
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 utilizing energy savings performance contracting
3 to improve the energy efficiency of their facilities, addressing
4 deferred maintenance and reduced facility life cycle operating
5 costs. Energy savings performance contracting is a method of
6 paying for facility improvements using energy and operational
7 savings through a contracting vehicle that provides an
8 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 retrofitting may
17 continue to receive budget appropriations for energy
18 expenditures at an amount that shall not fall below the



1 pre-retrofitting energy budget but shall rise in proportion
2 to any increase in the agency's overall budget for the
3 duration of the performance contract or project payment
4 term.

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

14 A change in the statute's language from permissive to
15 mandatory ("may" to "shall") in section 36-41(a), Hawaii Revised
16 Statutes, will remove the uncertainty for agencies regarding the
17 ability to direct the savings from an energy savings performance
18 contracting project available to fund the municipal lease
19 payment. This will enable more energy savings performance
20 contracting projects to be implemented, reduce Hawaii's
21 dependency on foreign oil, lessen utility pricing volatility due
22 to increasing oil pricing, and provide the ability for agencies



1 to address deferred maintenance issues without capital
2 improvements project bond funding.

3 The purpose of this Act is to clarify that state agencies
4 that perform energy efficiency retrofitting must continue to
5 receive budget appropriations for energy expenditures at an
6 amount that does not fall below the pre-retrofitting energy
7 budget.

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

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

11 "(a) All agencies shall evaluate and identify for
12 implementation energy efficiency retrofitting through
13 performance contracting. Agencies that perform energy
14 efficiency retrofitting [~~may~~] shall continue to receive budget
15 appropriations for energy expenditures at an amount that shall
16 not fall below the pre-retrofitting energy budget but shall rise
17 in proportion to any increase in the agency's overall budget for
18 the duration of the performance contract or project payment
19 term."

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

21 "(c) Notwithstanding any law to the contrary relating to
22 the award of public contracts, any agency desiring to enter into



1 an energy performance contract shall do so in accordance with
2 the following provisions:

- 3 (1) The agency shall issue a public request for proposals,
4 advertised in the same manner as provided in chapter
5 103D, concerning the provision of energy efficiency
6 services or the design, installation, operation, and
7 maintenance of energy equipment or both. The request
8 for proposals shall contain terms and conditions
9 relating to submission of proposals, evaluation and
10 selection of proposals, financial terms, legal
11 responsibilities, and other matters as may be required
12 by law and as the agency determines appropriate;
- 13 (2) Upon receiving responses to the request for proposals,
14 the agency may select the most qualified proposal or
15 proposals on the basis of the experience and
16 qualifications of the proposers, the technical
17 approach, the financial arrangements, the overall
18 benefits to the agency, and other factors determined
19 by the agency to be relevant and appropriate;
- 20 (3) The agency thereafter may negotiate and enter into an
21 energy performance contract with the person or company



1 whose proposal is selected as the most qualified based
2 on the criteria established by the agency;

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

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

8 "The continuation of this contract is contingent upon
9 the appropriation of funds to fulfill the requirements
10 of the contract by the applicable funding authority.

11 If that authority fails to appropriate sufficient
12 funds to provide for the continuation of the contract,
13 the contract shall terminate on the last day of the
14 fiscal year for which allocations were made";

15 (6) Any energy performance contract may provide that the
16 agency shall ultimately receive title to the energy
17 system being financed under the contract;

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

20 (8) For any guaranteed-savings plan:

21 (A) The payment obligation for each year of the
22 contract, including the year of installation,



1 shall be guaranteed by the private sector person
2 or company to be less than the annual energy cost
3 savings attributable under the contract to the
4 energy equipment and services. Such guarantee,
5 at the option of the agency, shall be a bond or
6 insurance policy, or some other guarantee
7 determined sufficient by the agency to provide a
8 level of assurance similar to the level provided
9 by a bond or insurance policy; and

10 (B) In the event that the actual annual verified
11 savings are less than the annual amount
12 guaranteed by the energy service company, the
13 energy service company, within thirty days of
14 being invoiced, shall pay the agency, or cause
15 the agency to be paid, the difference between the
16 guaranteed amount and the actual verified
17 amount."

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 4. This Act shall take effect upon its approval.
21



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. Specifies that the duration of a performance contract begins upon completion of construction.
(SD1)

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