

SENATE BILL REPORT

HB 1777

As of March 13, 2023

Title: An act relating to authorizing the use of performance-based contracting for energy services and equipment.

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.

Brief History: Passed House: 3/1/23, 96-0.

Committee Activity: Environment, Energy & Technology: 3/14/23.

Brief Summary of Bill

- Authorizes state agencies or school districts to independently enter into performance-based contracts for energy equipment and services under certain conditions.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Staff: Angela Kleis (786-7469)

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 attributable to the contract; or
- guaranteed by the service provider to be less than the annual energy, water, or solid

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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 DES Energy Savings Performance Contracting process through utility savings, capital funding, grants, or loans. Conservation includes reduced energy consumption, energy demand, energy cost, 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). 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.

OST has adopted policy guidance for COP program financing for energy upgrade projects and for financing contracts for state agency agreements. Under the COP program, OST executes a financing contract agreement between 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. 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 (Commerce) 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 building where the sum of nonresidential, hotel, motel, and dormitory floor areas exceed 50,000 gross square feet, excluding the parking garage area; and
- a Tier 2 covered building is a building where the sum of multifamily residential, nonresidential, hotel, motel, or dormitory floor areas is greater than 20,000 gross square feet but less than 50,000 gross square feet, excluding the parking garage area, and a multifamily residential building where floor area is equal to or greater than 50,000 gross square feet, excluding the parking garage area.

Dates of compliance with the Standard are phased in based on building size. Commerce may impose administrative penalties for building owners who fail to document compliance with the Standard by the compliance deadlines.

Summary of Bill: Either independently or through DES, state agencies or school districts may finance energy conservation projects at public facilities, enter into performance-based contracts for energy services, and contract to sell energy savings from a conservation project.

State agencies or school districts may contract with entities for energy equipment or services provided to the agency or school district when the following conditions are met:

- the contract includes terms that transfer ownership of the energy equipment from the state agency or school district to the entity;
- the entity 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 of property leased by the agency or school district, and this must be considered cost-effective; and
- at the end of the financing term of the contract, equipment ownership must be transferred back to the state agency or school district at no residual value.

In addition to financing contracts, state agencies and school districts may use performance-based contracts to provide all or part of the funding for conservation projects.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.