

H.R. 2689, the "Energy Savings Through Public-Private Partnerships Act of 2013," was introduced by Representatives Gardner (R–CO) and Welch (D–VT) on July 16, 2013. The legislation facilitates the use of energy savings performance contracts (ESPCs) and utility energy service contracts (UESCs) to utilize private sector investment to upgrade the energy and water efficiency of Federal facilities without any up-front cost to taxpayers. The bill helps to reduce Federal energy costs, while saving money, creating jobs, and reducing waste.

BACKGROUND AND NEED FOR LEGISLATION

As the nation's single largest energy consumer, the Federal government spends more than $7 billion annually on its energy costs.[1] Energy efficiency improvements can reduce this expenditure, as well as help agencies acquire necessary infrastructure and equipment. In 2007, the Energy Independence and Security Act required Federal agencies to perform energy audits of their facilities.[2] To date, with 77 percent of covered facilities audited, almost $11 billion worth of potential life-cycle cost-effective energy conservation measures have been identified.[3]

ESPCs and UESCs are a proven method by which Federal agencies can increase efficiency, thereby reducing energy costs. In both cases, an approved contractor designs and installs systems and equipment to reduce the energy consumption of a Federal facility and gets paid back through savings on utility bills that result from the project over a stipulated period of time. By law, and on a negotiated basis, the government never pays more than it would have paid for utilities if it had not entered into the ESPC. Using an ESPC or UESC in the Federal government eliminates the need for appropriated dollars for equipment replacement and for operations and maintenance of such energy consuming equipment.

For over 20 years, performance-based contracts for energy savings have provided upgrades to Federal buildings, including the House and Senate Office Buildings and the U.S. Capitol. According

[1] Dr. Timothy D. Unruh, Program Director, U.S. Department of Energy, *Federal Energy Management Program,* " NAESCO: Meeting Enhanced Energy Consumption Reduction and Performance Objectives at Federal Facilities through Strategic Use of ESPCs and UESCs," (Mar. 18, 2014).

[2] Energy Independence and Security Act of 2007, Pub. L. No. 110–140, 432 (2007).

[3] U.S. Department of Energy, Federal Energy Management Program, "*EISA Compliance Tracking System Reports and Data*."

to the Federal Energy Management Program, approximately 600 performance contracts worth $5.3 billion have been awarded throughout 25 Federal agencies and in 49 States. These projects have resulted in energy savings valued at $13.1 billion, of which, approximately $10.1 billion went to repay project investments, accruing a net savings of $3 billion to the Federal government.[4] Further, a June 2013 Oak Ridge National Laboratory study found that under an ESPC, Federal agencies are saving an average of almost twice as much energy as is guaranteed by the contractor.[5] In addition to generating energy and dollar savings, years of deferred maintenance at Federal facilities are successfully addressed by ESPC retrofits at no additional cost to taxpayers.

ESPCs also are used in State and municipal buildings, as well as in schools, hospitals and universities. All 50 States have statutes authorizing energy savings performance contracting. While utilization varies across each State, the U.S. Energy Services Company (ESCO) market—which is principally comprised of ESPC activity—exceeds $5 billion annually.[6] In the past twenty years, U.S. ESCOs delivered about $45 billion in projects paid from savings, $50 billion in energy and maintenance savings—guaranteed and verified, 400,000 person-years of direct employment, $30 billion of infrastructure improvements in public facilities, and 450 million tons of CO2 savings at no additional cost.[7]

Greater utilization of ESPCs has been impaired by administrative delay and process issues within Federal agencies, some of which are the result of ambiguity in the underlying law. H.R. 2689 seeks to eliminate administrative roadblocks by clarifying certain provisions of the law to reduce confusion resulting from statutory ambiguities. In addition, the legislation requires additional reporting requirements, thus ensuring improved transparency.

Supporters of the Legislation

The following entities have provided letters in support of H.R. 2689: Federal Performance Contracting Coalition, National Association of Manufacturers, U.S. Chamber of Commerce, and U.S. Green Building Council.

