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COMMERCE, REGULATION & LABOR

HOUSE FILE 510
BY T. TAYLOR

(COMPANION TO LSB 2683SS
BY DVORSKY)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for energy performance-based contracts for
2 certain public entities and public educational facilities.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 510

1 Section 1. NEW SECTION. 297A.1 STATE POLICY.

2 The general assembly finds that investment in energy
3 conservation measures by public facilities can reduce the
4 amount of energy consumed by the facilities and produce both
5 immediate and long-term cost savings. It is the policy of
6 this state to encourage school districts, area education
7 agencies, community colleges, public universities,
8 municipalities, counties, and state institutions to invest in
9 facility technology infrastructure upgrades and energy
10 conservation measures that reduce energy consumption, produce
11 a cost savings, or improve the quality of indoor air, or when
12 economically feasible, to build, operate, maintain, or
13 renovate public facilities in a manner which will minimize
14 energy consumption or maximize energy savings. It is
15 additionally the policy of this state to encourage
16 reinvestment of energy savings resulting from energy
17 conservation measures and facility technology infrastructure
18 into additional and continued energy conservation efforts.
19 The department of natural resources, in consultation with the
20 department of education, shall adopt rules pursuant to chapter
21 17A for the administration of sections 297A.2, 297A.3, and
22 297A.4.

23 Sec. 2. NEW SECTION. 297A.2 DEFINITIONS.

24 As used in this chapter, unless the context otherwise
25 requires:

26 1. "Energy conservation measure and facility technology
27 infrastructure" means a training program, facility alteration,
28 or equipment to be used in new construction, including an
29 addition to an existing facility, that reduces energy costs
30 and includes, but is not limited to, any of the following:

31 a. Insulation of the facility structure or systems within
32 the facility.

33 b. Storm windows or doors, caulking or weather stripping,
34 multiple-glazed windows or doors, heat-absorbing or heat-
35 reflective glazed and coated window or door systems,

1 additional glazing, reductions in glass area, or other window
2 and door system modifications that reduce energy consumption.

3 c. Automated or computerized energy control systems
4 including related software-required network communication
5 wiring, computer devices, wiring and support services for
6 building maintenance or delivery of energy conservation
7 services. Any cost for support services that will continue
8 beyond the length of the contract shall be identified
9 specifically in the energy performance-based evaluation.

10 Energy control system technology infrastructure may also be
11 used, as applicable, for other public corporation technology
12 needs. Additional technology infrastructure improvements may
13 be implemented if the cost is supported by the energy savings
14 generated by other energy conservation measures and facility
15 technology infrastructure.

16 d. Heating, ventilating, or air conditioning system
17 modifications or replacements.

18 e. Replacement or modification of lighting fixtures to
19 increase the energy efficiency of the lighting system which,
20 at a minimum, shall conform to the applicable state or local
21 building code.

22 f. Energy recovery systems.

23 g. Renewable energy systems, such as solar, biomass, and
24 wind.

25 h. Any measure not otherwise defined that produces energy
26 cost savings or British thermal unit reductions.

27 2. "Energy cost savings" means a measured reduction in
28 fuel, energy, or operation and maintenance cost savings
29 created from the implementation of one or more energy
30 conservation measures and facility technology infrastructure
31 when compared with an established baseline for previous fuel,
32 energy, or operation and maintenance costs.

33 3. "Energy performance-based contract" means a contract
34 for the recommendation and implementation of energy
35 conservation measures and facility technology infrastructure

1 which includes, at a minimum, all of the following:

2 a. The design and installation of equipment to implement
3 one or more energy conservation measures and facility
4 technology infrastructure, and, if applicable, operation and
5 maintenance of such measures.

6 b. The amount of any actual annual energy and operational
7 cost savings. The amount shall be guaranteed by the qualified
8 provider and verified by a professional engineer or registered
9 architect who is not employed or has contracted with the
10 qualified provider. The verification shall occur using a
11 process established by the department of natural resources.

12 4. "Energy performance-based evaluation" means performance
13 of an energy audit, data collection, or other related analyses
14 preliminary to the undertaking of energy conservation measures
15 and facility technology infrastructure, and maintenance of
16 project monitoring and data collection to verify
17 postinstallation energy consumption and energy-related
18 operating costs. The department of natural resources shall
19 establish guidelines that consider federal energy management
20 program guidelines.

21 5. "Maintenance cost savings" means auditable operating
22 expenses eliminated and future capital replacement
23 expenditures avoided as a result of new equipment installed or
24 services performed by the qualified provider.

25 6. "Public corporation" means a school district as
26 described in chapter 274, a community college as defined in
27 chapter 260C, a public university, city, county, or state
28 agency.

