

Senate Study Bill 3229

SENATE/HOUSE FILE _____
BY (PROPOSED GOVERNOR'S BILL)

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:
4 TLSB 5789XL 81
5 rn/gg/14

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1 1 Section 1. NEW SECTION. 297A.1 STATE POLICY ==
1 2 RULEMAKING.
1 3 1. The general assembly finds that investment in energy
1 4 conservation measures by public facilities can reduce the
1 5 amount of energy consumed by the facilities and produce both
1 6 immediate and long-term cost savings. It is the policy of
1 7 this state to encourage school districts, area education
1 8 agencies, community colleges, public universities,
1 9 municipalities, public hospitals, counties, and state
1 10 institutions to invest in facility technology infrastructure
1 11 upgrades and energy conservation measures that reduce energy
1 12 consumption, produce a cost savings, or improve the quality of
1 13 indoor air, or when economically feasible, to build, operate,
1 14 maintain, or renovate public facilities in a manner which will
1 15 minimize energy consumption or maximize energy savings. It is
1 16 additionally the policy of this state to encourage
1 17 reinvestment of energy savings resulting from energy
1 18 conservation measures and facility technology infrastructure
1 19 upgrades into additional and continued energy conservation
1 20 efforts.
1 21 2. The department of natural resources, in consultation
1 22 with the department of education, shall adopt rules pursuant
1 23 to chapter 17A for the administration of this chapter.
1 24 Sec. 2. NEW SECTION. 297A.2 DEFINITIONS.
1 25 As used in this chapter, unless the context otherwise
1 26 requires:
1 27 1. "Energy conservation measure or facility technology
1 28 infrastructure upgrade" means a training program, facility
1 29 alteration, or equipment to be used in new construction,
1 30 including an addition to an existing facility, that reduces
1 31 energy costs and includes, but is not limited to, any of the
1 32 following:
1 33 a. Insulation of the facility structure or systems within
1 34 the facility.
1 35 b. Storm windows or doors, caulking or weather stripping,
2 1 multiple-glazed windows or doors, heat-absorbing or heat=
2 2 reflective glazed and coated window or door systems,
2 3 additional glazing, reductions in glass area, or other window
2 4 and door system modifications that reduce energy consumption.
2 5 c. Automated or computerized energy control systems
2 6 including related software-required network communication
2 7 wiring, computer devices, wiring and support services for
2 8 building maintenance or delivery of energy conservation
2 9 services. Such energy control system technology
2 10 infrastructure may be used, as applicable, for other public
2 11 corporation technology needs. Other technology infrastructure
2 12 improvements may be implemented if the cost is supported by
2 13 the energy savings generated by other energy conservation
2 14 measures or facility technology infrastructure upgrades.
2 15 d. Heating, ventilating, or air conditioning system
2 16 modifications or replacements.
2 17 e. Replacement or modification of lighting fixtures to
2 18 increase the energy efficiency of the lighting system which,

2 19 at a minimum, shall conform to the applicable state or local
2 20 building code.

2 21 f. Energy recovery systems.

2 22 g. Renewable energy systems, such as solar, biomass, and
2 23 wind.

2 24 h. Devices that reduce water consumption or sewer charges.

2 25 i. Any measure not otherwise defined that produces energy
2 26 cost savings or British thermal unit reductions.

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

2 33 3. "Energy performance-based contract" means a contract
2 34 for the recommendation and implementation of energy
2 35 conservation measures or facility technology infrastructure
3 1 upgrades which includes, at a minimum, all of the following:

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

3 6 b. The amount of any actual annual energy and operational
3 7 cost savings. The amount shall be guaranteed in the contract
3 8 by the qualified provider and verified by a professional
3 9 engineer or registered architect who is not employed or has
3 10 contracted with the qualified provider. The verification
3 11 shall occur using a process established by the department of
3 12 natural resources.

3 13 4. "Energy performance-based evaluation" means performance
3 14 of an energy audit, data collection, or other related analyses
3 15 preliminary to the undertaking of energy conservation measures
3 16 or facility technology infrastructure upgrades, and
3 17 maintenance of project monitoring and data collection to
3 18 verify postinstallation energy consumption and energy-related
3 19 operating costs. The department of natural resources shall
3 20 establish performance guidelines that consider federal energy
3 21 management program guidelines. Any cost for support services
3 22 for building maintenance or delivery of energy conservation
3 23 services that will continue beyond the length of an energy
3 24 performance-based contract shall be identified specifically in
3 25 the energy performance-based evaluation.