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On April 29 and 30, 2014, the Committee on Energy and Commerce met in open markup session. During the markup, an amendment in the nature of a substitute was offered and adopted by a voice vote. The Committee ordered H.R. 2689 favorably reported to the House of Representatives, as amended, by a voice vote.

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[4] U.S. Department of Energy, Federal Energy Management Program, "*Awarded ESPC Projects*."

[5] Oak Ridge National Laboratory, "*Beyond Guaranteed Savings: Additional Cost Savings Associated With ESPC Projects,*" (Mar. 2013).

[6] U.S. Department of Energy, Weatherization and Intergovernmental Programs Office, "*Current Size and Remaining Market Potential of U.S. ESCO Industry,*" (Sept. 2013).

[7] National Association of Energy Service Companies, "*The ESCO Story*."

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 2689 reported. A motion by Mr. Upton to order H.R. 2689 reported to the House, as amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

H.R. 2689 facilitates the use of energy savings performance contracts (ESPCs) and utility energy service contracts (UESCs) to utilize private sector investment to upgrade the energy and water efficiency of Federal facilities without any up-front cost to taxpayers. The bill helps to reduce Federal energy costs while saving money, creating jobs, and reducing waste.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2689, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 2689 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 24, 2014.

Hon. FRED UPTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2689, the Energy Savings Through Public-Private Partnerships Act of 2014.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 2689—Energy Savings Through Public-Private Partnerships Act of 2014

Summary: H.R. 2689 would modify agencies' authority to enter into energy savings performance contracts (ESPCs), a specific type of long-term contract used to procure equipment and services to conserve energy in federal buildings. The bill also would specify new energy-related reporting requirements for federal agencies.

CBO estimates that enacting H.R. 2689 would increase direct spending; therefore, pay-as-you-go procedures apply. Over the 2015–2024 period, we estimate that direct spending for contractual commitments to pay nonfederal vendors for energy conservation measures implemented pursuant to this bill would amount to $450 million. CBO also estimates that reductions in Federal agencies' energy costs attributable to investments in energy-related services and equipment procured through contracts authorized under H.R. 2689 would total $210 million over the next 10 years (and additional amounts in subsequent years). In addition, CBO estimates that discretionary spending for certain services related to those contracts would total $10 million over the next five years. Enacting H.R. 2689 would not affect revenues.

CBO believes that allowing agencies to enter into ESPCs without appropriations in advance to cover the costs of the acquired equipment or services creates direct spending authority. However, the Administration does not treat ESPCs that way in the budget. Rather, agencies record payments to the vendors as coming from annual appropriations, usually spread out over many years. In the budget, those costs are offset, at least in part, by whatever reductions in annual energy costs are generated by the investments. Under that budgetary treatment, because it usually takes many years before the annual costs of the equipment or services fall below the annual savings, the federal government generally does not realize significant amounts of net savings in appropriations until after the 10-year period covered by CBO's cost estimates.

H.R. 2689 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effects of H.R. 2689 are shown in the following table. The costs of this legislation fall primarily within budget functions 050 (defense), 270 (energy), and 800 (general government).

	By fiscal year, in millions of dollars—											
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2015–2019	2015–2024
CHANGES IN DIRECT SPENDING												
Federal Obligations Under ESPCs:												
Estimated Budget Authority	50	50	50	50	50	50	50	50	50	50	250	500
Estimated Outlays	15	35	50	50	50	50	50	50	50	50	200	450
CHANGES IN SPENDING SUBJECT TO APPROPRIATION												
Reductions in Energy and Energy-Related Costs Attributable to ESPCs:												
Estimated Authorization Level	−1	−4	−9	−13	−18	−23	−28	−33	−38	−43	−45	−210
Estimated Outlays	−1	−4	−9	−13	−18	−23	−28	−33	−38	−43	−45	−210
Appropriations for ESPC-Related Services:												
Estimated Authorization Level	*	1	2	3	4	5	6	7	8	9	10	45
Estimated Outlays	*	1	2	3	4	5	6	7	8	9	10	45

Notes: ESPCs = Energy savings performance contracts; * = Less than $500,000.

