
A BILL FOR AN ACT

RELATING TO ENERGY.

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

1 SECTION 1. The legislature finds that state agencies are
2 interested in using energy savings performance contracting to
3 improve the energy efficiency of their facilities, thereby
4 addressing deferred maintenance and reduced facility life cycle
5 operating costs. Energy savings performance contracting is a
6 method of paying for facility improvements using energy and
7 operational savings through a contracting vehicle that provides
8 an opportunity to turn wasted energy and operating cost into
9 capital improvements. Typically, the energy conservation
10 measures and alternative energy measures are financed through a
11 municipal lease agreement with annual payments funded by the
12 guaranteed utility and energy-related operating and maintenance
13 savings.

14 Section 36-41(a), Hawaii Revised Statutes, states in
15 pertinent part:

16 Agencies that perform energy efficiency
17 retrofitting may continue to receive budget
18 appropriations for energy expenditures at an



1 amount that shall not fall below the pre-
2 retrofitting energy budget but shall rise in
3 proportion to any increase in the agency's
4 overall budget for the duration of the
5 performance contract or project payment
6 term.

7 The legislature finds that the current language creates
8 uncertainty and risk for agencies. Under energy savings
9 performance contracting, the energy savings from the energy
10 savings performance contracting project frees up a portion of
11 the "pre-retrofitting energy budget" that is commonly used to
12 enable the agencies to obtain municipal lease financing for
13 their projects. This provides alternative financing that will
14 allow projects to proceed expeditiously rather than waiting for
15 general obligation bond funds that may or may not be
16 appropriated.

17 A change in the statute's language from permissive to
18 mandatory ("may" to "shall") in section 36-41(a), Hawaii Revised
19 Statutes, will remove the uncertainty for agencies regarding the
20 ability to direct the savings from an energy savings performance
21 contracting project available to fund the municipal lease
22 payment. This will enable more energy savings performance



1 contracting projects to be implemented, reduce Hawaii's
2 dependency on foreign oil, lessen utility pricing volatility due
3 to increasing oil pricing, and provide agencies with the ability
4 to address deferred maintenance issues without capital
5 improvements project bond funding.

6 The purpose of this Act is to clarify that:

- 7 (1) State agencies that perform energy efficiency
8 retrofitting must continue to receive budget
9 appropriations for energy expenditures at an amount
10 that does not fall below the pre-retrofitting energy
11 budget; and
- 12 (2) The term of an energy performance contract shall not
13 exceed twenty years following completion of
14 construction.

15 SECTION 2. Section 36-41, Hawaii Revised Statutes, is
16 amended as follows:

17 1. By amending subsection (a) to read:

18 "(a) All agencies shall evaluate and identify for
19 implementation energy efficiency retrofitting through
20 performance contracting. Agencies that perform energy
21 efficiency retrofitting [~~may~~] shall continue to receive budget
22 appropriations for energy expenditures at an amount that shall



1 not fall below the pre-retrofitting energy budget but shall rise
2 in proportion to any increase in the agency's overall budget for
3 the duration of the performance contract or project payment
4 term."

5 2. By amending subsection (c) to read:

6 "(c) Notwithstanding any law to the contrary relating to
7 the award of public contracts, any agency desiring to enter into
8 an energy performance contract shall do so in accordance with
9 the following provisions:

- 10 (1) The agency shall issue a public request for proposals,
11 advertised in the same manner as provided in chapter
12 103D, concerning the provision of energy efficiency
13 services or the design, installation, operation, and
14 maintenance of energy equipment or both. The request
15 for proposals shall contain terms and conditions
16 relating to submission of proposals, evaluation and
17 selection of proposals, financial terms, legal
18 responsibilities, and other matters as may be required
19 by law and as the agency determines appropriate;
- 20 (2) Upon receiving responses to the request for proposals,
21 the agency may select the most qualified proposal or
22 proposals on the basis of the experience and



