

ENERGY SAVINGS THROUGH PUBLIC-PRIVATE
 PARTNERSHIPS ACT OF 2017

FEBRUARY 23, 2018.—Committed to the Committee of the Whole House on the State
 of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 723]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 723) to amend the National Energy Conservation Policy Act to encourage the increased use of performance contracting in Federal facilities, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
 Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Energy Savings Through Public-Private Partnerships Act of 2017”.

SEC. 2. 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 by striking “may” and inserting “shall”.

(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:

“(5)(A) the status of the energy savings performance contracts and utility energy service contracts of each agency;

“(B) the investment value of the contracts;

“(C) the guaranteed energy savings for the previous year as compared to the actual energy savings for the previous year;

“(D) the plan for entering into the contracts in the coming year; and

“(E) information explaining why any previously submitted plans for the contracts were not implemented.”.

(c) **DEFINITION OF ENERGY CONSERVATION MEASURES.**—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:

“(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 combination 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)(2)) 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 the 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) **DEFINITION OF FEDERAL BUILDING.**—Section 551(6) of the National Energy Conservation Policy Act (42 U.S.C. 8259(6)) is amended by striking the semicolon at the end and inserting “; the term does not include a dam, reservoir, or hydro-power facility owned or operated by a Federal agency;”.

(h) **DEFINITION OF ENERGY SAVINGS.**—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)” 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:

“(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. 723 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

The Committee on Energy and Commerce has recognized the significant benefits of energy efficiency efforts in conserving domestic resources, saving American consumers money, strengthening economic competitiveness, and reducing environmental impacts. The energy efficiency “resource” plays an increasingly important role in the nation’s energy strategy. The advancement of cost-effective efficiency programs and technologies can contribute to the nation’s goal of energy independence by reducing demand and using supplies in a more effective manner. H.R. 723 seeks to increase energy efficiency and water conservation measures in the Federal Government.

According to the Energy Information Administration, the Federal Government is the single largest energy consumer in the nation. Congress therefore expects the government to pursue its own energy efficiency efforts vigorously—not only to conserve energy resources and taxpayer dollars, but to lead by example. To that end, H.R. 723 further encourages the federal agencies to enter into energy savings performance contracts (ESPCs) and utility energy service contracts (UESCs).

ESPCs and UESCs are proven methods 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 contract. 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 to the Federal Energy Management Program, approximately 650 performance contracts worth \$8 billion have been awarded throughout 25 Federal agencies and in all 50 States. These projects have resulted in energy savings valued at nearly \$15 billion, of which approximately \$11 billion went to repay project investments, accruing a net savings of \$4 billion to the Federal Government.

Greater use 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. 723 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.

COMMITTEE ACTION

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

On June 7, 2017, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 723, without amendment, favorably reported to the House by unanimous consent.

COMMITTEE VOTES

Clause 3(b) of rule XIII 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. 723 reported.

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee has not held hearings on this legislation.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 723 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, 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, February 16, 2018.

Hon. GREG WALDEN,
*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. 723, the Energy Savings Through Public-Private Partnerships Act of 2017.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 723—Energy Savings Through Public-Private Partnerships Act of 2017

Summary: H.R. 723 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 reporting requirements for federal agencies.

In CBO's view, commitments under ESPCs create direct spending because agencies enter into such contracts without appropriations in advance to cover their full costs. On the basis of that view, CBO estimates that enacting H.R. 723 would increase direct spending by \$441 million over the 2019–2027 period. CBO also estimates that reductions in federal agencies' energy costs attributable to investments in energy-related services and equipment procured through contracts authorized under the bill would total \$166 million over the 2019–2027 period (and additional amounts after 2027). Over that period, CBO also estimates that discretionary spending for certain services related to those contracts would total \$36 million.

Because H.R. 723 would affect direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 723 would not increase net direct spending or on-budget deficits by more than \$2.5 billion in any of the four consecutive 10-year periods beginning in 2028.

For purposes of determining budget-related points of order for legislation considered by the House, section 5109 of H. Con. Res. 71, the Concurrent Resolution on the Budget for Fiscal Year 2018, specifies how CBO should prepare cost estimates for ESPCs. Specifically, that resolution requires CBO to estimate, on a net-present value basis, the lifetime net cost or savings attributable to projects financed by such contracts and to record that amount as an upfront change in direct spending. Using those procedures, CBO estimates that H.R. 723 would reduce direct spending by \$27 million over the 2019–2027 period. However, H. Con. Res. 71 also specifies that, in the House of Representatives, any estimated savings calculated on that basis may not be used as an offset for purposes of budget enforcement.

H.R. 723 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the federal government: The estimated budgetary effects of this legislation are shown in the following table. Because the bill would affect energy-related spending by agencies throughout the federal government, the costs of this legislation would be spread across most budget functions.

Background: Under current law, a variety of statutory provisions and executive orders direct federal agencies to meet certain goals to reduce the amount of energy used, increase the consumption of electricity that is generated from renewable sources, reduce emissions of greenhouse gases, and ensure that federal facilities meet certain standards related to the use of sustainable resources. To support investments in energy-efficient and renewable technologies necessary to achieve those goals, federal agencies sometimes use ESPCs—specific types of long-term contracts that enable non-federal vendors to finance energy-related investments on behalf of the government.

Under such contracts, agencies agree to pay vendors for energy conservation measures and related financing costs over time on the basis of anticipated and realized reductions in energy costs. Typically, an ESPC vendor develops a baseline estimate of energy con-

sumption 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. Those estimated reductions are used to set the annual payments to the vendor for the services and equipment provided under the ESPC. According to the Department of Energy, the typical term of those payments under an ESPC is at least 17 years—that is, it takes at least 17 years, on average, for the government to realize sufficient savings to cover the contractual payments due to the vendor. After the contract is fully repaid, additional savings generated by energy conservation measures accrue to the government.

