

# S .B. NO. 2804

JAN 23 2014

---

## A BILL FOR AN ACT

RELATING TO ENERGY PERFORMANCE CONTRACTING FOR PUBLIC BUILDINGS.

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

1           SECTION 1. The legislature finds that energy performance  
2 contracting offers significant opportunities for agencies to  
3 improve their facilities and operations. Energy performance  
4 contracting is a method of paying for facility improvements  
5 using energy and operational savings through a contracting  
6 vehicle that provides an opportunity to install more efficient  
7 equipment, address deferred maintenance, use renewable energy  
8 technologies, and reduce operating costs. The legislature finds  
9 that state agencies have seen the value of using energy  
10 performance contracting to improve the energy efficiency of  
11 their facilities, thereby addressing deferred maintenance and  
12 reduced facility life cycle operating costs.

13           SECTION 2. Section 36-41, Hawaii Revised Statutes, is  
14 amended to read as follows:

15           "**§36-41 Energy retrofit and performance contracting**  
16 **for public facilities.** (a) All agencies shall evaluate  
17 and identify for implementation energy efficiency

1 retrofitting through energy performance contracting.  
2 Agencies that perform energy efficiency retrofitting may  
3 continue to receive [~~budget appropriations for energy~~  
4 ~~expenditures at an amount that shall not fall below the~~  
5 ~~pre-retrofitting energy budget but shall rise in proportion~~  
6 ~~to any increase in the agency's overall budget]~~ annual  
7 operating budget appropriations in an amount equal to the  
8 greater of: (1) the pre-retrofit budget with escalation or  
9 (2) actual financing costs plus an annual estimated amount  
10 for energy cost escalation needed to repay annual project  
11 financing costs for implemented energy performance  
12 contracting projects and pay for actual annual energy usage  
13 costs plus applicable maintenance operations for the  
14 duration of the energy performance contract or project  
15 payment term.

16 (b) Any agency may enter into a multi-year energy  
17 performance contract for the purpose of undertaking or  
18 implementing energy conservation or alternate energy measures in  
19 a facility or facilities. An energy performance contract may  
20 include but shall not be limited to financing options such as  
21 leasing, lease-purchase, financing agreements, third-party joint  
22 ventures, guaranteed-savings plans, or energy service contracts,  
23 or any combination thereof; provided that in due course the

S .B. NO. 2804

1 agency may receive title to the energy system being financed.  
2 Except as otherwise provided by law, the agency that is  
3 responsible for a particular facility shall review and approve  
4 energy performance contract arrangements for the facility.

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

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

19 (2) Upon receiving responses to the request for proposals,  
20 the agency may select the most qualified proposal or  
21 proposals on the basis of the experience and  
22 qualifications of the proposers, the technical  
23 approach, the financial arrangements, the overall

S .B. NO. 2804

- 1 benefits to the agency, and other factors determined  
2 by the agency to be relevant and appropriate;
- 3 (3) The agency thereafter may negotiate and enter into an  
4 energy performance contract with the person or company  
5 whose proposal is selected as the most qualified based  
6 on the criteria established by the agency;
- 7 (4) The term of any energy performance contract, including  
8 construction period, entered into pursuant to this  
9 section shall not exceed [~~twenty~~] twenty-five years;
- 10 (5) Any contract entered into shall contain the following  
11 annual allocation dependency clause:  
12 "The continuation of this contract is contingent upon  
13 the appropriation of funds to fulfill the requirements  
14 of the contract by the applicable funding authority.  
15 If that authority fails to appropriate sufficient  
16 funds to provide for the continuation of the contract,  
17 the contract shall terminate on the last day of the  
18 fiscal year for which allocations were made";
- 19 (6) Any energy performance contract may provide that the  
20 agency shall ultimately receive title to the energy  
21 system being financed under the contract;
- 22 (7) Any energy performance contract shall provide that  
23 total payments shall not exceed total savings; and

1 (8) For any guaranteed-savings plan:

2 (A) The payment obligation for each year of the  
3 contract, [~~including the year of~~] commencing the  
4 first year after the final date of installation,  
5 shall be guaranteed by the private sector person  
6 or company to be less than the annual energy cost  
7 savings attributable under the contract to the  
8 energy equipment and services. Such guarantee,  
9 at the option of the agency, shall be a bond or  
10 insurance policy, or some other guarantee  
11 determined sufficient by the agency to provide a  
12 level of assurance similar to the level provided  
13 by a bond or insurance policy; and

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

21 (d) Any agency implementing an energy performance contract  
22 shall report, on an annual basis and in a form acceptable to the  
23 energy resource coordinator, information on the energy

S .B. NO. 2804

1 performance contract, including energy use, energy savings,  
2 annual cost savings, amount of investment, amount of incentives,  
3 and other information to be developed in consultation with  
4 various agencies.

5 [~~d~~] "(e) For purposes of this section:

6 "Agency" means any executive department, independent  
7 commission, board, bureau, office, or other establishment of the  
8 State or any county government, the judiciary, the University of  
9 Hawaii, or any quasi-public institution that is supported in  
10 whole or in part by state or county funds.