3 26 5. "Maintenance cost savings" means auditable operating
3 27 expenses eliminated and future capital replacement
3 28 expenditures avoided as a result of new equipment installed or
3 29 services performed by the qualified provider.

3 30 6. "Public corporation" means a school district as
3 31 described in chapter 274, a community college as defined in
3 32 chapter 260C, a public university, city, public hospital,
3 33 county, or state agency.

3 34 7. "Qualified provider" means a business or person that
3 35 has been qualified by the department of natural resources.

4 1 The department of natural resources shall adopt rules pursuant
4 2 to chapter 17A to establish a qualifications process. The
4 3 process shall consider accreditation by the national
4 4 association of energy service companies, certification by the
4 5 association of energy engineers, or professional licensure as
4 6 an engineer or registered architect in Iowa.

4 7 Sec. 3. NEW SECTION. 297A.3 REQUESTS FOR PROPOSALS
4 8 EVALUATION.

4 9 1. Prior to entering into an energy performance-based
4 10 contract as provided in section 297A.4, a public corporation
4 11 shall announce a request for proposals. A request for
4 12 proposals shall be advertised for public bidding and let
4 13 publicly. The model request for proposals format developed by
4 14 the department of natural resources shall be made available
4 15 for use by public corporations. A public corporation shall
4 16 administer the public bidding and letting, requesting
4 17 innovative solutions and proposals for energy conservation
4 18 measures and facility technology infrastructure upgrades.
4 19 Proposals submitted shall be sealed. If the model request for
4 20 proposals format is not used, the request for proposals shall
4 21 include, at a minimum, all of the following:

4 22 a. Name and address of the public corporation.

4 23 b. Name, address, title, and telephone number of a contact
4 24 person for the public corporation.

4 25 c. Notice indicating that the public corporation is
4 26 requesting qualified providers to propose energy conservation
4 27 measures and facility technology infrastructure upgrades to be
4 28 provided pursuant to an energy performance-based contract.

4 29 d. Date, time, and place where proposals must be received.

4 30 e. Evaluation criteria for assessing the proposals.
4 31 f. Any other stipulations and clarifications the public
4 32 corporation may require.

4 33 2. The public corporation shall evaluate any sealed
4 34 proposal from a qualified provider. Sealed proposals shall be
4 35 opened by a designated member or employee of the governing
5 1 body of the public corporation at a public meeting during
5 2 which the contents of the proposals shall be announced. Each
5 3 person submitting a sealed proposal must receive at least ten
5 4 days' notice of the time and place of the public meeting at
5 5 which the public corporation considers whether to award an
5 6 energy performance-based contract. The public corporation
5 7 shall analyze each qualified provider's estimate of the cost
5 8 of design, engineering, installation, maintenance, repairs,
5 9 debt service, conversions to a different energy or fuel
5 10 source, and postinstallation project monitoring, data
5 11 collection, and reporting. The evaluation shall include a
5 12 detailed analysis of whether the energy consumed or the
5 13 operating costs, or both, will be reduced. Selection of the
5 14 qualified provider shall, through either a request for
5 15 proposals process or other purchasing method, constitute
5 16 selection of the best value based on life cycle cost analysis
5 17 of the component parts and systems to the public corporation.
5 18 The public corporation shall determine whether to enter into
5 19 an energy performance-based contract.

5 20 Sec. 4. NEW SECTION. 297A.4 AWARD OF GUARANTEED ENERGY
5 21 COST SAVINGS CONTRACT.