ESTIMATED BUDGETARY EFFECTS OF H.R. 723 AS REPORTED BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON MAY 24, 2017

	By fiscal year, in millions of dollars—											2018–2022	2018–2027
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027			
INCREASES IN DIRECT SPENDING ^a													
Federal Obligations Under ESPCs ^b													
Estimated Budget Authority	0	55	55	55	55	55	55	55	55	55	55	220	495
Estimated Outlays	0	17	39	55	55	55	55	55	55	55	55	166	441
INCREASES OR DECREASES (–) IN SPENDING SUBJECT TO APPROPRIATION ^a													
Reductions in Energy and Energy-Related Costs Attributable to ESPCs													
Estimated Authorization Level	0	–1	–4	–8	–13	–18	–23	–28	–33	–38	–26	–166	–166
Estimated Outlays	0	–1	–4	–8	–13	–18	–23	–28	–33	–38	–26	–166	–166
Appropriations for ESPC-Related Services													
Estimated Authorization Level	0	*	1	2	3	4	5	6	7	8	6	36	36
Estimated Outlays	0	*	1	2	3	4	5	6	7	8	6	36	36
Total Changes in Spending Subject to Appropriation													
Estimated Authorization Level	0	–1	–3	–6	–10	–14	–18	–22	–26	–30	–20	–130	–130
Estimated Outlays	0	–1	–3	–6	–10	–14	–18	–22	–26	–30	–20	–130	–130

Memorandum: Estimated Net Present Value of All Budgetary Effects related to ESPCs under H.R. 723, Following Procedures Specified in Section 5109 of H. Con. Res. 71, as passed by the House of Representatives on October 25, 2017.

DECREASES IN DIRECT SPENDING AS ESTIMATED ON A NET-PRESENT-VALUE BASIS ^c

Decreases in Direct Spending													
Estimated Budget Authority	0	–3	–3	–3	–3	–3	–3	–3	–3	–3	–3	–12	–27
Estimated Outlays	0	–3	–3	–3	–3	–3	–3	–3	–3	–3	–3	–12	–27

ESPCs = energy savings performance contracts. * = between zero and \$500,000.

^a The estimates reflect CBO's view of how cash flows related to ESPCs should be recorded 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 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. 723, agencies' total energy-related costs would be largely unchanged during the contract period, when estimated savings from reduced energy use would be paid to vendors under ESPC contracts. As a result, CBO estimates that there would be no significant reduction in appropriations from implementing H.R. 723 over 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.

^b Estimated budget authority reflects the value of energy conservation measures as installed plus the net present value of the portion of vendors' borrowing costs attributable to contract interest rates that would exceed U.S. Treasury interest rates. Estimated outlays stemming from such commitments are spread across the period during which the vendor is expected to construct, manufacture, or purchase energy conservation assets on behalf of the federal government.

^cSection 5109 of H. Con. Res. 71, as passed by the House of Representatives on October 25, 2017, specifies an alternative method for estimating the budgetary effects of ESPCs and similar contracts. That methodology requires CBO to calculate, on a net-present-value basis, the lifetime net cost or savings attributable to projects financed by ESPCs and to record that amount as an upfront change in direct spending in the year when commitments are expected to be made. However, H. Con. Res. 71 also specifies that any estimating savings calculated on that basis may not be used as an offset for purposes of budget enforcement.

CBO generally expects that implementing ESPCs will affect both direct spending and spending subject to appropriation. The rationale for CBO's longstanding budgetary treatment of ESPCs, and differences between CBO's view and the Administration's, are discussed in depth in a CBO report on that topic.¹ In brief, upon entering into an ESPC, the government effectively commits to making payments to a vendor in future years before having appropriations to cover all of the resulting costs; in CBO's view, the authority to enter into such contractually binding agreements without appropriations is a form of direct spending. ESPCs permit 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 discretionary annual appropriations.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted by the start of fiscal year 2019.

H.R. 723 would make a variety of changes to the ESPC statute. In particular, the bill would:

- Require agencies to implement energy conservation measures identified as being cost-effective;
- Expand the definition of an energy conservation measure to include the acquisition of energy-consuming devices and support structures (such as appliances located within federal buildings);
- Expand the definition of energy savings that may be included in an ESPC to include the use, sale, or transfer of energy incentives, rebates, or credits (such as renewable energy certificates) as well as savings from reductions in water or energy use, more efficient waste recycling, or additional energy generated from energy conservation measures;²
- Authorize agencies to use, sell, or transfer energy incentives, rebates, or credits as a means of making payments to vendors under ESPCs;
- Require agencies to include anticipated reductions in operation and maintenance (O&M) costs when estimating the savings attributable to energy conservation measures acquired through an ESPC; and
- Specify that ESPCs could not be used to install energy conservation measures at dams, reservoirs, or hydropower facilities that are owned or operated by a federal agency.

Taken as a whole, CBO expects that those changes would allow agencies to use ESPCs to pay for new energy-related projects that otherwise would not be undertaken under current law. In general, we expect that broadening the scope of effects that could be counted as energy savings in particular, by allowing agencies to include the full extent of anticipated reductions in O&M costs stemming

¹ See Congressional Budget Office, *Using ESPCs to Finance Federal Investments in Energy-Efficient Equipment*, (February 2015), www.cbo.gov/publication/49869.

² 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.

from ESPC-financed investments would enable agencies to make investments that might not otherwise be justifiable within existing requirements. We also expect that permitting agencies to count incentives such as renewable energy credits as savings and use them to pay vendors would lead to greater investments in renewable technologies.

CBO estimates that, under H.R. 723, agencies would use ESPCs to implement additional energy conservation measures with an underlying cost of about \$40 million annually. That estimate represents a relatively modest incremental increase in anticipated spending for energy-related investments. By comparison, since 2012 overall spending by federal agencies for energy-related investments has averaged nearly \$1.7 billion annually, with more than 40 percent of energy conservation measures or about \$700 million annually acquired through ESPCs or similar contracts.

CBO estimates that enacting H.R. 723 would increase direct spending for contractual obligations to pay for energy-related investments and, on net, reduce the need for discretionary spending to cover agencies' annual energy costs.

