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# HOUSE BILL No. 1076

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 20-26-5-4; IC 36-1.

**Synopsis:** Contracts for public water and wastewater projects. Includes water and wastewater, in addition to energy, under the guaranteed savings contracts and utility efficiency programs that may be used by local units of government to reduce consumption and usage costs or to provide billable revenue increases.

**Effective:** July 1, 2006.

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January 5, 2006, read first time and referred to Committee on Local Government.

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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

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# HOUSE BILL No. 1076



A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 20-26-5-4, AS ADDED BY P.L.1-2005, SECTION  
2 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
3 2006]: Sec. 4. In carrying out the school purposes of a school  
4 corporation, the governing body acting on the school corporation's  
5 behalf has the following specific powers:

- 6 (1) In the name of the school corporation, to sue and be sued and
- 7 to enter into contracts in matters permitted by applicable law.
- 8 (2) To take charge of, manage, and conduct the educational affairs
- 9 of the school corporation and to establish, locate, and provide the
- 10 necessary schools, school libraries, other libraries where
- 11 permitted by law, other buildings, facilities, property, and
- 12 equipment.
- 13 (3) To appropriate from the school corporation's general fund an
- 14 amount, not to exceed the greater of three thousand dollars
- 15 (\$3,000) per budget year or one dollar (\$1) per pupil, not to
- 16 exceed twelve thousand five hundred dollars (\$12,500), based on
- 17 the school corporation's previous year's average daily membership



- 1 (as defined in IC 21-3-1.6-1.1) to promote the best interests of the
- 2 school corporation through:
- 3 (A) the purchase of meals, decorations, memorabilia, or
- 4 awards;
- 5 (B) provision for expenses incurred in interviewing job
- 6 applicants; or
- 7 (C) developing relations with other governmental units.
- 8 (4) To:
- 9 (A) Acquire, construct, erect, maintain, hold, and contract for
- 10 construction, erection, or maintenance of real estate, real estate
- 11 improvements, or an interest in real estate or real estate
- 12 improvements, as the governing body considers necessary for
- 13 school purposes, including buildings, parts of buildings,
- 14 additions to buildings, rooms, gymnasiums, auditoriums,
- 15 playgrounds, playing and athletic fields, facilities for physical
- 16 training, buildings for administrative, office, warehouse, repair
- 17 activities, or housing school owned buses, landscaping, walks,
- 18 drives, parking areas, roadways, easements and facilities for
- 19 power, sewer, water, roadway, access, storm and surface
- 20 water, drinking water, gas, electricity, other utilities and
- 21 similar purposes, by purchase, either outright for cash (or
- 22 under conditional sales or purchase money contracts providing
- 23 for a retention of a security interest by the seller until payment
- 24 is made or by notes where the contract, security retention, or
- 25 note is permitted by applicable law), by exchange, by gift, by
- 26 devise, by eminent domain, by lease with or without option to
- 27 purchase, or by lease under IC 21-5-10, IC 21-5-11, or
- 28 IC 21-5-12.
- 29 (B) Repair, remodel, remove, or demolish, or to contract for
- 30 the repair, remodeling, removal, or demolition of the real
- 31 estate, real estate improvements, or interest in the real estate
- 32 or real estate improvements, as the governing body considers
- 33 necessary for school purposes.
- 34 (C) Provide for ~~energy~~ conservation measures through utility
- 35 ~~energy~~ efficiency programs or under a guaranteed ~~energy~~
- 36 savings contract as described in IC 36-1-12.5.
- 37 (5) To acquire personal property or an interest in personal
- 38 property as the governing body considers necessary for school
- 39 purposes, including buses, motor vehicles, equipment, apparatus,
- 40 appliances, books, furniture, and supplies, either by cash purchase
- 41 or under conditional sales or purchase money contracts providing
- 42 for a security interest by the seller until payment is made or by

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1 notes where the contract, security, retention, or note is permitted  
2 by applicable law, by gift, by devise, by loan, or by lease with or  
3 without option to purchase and to repair, remodel, remove,  
4 relocate, and demolish the personal property. All purchases and  
5 contracts delineated under the powers given under subdivision (4)  
6 and this subdivision are subject solely to applicable law relating  
7 to purchases and contracting by municipal corporations in general  
8 and to the supervisory control of state agencies as provided in  
9 section 6 of this chapter.

10 (6) To sell or exchange real or personal property or interest in real  
11 or personal property that, in the opinion of the governing body, is  
12 not necessary for school purposes, in accordance with IC 20-26-7,  
13 to demolish or otherwise dispose of the property if, in the opinion  
14 of the governing body, the property is not necessary for school  
15 purposes and is worthless, and to pay the expenses for the  
16 demolition or disposition.