The estimates presented in this table reflect CBO's view of how cash flows related to ESPCs should be reflected in the federal budget. Since ESPCs were first implemented in 1998, however, the Administration has not recorded the full extent of federal obligations under ESPCs upfront when contracts were signed. Instead, the Administration records ongoing contract payments to vendors under ESPCs on a year-by-year basis as appropriations for such payments are provided. If the Administration was to continue following that practice for executing ESPCs under H.R. 2689, agencies' total energy-related costs would be largely unchanged during the contract period, when savings from reduced energy costs would go toward making contractual payments to vendors. As a result, CBO estimates that there would be no significant reduction in appropriations from implementing H.R. 2689 in the 10-year period covered by this estimate. If expected reductions in energy use continued beyond the contract period, budgetary savings would accrue to the federal government if annual appropriations for agencies' energy-related spending were reduced accordingly.

Basis of estimate: For this estimate, CBO assumes that H.R. 2689 will be enacted near the start of fiscal year 2015. CBO estimates that amending agencies' authority to enter into ESPCs would increase direct spending by $450 million over the next 10 years. That upfront increase in ESPC-related spending would lead to a reduction in agencies' energy-related costs, which are generally paid from discretionary appropriations, as well as some additional discretionary spending for certain services related to those contracts.

Budgetary treatment of ESPCs

ESPCs are a form of third-party financing, in which private parties pay for the design, acquisition, installation, and in some cases, the operation and maintenance of energy conservation equipment (generally referred to as energy conservation measures) in federal buildings.[1] Because the government does not pay for the equipment at the time it is acquired, the vendor borrows money from a nonfederal lender to finance the investment on behalf of the federal agency. With such private financing, agencies can pay for energy conservation measures and related financing costs over time on the basis of the anticipated and realized reductions in energy costs. Upon entering into an ESPC, the government effectively commits to make payments to a vendor in future years to cover the costs of equipment and services as well as interest costs on the vendor's borrowing to finance upfront costs. (Since the vendor faces higher borrowing costs than the U.S. Treasury, total interest payments for an ESPC will be higher than they would be if the government financed the acquisition directly with appropriated funds.)

Entering into such legally binding agreements constitutes a commitment of government resources without appropriations to cover all of the resulting costs. Thus, in CBO's view, the authority to enter into contractual agreements for third-party financing of energy conservation measures is a form of direct spending.[2] Consistent with long-standing practice, CBO's cost estimates for legislation providing such authority show budget authority in the year or years when commitments are expected to be made in the amount of the estimated net present value of those contractual commitments. Estimated outlays stemming from such commitments are spread across the period during which the vendor is expected to construct, manufacture, or purchase the asset on behalf of the federal government.

Agencies, however, generally do not follow the procedures that CBO views as appropriate for recording an ESPC in the budget and that are the basis for this cost estimate. In agency budgets, the initial commitment of governmental resources is not shown as an obligation requiring upfront budget authority. Rather, the payments to the vendor, which are usually spread out over many years, come from annual appropriations and are recorded as outlays over the full duration of the contract, offset, at least in part, by whatever annual savings are generated by the investments.

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[1] For more on third-party financing, see Congressional Budget Office, *Third-Party Financing of Federal Projects* (June 1, 2005).

[2] For further details on the principles that govern CBO's analyses of long-term contracts such as ESPCs, see Congressional Budget Office, letter to the Honorable Fred Upton on the budgetary impact of energy savings performance contracts (July 1, 2011).

Direct spending

H.R. 2689 would make a variety of changes to the ESPC statute. In particular, the bill would:

- Permit agencies to use, sell, or transfer energy incentives, rebates, or credits (such as renewable energy certificates) as a means of making payments to vendors under ESPCs;[3]
- Expand the definition of "energy conservation measure" to include the acquisition of energy-consuming devices and support structures (such as appliances located within federal buildings); and
- Require federal agencies to include, in estimating energy savings attributable to an ESPC, anticipated forgone operation and maintenance expenses related to energy conservation measures financed under the contract.

