

---

**SUBSTITUTE SENATE BILL 5481**

---

**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Water, Energy & Telecommunications (originally sponsored by Senators Oemig, Delvin, Rockefeller, Fraser and Regala)

READ FIRST TIME 02/1/07.

1       AN ACT Relating to conservation measures in performance-based  
2       contracting; and amending RCW 39.35A.010, 39.35A.020, 39.35A.030, and  
3       39.35C.010.

4       BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       **Sec. 1.** RCW 39.35A.010 and 1985 c 169 s 1 are each amended to read  
6       as follows:

7       The legislature finds that:

8       (1) Conserving energy and water in publicly owned buildings will  
9       have a beneficial effect on our overall supply of energy and water;

10       (2) Conserving energy and water in publicly owned buildings can  
11       result in cost savings for taxpayers; and

12       (3) Performance-based energy contracts are a means by which  
13       municipalities can achieve energy and water conservation without  
14       capital outlay.

15       Therefore, the legislature declares that it is the policy that a  
16       municipality may, after a competitive selection process, negotiate a  
17       performance-based energy contract with a firm that offers the best  
18       proposal.

1       **Sec. 2.** RCW 39.35A.020 and 2001 c 214 s 18 are each amended to  
2 read as follows:

3       Unless the context clearly indicates otherwise, the definitions in  
4 this section shall apply throughout this chapter.

5       (1) "Energy equipment and services" means energy management systems  
6 and any equipment, materials, or supplies that are expected, upon  
7 installation, to reduce the energy use or energy cost of an existing  
8 building or facility, and the services associated with the equipment,  
9 materials, or supplies, including but not limited to design,  
10 engineering, financing, installation, project management, guarantees,  
11 operations, and maintenance. Reduction in energy use or energy cost  
12 may also include reductions in the use or cost of water, wastewater, or  
13 solid waste.

14       (2) "Energy management system" has the definition provided in RCW  
15 39.35.030.

16       (3) "Municipality" has the definition provided in RCW 39.04.010.

17       (4) "Performance-based contract" means one or more contracts for  
18 water conservation services, solid waste reduction services, or energy  
19 equipment and services between a municipality and any other persons or  
20 entities, if the payment obligation for each year under the contract,  
21 including the year of installation, is either: (a) Set as a percentage  
22 of the annual energy cost savings, water cost savings, or solid waste  
23 cost savings attributable under the contract (~~(to the energy equipment~~  
24 ~~and services)~~); or (b) guaranteed by the other persons or entities to  
25 be less than the annual energy cost savings, water cost savings, or  
26 solid waste cost savings attributable under the contract (~~(to the~~  
27 ~~energy equipment and services)~~). Such guarantee shall be, at the  
28 option of the municipality, a bond or insurance policy, or some other  
29 guarantee determined sufficient by the municipality to provide a level  
30 of assurance similar to the level provided by a bond or insurance  
31 policy.

32       (5) "Water conservation" means reductions in the use of water or  
33 wastewater.

34       **Sec. 3.** RCW 39.35A.030 and 1985 c 169 s 3 are each amended to read  
35 as follows:

36       (1) Each municipality shall publish in advance its requirements to  
37 procure water conservation services, solid waste reduction services, or

1 energy equipment and services under a performance-based contract. The  
2 announcement shall state concisely the scope and nature of the  
3 equipment and services for which a performance-based contract is  
4 required, and shall encourage firms to submit proposals to meet these  
5 requirements.

6 (2) The municipality may negotiate a fair and reasonable  
7 performance-based contract with the firm that is identified, based on  
8 the criteria that is established by the municipality, to be the firm  
9 that submits the best proposal.

10 (3) If the municipality is unable to negotiate a satisfactory  
11 contract with the firm that submits the best proposal, negotiations  
12 with that firm shall be formally terminated and the municipality may  
13 select another firm in accordance with this section and continue  
14 negotiation until a performance-based contract is reached or the  
15 selection process is terminated.

16 **Sec. 4.** RCW 39.35C.010 and 2001 c 214 s 20 are each amended to  
17 read as follows:

18 Unless the context clearly requires otherwise, the definitions in  
19 this section apply throughout this chapter.

20 (1) "Cogeneration" means the sequential generation of two or more  
21 forms of energy from a common fuel or energy source. If these forms  
22 are electricity and thermal energy, then the operating and efficiency  
23 standards established by 18 C.F.R. Sec. 292.205 and the definitions  
24 established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

25 (2) "Conservation" means reduced energy consumption or energy cost,  
26 or increased efficiency in the use of energy, and activities, measures,  
27 or equipment designed to achieve such results, but does not include  
28 thermal or electric energy production from cogeneration.  
29 "Conservation" also means reductions in the use or cost of water,  
30 wastewater, or solid waste.

31 (3) "Cost-effective" means that the present value to a state agency  
32 or school district of the energy reasonably expected to be saved or  
33 produced by a facility, activity, measure, or piece of equipment over  
34 its useful life, including any compensation received from a utility or  
35 the Bonneville power administration, is greater than the net present  
36 value of the costs of implementing, maintaining, and operating such

1 facility, activity, measure, or piece of equipment over its useful  
2 life, when discounted at the cost of public borrowing.

3 (4) "Energy" means energy as defined in RCW 43.21F.025(1).

4 (5) "Energy audit" has the definition provided in RCW 43.19.670,  
5 and may include a determination of the water or solid waste consumption  
6 characteristics of a facility.

7 (6) "Energy efficiency project" means a conservation or  
8 cogeneration project.

9 (7) "Energy efficiency services" means assistance furnished by the  
10 department to state agencies and school districts in identifying,  
11 evaluating, and implementing energy efficiency projects.

12 (8) "Department" means the state department of general  
13 administration.

14 (9) "Performance-based contracting" means contracts for which  
15 payment is conditional on achieving contractually specified energy  
16 savings.

17 (10) "Public agency" means every state office, officer, board,  
18 commission, committee, bureau, department, and all political  
19 subdivisions of the state.

20 (11) "Public facility" means a building or structure, or a group of  
21 buildings or structures at a single site, owned by a state agency or  
22 school district.

23 (12) "State agency" means every state office or department, whether  
24 elective or appointive, state institutions of higher education, and all  
25 boards, commissions, or divisions of state government, however  
26 designated.

27 (13) "State facility" means a building or structure, or a group of  
28 buildings or structures at a single site, owned by a state agency.

29 (14) "Utility" means privately or publicly owned electric and gas  
30 utilities, electric cooperatives and mutuals, whether located within or  
31 without Washington state.

32 (15) "Local utility" means the utility or utilities in whose  
33 service territory a public facility is located.

--- END ---