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# 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 for**  
16    **public facilities.** (a) All agencies shall evaluate and  
17    identify for implementation energy efficiency retrofitting  
18    through energy performance contracting. Agencies that perform



1 energy efficiency retrofitting may continue to receive [budget  
2 ~~appropriations for energy expenditures at an amount that shall~~  
3 ~~not fall below the pre-retrofitting energy budget but shall rise~~  
4 ~~in proportion to any increase in the agency's overall budget]~~  
5 annual operating budget appropriations in an amount equal to the  
6 greater of:

7 (1) The pre-retrofit budget with escalation; or

8 (2) The actual financing costs plus an annual estimated  
9 amount for energy cost escalation needed to repay  
10 annual project financing costs for implemented energy  
11 performance contracting projects and pay for actual  
12 annual energy usage costs plus applicable maintenance  
13 operations for the duration of the energy performance  
14 contract or project payment term.

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



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



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

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

8 (4) The term of any energy performance contract, including  
9 construction period, entered into pursuant to this  
10 section shall not exceed [~~twenty~~] twenty-five years;

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

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

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

20 (6) Any energy performance contract may provide that the  
21 agency shall ultimately receive title to the energy  
22 system being financed under the contract;



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

3 (8) For any guaranteed-savings plan:

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

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



1        (d) Any agency implementing an energy performance contract  
2 shall report, on an annual basis and in a form acceptable to the  
3 energy resources coordinator, information on the energy  
4 performance contract, including energy use, energy savings,  
5 annual cost savings, amount of investment, amount of incentives,  
6 and other information to be developed in consultation with  
7 various agencies.

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

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

14        "Annual cost savings" means an estimated reduction in fuel  
15 costs, maintenance costs, energy costs, water costs, sewer  
16 costs, other utility costs, or related net operating costs from  
17 or as compared to an established baseline of those costs. The  
18 term also includes the difference between the lower cost of  
19 energy generated from on-site renewable energy technologies,  
20 such as photovoltaics and wind, and the corresponding energy  
21 costs baseline. The term does not include an estimated



1 reduction due to a decrease in energy rates that is not derived  
2 from increased conservation or reduced usage.

3 "Energy performance contract" means an agreement for the  
4 provision of energy services and equipment, including but not  
5 limited to commissioning and retro-commissioning, building or  
6 facility energy conservation enhancing retrofits, water saving  
7 technology retrofits, and alternate energy technologies, in  
8 which a private sector person or company agrees to finance,  
9 design, construct, install, maintain, operate, or manage energy  
10 systems or equipment to improve the energy efficiency of, or  
11 produce energy in connection with, a facility in exchange for a  
12 portion of the cost savings, lease payments, or specified  
13 revenues, and the level of payments is made contingent upon the  
14 verified energy savings, energy production, avoided maintenance,  
15 avoided energy equipment replacement, or any combination of the  
16 foregoing bases. Energy conservation retrofits also include  
17 energy saved off-site by water or other utility conservation  
18 enhancing retrofits.

19 "Facility" means a building or buildings or similar  
20 structure, including the site owned or leased by, or otherwise  
21 under the jurisdiction of, the agency.



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

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

8 "Verified" means the technique used in the determination of  
9 baseline energy use, post-installation energy use, and energy  
10 and cost savings by the following measurement and verification  
11 techniques: engineering calculations, metering and monitoring,  
12 utility meter billing analysis, computer simulations,  
13 mathematical models, and agreed-upon stipulations by the  
14 customer and the energy service company."

15 SECTION 3. Section 196-11, Hawaii Revised Statutes, is  
16 amended by amending the definition of "energy performance  
17 contract" to read as follows:

18 ""Energy performance contract" shall have the same meaning  
19 as in section [~~36-41(d)~~], 36-41(e), and shall additionally  
20 include commissioning and retro-commissioning."

21 SECTION 4. Section 196-19, Hawaii Revised Statutes, is  
22 amended to read as follows:





1           "~~[+]§196-19[+]~~ **Life-cycle cost analysis.** Agencies shall  
2 use life-cycle cost analysis in making decisions about their  
3 investments in products, services, construction, and other  
4 projects to lower the State's costs and to reduce energy and  
5 water consumption. Where appropriate, agencies shall consider  
6 the life-cycle costs of combinations of projects, particularly  
7 to encourage bundling of energy efficiency projects with  
8 renewable energy projects.