Taken together, CBO expects that the proposed changes would result in an increase in the use of ESPCs to finance energy-related investments. In particular, we expect that authorizing agencies to use incentives such as renewable energy certificates to finance contract payments would increase the use of ESPCs for projects involving renewable energy technologies. Under current law, agencies' authority to use such incentives to pay for contract costs is uncertain in light of a 2013 decision by a federal contract appeals board.[4] As a result of that decision, CBO expects that under current law federal agencies are unlikely to pursue ESPCs that involve renewable energy technologies as a significant component. In addition, CBO expects that other definitional changes in H.R. 2689 would result in additional projects going forward that would not be undertaken under current law.

Based on information from the Department of Energy (DOE), particularly related to the potential magnitude of renewable energy projects that are likely to be pursued through ESPCs if agencies were explicitly permitted to use incentives such as renewable energy certificates to fund contracts, CBO estimates that incremental increases in direct spending under H.R. 2689 would total $450 million over the 2015–2024 period. On average, CBO expects that agencies would use ESPCs to acquire new energy conservation measures at an upfront cost of about $50 million a year, with most of that amount supporting investments in renewable energy technologies.

CBO's estimate of direct spending reflects an amount equal to the cost of energy conservation measures as installed (about $35 million a year), plus the net present value of the portion of borrowing costs attributable to contract interest rates that would exceed U.S. Treasury interest rates (about $15 million). (Borrowing costs equivalent to the amount of Treasury interest that would be paid if the equipment was financed with appropriated funds are not included in our estimate because, for the enforcement of Congressional budget rules, changes in Treasury interest costs are not counted as a cost or savings related to any particular legislative

[3] Renewable energy certificates represent the rights to the nonpower renewable and environmental attributes of electricity generated from renewable resources. Such certificates, and other similar incentives and rebates, can be sold separately from the underlying units of physical electricity.

[4] *Honeywell International Inc.,* Armed Services Board of Contract Appeals No. 57779 (August 7, 2013).

provision.) CBO's estimate of outlays reflects its judgment as to when equipment or services would be provided—for equipment, typically over a three-year period.

Spending subject to appropriation

ESPCs permit federal agencies to pay vendors for energy conservation measures and related financing costs over time on the basis of anticipated and realized reductions in energy costs, which are generally paid from annual appropriations. Typically, an ESPC vendor develops a baseline estimate of energy consumption that would occur in the absence of energy conservation measures and estimates the reductions in energy consumption and energy costs that would result from an ESPC-funded project. Such reductions in energy-related costs are used to set the annual payments to the vendor for the services and equipment provided under the ESPC. According to DOE, the average term of those repayments under an ESPC is 17 years—that is, it takes about 17 years, on average, for the government to realize sufficient savings to cover the contractual payments due to the vendor.[5]

CBO anticipates that ESPC-funded projects under H.R. 2689 would, on average, have payback periods in line with that historical experience. On that basis, we estimate that reductions in energy-related federal costs attributable to such contracts would total $210 million over the next 10 years.

In addition to contractual commitments through ESPCs that CBO categorizes as direct spending, CBO estimates that discretionary spending for certain services related to ESPCs under H.R. 2689 would total $10 million over the next five years. Typically, when using an ESPC, an agency agrees to make payments for services related to the operation and maintenance of newly installed equipment. Such agreements include measurement and verification activities to confirm that the equipment produces savings as guaranteed by the contract. Because the government can opt out of those services at any time, such contract costs are discretionary. For this estimate, CBO assumes that the cost of such services would total about 2.5 percent of the value of the overall contract. Assuming appropriation of the necessary amounts, CBO estimates that discretionary spending for optional ESPC-related services would total less than $500,000 in 2015 but would gradually increase as new contracts are entered into each year and payments on older contracts continue.