17 (7) To lease any school property for a rental that the governing  
18 body considers reasonable or to permit the free use of school  
19 property for:

- 20 (A) civic or public purposes; or
- 21 (B) the operation of a school age child care program for  
22 children five (5) years of age through fourteen (14) years of  
23 age that operates before or after the school day, or both, and  
24 during periods when school is not in session;

25 if the property is not needed for school purposes. Under this  
26 subdivision, the governing body may enter into a long term lease  
27 with a nonprofit corporation, community service organization, or  
28 other governmental entity, if the corporation, organization, or  
29 other governmental entity will use the property to be leased for  
30 civic or public purposes or for a school age child care program.  
31 However, if payment for the property subject to a long term lease  
32 is made from money in the school corporation's debt service fund,  
33 all proceeds from the long term lease must be deposited in the  
34 school corporation's debt service fund so long as payment for the  
35 property has not been made. The governing body may, at the  
36 governing body's option, use the procedure specified in  
37 IC 36-1-11-10 in leasing property under this subdivision.

38 (8) To:  
39 (A) Employ, contract for, and discharge superintendents,  
40 supervisors, principals, teachers, librarians, athletic coaches  
41 (whether or not they are otherwise employed by the school  
42 corporation and whether or not they are licensed under

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1 IC 20-28-5), business managers, superintendents of buildings  
 2 and grounds, janitors, engineers, architects, physicians,  
 3 dentists, nurses, accountants, teacher aides performing  
 4 noninstructional duties, educational and other professional  
 5 consultants, data processing and computer service for school  
 6 purposes, including the making of schedules, the keeping and  
 7 analyzing of grades and other student data, the keeping and  
 8 preparing of warrants, payroll, and similar data where  
 9 approved by the state board of accounts as provided below,  
 10 and other personnel or services as the governing body  
 11 considers necessary for school purposes.  
 12 (B) Fix and pay the salaries and compensation of persons and  
 13 services described in this subdivision.  
 14 (C) Classify persons or services described in this subdivision  
 15 and to adopt schedules of salaries or compensation.  
 16 (D) Determine the number of the persons or the amount of the  
 17 services employed or contracted for as provided in this  
 18 subdivision.  
 19 (E) Determine the nature and extent of the duties of the  
 20 persons.  
 21 The compensation, terms of employment, and discharge of  
 22 teachers are, however, subject to and governed by the laws  
 23 relating to employment, contracting, compensation, and discharge  
 24 of teachers. The compensation, terms of employment, and  
 25 discharge of bus drivers ~~is~~ **are** subject to and governed by laws  
 26 relating to employment, contracting, compensation, and discharge  
 27 of bus drivers. The forms and procedures relating to the use of  
 28 computer and data processing equipment in handling the financial  
 29 affairs of the school corporation must be submitted to the state  
 30 board of accounts for approval to the end that the services are  
 31 used by the school corporation when the governing body  
 32 determines that it is in the best interest of the school corporation  
 33 while at the same time providing reasonable accountability for the  
 34 funds expended.  
 35 (9) Notwithstanding the appropriation limitation in subdivision  
 36 (3), when the governing body by resolution considers a trip by an  
 37 employee of the school corporation or by a member of the  
 38 governing body to be in the interest of the school corporation,  
 39 including attending meetings, conferences, or examining  
 40 equipment, buildings, and installation in other areas, to permit the  
 41 employee to be absent in connection with the trip without any loss  
 42 in pay and to refund to the employee or to the member the