29 7. "Qualified provider" means a business or person that
30 has been qualified by the department of natural resources.
31 The department of natural resources shall adopt rules pursuant
32 to chapter 17A to establish a qualifications process. The
33 process shall consider accreditation by the national
34 association of energy service companies, certification by the
35 association of energy engineers, or professional licensure as

1 an engineer or registered architect in Iowa. A business or
2 person accredited by the national association of energy
3 service companies shall be qualified in Iowa.

4 Sec. 3. NEW SECTION. 297A.3 REQUESTS FOR PROPOSALS
5 EVALUATION.

6 1. Prior to entering into an energy performance-based
7 contract as provided in section 297A.4, a public corporation
8 shall announce a request for proposals. A request for
9 proposals shall be advertised for public bidding and let
10 publicly. The model request for proposals format developed by
11 the department of natural resources shall be made available
12 for use by public corporations. The public corporation shall
13 administer the program, requesting innovative solutions and
14 proposals for energy conservation measures and facility
15 technology infrastructure. Proposals submitted shall be
16 sealed. If the model request for proposals format is not
17 used, the request for proposals shall include, at a minimum,
18 all of the following:

- 19 a. Name and address of the public corporation.
- 20 b. Name, address, title, and telephone number of a contact
21 person for the public corporation.
- 22 c. Notice indicating that the public corporation is
23 requesting qualified providers to propose energy conservation
24 measures and facility technology infrastructure to be provided
25 pursuant to an energy performance-based contract.
- 26 d. Date, time, and place where proposals must be received.
- 27 e. Evaluation criteria for assessing the proposals.
- 28 f. Any other stipulations and clarifications the public
29 corporation may require.

30 2. The public corporation shall evaluate any sealed
31 proposal from a qualified provider. Sealed proposals shall be
32 opened by a designated member or employee of the governing
33 body of the public corporation at a public meeting during
34 which the contents of the proposals shall be announced. Each
35 person submitting a sealed proposal must receive at least ten

1 days' notice of the time and place of the public meeting,
2 published pursuant to the procedure specified in this section.
3 The public corporation shall analyze each qualified provider's
4 estimate of the cost of design, engineering, installation,
5 maintenance, repairs, debt service, conversions to a different
6 energy or fuel source, and postinstallation project
7 monitoring, data collection, and reporting. The evaluation
8 shall include a detailed analysis of whether the energy
9 consumed or the operating costs, or both, will be reduced.
10 Selection of the qualified provider shall, through either a
11 request for proposals process or other purchasing method,
12 constitute selection of the best value based on life cycle
13 cost analysis of the component parts and systems to the public
14 corporation. The public corporation shall enter into an
15 energy performance-based contract.

16 Sec. 4. NEW SECTION. 297A.4 AWARD OF GUARANTEED ENERGY
17 COST SAVINGS CONTRACT.

18 1. A public corporation shall select a qualified provider
19 that best meets the needs of the public corporation based on
20 life cycle cost analysis. After completing its evaluation of
21 the proposals received pursuant to section 297A.3, the public
22 corporation shall provide public notice of the meeting at
23 which it proposes to award an energy performance-based
24 contract. The notice shall contain the names of the parties
25 to the proposed contract and the purpose of the contract. The
26 public notice shall be published at least ten days prior to
27 the meeting, pursuant to the procedure specified in section
28 297A.3. A public corporation may enter into an energy
29 performance-based contract with a qualified provider if it
30 finds, after evaluating the proposal pursuant to section
31 297A.3, that the total amount it would spend on the design,
32 implementation, financing and performance management of the
33 energy conservation measures and facility technology
34 infrastructure upgrades and modernization measures recommended
35 in the proposal would not exceed the amount to be saved in

1 either energy or operational costs, or both, within a twenty-
2 year period from the date of installation or modification,
3 based on life-cycle costing calculations, if the
4 recommendations in the proposal are followed. Each individual
5 improvement must pay for itself within the useful life of the
6 equipment, as determined by the American society of heating,
7 refrigeration, and air conditioning engineers.

8 2. A public corporation may enter into a financing
9 agreement as provided in sections 473.19, 473.20, and 473.20A,
10 for the purchase and installation of energy conservation
11 measures and facility technology infrastructure upgrades and
12 modernization measures. Energy performance-based contracts
13 may extend beyond the fiscal year in which they become
14 effective, and may be automatically renewed annually for up to
15 twenty years.

16 3. A qualified provider shall be responsible for the
17 measurement and verification of the savings generated by the
18 energy conservation measures and facility technology
19 infrastructure upgrades and modernization measures. The
20 process to be used for the measurement and verification shall
21 follow the guidelines of the federal energy management
22 program. A public corporation shall have these savings
23 verified by a qualified independent third party on an annual
24 basis. The verification shall also include an annual
25 reconciliation of the guaranteed energy cost savings for the
26 life of the bond or until the project is repaid from energy
27 savings. The cost of this verification shall be a part of the
28 contract with the qualified provider. The department of
29 natural resources shall establish the qualifications necessary
30 for a business or person to become a qualified independent
31 third party. A business or person accredited by the national
32 association of energy service companies shall be qualified in
33 Iowa.