Direct spending: Under H.R. 723, CBO estimates that direct spending for the upfront cost of contractual commitments to acquire additional energy conservation measures through ESPCs would total \$55 million annually. CBO's estimate of direct spending reflects an amount equal to the annual cost of energy conservation measures as installed (about \$40 million), plus the net present value of the portion of the contractor's borrowing costs that are attributable to interest rates that would exceed U.S. Treasury interest rates (about \$15 million).³ The portion of the borrowing costs that are equivalent to the amount of interest the Treasury would pay if projects were financed with appropriated funds are not included in our estimate because, for the enforcement of Congressional budget rules, changes in the amount of interest the Treasury pays are not reflected in cost estimates. CBO's estimate of spending reflects its judgment as to when equipment or services would be provided typically over a three-year period for equipment. On that basis, CBO estimates that direct spending under H.R. 723 would total \$441 million over the 2019–2027 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. CBO estimates that reductions in energy and related costs attributable to ESPCs entered into under H.R. 723 would occur gradually over the period of time covered by such contracts—up to 25 years. As a result, most anticipated savings attributable to projects financed by such contracts would occur beyond the period covered by this estimate.

CBO anticipates that ESPC-funded projects under H.R. 723 would, on average, have payback periods averaging about 19 years.

³The methodology that CBO follows in preparing cost estimates for proposals involving ESPCs is consistent with scorekeeping guidelines set forth in the joint statement of managers that accompanied the conference reports on the Balanced Budget Act of 1997. See House Committee on the Budget, *Conference Report to Accompany H.R. 2015*, House Report 105–217 (July 30, 1997), pp. 1007–1014, <http://go.usa.gov/hb8Q> (PDF, 3.1 MB). In particular, Rule 11 specifies scoring treatments for legislation that authorizes agencies to enter into capital leases and other third-party financing arrangements.

Based on an analysis of data related to existing ESPCs, CBO also estimates that annual reductions in energy and energy-related costs would equal roughly 11 percent of the underlying cost of energy conservation measures. On that basis, CBO estimates that reductions in energy-related federal costs attributable to ESPCs entered into pursuant to H.R. 723 would total \$166 million over the 2019–2027 period, with additional savings occurring in later years.

Those estimated savings would be partially offset by increased spending for certain services related to ESPCs entered into under the bill. Typically, when using such a contract, 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 projects reduce energy consumption as guaranteed by the contract. Because the government can opt out of those services at any time, such contract-related costs are considered discretionary. For this estimate, CBO projects that the cost of such services would total about 2.5 percent of the value of energy conservation measures acquired through ESPCs. Assuming appropriation of the necessary amounts, CBO estimates that discretionary spending for optional contract-related services would total \$36 million over the 2019–2027 period and gradually increase as new contracts are entered into each year and payments on older contracts continue. Netting those costs against the projected savings in energy and related costs, CBO estimates discretionary savings of \$130 million over the 2019–2027 period.

Estimated budgetary effects attributable to ESPCs under H. Con. Res. 71: As previously mentioned, in preparing estimates for legislation related to ESPCs, section 5109 of H. Con. Res. 71 requires CBO to estimate the net present value of all budgetary effects attributable to ESPC contracts as a change in direct spending. Specifically, that methodology requires CBO to calculate, on a net-present-value basis, the lifetime net cost or savings attributable to projects financed by ESPCs and to record that amount as an upfront change in direct spending in the year when commitments are expected to be made.

Following that methodology, CBO estimates that one year's worth of projects pursued through ESPCs under H.R. 723 would involve payments to contractors totaling, on a nominal basis \$89 million over nearly 20 years. Such payments include \$40 million for repayments of principal amounts borrowed by the contractors to finance projects, \$28 million in interest costs, and \$21 million in payments for optional contract-related services. We also estimate that nominal energy savings attributable to one year's worth of projects would total \$101 million over the anticipated useful life of equipment. Adjusting the discount rate for the market risk associated with the various cash flows, CBO estimates that one year's worth of projects would generate net savings, on a net-present-value basis, of \$3 million—or \$27 million for ESPCs entered into during the 2019–2027 period covered by this estimate.

However, H. Con. Res. 71 also specifies that, in the House of Representatives, any savings estimated by CBO using those procedures shall not be counted as an offset for purposes of budget enforcement.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures 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. Section 5109 of H. Con. Res. 71 does not apply to estimates for the Statutory Pay-As-You-Go Act; thus, the amounts shown here reflect CBO’s estimates of direct spending effects.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 723, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON ENERGY AND COMMERCE ON JUNE 7, 2017

	By fiscal year, in millions of dollars—											
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018–2022	2018–2027
	NET INCREASE IN THE DEFICIT											
Statutory Pay-As-You-Go Impact	0	17	39	55	55	55	55	55	55	55	166	441

Increase in long-term deficit and net direct spending: CBO estimates that enacting the legislation would not increase net on-budget deficits or net direct spending by \$2.5 billion or more in any of the four consecutive 10-year periods beginning in 2027.

Intergovernmental and private-sector impact: H.R. 723 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On February 16, 2018, CBO transmitted a revised cost estimate for S. 239, the Energy Savings Through Public-Private Partnerships Act of 2017, as reported by the Senate Committee on Energy and Natural Resources on May 24, 2017.

H.R. 723 and S. 239 are virtually identical and CBO’s estimates of the budgetary effects under the two bills are the same. However, under H. Con. Res. 71, our revised estimate of S. 239 would reflect one further difference. Specifically, the provision that prohibits any savings estimated by CBO to be considered as an offset for purposes of budget enforcement applies only to legislation considered by the House of Representatives, not the Senate. Thus, while H.R. 723 would have no effect on direct spending for purposes of budget enforcement in the House, S. 239 would be considered as reducing net direct spending in the Senate.

Estimate prepared by: Federal Costs: Megan Carroll; Impact on State, Local, and Tribal Governments: Jon Sperl; Impact on the Private Sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, 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.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to facilitate the use of ESPCs

and 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.

DUPPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 723 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, 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.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 723 contains no earmarks, limited tax benefits, or limited tariff benefits.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, the Committee finds that H.R. 723 contains no directed rule makings.

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

Section 1 provides that the Act may be cited as the “Energy Savings Through Public-Private Partnerships Act of 2017.”

Section 2. Use of energy and water efficiency measures in Federal buildings

Section 2 amends the National Energy Conservation Policy Act to encourage the increased use of performance contracting in Federal facilities and other purposes. Specifically, this section modifies language regarding energy management requirements, reports, the definition of energy conservation measures, the authority to enter into contracts, payment of costs, the definition of federal building, the definition of energy savings, and miscellaneous authorities.