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1 employee's or member's reasonable hotel and board bills and  
 2 necessary transportation expenses. To pay teaching personnel for  
 3 time spent in sponsoring and working with school related trips or  
 4 activities.  
 5 (10) To transport children to and from school, when in the  
 6 opinion of the governing body the transportation is necessary,  
 7 including considerations for the safety of the children and without  
 8 regard to the distance the children live from the school, the  
 9 transportation to be otherwise in accordance with applicable law.  
 10 (11) To provide a lunch program for a part or all of the students  
 11 attending the schools of the school corporation, including the  
 12 establishment of kitchens, kitchen facilities, kitchen equipment,  
 13 lunch rooms, the hiring of the necessary personnel to operate the  
 14 lunch program, and the purchase of material and supplies for the  
 15 lunch program, charging students for the operational costs of the  
 16 lunch program, fixing the price per meal or per food item. To  
 17 operate the lunch program as an extracurricular activity, subject  
 18 to the supervision of the governing body. To participate in a  
 19 surplus commodity or lunch aid program.  
 20 (12) To purchase textbooks, to furnish textbooks without cost or  
 21 to rent textbooks to students, to participate in a textbook aid  
 22 program, all in accordance with applicable law.  
 23 (13) To accept students transferred from other school corporations  
 24 and to transfer students to other school corporations in accordance  
 25 with applicable law.  
 26 (14) To levy taxes, to make budgets, to appropriate funds, and to  
 27 disburse the money of the school corporation in accordance with  
 28 applicable law. To borrow money against current tax collections  
 29 and otherwise to borrow money, in accordance with IC 21-2-21.  
 30 (15) To purchase insurance or to establish and maintain a  
 31 program of self-insurance relating to the liability of the school  
 32 corporation or the school corporation's employees in connection  
 33 with motor vehicles or property and for additional coverage to the  
 34 extent permitted and in accordance with IC 34-13-3-20. To  
 35 purchase additional insurance or to establish and maintain a  
 36 program of self-insurance protecting the school corporation and  
 37 members of the governing body, employees, contractors, or agents  
 38 of the school corporation from liability, risk, accident, or loss  
 39 related to school property, school contract, school or school  
 40 related activity, including the purchase of insurance or the  
 41 establishment and maintenance of a self-insurance program  
 42 protecting persons described in this subdivision against false

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1 imprisonment, false arrest, libel, or slander for acts committed in  
 2 the course of the persons' employment, protecting the school  
 3 corporation for fire and extended coverage and other casualty  
 4 risks to the extent of replacement cost, loss of use, and other  
 5 insurable risks relating to property owned, leased, or held by the  
 6 school corporation. To:  
 7 (A) participate in a state employee health plan under  
 8 IC 5-10-8-6.6;  
 9 (B) purchase insurance; or  
 10 (C) establish and maintain a program of self-insurance;  
 11 to benefit school corporation employees, including accident,  
 12 sickness, health, or dental coverage, provided that a plan of  
 13 self-insurance must include an aggregate stop-loss provision.  
 14 (16) To make all applications, to enter into all contracts, and to  
 15 sign all documents necessary for the receipt of aid, money, or  
 16 property from the state government, the federal government, or  
 17 from any other source.  
 18 (17) To defend any member of the governing body or any  
 19 employee of the school corporation in any suit arising out of the  
 20 performance of the member's or employee's duties for or  
 21 employment with, the school corporation, if the governing body  
 22 by resolution determined that the action was taken in good faith.  
 23 To save any member or employee harmless from any liability,  
 24 cost, or damage in connection with the performance, including the  
 25 payment of legal fees, except where the liability, cost, or damage  
 26 is predicated on or arises out of the bad faith of the member or  
 27 employee, or is a claim or judgment based on the member's or  
 28 employee's malfeasance in office or employment.  
 29 (18) To prepare, make, enforce, amend, or repeal rules,  
 30 regulations, and procedures for the government and management  
 31 of the schools, property, facilities, and activities of the school  
 32 corporation, the school corporation's agents, employees, and  
 33 pupils and for the operation of the governing body, which rules,  
 34 regulations, and procedures may be designated by an appropriate  
 35 title such as "policy handbook", "bylaws", or "rules and  
 36 regulations".  
 37 (19) To ratify and approve any action taken by a member of the  
 38 governing body, an officer of the governing body, or an employee  
 39 of the school corporation after the action is taken, if the action  
 40 could have been approved in advance, and in connection with the  
 41 action to pay the expense or compensation permitted under  
 42 IC 20-26-1 through IC 20-26-5, IC 20-26-7, IC 21-2-19, and

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1 IC 21-2-21 or any other law.

2 (20) To exercise any other power and make any expenditure in  
 3 carrying out the governing body's general powers and purposes  
 4 provided in this chapter or in carrying out the powers delineated  
 5 in this section which is reasonable from a business or educational  
 6 standpoint in carrying out school purposes of the school  
 7 corporation, including the acquisition of property or the  
 8 employment or contracting for services, even though the power or  
 9 expenditure is not specifically set out in this chapter. The specific  
 10 powers set out in this section do not limit the general grant of  
 11 powers provided in this chapter except where a limitation is set  
 12 out in IC 20-26-1 through IC 20-26-5, IC 20-26-7, IC 21-2-19,  
 13 and IC 21-2-21 by specific language or by reference to other law.

14 SECTION 2. IC 36-1-12-1 IS AMENDED TO READ AS  
 15 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) Except as  
 16 provided in this section, this chapter applies to all public work  
 17 performed or contracted for by:

- 18 (1) political subdivisions; and  
 19 (2) their agencies;

20 regardless of whether it is performed on property owned or leased by  
 21 the political subdivision or agency.

