SENATE BILL REPORT
HB 1777

As of March 14, 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.

Brief Summary of 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

Staff: Angela Kleis (786-7469)

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

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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 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, and this must be considered cost-effective; and
- 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.

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.

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: 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: 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: No one.