34 4. A selected qualified provider shall provide a one
35 hundred percent performance guarantee bond to the public

1 corporation for the installation and faithful performance of
2 the installed energy conservation measures and facility
3 technology infrastructure as outlined in the energy
4 performance-based contract.

5 5. A public corporation has the right to terminate an
6 energy performance-based contract at any time provided that
7 written notice to the qualified provider is provided at least
8 thirty days prior to termination. All qualified providers
9 shall include clear statements and requirements regarding
10 contract termination as part of the contract documentation.
11 The documentation shall clearly state the options of the
12 public corporation to satisfy the contract early and include
13 all associated costs. The documentation shall also state the
14 rights of a public corporation under a contract for
15 terminating the contract due to nonperformance, exercising
16 performance bonds, and shall list all costs and
17 responsibilities for payment of any remaining debt associated
18 with energy and operational savings projects already
19 implemented. The information and associated costs described
20 in this subsection shall be provided to a public corporation
21 before an energy performance-based contract is approved.

22 6. An energy performance-based contract shall include a
23 written guarantee by a qualified provider that the amount of
24 any actual energy and operational savings shall be guaranteed.
25 The amount must also meet or exceed the total annual contract
26 payments, including financing charges, made by the public
27 corporation over the life of the contract. A qualified
28 provider shall reimburse a public corporation for any
29 shortfall of guaranteed energy cost savings projected in the
30 contract. Actual savings documentation shall be reconciled on
31 an annual basis as provided in the contract. Any savings
32 shortfall shall be made whole by the qualified provider within
33 sixty days. Excess documented and mutually agreed upon
34 savings may be carried over to future years. A qualified
35 provider shall provide the public corporation with a one

1 hundred percent performance and payment bond for installation
2 and retrofit projects. A qualified provider shall guarantee
3 the savings for the length of the contract and shall also
4 provide cost savings or guaranteed performance and payment
5 bonds on an annual basis renewed each year for the term of the
6 agreement. An energy performance-based contract may provide
7 for payments over a period of time, not to exceed twenty
8 years.

9 7. A governmental body shall not have any state financial
10 assistance or any appropriations or reimbursements reduced as
11 a result of energy and operational savings realized from an
12 energy performance-based contract or a lease-purchase
13 agreement for the purchase and installation of energy
14 conservation measures and facility technology infrastructure.

15 EXPLANATION

16 This bill allows public corporations, through a request for
17 proposals process, to enter into energy performance-based
18 contracts with qualified providers for purposes of undertaking
19 one or more energy conservation measures and facility
20 technology infrastructure. The bill provides that a public
21 corporation may enter into an energy performance-based
22 contract with a qualified provider if it finds, after
23 evaluating the proposal, that the total amount it would spend
24 on the design, implementation, financing, and performance
25 management of the energy conservation measures and facility
26 technology infrastructure recommended in the proposal would
27 not exceed the amount to be saved in either energy or
28 operational costs, or both, within a 20-year period from the
29 date of installation or modification, based on life-cycle
30 costing calculations, if the recommendations in the proposal
31 are followed. The bill provides that a qualified provider
32 shall be responsible for the measurement and verification of
33 the savings generated by the energy conservation measures and
34 facility technology infrastructure. The bill provides that a
35 public corporation shall have these savings verified by a

1 qualified independent third party. The bill provides that a
2 public corporation has the right to terminate an energy
3 performance-based contract at any time provided that written
4 notice to the qualified provider is provided at least 30 days
5 prior to termination.

6 The bill provides that an energy performance-based contract
7 shall include a written guarantee by a qualified provider that
8 the amount of any actual energy and operational savings shall
9 be guaranteed. The bill provides that a qualified provider
10 shall reimburse a public corporation for any shortfall of
11 guaranteed energy cost performance or payment projected in the
12 contract and that actual savings documentation shall be
13 reconciled on an annual basis as provided in the contract.
14 The bill provides that a qualified provider shall guarantee
15 the savings for the length of the contract and shall also
16 provide cost savings or guaranteed performance or payment
17 bonds on an annual basis renewed each year for the term of the
18 contract. The bill provides that a governmental body shall
19 not have any state financial assistance or any appropriations
20 or reimbursements reduced as a result of energy and
21 operational savings realized from an energy performance-based
22 contract or a lease-purchase agreement for the purchase and
23 installation of energy conservation measures and facility
24 technology infrastructure.

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