22 (b) This chapter does not apply to an officer or agent who, on behalf  
 23 of a municipal utility, maintains, extends, and installs services of the  
 24 utility if the necessary work is done by the employees of the utility.

25 (c) This chapter does not apply to hospitals organized or operated  
 26 under IC 16-22-1 through IC 16-22-5 or IC 16-23-1, unless the public  
 27 work is financed in whole or in part with cumulative building fund  
 28 revenue.

29 (d) This chapter does not apply to tax exempt Indiana nonprofit  
 30 corporations leasing and operating a city market owned by a political  
 31 subdivision.

32 (e) As an alternative to this chapter, the governing body of a school  
 33 corporation may participate in a utility ~~energy~~ efficiency program or  
 34 may enter into a guaranteed ~~energy~~ savings contract as permitted under  
 35 IC 36-1-12.5.

36 (f) This chapter does not apply to a person that has entered into an  
 37 operating agreement with a political subdivision or an agency of a  
 38 political subdivision under IC 5-23.

39 SECTION 3. IC 36-1-12.5-0.6 IS ADDED TO THE INDIANA  
 40 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 41 [EFFECTIVE JULY 1, 2006]: **Sec. 0.6. As used in this chapter,**  
 42 **"billable revenues", "billable revenue increases", and "revenues"**

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1 **include only revenues of a municipal water or wastewater utility**  
 2 **operated by a political subdivision.**

3 SECTION 4. IC 36-1-12.5-0.7 IS AMENDED TO READ AS  
 4 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 0.7. As used in this  
 5 chapter, "causally connected work" means work that is required to  
 6 properly implement ~~an energy~~ a conservation measure.

7 SECTION 5. IC 36-1-12.5-1 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. **(a)** As used in this  
 9 chapter, "~~energy~~ "conservation measure":

10 **(1)** means:

11 **(A)** a school facility alteration; ~~or~~

12 **(B)** an alteration of a structure (as defined in IC 36-1-10-2);

13 **(C)** a **technology upgrade**; ~~or~~

14 **(D)** **with respect to an installation described in subdivision**

15 **(2)(G) or (2)(H), an alteration of a structure or system;**

16 designed to **provide billable revenue increases or** reduce energy  
 17 **or water** consumption costs, **wastewater costs**, or other  
 18 operating costs; ~~including and~~

19 **(2)** **includes** the following:

20 ~~(1)~~ **(A)** Providing insulation of the school facility or structure  
 21 and systems ~~within in~~ the school facility or structure.

22 ~~(2)~~ **(B)** Installing or providing for window and door systems,  
 23 including:

24 ~~(A)~~ **(i)** storm windows and storm doors;

25 ~~(B)~~ **(ii)** caulking or weatherstripping;

26 ~~(C)~~ **(iii)** multi-glazed windows and doors;

27 ~~(D)~~ **(iv)** heat absorbing or heat reflective glazed and coated  
 28 windows and doors;

29 ~~(E)~~ **(v)** additional glazing;

30 ~~(F)~~ **(vi)** the reduction in glass area; and

31 ~~(G)~~ **(vii)** other modifications that reduce energy  
 32 consumption.

33 ~~(3)~~ **(C)** Installing automatic energy control systems.

34 ~~(4)~~ **(D)** Modifying or replacing heating, ventilating, or air  
 35 conditioning systems.

36 ~~(5)~~ **(E)** Unless an increase in illumination is necessary to  
 37 conform to Indiana laws or rules or local ordinances,  
 38 modifying or replacing lighting fixtures to increase the energy  
 39 efficiency of the lighting system without increasing the overall  
 40 illumination of a facility or structure.

41 ~~(6)~~ **(F)** Providing for other ~~energy~~ conservation measures that  
 42 **provide billable revenue increases or** reduce energy **or**

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- 1            **water** consumption, ~~or~~ reduce operating costs, **or reduce**
- 2            **wastewater costs**, including future:
- 3            ~~(A)~~ (i) labor costs;
- 4            ~~(B)~~ (ii) costs **or revenues** for contracted services; and
- 5            ~~(C)~~ (iii) related capital expenditures.
- 6            **(G) Installing equipment upgrades that improve accuracy**
- 7            **of billable revenue generating systems.**
- 8            **(H) Installing automated, electronic, or remotely**
- 9            **controlled systems or measures that reduce direct**
- 10           **personnel costs.**

11           **(b) The term does not include an alteration of a water or**

12           **wastewater structure or system that increases the capacity of the**

13           **structure or system.**

14           SECTION 6. IC 36-1-12.5-1.5, AS AMENDED BY P.L.1-2005,

15           SECTION 235, IS AMENDED TO READ AS FOLLOWS

16           [EFFECTIVE JULY 1, 2006]: Sec. 1.5. As used in this chapter,

17           "governing body" means the following:

- 18           (1) With respect to school corporations, the governing body (as
- 19           defined in IC 20-18-2-5).
- 20           (2) With respect to a public library, the library board (as defined
- 21           in IC 36-12-1-3).
- 22           (3) With respect to a library described in IC 36-12-7-8, the
- 23           trustees of the library.
- 24           **(4) With respect to a political subdivision that operates a**
- 25           **municipal water or wastewater utility and in connection with**
- 26           **the installation of a conservation measure to a water or**
- 27           **wastewater structure or system under this chapter, the board**
- 28           **or officer that has the power to award contracts.**
- 29           ~~(4)~~ **(5) With respect to other political subdivisions for any other**
- 30           **project or program under this chapter, the legislative body (as**
- 31           **defined in IC 36-1-2-9).**

32           SECTION 7. IC 36-1-12.5-2 IS AMENDED TO READ AS

33           FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. As used in this

34           chapter, "guaranteed ~~energy~~ savings contract" refers to a contract

35           entered into under this chapter, in which a qualified provider enters

36           into an agreement with the governing body to:

- 37           (1) evaluate and recommend to the governing body ~~energy~~
- 38           conservation measures; and
- 39           (2) provide for the implementation of at least one (1) ~~energy~~
- 40           conservation measure.

41           SECTION 8. IC 36-1-12.5-3 IS AMENDED TO READ AS

42           FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) As used in this

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- 1 chapter, "qualified provider" means the following:
- 2 (1) Before July 1, 1999, the term means a person that satisfies
- 3 both of the following:
- 4 (A) The person is experienced in the design, implementation,
- 5 and installation of energy conservation measures.
- 6 (B) The person submits to the school corporation or political
- 7 subdivision a performance bond to ensure the qualified
- 8 provider's faithful performance of the qualified provider's
- 9 obligations over the term of the guaranteed energy savings
- 10 contract.
- 11 (2) After June 30, 1999, the term means a person that satisfies all
- 12 of the following:
- 13 (A) **Subject to subdivision (3)**, the person is experienced in
- 14 the design, implementation, and installation of energy
- 15 conservation measures.
- 16 (B) The person is certified and meets the requirements of
- 17 IC 4-13.6-4. The person's response to the request for proposals
- 18 must include a copy of the person's certificate of qualification
- 19 issued under IC 4-13.6-4.
- 20 (C) **Subject to subdivision (3)**, the person provides energy
- 21 conservation engineering services by a professional engineer
- 22 licensed under IC 25-31 who is under the person's direct
- 23 employment and supervision. The person's response to the
- 24 request for proposals must include the license number of each
- 25 professional engineer employed by the person to satisfy the
- 26 requirement of this clause.
- 27 (D) The person provides:
- 28 (i) monitoring for the facility performance guarantee; and
- 29 (ii) service personnel under the person's direct employment
- 30 and supervision;
- 31 for the duration of the contract's guarantee.
- 32 (E) The person performs at least twenty percent (20%) of the
- 33 work (measured in dollars of the total contract price) with its
- 34 own workforce.
- 35 (F) The person submits to the school corporation or political
- 36 subdivision a performance bond to ensure the qualified
- 37 provider's faithful performance of the qualified provider's
- 38 obligations over the term of:
- 39 (i) the guaranteed energy savings contract; **or**
- 40 (ii) **the guaranteed savings contract.**
- 41 **(3) With respect to conservation measures for which a**
- 42 **contract is executed after June 30, 2006, the term includes a**

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person that satisfies the following:

- (A) The person is experienced in the design, implementation, and installation of conservation measures.
- (B) The person provides engineering services with respect to conservation measures by a professional engineer licensed under IC 25-31 who is under the person's direct employment and supervision. The person's response to the request for proposals must include the license number of each professional engineer employed by the person to satisfy the requirement of this clause.

(b) For purposes of a guaranteed energy savings contract entered into before July 1, 1999, a person who was a qualified provider under subsection (a)(1) at the time the contract was entered into remains a qualified provider for that contract after June 30, 1999. If the person enters into:

- (1) a guaranteed energy savings contract after June 30, 1999, and before July 1, 2006, the person must satisfy the requirements of subsection (a)(2); or
- (2) a guaranteed savings contract after June 30, 2006, the person must satisfy the requirements of subsection (a)(2) and (a)(3);

to be considered a qualified provider.