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, and 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) **ENERGY PERFORMANCE REQUIREMENT FOR FEDERAL BUILDINGS.**—(1) Subject to paragraph (2), each agency shall apply energy conservation measures to, and shall improve the design for the construction of, the Federal buildings of the agency (including each industrial or laboratory facility) so that the energy consumption per gross square foot of the Federal buildings of the agency in fiscal years 2006 through 2015 is reduced, as compared with the energy consumption per gross square foot of the Federal buildings of the agency in fiscal year 2003, by the percentage specified in the following table:

Fiscal Year	Percentage Reduction
2006	2
2007	4
2008	9
2009	12
2010	15
2011	18
2012	21
2013	24
2014	27
2015	30.

(2) An agency may exclude from the requirements of paragraph (1) any building, and the associated energy consumption and gross square footage, in which energy intensive activities are carried out. Each agency shall identify and list in each report made under section 548(a) the buildings designated by it for such exclusion.

(3) Not later than December 31, 2014, the Secretary shall review the results of the implementation of the energy performance requirement established under paragraph (1) and submit to Congress recommendations concerning energy performance requirements for fiscal years 2016 through 2025.

(b) **ENERGY MANAGEMENT REQUIREMENT FOR FEDERAL AGENCIES.**—(1) Not later than January 1, 2005, each agency shall, to the maximum extent practicable, install in Federal buildings owned by the United States all energy and water conservation measures with

payback periods of less than 10 years, as determined by using the methods and procedures developed pursuant to section 544.

(2) The Secretary may waive the requirements of this subsection for any agency for such periods as the Secretary may determine if the Secretary finds that the agency is taking all practicable steps to meet the requirements and that the requirements of this subsection will pose an unacceptable burden upon the agency. If the Secretary waives the requirements of this subsection, the Secretary shall, as part of the report required under section 548(b), notify the Congress in writing with an explanation and a justification of the reasons for such waiver.

(3) This subsection shall not apply to an agency's facilities that generate or transmit electric energy or to the uranium enrichment facilities operated by the Department of Energy.

(4) An agency may participate in the Environmental Protection Agency's "Green Lights" program for purposes of receiving technical assistance in complying with the requirements of this section.

(c) EXCLUSIONS.—(1)(A) An agency may exclude, from the energy performance requirement for a fiscal year established under subsection (a) and the energy management requirement established under subsection (b), any Federal building or collection of Federal buildings, if the head of the agency finds that—

(i) compliance with those requirements would be impracticable;

(ii) the agency has completed and submitted all federally required energy management reports;

(iii) the agency has achieved compliance with the energy efficiency requirements of this Act, the Energy Policy Act of 1992, Executive orders, and other Federal law; and

(iv) the agency has implemented all practicable, life cycle cost-effective projects with respect to the Federal building or collection of Federal buildings to be excluded.

(B) A finding of impracticability under subparagraph (A)(i) shall be based on—

(i) the energy intensiveness of activities carried out in the Federal building or collection of Federal buildings; or

(ii) the fact that the Federal building or collection of Federal buildings is used in the performance of a national security function.

(2) Each agency shall identify and list, in each report made under section 548(a), the Federal buildings designated by it for such exclusion. The Secretary shall review such findings for consistency with the standards for exclusion set forth in paragraph (1), and may within 90 days after receipt of the findings, reverse the exclusion. In the case of any such reversal, the agency shall comply with the requirements of subsections (a) and (b)(1) for the building concerned.

(3) Not later than 180 days after the date of enactment of this paragraph, the Secretary shall issue guidelines that establish criteria for exclusions under paragraph (1).

(d) IMPLEMENTATION STEPS.—The Secretary shall consult with the Secretary of Defense and the Administrator of General Services in developing guidelines for the implementation of this part. To meet the requirements of this section, each agency shall—

(1) prepare and submit to the Secretary, not later than December 31, 1993, a plan describing how the agency intends to meet such requirements, including how it will—

(A) designate personnel primarily responsible for achieving such requirements;

(B) identify high priority projects through calculation of payback periods;

(C) take maximum advantage of contracts authorized under title VIII of this Act, of financial incentives and other services provided by utilities for efficiency investment, and of other forms of financing to reduce the direct costs to the Government; and

(D) otherwise implement this part;

(2) perform energy surveys of its Federal buildings to the extent necessary and update such surveys as needed, incorporating any relevant information obtained from the survey conducted pursuant to section 550;

(3) using such surveys, determine the cost and payback period of energy and water conservation measures likely to achieve the requirements of this section;

(4) install energy and water conservation measures that will achieve the requirements of this section through the methods and procedures established pursuant to section 544; and

(5) ensure that the operation and maintenance procedures applied under this section are continued.

(e) METERING OF ENERGY USE.—

(1) DEADLINE.—By October 1, 2012, in accordance with guidelines established by the Secretary under paragraph (2), all Federal buildings shall, for the purposes of efficient use of energy and reduction in the cost of electricity used in such buildings, be metered. Each agency shall use, to the maximum extent practicable, advanced meters or advanced metering devices that provide data at least daily and that measure at least hourly consumption of electricity in the Federal buildings of the agency. Not later than October 1, 2016, each agency shall provide for equivalent metering of natural gas and steam, in accordance with guidelines established by the Secretary under paragraph (2). Such data shall be incorporated into existing Federal energy tracking systems and made available to Federal facility managers.

(2) GUIDELINES.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Secretary, in consultation with the Department of Defense, the General Services Administration, representatives from the metering industry, utility industry, energy services industry, energy efficiency industry, energy efficiency advocacy organizations, national laboratories, universities, and Federal facility managers, shall establish guidelines for agencies to carry out paragraph (1).