11 "Energy cost savings" means an estimated reduction in fuel  
12 costs, maintenance costs, energy costs, water costs, sewer  
13 costs, other utility costs, or related net operating costs from  
14 or as compared to an established baseline of those costs. The  
15 term also includes the difference between the lower cost of  
16 energy generated from on-site renewable energy technologies,  
17 such as photovoltaics and wind, and the corresponding energy  
18 costs baseline. The term does not include an estimated  
19 reduction due to a decrease in energy rates that is not derived  
20 from increased conservation or reduced usage.

21 "Energy performance contract" means an agreement for the  
22 provision of energy services and equipment, including but not  
23 limited to commissioning and retro-commissioning, building or

1 facility energy conservation enhancing retrofits, water saving  
2 technology retrofits, and alternate energy technologies, in  
3 which a private sector person or company agrees to finance,  
4 design, construct, install, maintain, operate, or manage energy  
5 systems or equipment to improve the energy efficiency of, or  
6 produce energy in connection with, a facility in exchange for a  
7 portion of the cost savings, lease payments, or specified  
8 revenues, and the level of payments is made contingent upon the  
9 verified energy savings, energy production, avoided maintenance,  
10 avoided energy equipment replacement, or any combination of the  
11 foregoing bases. Energy conservation retrofits also include  
12 energy saved off-site by water or other utility conservation  
13 enhancing retrofits.

14 "Facility" means a building or buildings or similar  
15 structure, including the site owned or leased by, or otherwise  
16 under the jurisdiction of, the agency.

17 "Financing agreement" shall have the same meaning as in  
18 section 37D-2.

19 "Guaranteed-savings plan" means an agreement under which a  
20 private sector person or company undertakes to design, install,  
21 operate, and maintain improvements to an agency's facility or  
22 facilities and the agency agrees to pay a contractually  
23 specified amount of verified energy cost savings.

1 "Verified" means the technique used in the determination of  
2 baseline energy use, post-installation energy use, and energy  
3 and cost savings by the following measurement and verification  
4 techniques: engineering calculations, metering and monitoring,  
5 utility meter billing analysis, computer simulations,  
6 mathematical models, and agreed-upon stipulations by the  
7 customer and the energy service company."

8 SECTION 3. Section 196-19, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "[~~†~~]**§196-19**[~~†~~] **Life-cycle cost analysis.** Agencies shall  
11 use life-cycle cost analysis in making decisions about their  
12 investments in products, services, construction, and other  
13 projects to lower the State's costs and to reduce energy and  
14 water consumption. Where appropriate, agencies shall consider  
15 the life-cycle costs of combinations of projects, particularly  
16 to encourage bundling of energy efficiency projects with  
17 renewable energy projects.

18 Agencies shall retire inefficient equipment on an  
19 accelerated basis where replacement results in lower life-cycle  
20 costs. [~~Agencies that minimize life-cycle costs with efficiency~~  
21 ~~measures shall be recognized in their scorecard evaluations~~  
22 ~~established under section 196-17(a).~~]"



1 SECTION 4. Section 196-21, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§196-21 Financing mechanisms.** [~~a~~] Agencies shall  
4 maximize their use of available alternative financing  
5 contracting mechanisms, including [~~energy-savings~~] energy  
6 performance contracts, when life-cycle cost-effective, to reduce  
7 energy use and cost in their facilities and operations.

8 [~~Energy-savings~~] Energy performance contracts shall include:

- 9 (1) Energy performance contracts;  
10 (2) Municipal lease and purchase financing; and  
11 (3) Utility energy-efficiency service contracts.

12 [~~Energy-savings contracts shall provide significant~~  
13 ~~opportunities for making state facilities more energy efficient~~  
14 ~~at no net cost to taxpayers.~~

15 [~~(b) Agencies that perform energy efficiency and renewable~~  
16 ~~energy system retrofitting may continue to receive budget~~  
17 ~~appropriations for energy expenditures at an amount that will~~  
18 ~~not fall below the pre-retrofitting energy budget but will rise~~  
19 ~~in proportion to any increase in the agency's overall budget for~~  
20 ~~the duration of the performance contract or project payment~~  
21 ~~term. A portion of the moneys saved through efficiency and~~  
22 ~~renewable energy system retrofitting shall be set aside to pay~~  
23 ~~for any costs directly associated with administering energy~~

1 ~~efficiency and renewable energy system retrofitting programs~~  
2 ~~incurred by the agency.~~

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

7 ~~(1) The agency shall issue a public request for proposals,~~  
8 ~~advertised in the same manner as provided in chapter~~  
9 ~~103D, concerning the provision of energy efficiency~~  
10 ~~services or the design, installation, operation, and~~  
11 ~~maintenance of energy equipment. The request for~~  
12 ~~proposals shall contain terms and conditions relating~~  
13 ~~to submission of proposals, evaluation, and selection~~  
14 ~~of proposals, financial terms, legal responsibilities,~~  
15 ~~and other matters as may be required by law and as the~~  
16 ~~agency determines appropriate;~~

