

**RCW 39.35C.050 Authority of state agencies and school districts to implement conservation—Energy as a service contracts. (Effective until June 30, 2033.)** In addition to any other authorities conferred by law:

(1) The department, with the consent of the state agency or school district responsible for a facility, a state or regional university acting independently, and any other state agency or school district acting through the department or acting independently, may:

(a) Develop and finance conservation at public facilities in accordance with express provisions of this chapter;

(b) Contract for energy services, including through a performance-based contract; and

(c) Contract to sell energy savings from a conservation project at public facilities to local utilities or the Bonneville power administration.

(2) (a) This subsection authorizes state agencies, public school districts, public universities, and municipalities to enter into energy as a service contracts. Pursuant to this subsection, a state agency, public school district, public university, or municipality may, whether acting independently or through the department:

(i) Develop conservation projects and services that require the ownership of energy equipment to be held by other persons or entities;

(ii) Contract for energy services, including through a performance-based contract;

(iii) Contract to sell energy savings from a conservation project at public facilities to local utilities or the Bonneville power administration; and

(iv) Contract with a person or entity for energy equipment or services.

(b) Any contract for energy as a service entered into pursuant to the authority of this subsection is subject to the following conditions:

(i) The contract may include terms that transfer ownership of energy equipment from the state agency, public school district, public university, or municipality to the person or entity;

(ii) The person or entity is responsible for cost-savings and performance guarantees through the terms of the contract;

(iii) The value of energy equipment or services at the time of contract execution may exceed the fair market value;

(iv) At the end of the term of the contract, equipment ownership may be transferred back to the state agency, public school district, public university, or municipality;

(v) The state agency, public school district, public university, or municipality will ensure that a contract does not directly result in loss of any position of employment by state employees in the classified service under RCW 41.06.020, employees included in the Washington management service under RCW 41.06.022, or school district employees under RCW 28A.150.203;

(vi) Training must be offered in the preventative maintenance and other related activities of energy equipment and services as detailed in the contract for energy services to existing classified employees who currently provide maintenance of energy equipment for the state agency, public school district, public university, or municipality; and

(vii) Prior to entering into a contract, the state agency, public school district, public university, or municipality must coordinate

with the department to analyze the cost-effectiveness of the proposed performance-based contract compared to alternative available financing and service mechanisms, including certificates of participation. The state agency, public school district, public university, or municipality may enter into a contract only if the cost-effectiveness is greater than other available alternatives.

(3) A state or regional university acting independently, and any other state agency acting through the department or as otherwise authorized by law, may undertake procurements for third-party development of conservation at its facilities.

(4) A school district may also:

(a) Develop and finance conservation at school district facilities; and

(b) Contract to sell energy savings from energy conservation projects at school district facilities to local utilities or the Bonneville power administration directly or through third parties.

(5) Direct financial grants and incentives received on behalf of the state agency, public school district, public university, or municipality will be passed on to the state agency, public school district, public university, or municipality.

(6) In exercising the authority granted by subsections (1), (3), and (4) of this section, a school district or state agency must comply with the provisions of RCW 39.35C.040. [2023 c 309 § 4; 2015 c 79 § 10; 1996 c 186 § 409; 1991 c 201 § 6.]

**Expiration date—2023 c 309 §§ 2-5:** See note following RCW 39.35A.020.

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

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(1) The department, with the consent of the state agency or school district responsible for a facility, a state or regional university acting independently, and any other state agency acting through the department or as otherwise authorized by law, may:

(a) Develop and finance conservation at public facilities in accordance with express provisions of this chapter;

(b) Contract for energy services, including performance-based contracts;

(c) Contract to sell energy savings from a conservation project at public facilities to local utilities or the Bonneville power administration.

(2) A state or regional university acting independently, and any other state agency acting through the department or as otherwise authorized by law, may undertake procurements for third-party development of conservation at its facilities.

(3) A school district may:

(a) Develop and finance conservation at school district facilities;

(b) Contract for energy services, including performance-based contracts at school district facilities; and

(c) Contract to sell energy savings from energy conservation projects at school district facilities to local utilities or the Bonneville power administration directly or to local utilities or the Bonneville power administration through third parties.

(4) In exercising the authority granted by subsections (1), (2), and (3) of this section, a school district or state agency must comply with the provisions of RCW 39.35C.040. [2015 c 79 § 10; 1996 c 186 § 409; 1991 c 201 § 6.]

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.