(B) REQUIREMENTS FOR GUIDELINES.—The guidelines shall—

(i) take into consideration—

(I) the cost of metering and the reduced cost of operation and maintenance expected to result from metering;

(II) the extent to which metering is expected to result in increased potential for energy management, increased potential for energy savings and energy efficiency improvement, and cost and energy savings due to utility contract aggregation; and

(III) the measurement and verification protocols of the Department of Energy;

(ii) include recommendations concerning the amount of funds and the number of trained personnel necessary to gather and use the metering information to track and reduce energy use;

(iii) establish priorities for types and locations of buildings to be metered based on cost-effectiveness and a schedule of one or more dates, not later than 1 year after the date of issuance of the guidelines, on which the requirements specified in paragraph (1) shall take effect; and

(iv) establish exclusions from the requirements specified in paragraph (1) based on the de minimis quantity of energy use of a Federal building, industrial process, or structure.

(3) PLAN.—Not later than 180 days after the date on which guidelines are established under paragraph (2), in a report submitted by the agency under section 548(a), each agency shall submit to the Secretary a plan describing the manner in which the agency will implement the requirements of paragraph (1), including—

(A) how the agency will designate personnel primarily responsible for achieving the requirements; and

(B) a demonstration by the agency, complete with documentation, of any finding that advanced meters or advanced metering devices (as those terms are used in paragraph (1)), are not practicable.

(4) BEST PRACTICES REPORT.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this paragraph, the Secretary of Energy, in consultation with the Secretary of Defense and the Administrator of General Services, shall develop, and issue a report on, best practices for the use of advanced metering of energy use in Federal facilities, buildings, and equipment by Federal agencies.

(B) COMPONENTS.—The report shall include, at a minimum—

(i) summaries and analysis of the reports by agencies under paragraph (3);

(ii) recommendations on standard requirements or guidelines for automated energy management systems, including—

(I) potential common communications standards to allow data sharing and reporting;

(II) means of facilitating continuous commissioning of buildings and evidence-based maintenance of buildings and building systems; and

(III) standards for sufficient levels of security and protection against cyber threats to ensure systems cannot be controlled by unauthorized persons; and

(iii) an analysis of—

(I) the types of advanced metering and monitoring systems being piloted, tested, or installed in Federal buildings; and

(II) existing techniques used within the private sector or other non-Federal government buildings.

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

(1) DEFINITIONS.—In this subsection:

(A) COMMISSIONING.—The term “commissioning”, with respect to a facility, means a systematic process—

(i) of ensuring, using appropriate verification and documentation, during the period beginning on the initial day of the design phase of the facility and ending not earlier than 1 year after the date of completion of construction of the facility, that all facility systems perform interactively in accordance with—

(I) the design documentation and intent of the facility; and

(II) the operational needs of the owner of the facility, including preparation of operation personnel; and

(ii) the primary goal of which is to ensure fully functional systems that can be properly operated and maintained during the useful life of the facility.

(B) ENERGY MANAGER.—

(i) IN GENERAL.—The term “energy manager”, with respect to a facility, means the individual who is responsible for—

(I) ensuring compliance with this subsection by the facility; and

(II) reducing energy use at the facility.

(ii) INCLUSIONS.—The term “energy manager” may include—

(I) a contractor of a facility;

(II) a part-time employee of a facility; and

(III) an individual who is responsible for multiple facilities.

(C) FACILITY.—

(i) IN GENERAL.—The term “facility” means any building, installation, structure, or other property (including any applicable fixtures) owned or operated by, or constructed or manufactured and leased to, the Federal Government.

(ii) INCLUSIONS.—The term “facility” includes—

(I) a group of facilities at a single location or multiple locations managed as an integrated operation; and

(II) contractor-operated facilities owned by the Federal Government.

(iii) EXCLUSIONS.—The term “facility” does not include any land or site for which the cost of utilities is not paid by the Federal Government.

(D) LIFE CYCLE COST-EFFECTIVE.—The term “life cycle cost-effective”, with respect to a measure, means a measure, the estimated savings of which exceed the estimated costs over the lifespan of the measure, as determined in accordance with section 544.

(E) PAYBACK PERIOD.—

(i) IN GENERAL.—Subject to clause (ii), the term “payback period”, with respect to a measure, means a value equal to the quotient obtained by dividing—

(I) the estimated initial implementation cost of the measure (other than financing costs); by

(II) the annual cost savings resulting from the measure, including—

(aa) net savings in estimated energy and water costs; and

(bb) operations, maintenance, repair, replacement, and other direct costs.

(ii) MODIFICATIONS AND EXCEPTIONS.—The Secretary, in guidelines issued pursuant to paragraph (6), may make such modifications and provide such exceptions to the calculation of the payback period of a measure as the Secretary determines to be appropriate to achieve the purposes of this Act.

(F) RECOMMISSIONING.—The term “recommissioning” means a process—

(i) of commissioning a facility or system beyond the project development and warranty phases of the facility or system; and

(ii) the primary goal of which is to ensure optimum performance of a facility, in accordance with design or current operating needs, over the useful life of the facility, while meeting building occupancy requirements.

(G) RETROCOMMISSIONING.—The term “retrocommissioning” means a process of commissioning a facility or system that was not commissioned at the time of construction of the facility or system.

(2) FACILITY ENERGY MANAGERS.—

(A) IN GENERAL.—Each Federal agency shall designate an energy manager responsible for implementing this subsection and reducing energy use at each facility that meets criteria under subparagraph (B).

(B) COVERED FACILITIES.—The Secretary shall develop criteria, after consultation with affected agencies, energy efficiency advocates, and energy and utility service providers, that cover, at a minimum, Federal facilities, including central utility plants and distribution systems and other energy intensive operations, that constitute at least 75 percent of facility energy use at each agency.

(3) ENERGY AND WATER EVALUATIONS.—

(A) EVALUATIONS.—Effective beginning on the date that is 180 days after the date of enactment of this subsection and annually thereafter, energy managers shall complete, for each calendar year, a comprehensive energy and water evaluation for approximately 25 percent of the facilities of each agency that meet the criteria under paragraph (2)(B) in a manner that ensures that an evaluation of each such facility is completed at least once every 4 years.

(B) RECOMMISSIONING AND RETROCOMMISSIONING.—As part of the evaluation under subparagraph (A), the energy manager shall identify and assess recommissioning measures (or, if the facility has never been commissioned, retrocommissioning measures) for each such facility.

