

SENATE BILL REPORT

HB 1777

As Reported by Senate Committee On:
Environment, Energy & Technology, March 28, 2023
Ways & Means, April 4, 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, 3/28/23 [DPA-WM, w/oRec].

Ways & Means: 3/30/23, 4/04/23 [DPA, DNP, w/oRec].

Brief Summary of Amended 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

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; Lovick, Trudeau and Wellman.

Minority Report: That it be referred without recommendation.
Signed by Senators MacEwen, Ranking Member; Boehnke and Short.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Angela Kleis (786-7469)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Billig, Conway, Dhingra, Hunt, Keiser, Nguyen, Pedersen, Saldaña, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senator Warnick, Assistant Ranking Member, Capital.

Minority Report: That it be referred without recommendation.

Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Boehnke, Braun, Hasegawa, Muzzall, Torres and Wagoner.

Staff: Michael Bezanson (786-7449)

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 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 Amended 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;
- at the end of the financing term of the contract, equipment ownership must be transferred back to the state agency or school district;

- the financing term may not exceed the manufacturer's published life expectancy of the equipment;
- the contract does not directly result in loss of any position of employment by certain state employees;
- training must be offered in the preventative maintenance and other related services to existing classified employees at the state agency or school district; and
- a state agency or school district may only enter into a contract if the cost-effectiveness is greater than other available alternatives such as COPs.

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.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- Removes language designating items in excess of fair market value to be cost-effective.
- Removes requirement that equipment be transferred back to the state agency or school district at no residual value.
- Adds requirement that the financing term may not exceed the manufacturer's published life expectancy of the equipment.
- Modifies that training must be offered in the preventative maintenance and other related activities rather than preventative maintenance and repair.
- Adds requirement that a state agency or school district may only enter into a contract if the cost-effectiveness is greater than other available alternatives such as COPs.
- Reinstates current law authorizing school districts to contract to sell energy savings from energy conservation projects directly.

EFFECT OF ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE AMENDMENT(S):

- Provides an expiration date of June 30, 2033, and that contracts entered into under this act may remain in effect following expiration.
- Requires DES to submit a report, by June 30, 2031, including specified information on the implementation of this act, such as the number of performance-based contracts issued and the cost-effectiveness of such contracts.
- Specifies legislative intent to consider findings in the DES report and extend the expiration date of this act if performance-based contracts are achieving the legislative objective.
- Modifies contract requirements by also requiring that the contract does not directly result in loss of any position of employment by certain state employees and training must be offered in the preventative maintenance and repair of energy equipment and services to existing classified employees.
- Specifies performance-based contracts entered into under this act are subject to statutory financing contract regulations.

- Requires DES, no later than December 31, 2023, to complete development of approved model contracts authorized under this act.

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.

Staff Summary of Public Testimony on House Bill (Environment, Energy & Technology): *The committee recommended a different version of the bill than what was heard.* PRO: This bill provides energy as a service to public buildings, which is common for private buildings. A company comes in and provides upfront capital to school districts that may not have the funds for needed improvements. Every tool is needed to help the public sector meet the Clean Buildings Performance Standard goals as there are high costs associated with compliance. The need for this policy is great because of progressive climate policy in this state, which requires significant investment. There are ongoing discussions with agencies and stakeholders to address concerns.

CON: This introduces a new funding paradigm, energy as a service. The funding model should have some guardrails in it before the policy proceeds. The bill may open the door to agencies being taken advantage of because they may not understand long term financing. The implications of the bill are unknown at this time so we are asking for more time. We need to make sure this does not impact the state debt limit as counsel tells us that contracts under this bill could contribute to the state debt. The extra tool is appreciated but it is a more expensive option.

OTHER: There are concerns that bill, without further protections, could lead to the displacement of jobs. We are working with the sponsor to protect members in public service.

Persons Testifying (Environment, Energy & Technology): PRO: Representative Beth Doglio, Prime Sponsor; Ash Awad, McKinstry; Lincoln Ferris, Seattle Colleges.

CON: William Frare, Washington State Department of Enterprise Services; Matt Zuvich, Office of State Treasurer.

OTHER: Brandon Anderson, Washington Federation of State Employees, WFSE.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.

Staff Summary of Public Testimony on Bill as Amended by Environment, Energy &

Technology (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: We need to address and support the aging infrastructure of this state. We cannot continue to do it with old tools. There is federal money available through the Inflation Reduction Act that this bill will be allowed to leverage. The bill follows existing RCW programs and has been collaborated on by the different agencies involved. The bill has oversight. The bill helps with projects are not minor works or major remodels. We already use energy savings measures, and this will help more.

Persons Testifying (Ways & Means): PRO: Ash Awad, McKinstry; Lincoln Ferris, Seattle Central College.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.