SECTION 9. IC 36-1-12.5-3.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3.5. As used in this chapter, "related capital expenditures" includes capital costs that:

- (1) the governing body reasonably believes will be incurred during the contract term;
- (2) are part of or are causally connected to the energy conservation measures being implemented; and
- (3) are documented by industry engineering standards.

SECTION 10. IC 36-1-12.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. As used in this chapter, "utility energy efficiency program" refers to an energy, a water, or a wastewater efficiency program that:

- (1) includes an energy a conservation measure;
- (2) is established by a public utility (as defined in IC 8-1-8.7-2); and
- (3) is undertaken pursuant to this chapter.

SECTION 11. IC 36-1-12.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) The governing body may enter into an agreement with a public utility to participate in a utility energy efficiency program or enter into a guaranteed energy

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1 savings contract with a qualified provider to **increase the political**  
 2 **subdivision's billable revenues or** reduce the school corporation's or  
 3 the political subdivision's energy **or water** consumption, **wastewater**  
 4 **usage** costs, or operating costs if, after review of the report described  
 5 in section 6 of this chapter, the governing body finds:

6 **(1) in the case of conservation measures other than those that**  
 7 **are part of a project related to the alteration of a water or**  
 8 **wastewater structure or system, that the amount the**  
 9 **governing body would spend on the conservation measures**  
 10 **under the contract and that are recommended in the report is**  
 11 **not likely to exceed the amount to be saved in energy**  
 12 **consumption costs and other operating costs over ten (10)**  
 13 **years from the date of installation if the recommendations in**  
 14 **the report were followed;**

15 ~~(+)~~ **(2) in the case of conservation measures that are part of a**  
 16 **project related to the alteration of a water or wastewater**  
 17 **structure or system, that the amount the governing body would**  
 18 **spend on the energy conservation measures under the contract and**  
 19 **that are recommended in the report is not likely to exceed the**  
 20 **amount of increased billable revenues or the amount to be**  
 21 **saved in energy and water consumption costs, wastewater usage**  
 22 **costs, and other operating costs over ten (10) fifteen (15) years**  
 23 **from the date of installation if the recommendations in the report**  
 24 **were followed; and**

25 ~~(2)~~ **(3) in the case of a guaranteed energy savings contract, the**  
 26 **qualified provider provides a written guarantee as described in**  
 27 **subsection ~~(d)(2): (d)(3).~~**

28 (b) Before entering into an agreement to participate in a utility  
 29 ~~energy~~ efficiency program or a guaranteed ~~energy~~ savings contract  
 30 under this section, the governing body must publish notice under  
 31 subsection (c) indicating:

32 (1) that the governing body is requesting public utilities or  
 33 qualified providers to propose ~~energy~~ conservation measures  
 34 through: ~~either~~

35 **(A) a utility energy efficiency program; or**

36 **(B) a guaranteed energy savings contract; and**

37 (2) the date, the time, and the place where proposals must be  
 38 received.

39 (c) The notice required by subsection (b) must:

40 (1) be published in two (2) newspapers of general circulation in  
 41 the county where the school corporation or the political  
 42 subdivision is located;

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- 1 (2) be published two (2) times with at least one (1) week between
- 2 publications and with the second publication made at least thirty
- 3 (30) days before the date by which proposals must be received;
- 4 and
- 5 (3) meet the requirements of IC 5-3-1-1.

6 (d) An agreement to participate in a utility ~~energy~~ efficiency  
 7 program or guaranteed ~~energy~~ savings contract under this section must  
 8 provide that:

9 **(1) in the case of conservation measures other than those that**  
 10 **are part of a project related to the alteration of a water or**  
 11 **wastewater structure or system, all payments, except**  
 12 **obligations upon the termination of the agreement or contract**  
 13 **before the agreement or contract expires, may be made to the**  
 14 **public utility or qualified provider (whichever applies) in**  
 15 **installments, not to exceed the lesser of ten (10) years or the**  
 16 **average life of the conservation measures installed from the**  
 17 **date of final installation;**

18 ~~(1)~~ **(2) in the case of conservation measures that are part of a**  
 19 **project related to the alteration of a water or wastewater**  
 20 **structure or system, all payments, except obligations upon the**  
 21 **termination of the agreement or contract before the agreement or**  
 22 **contract expires, may be made to the public utility or qualified**  
 23 **provider (whichever applies) in installments, not to exceed the**  
 24 **lesser of ~~ten (10)~~ fifteen (15) years or the average life of the**  
 25 **~~energy~~ conservation measures installed from the date of final**  
 26 **installation; and**

27 ~~(2)~~ **(3) in the case of the guaranteed ~~energy~~ savings contract:**  
 28 (A) the:

- 29 (i) savings in energy **and water consumption costs,**
- 30 **wastewater usage costs, and other** operating costs; **and**
- 31 **(ii) increase in billable revenues;**

