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HOUSE BILL 1777

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State of Washington

68th Legislature

2023 Regular Session

By Representative Doglio

1 AN ACT Relating to authorizing the use of performance-based  
2 contracting for energy services and equipment; and amending RCW  
3 39.35A.020, 39.35C.010, 39.35C.050, and 39.35C.060.

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

5 **Sec. 1.** RCW 39.35A.020 and 2022 c 128 s 2 are each amended to  
6 read as follows:

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

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

10 (i) Energy consumption;

11 (ii) Energy demand;

12 (iii) Energy cost; or

13 (iv) Greenhouse gas emissions.

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

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

18 (2) "Energy equipment and services" means:

19 (a) Energy management systems and any equipment, materials,  
20 supplies, or conservation projects that are expected, upon  
21 installation, to reduce the energy use, reduce the energy demand,

1 reduce the energy cost, or reduce the greenhouse gas emissions, of a  
2 facility; and

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

9 (3) "Energy management system" has the definition provided in RCW  
10 39.35.030.

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

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

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

33 **Sec. 2.** RCW 39.35C.010 and 2022 c 128 s 1 are each amended to  
34 read as follows:

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

37 (1) "Cogeneration" means the sequential generation of two or more  
38 forms of energy from a common fuel or energy source. If these forms  
39 are electricity and thermal energy, then the operating and efficiency

1 standards established by 18 C.F.R. Sec. 292.205 and the definitions  
2 established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

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

- 4 (i) Energy consumption;
- 5 (ii) Energy demand;
- 6 (iii) Energy cost; or
- 7 (iv) Greenhouse gas emissions.

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

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

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

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

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

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

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

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

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

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

39 (10) "Performance-based contracting" means contracts for which  
40 payment (~~(is)~~) or payment obligations are conditional on achieving

1 contractually specified energy savings, which may include regular  
2 service payments made by a state agency or school district to any  
3 persons or entities that own energy equipment and services under a  
4 performance-based contract.

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

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

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

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

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

20 **Sec. 3.** RCW 39.35C.050 and 2015 c 79 s 10 are each amended to  
21 read as follows:

22 In addition to any other authorities conferred by law:

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

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

30 (b) Contract for energy services, including through a  
31 performance-based (~~contracts~~) contract;

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

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

1 (i) The contract must include terms that transfer ownership of  
2 energy equipment from the state agency or school district to the  
3 person or entity;

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

6 (iii) The value of energy equipment or services at the time of  
7 contract execution may exceed the fair market value of property  
8 leased by the state agency or school district, and this must be  
9 considered to be cost-effective; and

10 (iv) At the end of the financing term of the contract, equipment  
11 ownership must be transferred back to the state agency or school  
12 district at no residual value.

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

17 (3) A school district may also:

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

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

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

26 (4) In exercising the authority granted by subsections (1), (2),  
27 and (3) of this section, a school district or state agency must  
28 comply with the provisions of RCW 39.35C.040.

29 **Sec. 4.** RCW 39.35C.060 and 1996 c 186 s 410 are each amended to  
30 read as follows:

31 State agencies and school districts may use financing contracts  
32 under chapter 39.94 RCW, as well as performance-based contracts, to  
33 provide all or part of the funding for conservation projects. The  
34 department shall determine the eligibility of such projects for  
35 financing contracts. The repayments of the financing contracts or  
36 performance-based contracts shall be sufficient to pay, when due, the

1 principal and interest on the contracts or the services payments over  
2 the agreed upon term.

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