17 ~~(2) Upon receiving responses to the request for proposals,~~  
18 ~~the agency shall select the most qualified proposal or~~  
19 ~~proposals and may base its determination on the basis~~  
20 ~~of the experience and qualifications of the proposers,~~  
21 ~~the technical approach, the financial arrangements,~~  
22 ~~the overall benefits to the agency, or other factors~~

S .B. NO. 2804

1           ~~determined by the agency to be relevant and~~  
2           ~~appropriate;~~

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

7           ~~(4) The term of any energy performance contract entered~~  
8           ~~into pursuant to this section shall not exceed twenty~~  
9           ~~years;~~

10          ~~(5) Any energy performance contract may provide that the~~  
11          ~~agency ultimately shall receive title to the energy~~  
12          ~~system being financed under the contract; and~~

13          ~~(6) Any energy performance contract shall provide that~~  
14          ~~total payments shall not exceed total savings.]"~~

15          SECTION 5. Section 196-30, Hawaii Revised Statutes, is  
16          amended to read as follows:

17          "~~[+]§196-30[+]~~ **Public buildings; benchmarks; retro-**  
18          **commissioning [guidelines]; energy [savings] performance**

19          **contracts.** (a) By December 31, 2010, each state department  
20          with responsibilities for the design and construction of public  
21          buildings and facilities shall benchmark every existing public  
22          building that is either larger than five thousand square feet or  
23          uses more than eight thousand kilowatt-hours of electricity or

1 energy per year and shall use the benchmark as a basis for  
2 determining the State's investment in improving the efficiency  
3 of its own building stock. Benchmarking activities shall be  
4 reported to the energy resources coordinator and shall be  
5 conducted using the ENERGY STAR portfolio [~~management~~] manager  
6 or equivalent tool. The energy resources coordinator shall  
7 provide training to affected departments on the ENERGY STAR  
8 portfolio [~~management~~] manager or equivalent tool.

9 (b) Public buildings shall be retro-commissioned no less  
10 often than every five years. [~~The energy resources coordinator~~  
11 ~~shall establish retro-commissioning guidelines by January 1,~~  
12 ~~2010.~~] Agencies shall report retro-commissioning efforts to the  
13 energy resources coordinator.

14 (c) Departments may enter into energy [~~savings~~]  
15 performance contracts with a third party to cover the capital  
16 costs of energy-efficiency measures and distributed generation  
17 provided the terms of the energy [~~savings~~] performance contracts  
18 conform to the benchmark standard. The comptroller may review  
19 and exempt specific projects as appropriate to take into account  
20 cost-effectiveness.

21 [~~Energy savings performance contracts shall be executed~~  
22 ~~according to state guidelines issued by the comptroller, and the~~  
23 ~~contracts shall be reviewed by the comptroller.~~] To expedite


S .B. NO. 2804

1 energy [savings] performance contracting for public buildings,  
2 the department of accounting and general services shall develop  
3 a master energy [savings] performance contracts agreement that  
4 any department may use to contract with an energy savings  
5 performance contracts provider for energy-efficiency and  
6 renewable energy services.

7 ~~[(d) For existing public buildings that undergo a major~~  
8 ~~retrofit or renovation, the department or departments~~  
9 ~~responsible for design and construction shall make investments~~  
10 ~~in efficiency; provided that the cost of the measures shall be~~  
11 ~~recouped within twenty years.]"~~

12 SECTION 6. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act, upon its approval, shall take effect  
15 on July 1, 2014.

16  
17 INTRODUCED BY: 

18 BY REQUEST

S .B. NO. 2804

**Report Title:**

Energy Efficiency Retrofitting; State Agencies

**Description:**

Provides that agencies entering into energy performance contracts receive budget appropriations and have access to financing options; that an energy performance contract has a maximum term of 25 years, including the construction period; and that agencies implementing performance contracts provide annual reports to the Department of Business, Economic Development, and Tourism. Includes housekeeping measures.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO ENERGY  
PERFORMANCE CONTRACTING FOR PUBLIC  
BUILDINGS.

PURPOSE: Provides that agencies entering into energy performance contracts receive budget appropriations and have access to financing options; that an energy performance contract has a maximum term of 25 years, including the construction period; and that agencies implementing performance contracts provide annual reports to the Department of Business, Economic Development, and Tourism. Includes housekeeping measures.

MEANS: Amends sections 36-41, 196-19, 196-21, and 196-30, Hawaii Revised Statutes.

JUSTIFICATION: Allows for longer contract periods for deeper energy improvements and incorporating construction period into maximum contract period. Enables better data collection and reporting on performance contracting projects and building benchmarking efforts.

Impact on the public: None.

Impact on the department and other agencies:  
Provides flexibility and options to agencies to encourage greater use of energy performance contracting and allows the Energy Resources Coordinator to gather and report more information and data on these programs.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION:

BED 120.

OTHER AFFECTED  
AGENCIES:

Agencies that maintain and operate facilities,  
e.g. Department of Accounting and General  
Services, University of Hawaii, Department of  
Education, Department of Public Safety,  
Department of Transportation, Department of  
Defense.

EFFECTIVE DATE:

July 1, 2014.