H-1036.2

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**HOUSE BILL 1777**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Representatives Doglio, Fitzgibbon, Duerr, Lekanoff, Stearns, McEntire, Ramel, and Pollet

AN ACT Relating to authorizing the use of performance-based contracting for energy services and equipment; and amending RCW 39.35A.020, 39.35C.010, 39.35C.050, and 39.35C.060.

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

**Sec.**  RCW 39.35A.020 and 2022 c 128 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Conservation" includes reduced:

(i) Energy consumption;

(ii) Energy demand;

(iii) Energy cost; or

(iv) Greenhouse gas emissions.

(b)(i) "Conservation" includes reductions in the use or cost of water, wastewater, or solid waste.

(ii) "Conservation" does not include thermal or electric energy production from cogeneration.

(2) "Energy equipment and services" means:

(a) Energy management systems and any equipment, materials, supplies, or conservation projects that are expected, upon installation, to reduce the energy use, reduce the energy demand, reduce the energy cost, or reduce the greenhouse gas emissions, of a facility; and

(b) The services associated with the equipment, materials, supplies, or conservation projects including, but not limited to, design, engineering, financing, installation, project management, guarantees, operations, and maintenance. Reduction in energy use or energy cost may also include reductions in the use or cost of water, wastewater, or solid waste.

(3) "Energy management system" has the definition provided in RCW 39.35.030.

(4) "Facility" includes a building, structure, group of buildings or structures at a single site, site improvement, or other facility owned by a municipality.

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

(6) "Performance-based contract" means one or more contracts for water conservation services, solid waste reduction services, or energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) Set as a percentage of the annual energy cost savings, water cost savings, solid waste cost savings, or benefits achieved through conservation projects attributable under the contract; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings, water cost savings, solid waste cost savings, or other benefits attributable under the contract. Such guarantee shall be, at the option of the municipality, a bond or insurance policy, or some other guarantee determined sufficient by the municipality to provide a level of assurance similar to the level provided by a bond or insurance policy. Payment obligations may include regular service payments made by a municipality to any persons or entities that own energy equipment and services under a performance-based contract.

**Sec.**  RCW 39.35C.010 and 2022 c 128 s 1 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2)(a) "Conservation" includes reduced:

(i) Energy consumption;

(ii) Energy demand;

(iii) Energy cost; or

(iv) Greenhouse gas emissions.

(b) "Conservation" does not include thermal or electric energy production from cogeneration.

(c) "Conservation" also includes reductions in the use or cost of water, wastewater, or solid waste.

(3)(a) "Cost-effective" means that the present value to a state agency or school district of the benefits reasonably expected to be achieved or produced by a facility, conservation activity, measure, or piece of equipment over its useful life, including any compensation received from a utility or the Bonneville power administration, is greater than the net present value of the costs of implementing, maintaining, and operating such facility, activity, measure, or piece of equipment over its useful life, when discounted at the cost of public borrowing.

(b) The expected value of energy equipment and services at the time of contract execution that are provided through a performance-based contract may exceed the fair market value of property leased or owned by a state agency or school district and still be deemed to be cost-effective.

(4) "Department" means the state department of enterprise services.

(5) "Energy" means energy as defined in RCW 43.21F.025(5).

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

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

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

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

(10) "Performance-based contracting" means contracts for which payment ((~~is~~)) or payment obligations are conditional on achieving contractually specified energy savings, which may include regular service payments made by a state agency or school district to any persons or entities that own energy equipment and services under a performance-based contract.

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

(12) "Public facility" means a building, structure, group of buildings or structures at a single site, site improvement, or other facility owned by a state agency or school district.

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

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

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

**Sec.**  RCW 39.35C.050 and 2015 c 79 s 10 are each amended to read as follows:

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 ((~~as otherwise authorized by law~~)) 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 ((~~contracts~~)) contract;

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

(d) Contract with a person or entity for energy equipment or services provided to a state agency or school district when the following conditions are met:

(i) The contract must include terms that transfer ownership of energy equipment from the state agency or school district 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 of property leased by the state agency or school district, and this must be considered to be cost-effective; and

(iv) 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.

(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 also:

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

(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.

**Sec.**  RCW 39.35C.060 and 1996 c 186 s 410 are each amended to read as follows:

State agencies and school districts may use financing contracts under chapter 39.94 RCW, as well as performance-based contracts, to provide all or part of the funding for conservation projects. The department shall determine the eligibility of such projects for financing contracts. The repayments of the financing contracts or performance-based contracts shall be sufficient to pay, when due, the principal and interest on the contracts or the services payments over the agreed upon term.

**--- END ---**