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GOVERNMENT OVERSIGHT

SENATE FILE 2178  
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Passed Senate, Date \_\_\_\_\_ Passed House, 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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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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