

(2) THE PAYMENTS AND THE TOTAL CONTRACT AMOUNT DUE UNDER AN ENERGY PERFORMANCE CONTRACT MAY NOT EXCEED THE ACTUAL ENERGY SAVINGS REALIZED AS A RESULT OF THE CONTRACT'S PERFORMANCE.

(3) BEFORE APPROVAL OF AN ENERGY PERFORMANCE CONTRACT, THE BOARD SHALL ENSURE THAT THE PROJECTED ANNUAL ENERGY SAVINGS ATTRIBUTABLE TO THE PROJECT WILL EXCEED THE PROJECTED ANNUAL PAYMENTS TO THE CONTRACTOR UNDER THE CONTRACT.

(I) THE BOARD MAY:

1. AUTHORIZE THE USE OF INCENTIVE CONTRACTS, INCLUDING CONTRACTS THAT GUARANTEE ENERGY SAVINGS PERFORMANCE; AND

2. REQUIRE PROSPECTIVE CONTRACTORS TO FURNISH APPROPRIATE GUARANTEES TO ENSURE THAT PROJECTED SAVINGS ARE REALIZED.

(II) ANY GUARANTEES REQUIRED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY INCLUDE A REQUIREMENT THAT THE CONTRACTOR FURNISH A BOND OR OTHER ASSURANCE TO THE STATE IN AN APPROPRIATE AMOUNT TO GUARANTEE PROJECTED PERFORMANCE AND THAT THE BOND OR OTHER ASSURANCE BE STRUCTURED SO THAT A FAILURE TO MEET GUARANTEED PERFORMANCE SAVINGS WILL FORFEIT A PORTION OF THE BOND OR OTHER ASSURANCE TO MATCH THE SHORTFALL IN ENERGY SAVINGS.

12-302.

THE MARYLAND ENERGY ADMINISTRATION SHALL BE RESPONSIBLE FOR MONITORING THE STATUS OF ACTIVE ENERGY PERFORMANCE CONTRACTS AND REPORTING THAT STATUS TO THE BOARD ANNUALLY.

12-303.

THE BOARD MAY MODIFY OR WAIVE ANY AUTHORIZATION, SOURCE SELECTION, SOLICITATION, OR CONTRACT REQUIREMENT UNDER THIS DIVISION II FOR AN ENERGY PERFORMANCE CONTRACT OR A CLASS OF ENERGY PERFORMANCE CONTRACTS TO THE EXTENT THAT:

(1) THE PURPOSES STATED IN § 11-201(A) OF THIS ARTICLE ARE FOSTERED; AND

(2) THE CIRCUMSTANCES OF ENERGY PERFORMANCE CONTRACTING REQUIRE THE MODIFICATION OR WAIVER.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1993.

Approved May 27, 1993.