32 due to the ~~energy~~ conservation measures are guaranteed to  
 33 cover the costs of the payments for the measures; and

34 (B) the qualified provider will reimburse the school  
 35 corporation or political subdivision for the difference between  
 36 the guaranteed savings and the actual savings; and

37 ~~(3)~~ **(4) payments are subject to annual appropriation by the fiscal**  
 38 **body of the school corporation or political subdivision and do not**  
 39 **constitute an indebtedness of the school corporation or political**  
 40 **subdivision within the meaning of a constitutional or statutory**  
 41 **debt limitation.**

42 (e) An agreement or a contract under this chapter is subject to

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1 IC 5-16-7.

2 SECTION 12. IC 36-1-12.5-5.3 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5.3. (a) This section  
4 applies only to a guaranteed energy savings contract **or a guaranteed**  
5 **savings contract** entered into after June 30, 1999.

6 (b) A qualified provider may enter into a subcontract:

7 (1) with a value of more than one hundred fifty thousand dollars  
8 (\$150,000); and

9 (2) for the performance of any part of a guaranteed energy savings  
10 contract **or guaranteed savings contract;**

11 only if the subcontractor is certified under IC 4-13.6-4.

12 SECTION 13. IC 36-1-12.5-5.5 IS AMENDED TO READ AS  
13 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5.5. IC 6-1.1-20 does  
14 not apply to an agreement to participate in:

15 (1) a utility ~~energy~~ efficiency program; or

16 (2) a guaranteed ~~energy~~ savings contract;

17 entered into under this chapter.

18 SECTION 14. IC 36-1-12.5-6 IS AMENDED TO READ AS  
19 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) Before the public  
20 utility or the qualified provider may install equipment in, make  
21 modifications to, or remodel a building or complex of buildings under  
22 a utility ~~energy~~ efficiency program or a guaranteed ~~energy~~ savings  
23 contract, the public utility or the qualified provider (whichever applies)  
24 must issue a report that includes estimates for the following:

25 (1) All costs attributable to the work stipulated in the agreement  
26 or the contract, including the costs of design, engineering,  
27 installation, maintenance, repairs, or debt service.

28 (2) The amounts by which:

29 (A) energy **or water** consumption;

30 (B) **wastewater costs;** or

31 (C) operating costs;

32 will be reduced.

33 (3) **The amounts by which billable revenues will be increased.**

34 (b) The report must also contain a listing of contractors and  
35 subcontractors to be used by the public utility or the qualified provider  
36 with respect to the ~~energy~~ conservation measures.

37 SECTION 15. IC 36-1-12.5-7 IS AMENDED TO READ AS  
38 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. (a) If the governing  
39 body enters into an installment payment contract for the purchase and  
40 installation of ~~energy~~ conservation measures under this chapter **that**  
41 **are part of a project that is not related to the alteration of a water**  
42 **or wastewater structure or system,** the balance of the payments must

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1 be paid in installments not to exceed the lesser of ten (10) years or the  
2 average life of the ~~energy~~ conservation measure installed from the date  
3 of final installation. Payments under an installment payment contract  
4 are subject to annual appropriation by the fiscal body of the school  
5 corporation or political subdivision and do not constitute an  
6 indebtedness of the school corporation or political subdivision within  
7 the meaning of a constitutional or statutory debt limitation.

8 **(b) If the governing body enters into an installment payment**  
9 **contract for the purchase and installation of conservation measures**  
10 **under this chapter that are part of a project that is related to the**  
11 **alteration of a water or wastewater structure or system, the**  
12 **balance of the payments must be paid in installments not to exceed**  
13 **the lesser of fifteen (15) years or the average life of the**  
14 **conservation measure installed from the date of final installation.**  
15 **Payments under an installment payment contract are subject to**  
16 **annual appropriation by the fiscal body of the school corporation**  
17 **or political subdivision and do not constitute an indebtedness of the**  
18 **school corporation or political subdivision within the meaning of**  
19 **a constitutional or statutory debt limitation.**

20 **(c) With respect to a conservation measure described in section**  
21 **1(a)(2)(G) or 1(a)(2)(H) of this chapter, annual revenues or savings**  
22 **from a guaranteed savings contract may be less than annual**  
23 **payments on the contract if during the length of the contract total**  
24 **savings and increased billable revenues occur as provided for by**  
25 **the contract.**

26 **(d) The financing of a guaranteed savings contract may be**  
27 **provided by:**

- 28 **(1) the vendor under the guaranteed savings contract; or**
- 29 **(2) a third party financial institution or company.**

30 SECTION 16. IC 36-1-12.5-8 IS AMENDED TO READ AS  
31 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. ~~Energy~~ Conservation  
32 measures installed under a utility ~~energy~~ efficiency program or a  
33 guaranteed ~~energy~~ savings contract must be approved by the following:

- 34 (1) The state department of health, ~~office of the state fire marshal,~~  
35 ~~office of the state building commissioner,~~ **division of fire and**  
36 **building safety**, and any other state agency designated by statute.
- 37 (2) An architect or engineer licensed under IC 25-4 or IC 25-31  
38 if the ~~energy~~ conservation measures have a cost of more than fifty  
39 thousand dollars (\$50,000).

