

ENERGY SAVINGS PERFORMANCE CONTRACTING STATUTES

MICHIGAN (as of June 15, 2010)

	Statute	Procurement Method	Competitive Bidding/ Selection Requirements	Term of Contract	Guarantee Requirement	Restrictions/ Miscellaneous
State	MCL § 18.1253	RFP	Yes. <i>See</i> MCL § 18.1241.	Not specified. May be “multi year.” MCL § 18.1241.	Must be paid for from avoided operating costs for utility service or fuel produced by the improvements. MCL § 18.1241.	
Counties	MCL § 46.11c	Not statutorily specified.	<p>Not statutorily specified. Refer to county provisions.</p> <p>Although the statutes do not reference or direct the reader to the local county provisions specifically, an AG opinion alludes to the fact that competitive bidding is not mandatory. However, if smaller governmental units do not competitively bid contracts above \$20,000, they lose state revenue that is allocated to them under the Income Tax Act of 1967. Therefore, most counties will have competitive bidding requirements. <i>See</i> 1994 Mich. AG Lexis 56.</p>	Not specified. Note, however, that installment contract or notes may not exceed 10 years (if used). MCL § 46.11c(2).	Allowed but not required. “These contractual agreements <i>may</i> provide that the cost of the energy conservation improvements are paid only if the energy savings are sufficient to cover their cost.” MCL § 46.11c(2).	
Municipalities	MCL § 117.5f	Not statutorily specified.	Refer to local ordinances for competitive bidding requirement. (See above for counties, also.)	Not specified. Note, however, that installment contract or notes may not exceed 10 years (if used). MCL § 117.5f.	Allowed but not required. “These contractual agreements <i>may</i> provide that the cost of the energy conservation improvements are paid only if the energy savings are sufficient to cover their cost.” MCL § 117.5f.	

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Townships, Villages	MCL § 41.75b MCL § 68.36 (incorporated villages) MCL § 78.24b (home rule villages)	Not statutorily specified.	Yes, for public works projects in “fourth class cities” (<10,000 population). <i>See</i> MCL § 41.278 and 108.5 Refer to local ordinances for competitive bidding requirement.	Not specified. Note, however, that installment contract or notes may not exceed 10 years (if used). MCL §§ 41.75b(2); 68.36(2); 78.24b(2).	Allowed but not required. “These contractual agreements may provide that the cost of the energy conservation improvements are paid only if the energy savings are sufficient to cover their cost.” MCL § 41.75b(2); 68.36(2); 78.24b(2).	
School Districts	MCL § 380.1274a	RFP	Yes. MCL § 380.1274a(6). <i>See</i> MCL § 380.1267(1)	Not specified.	Yes. MCL § 380.1274a(9). But not all energy conservation improvement contracts require a guarantee. “These contracts may contain a written financial guarantee providing that the costs of improvements will be paid only if the energy savings are sufficient to cover them.” MCL § 380.1274a(1).	For energy conservation improvements and services under MCL 380.1274a, the architect or engineer may be directly affiliated with the qualified provider that is providing the applicable improvements and services. However, the specifications for the project must be generic and, to the extent possible, may not include proprietary equipment or technology developed by the qualified provider or in which the qualified provider has an interest. MCL § 388.851.
State Universities, Community Colleges	MCL § 389.122 (Community Colleges) (2007) There is no statutory authority explicitly allowing ESPC by state universities. Note that the term “state agency” for purposes of MCL § 18.1253 above “ <i>does not include</i>	Not statutorily specified.	Not statutorily specified – refer to college provisions.	Not specified. Note, however, that installment contract or notes shall not exceed 10 years (if used). MCL § 389.122(c).	Allowed but not required. “These contractual agreements <i>may</i> provide that the cost of the energy conservation improvements are paid only if the energy savings are sufficient to cover their cost.” MCL § 389.122(c).	

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	an institution of higher education or a community college.” MCL § 18.1115(4).					