

ACT 275

H.B. NO. 1872

A Bill for an Act Relating to Energy Performance Contracting.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 36-41, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§36-41] Third-party financing] Energy performance contracting for public facilities.~~ (a) Any agency may enter into ~~[any third-party financing arrangement]~~ a multi-year energy performance contract for the purpose of undertaking or implementing energy conservation[, cogeneration,] or [alternative] alternate energy

measures in [public facilities. These innovative financing arrangements with third parties] a facility or facilities. An energy performance contract may include, but shall not be limited to, options such as leasing, joint ventures, shared-savings plans, or energy service contracts, or any combination thereof; provided that in due course [a state] the agency [shall] may receive title to the energy system being financed. [The department of accounting and general services shall review and approve third-party financing arrangements for state facilities.] Except as otherwise provided by law, the agency that is responsible for a particular facility shall review and approve energy performance contract arrangements for the facility.

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

- (1) The agency shall issue a public request for proposals, advertised in the same manner as provided in chapter 103, concerning the provision of energy efficiency services or the design, installation, operation, and maintenance of energy equipment or both. The request for proposals shall contain terms and conditions relating to submission of proposals, evaluation and selection of proposals, financial terms, legal responsibilities, and other matters as may be required by law and as the agency determines appropriate;
- (2) Upon receiving responses to the request for proposals, the agency may select the most qualified proposal or proposals on the basis of the experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the agency, and other factors determined by the agency to be relevant and appropriate;
- (3) The agency thereafter may negotiate and enter into an energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency;
- (4) The term of any energy performance contract entered into pursuant to this section shall not exceed ten years;
- (5) Any contract entered into shall contain the following annual allocation dependency clause:

“The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the applicable funding authority. If that authority fails to appropriate sufficient funds to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which allocations were made”; and

- (6) Any energy performance contract may provide that the agency ultimately shall receive title to the energy system being financed under the contract.

(c) Any agency may enter into an energy performance contract pursuant to this section for a period not to exceed ten years.

[(b)] (d) For purposes of this section:

“Energy service contract” means the investor undertakes to engineer, install, operate, and maintain improvements to the customer’s facilities to supply all or a specified portion of the customer’s energy requirements at a fixed aggregate or unit price set below the corresponding costs in the absence of improvements.]

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

“Energy performance contract” means an agreement for the provision of energy services and equipment, including but not limited to building energy con-

servation enhancing retrofits and alternate energy technologies, in which a private sector person or company agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a facility in exchange for a portion of the energy cost savings, lease payments, or specified revenues, and the level of payments is made contingent upon the measured energy cost savings or energy production.

“Facility” means a building or buildings or similar structure owned or leased by, or otherwise under the jurisdiction of, the agency.

“Shared-savings plan” means an agreement under which the [investor] private sector person or company undertakes to [engineer,] design, install, operate, and maintain improvements to the [customer’s] agency’s facility or facilities and the [customer] agency agrees to pay a contractually specified amount of measured energy cost savings.

[“Third-party financing arrangement” means any arrangement in which a private sector investor finances, designs, constructs, owns, and operates an energy-conserving or energy-producing system in a public facility.]”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved June 8, 1989.)