FINAL BILL REPORT
HB 1777

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Synopsis as Enacted

Brief Description: Authorizing the use of performance-based contracting for energy services and equipment.

Sponsors: Representatives Doglio, Fitzgibbon, Duerr, Lekanoff, Stearns, McEntire, Ramel and Pollet.

House Committee on Capital Budget
Senate Committee on Environment, Energy & Technology
Senate Committee on Ways & Means

Background:

Performance-Based Contracting for Energy Conservation Projects.
Municipalities, including cities, counties, and port districts, may negotiate performance-based contracts with companies that offer water conservation, solid waste reduction, or energy equipment and services.

Performance-based contracts for energy conservation have payment terms that are:
- set as a percentage of the annual energy, water, or solid waste cost savings or benefits achieved through conservation that are attributable to the contract; or
- guaranteed by the service provider to be less than the annual energy, water, or solid waste cost savings or benefits attributable to the contract.

A state agency or school district may work through the Department of Enterprise Services (DES) to develop and finance energy conservation projects, enter into performance-based contracts for energy services, and contract to sell energy savings from a conservation project.

Conservation projects may be funded through the DES Energy Savings Performance Contracting process through utility savings, capital funding, grants, or loans. "Conservation" includes: reduced energy consumption, energy demand, energy cost,

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greenhouse gas emissions, and reduced use or cost of water, wastewater, or solid waste.

Certificate of Participation Program.
Real property and major equipment acquisitions for state agencies and local governments may be financed through the Certificate of Participation (COP) programs administered by the Office of the State Treasurer (OST). The COP programs combine borrowing into larger offerings to reduce the overall cost of financing. For state projects, debt incurred under COP programs does not fall under the state debt limit.

The OST has adopted policy guidance for COP program financing for energy upgrade projects, which outlines the requirements for a project with an energy service company to be either a personal property project (equipment) or a real property project (real estate).

Under the COP program, the OST executes a financing contract agreement between the OST and the agency when the COP program issuance occurs. State agencies may use financing contracts to provide all or part of the funding for conservation projects.

The OST has adopted policy guidance defining a financing contract for state agency agreements as meeting at least one of the following criteria:
- The present value of the lease payments is greater than 90 percent of the fair market value of the property as estimated at the beginning of the lease term.
- The lease term is greater than 75 percent of the useful life of the property.
- The lease includes a bargain purchase option that is not based on fair market value.
- The lease provides for the transfer of ownership of the property to the agency.

Except for financing contracts entered into by state and regional universities, the State Finance Committee approves the form of all financing contracts of the state.

Clean Buildings Performance Standard.
In 2019 the State Energy Performance Standard (Standard) for commercial buildings was established. The Standard requires the Department of Commerce (COM) to establish rules for energy performance standards for covered buildings, collect data on compliance, and report on outcomes. With certain exemptions, there are two tiers of covered buildings under the Standard:
- A Tier 1 covered building is a commercial building where the sum of nonresidential, hotel, motel, and dormitory floor areas exceed 50,000 gross square feet, excluding the parking garage area.
- A Tier 2 covered building is a commercial building that is greater than 20,000 gross square feet and less than 50,000 gross square feet or a multifamily residential building greater than 20,000 gross square feet.

The deadlines for compliance with the Standard are phased in based on building size. Owners of Tier 1 covered buildings must come into compliance with the Standard between 2026 and 2028, and owners of Tier 2 covered buildings must come into compliance with the

Standard in 2031. The COM may impose administrative penalties for building owners who fail to document compliance with the Standard by the deadlines. The penalty may not exceed $5,000 plus an amount based on the duration of the continuing violation and the size of the building. The COM may also adopt rules to impose a penalty of up to 30 cents per square foot on Tier 2 building owners who fail to demonstrate compliance with the energy management and benchmarking requirement.

Summary:

Either independently or through the Department of Enterprise Services (DES), state agencies, school districts, public universities, and municipalities may develop conservation projects and services that require the ownership of energy equipment to be held by other persons or entities; enter into performance-based contracts for energy services; contract to sell energy savings from a conservation project at a public facilities to local utilities or the Bonneville Power Administration; and contract with a person or entity for energy equipment or services.

State agencies, school districts, public universities, and municipalities must coordinate with the DES to analyze the cost-effectiveness of proposed "energy as a service" contracts and determine that the contract is more cost-effective than other available alternatives prior to entering an energy as a service contract. "Energy as a service" is defined as a performance-based contract in which a state agency, school district, public university, or municipality makes service payments to a third party for energy services, which may include the provision of energy equipment that is owned and operated by the third party.

Energy as a service contracts are subject to the following conditions:
- The contract may include terms that transfer ownership of the energy equipment from the state agency, school district, public university, or municipality to the third party.
- The third party is responsible for cost-savings and performance guarantees through the terms of the contract.
- The value of energy equipment or services at the time of contract execution may exceed the fair market value.
- At the end of the financing term of the contract, equipment ownership may be transferred back to the state agency, school district, public university, or municipality.

The state agency, school district, public university, or municipality must:
- ensure that the contract does not directly result in the loss of a position of employment by a state employee or a school district employee; and
- must offer training in preventative maintenance and other related activities of energy equipment and services.

Any direct financial grants and incentives received on behalf of a state agency, school district, public university, or municipality will be passed on to the receiving agency. State agencies, school districts, public universities, and municipalities may use financing contracts as well as performance-based contracts to provide all or part of the funding for conservation projects. Performance-based contracts that include the purchase of real or personal property are subject to the requirements of financing contracts. By December 31, 2023, the DES must complete approved model "energy as service" contracts.

By June 30, 2031, the DES must report data to the Governor and the Legislature on the adoption rate and cost-effectiveness of performance-based contracts for energy as a service. The act expires June 30, 2033, and contracts entered into under the authority granted by the act may remain in effect after the act's expiration date. A statement of intent is included that indicates the Legislature will consider the findings of the DES report and a possible extension of the act's expiration.

Votes on Final Passage:

House	96	0	
Senate	47	2	(Senate amended)
House	96	0	(House concurred)

Effective: July 23, 2023