If the funding for ESPCs was recorded as direct spending (as shown in the above table), any reductions in energy and related costs could be used to reduce discretionary spending by the affected agencies. However, because agencies do not record commitments under ESPCs upfront and instead record the payments to vendors as discretionary spending over the course of the contracts, we expect that savings from reduced energy costs over the first 17 years would be roughly offset by the costs of contract payments to vendors.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures

[5] Information provided to the Congressional Budget Office by the U.S. Department of Energy, Federal Energy Management Program, June 2014.

for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 2689, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON ENERGY AND COMMERCE ON APRIL 30, 2014

	By fiscal year, in millions of dollars—												
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2014–2019	2014–2024
	NET INCREASE OR DECREASE (—) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	15	35	50	50	50	50	50	50	50	50	200	450

Intergovernmental and private-sector impact: H.R. 2689 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Megan Carroll and David Newman; Impact on state, local, and tribal governments: J'nell L. Blanco; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2689 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 2689 specifically directs no rule makings within the meaning of 5 U.S.C. 551 to be completed.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides the short title of the "Energy Savings Through Public-Private Partnerships Act of 2014."

Section 2. Findings

This section sets forth various findings regarding the use of energy savings performance contracts and utility energy service contracts to reduce Federal energy costs.

Section 3. Use of energy and water efficiency measures in Federal buildings

Section 3(a) amends Section 543(f)(4) of the National Energy Conservation Policy Act (NECPA) by adding a new section requiring Federal energy managers to provide, as part of their compliance certifications, an explanation regarding any life-cycle cost-effective energy-saving or water-saving measures that have not been implemented.

Section 3(b) amends Section 548(b) of NECPA by adding a new Department of Energy (DOE) reporting requirement on the status of each Federal agency's energy savings performance contracts and utility energy service contracts, the investment value of such contracts, the guaranteed energy savings for the previous year as compared to the actual energy savings for the previous year, the plan for entering into such contracts in the coming year, and information explaining why any previously submitted plans for such contracts were not implemented.

Section 3(c) amends Section 551(4) of NECPA by revising the term "energy conservation measures" to include energy consuming devices and required support structures.

Section 3(d) amends Section 801(a)(2)(F) of NECPA by prohibiting Federal agencies from limiting the recognition of operation and maintenance savings associated with systems modernized or replaced with the implementation of energy conservation measures, water conservation measures, or any series of energy conservation measures and water conservation measures.

Section 3(e) amends Section 801(a) of NECPA by adding a new subsection (H) to permit the sale of renewable energy credits, rebates and other similar incentives to fund energy savings performance contracts.

Section 3(f) amends Section 802 of NECPA to further clarify that reduced operation and maintenance expenses resulting from energy or water conversation measures implemented through an ESPC shall be treated as energy or water savings for purposes of ESPC financing.

Section 3(g) amends Section 804(2) of NECPA by revising the definition of "energy savings" to reference Federal buildings as defined in Section 551 of NECPA. This section also amends the definition of "energy savings" to include (1) the use, sale, or transfer of energy incentives, rebates, or credits (including renewable energy credits) from governments or utilities; and (2) any revenue generated from a reduction in energy or water use, more efficient waste recycling, or additional energy generated from more efficient equipment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NATIONAL ENERGY CONSERVATION POLICY ACT

* * * * * * *

TITLE V—FEDERAL ENERGY INITIATIVE

* * * * * * *

PART 3—FEDERAL ENERGY MANAGEMENT

* * * * * * *

SEC. 543. ENERGY MANAGEMENT REQUIREMENTS.

(a) * * *

* * * * * * *

(f) USE OF ENERGY AND WATER EFFICIENCY MEASURES IN FEDERAL BUILDINGS.—

(1) * * *

* * * * * * *

(4) IMPLEMENTATION OF IDENTIFIED ENERGY AND WATER EFFICIENCY MEASURES.— [Not later than]

(A) IN GENERAL.—Not later than 2 years after the completion of each evaluation under paragraph (3), each energy manager may—

[(A)] *(i)* implement any energy- or water-saving measure that the Federal agency identified in the evaluation conducted under paragraph (3) that is life cycle cost-effective; and

[(B)] *(ii)* bundle individual measures of varying paybacks together into combined projects.