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

14           SECTION 5. Section 196-21, Hawaii Revised Statutes, is  
15 amended to read as follows:

16           "**§196-21 Financing mechanisms.** [~~(a)~~] Agencies shall  
17 maximize their use of available alternative financing  
18 contracting mechanisms, including [~~energy savings~~] energy  
19 performance contracts, when life-cycle cost-effective, to reduce  
20 energy use and cost in their facilities and operations.

21 [~~Energy savings~~] Energy performance contracts shall include:

22           (1) Energy performance contracts;



1           (2) Municipal lease and purchase financing; and

2           (3) Utility energy-efficiency service contracts.

3 ~~[Energy savings contracts shall provide significant~~  
4 ~~opportunities for making state facilities more energy efficient~~  
5 ~~at no net cost to taxpayers.~~

6           ~~(b) Agencies that perform energy efficiency and renewable~~  
7 ~~energy system retrofitting may continue to receive budget~~  
8 ~~appropriations for energy expenditures at an amount that will~~  
9 ~~not fall below the pre-retrofitting energy budget but will rise~~  
10 ~~in proportion to any increase in the agency's overall budget for~~  
11 ~~the duration of the performance contract or project payment~~  
12 ~~term. A portion of the moneys saved through efficiency and~~  
13 ~~renewable energy system retrofitting shall be set aside to pay~~  
14 ~~for any costs directly associated with administering energy~~  
15 ~~efficiency and renewable energy system retrofitting programs~~  
16 ~~incurred by the agency.~~

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

21           ~~(1) The agency shall issue a public request for proposals,~~  
22           ~~advertised in the same manner as provided in chapter~~



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

- 1       ~~(4) The term of any energy performance contract entered~~  
2       ~~into pursuant to this section shall not exceed twenty~~  
3       ~~years;~~
- 4       ~~(5) Any energy performance contract may provide that the~~  
5       ~~agency ultimately shall receive title to the energy~~  
6       ~~system being financed under the contract; and~~
- 7       ~~(6) Any energy performance contract shall provide that~~  
8       ~~total payments shall not exceed total savings.]"~~

9       SECTION 6. Section 196-30, Hawaii Revised Statutes, is  
10      amended to read as follows:

11       "~~{}~~§196-30~~{}~~ **Public buildings; benchmarks; retro-**  
12      **commissioning [guidelines]; energy [savings] performance**  
13      **contracts.** (a) By December 31, 2010, each state department  
14      with responsibilities for the design and construction of public  
15      buildings and facilities shall benchmark every existing public  
16      building that is either larger than five thousand square feet or  
17      uses more than eight thousand kilowatt-hours of electricity or  
18      energy per year and shall use the benchmark as a basis for  
19      determining the State's investment in improving the efficiency  
20      of its own building stock. Benchmarking activities shall be  
21      reported to the energy resources coordinator and shall be  
22      conducted using the ENERGY STAR portfolio ~~[management]~~ manager



1 or equivalent tool. The energy resources coordinator shall  
2 provide training to affected departments on the ENERGY STAR  
3 portfolio [~~management~~] manager or equivalent tool.

4 (b) Public buildings shall be retro-commissioned no less  
5 often than every five years. [~~The energy resources coordinator~~  
6 ~~shall establish retro-commissioning guidelines by January 1,~~  
7 ~~2010.~~] Agencies shall report retro-commissioning efforts to the  
8 energy resources coordinator.

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

16 [~~Energy savings performance contracts shall be executed~~  
17 ~~according to state guidelines issued by the comptroller, and the~~  
18 ~~contracts shall be reviewed by the comptroller.~~] To expedite  
19 energy [~~savings~~] performance contracting for public buildings,  
20 the department of accounting and general services shall develop  
21 a master energy [~~savings~~] performance contracts agreement that  
22 any department may use to contract with an energy savings



1 performance contracts provider for energy-efficiency and  
2 renewable energy services.

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

8 SECTION 7. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 8. This Act, upon its approval, shall take effect  
11 on July 1, 2014.



**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. (SD1)

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