1 qualifications of the proposers, the technical
2 approach, the financial arrangements, the overall
3 benefits to the agency, and other factors determined
4 by the agency to be relevant and appropriate;

5 (3) The agency thereafter may negotiate and enter into an
6 energy performance contract with the person or company
7 whose proposal is selected as the most qualified based
8 on the criteria established by the agency;

9 (4) The term of any energy performance contract entered
10 into pursuant to this section shall not exceed twenty
11 years[+] following completion of construction;

12 (5) Any contract entered into shall contain the following
13 annual allocation dependency clause:

14 "The continuation of this contract is contingent upon
15 the appropriation of funds to fulfill the requirements
16 of the contract by the applicable funding authority.

17 If that authority fails to appropriate sufficient
18 funds to provide for the continuation of the contract,
19 the contract shall terminate on the last day of the
20 fiscal year for which allocations were made";



1 (6) Any energy performance contract may provide that the
2 agency shall ultimately receive title to the energy
3 system being financed under the contract;

4 (7) Any energy performance contract shall provide that
5 total payments shall not exceed total savings; and

6 (8) For any guaranteed-savings plan:

7 (A) The payment obligation for each year of the
8 contract, including the year of installation,
9 shall be guaranteed by the private sector person
10 or company to be less than the annual energy cost
11 savings attributable under the contract to the
12 energy equipment and services. Such guarantee,
13 at the option of the agency, shall be a bond or
14 insurance policy, or some other guarantee
15 determined sufficient by the agency to provide a
16 level of assurance similar to the level provided
17 by a bond or insurance policy; and

18 (B) In the event that the actual annual verified
19 savings are less than the annual amount
20 guaranteed by the energy service company, the
21 energy service company, within thirty days of
22 being invoiced, shall pay the agency, or cause



1 the agency to be paid, the difference between the
2 guaranteed amount and the actual verified
3 amount."

4 SECTION 3. Section 196-21, Hawaii Revised Statutes, is
5 amended by amending subsection (c) to read as follows:

6 "(c) Notwithstanding any law to the contrary relating to
7 the award of public contracts, any agency desiring to enter into
8 an energy performance contract shall do so in accordance with
9 the following provisions:

10 (1) The agency shall issue a public request for proposals,
11 advertised in the same manner as provided in chapter
12 103D, concerning the provision of energy-efficiency
13 services or the design, installation, operation, and
14 maintenance of energy equipment. The request for
15 proposals shall contain terms and conditions relating
16 to submission of proposals, evaluation, and selection
17 of proposals, financial terms, legal responsibilities,
18 and other matters as may be required by law and as the
19 agency determines appropriate;

20 (2) Upon receiving responses to the request for proposals,
21 the agency shall select the most qualified proposal or
22 proposals and may base its determination on the basis



1 of the experience and qualifications of the proposers,
2 the technical approach, the financial arrangements,
3 the overall benefits to the agency, or other factors
4 determined by the agency to be relevant and
5 appropriate;

6 (3) The agency thereafter may negotiate and enter into an
7 energy performance contract with the person or company
8 whose proposal is selected as the most qualified based
9 on the criteria established by the agency;

10 (4) The term of any energy performance contract entered
11 into pursuant to this section shall not exceed twenty
12 years[+] following completion of construction;

13 (5) Any energy performance contract may provide that the
14 agency ultimately shall receive title to the energy
15 system being financed under the contract; and

16 (6) Any energy performance contract shall provide that
17 total payments shall not exceed total savings."

18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 5. This Act shall take effect upon its approval.



Report Title:

Energy Efficiency Retrofitting; State Agencies; Budget

Description:

Ensures that agencies that enter into energy performance contracts shall continue to receive budget appropriations for energy expenditures in an amount that shall not fall below the pre-performance contract budget. Establishes the term of the energy performance contract as the twenty year period after completion of project construction. (HB1366 HD1)

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