SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 1676

(SENATE AUTHORS: STUMPF)

DATE	D-PG	OFFICIAL STATUS
03/12/2015	777	Introduction and first reading Referred to State and Local Government
03/19/2015	1011a	Comm report: To pass as amended and re-refer to Finance See SF888, Art. 2, Sec. 9-12

A bill for an act

relating to state government; making changes to state contracting; modifying grants contracting and the guaranteed energy-savings program; amending Minnesota Statutes 2014, sections 16B.97, subdivision 1; 16B.98, subdivisions 1, 11; 16C.144.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2014, section 16B.97, subdivision 1, is amended to read:

Subdivision 1. **Grant agreement.** (a) A grant agreement is a written instrument or electronic document defining a legal relationship between a granting agency and a grantee when the principal purpose of the relationship is to transfer cash or something of value to the recipient to support a public purpose authorized by law instead of acquiring by professional or technical contract, purchase, lease, or barter property or services for the direct benefit or use of the granting agency.

(b) This section does not apply to general obligation grants as defined by section 16A.695 and capital project grants to political subdivisions as defined by section 16A.86.

Sec. 2. Minnesota Statutes 2014, section 16B.98, subdivision 1, is amended to read:

Subdivision 1. **Limitation.** (a) As a condition of receiving a grant from an appropriation of state funds, the recipient of the grant must agree to minimize administrative costs. The granting agency is responsible for negotiating appropriate limits to these costs so that the state derives the optimum benefit for grant funding.

(b) This section does not apply to general obligation grants as defined by section 16A.695 and also capital project grants to political subdivisions as defined by section 16A.86.

Sec. 3. Minnesota Statutes 2014, section 16B.98, subdivision 11, is amended to read:

Subd. 11. **Encumbrance exception.** Notwithstanding subdivision 5, paragraph (a), clause (2), or section 16C.05, subdivision 2, paragraph (a), clause (3), agencies may permit a specifically named, legislatively appropriated, noncompetitive grant recipient to incur eligible expenses based on an agreed upon work plan and budget for up to 60 days prior to an encumbrance being established in the accounting system. ~~For a grant funded in whole or in part with state general obligation bond proceeds, an agency may permit incurring of expenses under this subdivision only with prior approval of the commissioner of management and budget.~~

Sec. 4. Minnesota Statutes 2014, section 16C.144, is amended to read:

16C.144 GUARANTEED ENERGY-SAVINGS PROGRAM.

Subdivision 1. **Definitions.** The following definitions apply to this section.

(a) "Utility" means electricity, natural gas, or other energy resource, water, and wastewater.

(b) "Utility cost savings" means the difference between the utility costs after installation of the utility cost-savings measures pursuant to the guaranteed energy-savings agreement and the baseline utility costs after baseline adjustments have been made.

(c) "Baseline" means the preagreement utilities, operations, and maintenance costs.

(d) "Utility cost-savings measure" means a measure that produces utility cost savings or operation and maintenance cost savings.

(e) "Operation and maintenance cost savings" means a measurable difference between operation and maintenance costs after the installation of the utility cost-savings measures pursuant to the guaranteed energy-savings agreement and the baseline operation and maintenance costs after inflation adjustments have been made. Operation and maintenance costs savings shall not include savings from in-house staff labor.

(f) "Guaranteed energy-savings agreement" means an agreement for the installation of one or more utility cost-savings measures that includes the qualified provider's guarantee as required under subdivision 2.

(g) "Baseline adjustments" means adjusting the utility cost-savings baselines annually for changes in the following variables:

(1) utility rates;

(2) number of days in the utility billing cycle;

(3) square footage of the facility;

(4) operational schedule of the facility;

(5) facility temperature set points;

(6) weather; and

(7) amount of equipment or lighting utilized in the facility.

(h) "Inflation adjustment" means adjusting the operation and maintenance cost-savings baseline annually for inflation.