5 22 1. If a public corporation enters into an energy
5 23 performance-based contract, a qualified provider shall be
5 24 selected that best meets the needs of the public corporation
5 25 based on life cycle cost analysis. After completing its
5 26 evaluation of the proposals received pursuant to section
5 27 297A.3, the public corporation shall provide public notice of
5 28 the public meeting at which it will consider whether to award
5 29 an energy performance-based contract. The public notice shall
5 30 contain the names of the parties to the potential contract and
5 31 the purpose of the contract. The public notice shall be
5 32 published at least ten days prior to the public meeting. A
5 33 public corporation may enter into an energy performance-based
5 34 contract with a qualified provider if it finds, after
5 35 evaluating the proposal pursuant to section 297A.3, that the
6 1 total amount the public corporation would spend on the design,
6 2 implementation, financing, and performance management of the
6 3 energy conservation measures or facility technology
6 4 infrastructure upgrades and modernization measures recommended
6 5 in the proposal would not exceed the amount to be saved in
6 6 either energy or operational costs, or both, within a twenty=
6 7 year period from the date of installation of such measures or
6 8 upgrades, based on life-cycle costing calculations, if the
6 9 recommendations in the proposal are followed.

6 10 2. A public corporation may enter into a financing
6 11 agreement as provided in sections 473.19, 473.20, and 473.20A,
6 12 for the purchase and installation of energy conservation
6 13 measures or facility technology infrastructure upgrades and
6 14 modernization measures. Energy performance-based contracts
6 15 may extend beyond the fiscal year in which they become
6 16 effective, and may be automatically renewed annually for up to
6 17 twenty years.

6 18 3. A qualified provider shall be responsible for the
6 19 measurement and verification of the savings generated by the
6 20 energy conservation measures or facility technology
6 21 infrastructure upgrades and modernization measures. The
6 22 process to be used for the measurement and verification shall
6 23 follow the guidelines of the federal energy management
6 24 program. A public corporation shall have these savings
6 25 verified by a qualified independent third party on an annual
6 26 basis. The verification shall also include an annual
6 27 reconciliation of the guaranteed energy cost savings for the
6 28 life of any financing agreement obligations or until the
6 29 project is repaid from energy savings. The cost of this
6 30 verification shall be a part of the contract with the
6 31 qualified provider. The department of natural resources shall
6 32 establish the qualifications necessary for a business or
6 33 person to become a qualified independent third party and in so
6 34 doing shall take into consideration that a business or person
6 35 is accredited by the national association of energy service
7 1 companies.

7 2 4. A selected qualified provider shall provide a one
7 3 hundred percent performance guarantee bond to the public
7 4 corporation for the installation and faithful performance of
7 5 the installed energy conservation measures or facility

7 6 technology infrastructure upgrades as outlined in the energy
7 7 performance-based contract.

7 8 5. A public corporation has the right to terminate an
7 9 energy performance-based contract at any time provided that
7 10 written notice to the qualified provider is provided at least
7 11 thirty days prior to termination. All qualified providers
7 12 shall include clear statements and requirements regarding
7 13 contract termination as part of the contract documentation.
7 14 The documentation shall clearly state the options of the
7 15 public corporation to satisfy the contract early and include
7 16 all associated costs. The documentation shall also state the
7 17 rights of a public corporation under a contract for
7 18 terminating the contract due to nonperformance, for exercising
7 19 rights pursuant to the performance guarantee bond, and for
7 20 listing all costs and responsibilities for payment of any
7 21 remaining debt associated with energy and operational savings
7 22 projects already implemented. The information and associated
7 23 costs described in this subsection shall be provided to a
7 24 public corporation before an energy performance-based contract
7 25 is approved.

7 26 6. An energy performance-based contract shall include a
7 27 written guarantee by a qualified provider that the amount of
7 28 any actual energy and operational savings shall be guaranteed.
7 29 The amount must also meet or exceed the total annual contract
7 30 payments, including financing charges, made by the public
7 31 corporation over the life of the contract. A qualified
7 32 provider shall reimburse a public corporation for any
7 33 shortfall of guaranteed energy cost savings projected in the
7 34 contract. Actual savings documentation shall be reconciled on
7 35 an annual basis as provided in the contract. Any savings
8 1 shortfall shall be made whole by the qualified provider within
8 2 sixty days. Excess documented and mutually agreed upon
8 3 savings may be carried over to future years. A qualified
8 4 provider shall provide the public corporation with a one
8 5 hundred percent performance guarantee bond for installation
8 6 and retrofit projects. A qualified provider shall guarantee
8 7 the savings for the length of the contract and shall also
8 8 provide the guaranteed performance bonds on an annual basis
8 9 renewed each year for the term of the contract. An energy
8 10 performance-based contract may provide for payments over a
8 11 period of time, not to exceed twenty years.