(4) IMPLEMENTATION OF IDENTIFIED ENERGY AND WATER EFFICIENCY MEASURES.—Not later than 2 years after the completion of each evaluation under paragraph (3), each energy manager **[may]** *shall*—

(A) 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) bundle individual measures of varying paybacks together into combined projects.

(5) FOLLOW-UP ON IMPLEMENTED MEASURES.—For each measure implemented under paragraph (4), each energy manager shall ensure that—

(A) equipment, including building and equipment controls, is fully commissioned at acceptance to be operating at design specifications;

(B) a plan for appropriate operations, maintenance, and repair of the equipment is in place at acceptance and is followed;

(C) equipment and system performance is measured during its entire life to ensure proper operations, maintenance, and repair; and

(D) energy and water savings are measured and verified.

(6) GUIDELINES.—

(A) IN GENERAL.—The Secretary shall issue guidelines and necessary criteria that each Federal agency shall follow for implementation of—

(i) paragraphs (2) and (3) not later than 180 days after the date of enactment of this subsection; and

(ii) paragraphs (4) and (5) not later than 1 year after the date of enactment of this subsection.

(B) RELATIONSHIP TO FUNDING SOURCE.—The guidelines issued by the Secretary under subparagraph (A) shall be appropriate and uniform for measures funded with each type of funding made available under paragraph (10), but may distinguish between different types of measures project size, and other criteria the Secretary determines are relevant.

(7) WEB-BASED CERTIFICATION.—

(A) IN GENERAL.—For each facility that meets the criteria established by the Secretary under paragraph (2)(B), the energy manager shall use the web-based tracking system under subparagraph (B)—

- (i) to certify compliance with the requirements for—
 - (I) energy and water evaluations under paragraph (3);
 - (II) implementation of identified energy and water measures under paragraph (4); and
 - (III) follow-up on implemented measures under paragraph (5); and
 - (ii) to publish energy and water consumption data on an individual facility basis.
- (B) DEPLOYMENT.—
- (i) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall develop and deploy a web-based tracking system required under this paragraph in a manner that tracks, at a minimum—
 - (I) the covered facilities;
 - (II) the status of meeting the requirements specified in subparagraph (A);
 - (III) the estimated cost and savings for measures required to be implemented in a facility;
 - (IV) the measured savings and persistence of savings for implemented measures; and
 - (V) the benchmarking information disclosed under paragraph (8)(C).
 - (ii) EASE OF COMPLIANCE.—The Secretary shall ensure that energy manager compliance with the requirements in this paragraph, to the maximum extent practicable—
 - (I) can be accomplished with the use of streamlined procedures and templates that minimize the time demands on Federal employees; and
 - (II) is coordinated with other applicable energy reporting requirements.
- (C) AVAILABILITY.—
- (i) IN GENERAL.—Subject to clause (ii), the Secretary shall make the web-based tracking system required under this paragraph available to Congress, other Federal agencies, and the public through the Internet.
 - (ii) EXEMPTIONS.—At the request of a Federal agency, the Secretary may exempt specific data for specific facilities from disclosure under clause (i) for national security purposes.
- (8) BENCHMARKING OF FEDERAL FACILITIES.—
- (A) IN GENERAL.—The energy manager shall enter energy use data for each metered building that is (or is a part of) a facility that meets the criteria established by the Secretary under paragraph (2)(B) into a building energy use benchmarking system, such as the Energy Star Portfolio Manager.
 - (B) SYSTEM AND GUIDANCE.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall—
 - (i) select or develop the building energy use benchmarking system required under this paragraph for each type of building; and

(ii) issue guidance for use of the system.

(C) PUBLIC DISCLOSURE.—Each energy manager shall post the information entered into, or generated by, a benchmarking system under this subsection, on the web-based tracking system under paragraph (7)(B). The energy manager shall update such information each year, and shall include in such reporting previous years' information to allow changes in building performance to be tracked over time.

(9) FEDERAL AGENCY SCORECARDS.—

(A) IN GENERAL.—The Director of the Office of Management and Budget shall issue semiannual scorecards for energy management activities carried out by each Federal agency that includes—

(i) summaries of the status of implementing the various requirements of the agency and its energy managers under this subsection; and

(ii) any other means of measuring performance that the Director considers appropriate.

(B) AVAILABILITY.—The Director shall make the scorecards required under this paragraph available to Congress, other Federal agencies, and the public through the Internet.

(10) FUNDING AND IMPLEMENTATION.—

(A) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection.

(B) FUNDING OPTIONS.—

(i) IN GENERAL.—To carry out this subsection, a Federal agency may use any combination of—

(I) appropriated funds made available under subparagraph (A); and

(II) private financing otherwise authorized under Federal law, including financing available through energy savings performance contracts or utility energy service contracts.

(ii) COMBINED FUNDING FOR SAME MEASURE.—A Federal agency may use any combination of appropriated funds and private financing described in clause (i) to carry out the same measure under this subsection.

(C) IMPLEMENTATION.—Each Federal agency may implement the requirements under this subsection itself or may contract out performance of some or all of the requirements.

(11) RULE OF CONSTRUCTION.—This subsection shall not be construed to require or to obviate any contractor savings guarantees.

(g) LARGE CAPITAL ENERGY INVESTMENTS.—

(1) IN GENERAL.—Each Federal agency shall ensure that any large capital energy investment in an existing building that is not a major renovation but involves replacement of installed equipment (such as heating and cooling systems), or involves renovation, rehabilitation, expansion, or remodeling of existing space, employs the most energy efficient designs, systems, equipment, and controls that are life-cycle cost effective.

(2) PROCESS FOR REVIEW OF INVESTMENT DECISIONS.—Not later than 180 days after the date of enactment of this subsection, each Federal agency shall—

(A) develop a process for reviewing each decision made on a large capital energy investment described in paragraph (1) to ensure that the requirements of this subsection are met; and

(B) report to the Director of the Office of Management and Budget on the process established.

(3) COMPLIANCE REPORT.—Not later than 1 year after the date of enactment of this subsection, the Director of the Office of Management and Budget shall evaluate and report to Congress on the compliance of each agency with this subsection.

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SEC. 548. REPORTS.