(B) MEASURES NOT IMPLEMENTED.—Each energy manager, as part of the certification system under paragraph (7) and using guidelines developed by the Secretary, shall provide an explanation regarding any life-cycle cost-effective measures described in subparagraph (A)(i) that have not been implemented.

* * * * * * *

SEC. 548. REPORTS.

(a) * * *

(b) REPORTS TO THE PRESIDENT AND CONGRESS.—The Secretary shall report, not later than April 2 of each year, with respect to each fiscal year beginning after the date of the enactment of this subsection, to the President and Congress—

(1) * * *

* * * * * * *

(3) the extent and nature of interagency exchange of information concerning the conservation and efficient utilization of energy; [and]

(4) the information required under section 161(d) of the Energy Policy Act of 1992[.]*; and*

* * * * * * *

(5) the status of each agency's energy savings performance contracts and utility energy service contracts, the investment value of such contracts, the guaranteed energy savings for the previous year as compared to the actual energy savings for the previous year, the plan for entering into such contracts in the coming year, and information explaining why any previously submitted plans for such contracts were not implemented.

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SEC. 551. DEFINITIONS.

For the purposes of this part—

(1) * * *

* * * * * * *

(4) the term "energy conservation measures" means measures that are applied to a Federal building that improve energy efficiency and are life cycle cost effective and that involve energy conservation, cogeneration facilities, renewable energy sources, improvements in operations and maintenance efficiencies, [or retrofit activities] *retrofit activities, or energy consuming devices and required support structures*;

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TITLE VIII—ENERGY SAVINGS PERFORMANCE CONTRACTS

SEC. 801. AUTHORITY TO ENTER INTO CONTRACTS.

(a) IN GENERAL.—(1) * * *

(2)(A) * * *

* * * * * * *

(F) PROMOTION OF CONTRACTS.—In carrying out this section, a Federal agency shall not—

(i) establish a Federal agency policy that limits the maximum contract term under subparagraph (D) to a period shorter than 25 years; [or]

(ii) limit the total amount of obligations under energy savings performance contracts or other private financing of energy savings measures[.]*; or*

* * * * * * *

(iii) limit the recognition of operation and maintenance savings associated with systems modernized or replaced with the implementation of energy conservation measures, water conservation measures, or any series of energy conservation measures and water conservation measures.

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(H) MISCELLANEOUS AUTHORITY.—Notwithstanding any other provision of law, a Federal agency may sell or transfer energy savings and apply the proceeds of such sale or transfer to fund a contract under this title.

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SEC. 802. PAYMENT OF COSTS.

Any amount paid by a Federal agency pursuant to any contract entered into under this title may be paid only from funds appropriated or otherwise made available to the agency for fiscal year 1986 or any fiscal year thereafter for the payment of energy, water, or wastewater treatment expenses **[**(and related operation and maintenance expenses)**]***, including related operations and maintenance expenses*.

* * * * * * *

SEC. 804. DEFINITIONS.

For purposes of this title, the following definitions apply:

(1) * * *

(2) The term "energy savings" means—

(A) a reduction in the cost of energy, water, or wastewater treatment, from a base cost established through a methodology set forth in the contract, used in an existing **[**federally owned building or buildings or other federally owned facilities**]** *Federal building (as defined in section 551 (42 U.S.C. 8259))* as a result of—

(i) * * *

(ii) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a **[**federally owned building or buildings or other federally owned facilities**]** *Federal building (as defined in section 551 (42 U.S.C. 8259))*; or

* * * * * * *

(C) if otherwise authorized by Federal or State law (including regulations), the sale or transfer of electrical or thermal energy generated on-site from renewable energy sources or cogeneration, but in excess of Federal needs, to utilities or non-Federal energy users**[**; and**]***;*

(D) the increased efficient use of existing water sources in interior or exterior applications**[**.**]***;*

(E) the use, sale, or transfer of energy incentives, rebates, or credits (including renewable energy credits) from Federal, State, or local governments or utilities; and

(F) any revenue generated from a reduction in energy or water use, more efficient waste recycling, or additional energy generated from more efficient equipment.

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