8 12 7. A public corporation shall not have any state financial
8 13 assistance or any appropriations or reimbursements reduced as
8 14 a result of energy and operational savings realized from an
8 15 energy performance-based contract for the installation of
8 16 energy conservation measures or facility technology
8 17 infrastructure upgrades.

8 18 Sec. 5. NEW SECTION. 297A.5 ENERGY PERFORMANCE-BASED
8 19 CONTRACTS == SUPPORT PROGRAM ESTABLISHED == FEES.

8 20 1. The department of natural resources shall establish a
8 21 support program to provide assistance to public corporations
8 22 entering into energy performance-based contracts. The support
8 23 program shall be available to public corporations on an
8 24 optional, discretionary basis and may provide services to
8 25 include but not be limited to prenegotiated and standardized
8 26 energy performance-based contracts; third-party verification
8 27 of energy audits; streamlined financing arrangements;
8 28 providing information and guidance throughout the energy
8 29 performance-based contract process, including installation of
8 30 energy conservation measures, upgrades, and new construction;
8 31 third-party assistance with dispute resolution; and follow-up
8 32 assistance through savings guarantee resolutions and warranty
8 33 replacements, if necessary.

8 34 2. The department shall establish procedures relating to
8 35 the administration of the support program by rule and may
9 1 collect fees in an amount determined necessary to offset the
9 2 costs associated with offering the program. Fees collected
9 3 pursuant to this section shall be considered repayment
9 4 receipts as defined in section 8.2 and may be retained by the
9 5 department to administer the program.

9 6 EXPLANATION

9 7 This bill allows public corporations, through a request for
9 8 proposals process, to enter into energy performance-based
9 9 contracts with qualified providers for purposes of undertaking
9 10 one or more energy conservation measures or facility
9 11 technology infrastructure upgrades. The bill provides that a
9 12 public corporation may enter into an energy performance-based
9 13 contract with a qualified provider if it finds, after
9 14 evaluating the proposal, that the total amount it would spend
9 15 on the design, implementation, financing, and performance
9 16 management of the energy conservation measures or facility

9 17 technology infrastructure upgrades recommended in the proposal
9 18 would not exceed the amount to be saved in either energy or
9 19 operational costs, or both, within a 20-year period from the
9 20 date of installation, based on life-cycle costing
9 21 calculations, if the recommendations in the proposal are
9 22 followed. The bill provides that a qualified provider shall
9 23 be responsible for the measurement and verification of the
9 24 savings generated by the energy conservation measures or
9 25 facility technology infrastructure upgrades. The bill
9 26 provides that a public corporation shall have these savings
9 27 verified by a qualified independent third party. The bill
9 28 provides that a public corporation has the right to terminate
9 29 an energy performance-based contract at any time provided that
9 30 written notice to the qualified provider is provided at least
9 31 30 days prior to termination.
9 32 The bill provides that an energy performance-based contract
9 33 shall include a written guarantee by a qualified provider of
9 34 the amount of any actual energy and operational savings. The
9 35 bill provides that a qualified provider shall reimburse a
10 1 public corporation for any shortfall of guaranteed energy cost
10 2 performance or payment projected in the contract and that
10 3 actual savings documentation shall be reconciled on an annual
10 4 basis as provided in the contract. The bill provides that a
10 5 qualified provider shall guarantee the savings for the length
10 6 of the contract and shall also provide guaranteed performance
10 7 bonds on an annual basis renewed each year for the term of the
10 8 contract. The bill provides that a public corporation shall
10 9 not have any state financial assistance or any appropriations
10 10 or reimbursements reduced as a result of energy and
10 11 operational savings realized from an energy performance-based
10 12 contract for the installation of energy conservation measures
10 13 or facility technology infrastructure upgrades.
10 14 The bill requires the department of natural resources to
10 15 establish a support program to provide assistance to public
10 16 corporations entering into energy performance-based contracts.
10 17 The support program shall be available on an optional,
10 18 discretionary basis to provide services specified in the bill.
10 19 The bill provides that the department shall establish
10 20 procedures relating to administration of the program by rule
10 21 and may collect and retain fees to offset the costs associated
10 22 with offering the program.
10 23 LSB 5789XL 81
10 24 rn:rj/gg/14