(a) REPORTS TO THE SECRETARY.—Each agency shall transmit a report to the Secretary, at times specified by the Secretary but at least annually, with complete information on its activities under this part, including information on—

(1) the agency's progress in achieving the goals established by section 543; and

(2) the procedures being used by the agency pursuant to section 546(a)(2), the number of contracts entered into by such agency under title VIII of this Act, the energy and cost savings that have resulted from such contracts and any termination penalty exposure, the use of such cost savings under section 546(c), and any problem encountered in entering into such contracts and otherwise implementing section 546.

(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) on all activities carried out under this part and on the progress made toward achievement of the objectives of this part, including—

(A) a copy of the list of the exclusions made under sections 543(a)(2) and 543(c)(3);

(B) the information required under section 543(b)(2); and

(C) a statement detailing the amount of funds awarded to each agency under section 546(b), the energy and water conservation measures installed with such funds, the projected energy and water savings to be realized from installed measures, and, for each installed measure for which the projected energy and water savings reported in the previous year were not realized, the percentage of such projected savings that was not realized, the reasons such savings were not realized, and proposals for, and projected costs of, achieving such projected savings in the future;

(2) the number of contracts entered into by all agencies under title VIII of this Act, the difficulties (if any) encountered in attempting to enter into such contracts, and proposed solutions to those difficulties;

(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)(A) *the status of the energy savings performance contracts and utility energy service contracts of each agency;*

(B) *the investment value of the contracts;*

(C) *the guaranteed energy savings for the previous year as compared to the actual energy savings for the previous year;*

(D) *the plan for entering into the contracts in the coming year; and*

(E) *information explaining why any previously submitted plans for the contracts were not implemented.*

(c) OTHER REPORT.—The Secretary, in consultation with the Administrator of General Services, shall—

(1) conduct a study and evaluate legal, institutional, and other constraints to connecting buildings owned or leased by the Federal Government to district heating and district cooling systems; and

(2) not later than 18 months after the date of the enactment of this subsection, transmit to the Congress a report containing the findings and conclusions of such study, including recommendations for the development of streamlined processes for the consideration of connecting buildings owned or leased by the Federal Government to district heating and cooling systems.

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SEC. 551. DEFINITIONS.

For the purposes of this part—

(1) the term “agency” has the meaning given it in section 551(1) of title 5, United States Code;

(2) the term “construction” means new construction or substantial rehabilitation of existing structures;

(3) the term “cogeneration facilities” has the same meaning given such term in section 3(18)(A) of the Federal Power Act (16 U.S.C. 796(18)(A));

(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;*

(5) the term “energy survey” means a procedure used to determine energy and cost savings likely to result from the use of appropriate energy related maintenance and operating procedures and modifications, including the purchase and installation of particular energy-related equipment and the use of renewable energy sources;

(6) the term “Federal building” means any building, structure, or facility, or part thereof, including the associated energy consuming support systems, which is constructed, renovated, leased, or purchased in whole or in part for use by the Federal

Government and which consumes energy; such term also means a collection of such buildings, structures, or facilities and the energy consuming support systems for such collection[;]; *the term does not include a dam, reservoir, or hydropower facility owned or operated by a Federal agency;*

(7) the term “life cycle cost” means the total costs of owning, operating, and maintaining a building over its useful life (including such costs as fuel, energy, labor, and replacement components) determined on the basis of a systematic evaluation and comparison of alternative building systems, except that in the case of leased buildings, the life cycle costs shall be calculated over the effective remaining term of the lease;

(8) the term “renewable energy sources” includes, but is not limited to, sources such as agriculture and urban waste, geothermal energy, solar energy, and wind energy; and

(9) the term “Secretary” means the Secretary of Energy.

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TITLE VIII—ENERGY SAVINGS PERFORMANCE CONTRACTS

SEC. 801. AUTHORITY TO ENTER INTO CONTRACTS.

(a) **IN GENERAL.**—(1) The head of a Federal agency may enter into contracts under this title solely for the purpose of achieving energy savings and benefits ancillary to that purpose. Each such contract may, notwithstanding any other provision of law, be for a period not to exceed 25 years. Such contract shall provide that the contractor shall incur costs of implementing energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel, in exchange for a share of any energy savings directly resulting from implementation of such measures during the term of the contract.

(2)(A) Contracts under this title shall be energy savings performance contracts and shall require an annual energy audit and specify the terms and conditions of any Government payments and performance guarantees. Any such performance guarantee shall provide that the contractor is responsible for maintenance and repair services for any energy related equipment, including computer software systems.

(B) Aggregate annual payments by an agency to both utilities and energy savings performance contractors, under an energy savings performance contract, may not exceed the amount that the agency would have paid for utilities without an energy savings performance contract (as estimated through the procedures developed pursuant to this section) during contract years. The contract shall provide for a guarantee of savings to the agency, and shall establish payment schedules reflecting such guarantee, taking into account any capital costs under the contract.

(C) Federal agencies may incur obligations pursuant to such contracts to finance energy conservation measures provided guaranteed savings exceed the debt service requirements.

(D) A Federal agency may enter into a multiyear contract under this title for a period not to exceed 25 years beginning on the date of the delivery order, without funding of cancellation charges before cancellation, if—

(i) such contract was awarded in a competitive manner pursuant to subsection (b)(2), using procedures and methods established under this title;

(ii) funds are available and adequate for payment of the costs of such contract for the first fiscal year; and

(iii) such contract is governed by part 17.1 of the Federal Acquisition Regulation promulgated under section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421) or the applicable rules promulgated under this title.

(E) FUNDING OPTIONS.—In carrying out a contract under this title, a Federal agency may use any combination of—

(i) appropriated funds; and

(ii) private financing under an energy savings performance contract.

(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 combination of energy conservation measures and water conservation measures.

(G) MEASUREMENT AND VERIFICATION REQUIREMENTS FOR PRIVATE FINANCING.—

(i) IN GENERAL.—In the case of energy savings performance contracts, the evaluations and savings measurement and verification required under paragraphs (2) and (4) of section 543(f) shall be used by a Federal agency to meet the requirements for the need for energy audits, calculation of energy savings, and any other evaluation of costs and savings needed to implement the guarantee of savings under this section.