40 SECTION 17. IC 36-1-12.5-9 IS AMENDED TO READ AS  
41 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. (a) The contractor  
42 and each subcontractor engaged in installing ~~energy~~ conservation

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1 measures under a guaranteed ~~energy~~ savings contract shall keep full  
2 and accurate records indicating the names, classifications, and work  
3 performed by each worker employed by the respective contractor and  
4 subcontractor in connection with the work, together with an accurate  
5 record of the number of hours worked by each worker and the actual  
6 wages paid.

7 (b) The payroll records required to be kept under this section must  
8 be open to inspection by an authorized representative of the governing  
9 body or the department of labor.

10 SECTION 18. IC 36-1-12.5-10 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10. The governing body  
12 shall:

13 (1) provide to the ~~department of commerce~~ **lieutenant governor**  
14 not more than sixty (60) days after the date of execution of the  
15 guaranteed ~~energy~~ savings contract:

16 (A) a copy of the executed guaranteed ~~energy~~ savings contract;

17 (B) the:

18 (i) energy **or water** consumption costs;

19 (ii) **wastewater usage costs; and**

20 (iii) **billable revenues, if any;**

21 before the date of execution of the guaranteed ~~energy~~ savings  
22 contract; and

23 (C) the documentation using industry engineering standards  
24 for:

25 (i) stipulated savings; and

26 (ii) related capital expenditures; and

27 (2) annually report to the ~~department of commerce;~~ **lieutenant**  
28 **governor**, in accordance with procedures established by the  
29 ~~department of commerce;~~ **lieutenant governor**, the savings  
30 resulting in the previous year from the guaranteed ~~energy~~ savings  
31 contract or utility ~~energy~~ efficiency program.

32 SECTION 19. IC 36-1-12.5-11 IS AMENDED TO READ AS  
33 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 11. (a) A guaranteed  
34 ~~energy~~ savings contract that includes stipulated savings must specify  
35 the methodology used to calculate the savings using industry  
36 engineering standards.

37 (b) Stipulated savings may be used for ~~energy~~ conservation  
38 measures including the following:

39 (1) Heating.

40 (2) Air conditioning.

41 (3) Ventilating.

42 (4) Lighting.

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- 1 (5) Roofing.
- 2 (6) Windows.
- 3 (7) Water conservation.
- 4 (8) Fuel and power improvements.
- 5 **(9) Wastewater generation.**
- 6 **(10) Billable revenue increases.**
- 7 ~~(9)~~ **(11)** Any work that is causally connected to the ~~energy~~
- 8 conservation measures listed in subdivisions (1) through ~~(8)~~: **(10)**.
- 9 (c) The guaranteed ~~energy~~ savings contract shall:
- 10 (1) describe stipulated savings for:
- 11 (A) ~~energy~~ conservation measures; and
- 12 (B) work causally connected to the ~~energy~~ conservation
- 13 measures; and
- 14 (2) document assumptions by industry engineering standards.
- 15 SECTION 20. IC 36-1-12.5-12 IS AMENDED TO READ AS
- 16 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 12. (a) An
- 17 improvement that is not causally connected to ~~an energy~~ a conservation
- 18 measure may be included in a guaranteed ~~energy~~ savings contract if:
- 19 (1) the total value of the improvement does not exceed fifteen
- 20 percent (15%) of the total value of the guaranteed ~~energy~~ savings
- 21 contract; and
- 22 (2) either:
- 23 (A) the improvement is necessary to conform to a law, a rule,
- 24 or an ordinance; or
- 25 (B) an analysis within the guaranteed ~~energy~~ savings contract
- 26 demonstrates that:
- 27 (i) there is an economic advantage to the political
- 28 subdivision in implementing an improvement as part of the
- 29 guaranteed ~~energy~~ savings contract; and
- 30 (ii) the savings justification for the improvement is
- 31 documented by industry engineering standards.
- 32 (b) The information required under subsection (a) must be reported
- 33 to the ~~department of commerce~~: **lieutenant governor**.

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