(i) "~~Lease purchase agreement~~ Project financing" means ~~an agreement~~ any type of financing including but not limited to lease, lease purchase, installment agreements, or bonds issued by an entity, other than the state, with authority to issue bonds, obligating the state to make regular ~~lease~~ payments to satisfy the ~~lease~~ costs of the utility cost-savings measures until the final payment~~, after which time the utility cost-savings measures become the sole property of the state of Minnesota~~.

(j) "Qualified provider" means a person or business experienced in the design, implementation, and installation of utility cost-savings measures.

(k) "Engineering report" means a report prepared by a professional engineer licensed by the state of Minnesota summarizing estimates of all costs of installations, modifications, or remodeling, including costs of design, engineering, installation, maintenance, repairs, and estimates of the amounts by which utility and operation and maintenance costs will be reduced.

(l) "Capital cost avoidance" means money expended by a state agency to pay for utility cost-savings measures with a guaranteed savings agreement so long as the measures that are being implemented to achieve the utility, operation, and maintenance cost savings are a significant portion of an overall project as determined by the commissioner.

(m) "Guaranteed energy-savings program guidelines" means policies, procedures, and requirements of guaranteed savings agreements established by the Department of Administration.

Subd. 2. **Guaranteed energy-savings agreement.** The commissioner may enter into a guaranteed energy-savings agreement with a qualified provider if:

(1) the qualified provider is selected through a competitive process in accordance with the guaranteed energy-savings program guidelines within the Department of Administration;

(2) the qualified provider agrees to submit an engineering report prior to the execution of the guaranteed energy-savings agreement. The cost of the engineering report may be considered as part of the implementation costs if the commissioner enters into a guaranteed energy-savings agreement with the provider;

(3) the term of the guaranteed energy-savings agreement shall not exceed 25 years from the date of final installation;

(4) the commissioner finds that the amount ~~it~~ the state would spend, less the amount contributed for capital cost avoidance, on the utility cost-savings measures recommended in the engineering report will not exceed the amount to be saved in utility operation and maintenance costs over 25 years from the date of implementation of utility cost-savings measures;

(5) the qualified provider provides a written guarantee that the annual utility, operation, and maintenance cost savings during the term of the guaranteed energy-savings agreement will meet or exceed the annual payments due under ~~a lease purchase agreement~~ the project financing. The qualified provider shall reimburse the state for any shortfall of guaranteed utility, operation, and maintenance cost savings; and

(6) the qualified provider gives a sufficient bond in accordance with section 574.26 to the commissioner for the faithful implementation and installation of the utility cost-savings measures.

Subd. 3. **~~Lease purchase agreement~~ Project financing.** The commissioner may enter into ~~a lease purchase agreement~~ project financing with any party for the implementation of utility cost-savings measures in accordance with the guaranteed energy-savings agreement. ~~The implementation costs of the utility cost-savings measures recommended in the engineering report shall not exceed the amount to be saved in utility and operation and maintenance costs over the term of the lease purchase agreement.~~ The term of the ~~lease purchase agreement~~ project financing shall not exceed 25 years from the date of final installation. The ~~lease~~ project financing is assignable in accordance with terms approved by the commissioner of management and budget.

Subd. 4. **Use of capital cost avoidance.** The affected state agency may contribute funds for capital cost avoidance for guaranteed energy-savings agreements. Use of capital cost avoidance is subject to the guaranteed energy-savings program guidelines within the Department of Administration.

Subd. 5. **Independent report.** For each guaranteed energy-savings agreement entered into, the commissioner of administration shall contract with an independent third party to evaluate the cost-effectiveness of each utility cost-savings measure implemented to ensure that such measures were the least-cost measures available. For the purposes of this section, "independent third party" means an entity not affiliated with the qualified provider, that is not involved in creating or providing conservation project services to that provider, and that has expertise (or access to expertise) in energy-savings practices.