(ii) MODIFICATION OF EXISTING CONTRACTS.—Not later than 18 months after the date of enactment of this subparagraph, each Federal agency shall, to the maximum extent practicable, modify any indefinite delivery and indefinite quantity energy savings performance contracts, and other indefinite delivery and indefinite quantity contracts using private financing, to conform to the amendments made by subtitle B of title V of the Energy Independence and Security Act of 2007.

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

(b) IMPLEMENTATION.—(1)(A) The Secretary, with the concurrence of the Federal Acquisition Regulatory Council established under section 25(a) of the Office of Federal Procurement Policy Act, not later than 180 days after the date of the enactment of the Energy Policy Act of 1992, shall, by rule, establish appropriate procedures and methods for use by Federal agencies to select, monitor, and terminate contracts with energy service contractors in accordance with laws governing Federal procurement that will achieve the intent of this section in a cost-effective manner. In developing such procedures and methods, the Secretary, with the concurrence of the Federal Acquisition Regulatory Council, shall determine which existing regulations are inconsistent with the intent of this section and shall formulate substitute regulations consistent with laws governing Federal procurement.

(B) The procedures and methods established pursuant to subparagraph (A) shall be the procedures and contracting methods for selection, by an agency, of a contractor to provide energy savings performance services. Such procedures and methods shall provide for the calculation of energy savings based on sound engineering and financial practices.

(2) The procedures and methods established pursuant to paragraph (1)(A) shall—

(A) allow the Secretary to—

(i) request statements of qualifications, which shall, at a minimum, include prior experience and capabilities of contractors to perform the proposed types of energy savings services and financial and performance information, from firms engaged in providing energy savings services; and

(ii) from the statements received, designate and prepare a list, with an update at least annually, of those firms that are qualified to provide energy savings services;

(B) require each agency to use the list prepared by the Secretary pursuant to subparagraph (A)(ii) unless the agency elects to develop an agency list of firms qualified to provide energy savings performance services using the same selection procedures and methods as are required of the Secretary in preparing such lists; and

(C) allow the head of each agency to—

(i) select firms from the list prepared pursuant to subparagraph (A)(ii) or the list prepared by the agency pursuant to subparagraph (B) to conduct discussions concerning a particular proposed energy savings project, including requesting a technical and price proposal from such selected firms for such project;

(ii) select from such firms the most qualified firm to provide energy savings services based on technical and price proposals and any other relevant information;

(iii) permit receipt of unsolicited proposals for energy savings performance contracting services from a firm that such agency has determined is qualified to provide such services under the procedures established pursuant to paragraph (1)(A), and require agency facility managers to place a notice in the Commerce Business Daily announcing they have received such a proposal and invite other similarly qualified firms to submit competing proposals; and

(iv) enter into an energy savings performance contract with a firm qualified under clause (iii), consistent with the procedures and methods established pursuant to paragraph (1)(A).

(3) A firm not designated as qualified to provide energy savings services under paragraph (2)(A)(i) or paragraph (2)(B) may request a review of such decision to be conducted in accordance with procedures to be developed by the board of contract appeals of the General Services Administration.

(c) TASK OR DELIVERY ORDERS.—(1) The head of a Federal agency may issue a task or delivery order under an energy savings performance contract by—

(A) notifying all contractors that have received an award under such contract that the agency proposes to discuss energy savings performance services for some or all of its facilities and, following a reasonable period of time to provide a proposal in response to the notice, soliciting from such contractors the submission of expressions of interest in, and contractor qualifications for, performing site surveys or investigations and feasibility designs and studies, and including in the notice summary information concerning energy use for any facilities that the agency has specific interest in including in such task or delivery order;

(B) reviewing all expressions of interest and qualifications submitted pursuant to the notice under subparagraph (A);

(C) selecting two or more contractors (from among those reviewed under subparagraph (B)) to conduct discussions concerning the contractors' respective qualifications to implement potential energy conservation measures, including—

(i) requesting references and specific detailed examples with respect to similar efforts and the resulting energy savings of such similar efforts; and

(ii) requesting an explanation of how such similar efforts relate to the scope and content of the task or delivery order concerned;

(D) selecting and authorizing—

(i) more than one contractor (from among those selected under subparagraph (C)) to conduct site surveys, investigations, feasibility designs and studies, or similar assessments for the energy savings performance contract services (or for discrete portions of such services), for the purpose of allowing each such contractor to submit a firm, fixed-price proposal to implement specific energy conservation measures; or

(ii) one contractor (from among those selected under subparagraph (C)) to conduct a site survey, investigation, feasibility design and study, or similar assessment for the purpose of allowing the contractor to submit a firm, fixed-price proposal to implement specific energy conservation measures;

(E) providing a debriefing to any contractor not selected under subparagraph (D);

(F) negotiating a task or delivery order for energy savings performance contracting services with the contractor or con-

tractors selected under subparagraph (D) based on the energy conservation measures identified; and

(G) issuing a task or delivery order for energy savings performance contracting services to such contractor or contractors.

(2) The issuance of a task or delivery order for energy savings performance contracting services pursuant to paragraph (1) is deemed to satisfy the task and delivery order competition requirements in section 2304c(d) of title 10, United States Code, and section 303J(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(d)).

(3) The Secretary may issue guidance as necessary to agencies issuing task or delivery orders pursuant to paragraph (1).

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.*

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SEC. 804. DEFINITIONS.

For purposes of this title, the following definitions apply:

(1) The term “Federal agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency.

(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)* as a result of—

(i) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

(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)*; or

(iii) the increased efficient use of existing water sources in either interior or exterior applications;

(B) the increased efficient use of an existing energy source by cogeneration or heat recovery;

(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.

(3) The terms “energy savings contract” and “energy savings performance contract” mean a contract that provides for the performance of services for the design, acquisition, installation, testing, and, where appropriate, operation, maintenance, and repair, of an identified energy or water conservation measure or series of measures at 1 or more locations. Such contracts shall, with respect to an agency facility that is a public building (as such term is defined in section 3301 of title 40, United States Code), be in compliance with the prospectus requirements and procedures of section 3307 of title 40, United States Code.

(4) The term “energy or water conservation measure” means—

(A) an energy conservation measure, as defined in section 551; or

(B) a water conservation measure that improves the efficiency of water use, is life-cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.