

House Study Bill 580 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON COWNIE)

A BILL FOR

1 An Act providing for performance-based efficiency contracts for
2 governmental units.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 297A.1 Legislative intent.

2 The general assembly finds that investment in energy
3 conservation measures by public facilities can reduce
4 the amount of energy and other resources consumed by the
5 facilities; reduce ongoing operational costs; improve comfort,
6 reliability, and the indoor environment for employees and
7 citizens; produce a positive environmental impact; enhance
8 revenues generated by governmental units; and create local
9 jobs, producing both immediate and long-term cost savings and
10 other benefits. It is the policy of this state to encourage
11 state agencies, departments, and divisions; public health
12 facilities; public universities and community colleges,
13 school districts, and area education agencies; and counties,
14 municipalities, and other political subdivisions to implement
15 energy conservation and facility improvement measures that
16 reduce energy, water, wastewater, or any other utility or
17 operating costs, and, when economically feasible, build,
18 operate, maintain, or renovate public facilities and systems
19 in a manner that will minimize operational costs and maximize
20 utility savings and other efficiencies. It is additionally the
21 policy of this state to encourage reinvestment of the savings
22 and revenues resulting from energy conservation measures into
23 additional and continued energy conservation efforts through
24 performance-based efficiency contracts and other measures
25 deemed appropriate by a governmental unit.

26 Sec. 2. NEW SECTION. 297A.2 Definitions.

27 As used in this chapter, unless the context otherwise
28 requires:

29 1. *“Energy conservation measure”* or *“facility improvement*
30 *measure”* means a program, facility alteration, equipment
31 installation, remodeling of a new or existing building, or
32 technology upgrade, which is designed to reduce energy, water,
33 wastewater, or other utility or operating costs, or enhance
34 billable revenue, including but not limited to the following:

35 a. Employee training and occupant behavior modification

- 1 programs.
- 2 *b.* Insulation of building structures and systems within
3 buildings.
- 4 *c.* Windows and window systems, roofs and roofing materials,
5 caulking or weather stripping, installation or modification of
6 doors, heat-absorbing or heat-reflecting applications, or other
7 modifications to windows, doors, or the building envelope, that
8 reduce energy and operating costs.
- 9 *d.* Automated or computerized energy or facility control
10 systems.
- 11 *e.* Heating, ventilation, and air-conditioning systems,
12 including specialty systems serving food service, laboratory,
13 and other applications.
- 14 *f.* Lighting systems and fixtures, including daylighting
15 systems.
- 16 *g.* Energy recovery systems.
- 17 *h.* Systems that produce steam or forms of energy such as
18 heat in addition to electricity.
- 19 *i.* Renewable energy systems or other distributed power
20 generation systems.
- 21 *j.* Water and wastewater fixtures, appliances, and equipment.
- 22 *k.* Improvements to water distribution, sewer, and wastewater
23 treatment facilities.
- 24 *l.* Landscaping measures that reduce watering demands and
25 capture and hold applied water and rainfall.
- 26 *m.* Metering or related equipment or systems that improve the
27 accuracy or efficiency of billable revenue-generating systems.
- 28 *n.* Automated, electronic, or remotely controlled
29 technologies, systems, or measures that reduce operating costs.
- 30 *o.* Installation and modification of software-based systems
31 that reduce facility management or other facility operating
32 costs.
- 33 *p.* Programs to reduce energy costs through rate adjustments,
34 load shifting to reduce peak demand, or use of alternative
35 energy suppliers, including but not limited to demand response

1 programs, changes to more favorable rate schedules, negotiation
2 of lower rates or new suppliers, or auditing of utility billing
3 and metering.

4 *q.* Energy information and control systems that monitor
5 consumption, redirect systems to optimal energy sources, and
6 manage energy-using equipment.

7 *r.* Any measure not otherwise described in this chapter that
8 is designed to produce utility consumption or operational cost
9 savings, revenue enhancements, or similar efficiency gains to a
10 governmental unit.

11 2. "*Governmental unit*" means any authority, board, bureau,
12 commission, department, agency, or institution of a government
13 agency, including but not limited to any state agency, or any
14 county, city, district, municipal corporation, municipality,
15 municipal authority, political subdivision, school district,
16 educational institution, incorporated town, township, other
17 incorporated district, or other public instrumentality
18 which has the authority to contract for the construction,
19 reconstruction, alteration, or repair of any public building or
20 other public work or public improvement.

21 3. "*Performance-based efficiency contract*" means a contract
22 between a governmental unit and a qualified provider for
23 the evaluation and recommendation of energy conservation or
24 facility improvement measures and for implementation of one or
25 more such measures.

26 4. "*Qualified provider*" means a person with a record of
27 documented performance-based efficiency contract projects who
28 is experienced in the design, implementation, and installation
29 of energy conservation or facility-improvement measures; and
30 has the technical capabilities to verify that such measures
31 generate energy and operational cost savings or enhanced
32 revenues. A "*qualified provider*" provides a governmental unit
33 with the following information and services in connection with
34 a performance-based efficiency contract:

35 *a.* Project design and specifications.

1 *b.* Construction and construction management.

2 *c.* Commissioning.

3 *d.* Ongoing services as required.

4 *e.* Measurement, verification, and guarantee of savings from
5 energy conservation or facility-improvement measures.

6 Sec. 3. NEW SECTION. **297A.3 Selection of qualified provider**
7 **— award of performance-based contract — contracting procedures**
8 **and provisions — funding.**

9 1. A governmental unit may enter into a performance-based
10 efficiency contract with a qualified provider in accordance
11 with the provisions of this chapter. If, in accordance with
12 applicable law, the award of a contract by a governmental
13 unit requires action at a public meeting, a governmental
14 unit may award a performance-based efficiency contract at
15 a public meeting if it has provided public notice in the
16 manner prescribed under chapter 21, and the notice shall
17 include the names of the parties to the proposed contract
18 and the purpose of the contract. For governmental units
19 that are not required to take actions on contracts at public
20 meetings, the governmental unit may award a performance-based
21 efficiency contract in accordance with the procedures
22 adopted by the governmental unit and the requirements of all
23 applicable laws. However, notwithstanding the provisions of
24 chapter 8A, subchapter III, chapter 26, or other provisions
25 of law relating to the awarding of public contracts, this
26 chapter shall constitute the sole authority necessary for a
27 governmental unit to select a qualified provider and enter into
28 a performance-based efficiency contract.

29 2. A governmental unit may select a qualified provider
30 that best meets the needs of the governmental unit in
31 accordance with criteria established by the governmental
32 unit. After reviewing the qualifications of one or more
33 qualified providers, a governmental unit may enter into a
34 performance-based efficiency contract with a qualified provider
35 if it finds that the amount the governmental unit would spend

1 on the energy conservation and facility-improvement measures
2 recommended in the proposal would not exceed the amount of
3 energy and operational cost savings or revenue enhancements
4 derived from the measures within a twenty-year period from the
5 date of installation.

6 3. A qualified provider to whom a performance-based
7 efficiency contract is awarded shall provide a one hundred
8 percent performance bond to the governmental unit to assure the
9 provider's faithful and complete performance of the contract.

10 4. a. A performance-based efficiency contract shall
11 include a written guarantee by the qualified provider that
12 the savings and efficiency gains, in the aggregate, will meet
13 or exceed the cost of the energy conservation or facility
14 improvement measures to be implemented under the contract.
15 The qualified provider shall be responsible, pursuant to the
16 performance-based efficiency contract, for measuring and
17 verifying the guaranteed savings and efficiency gains provided
18 by the implemented measures by using one of the measurement
19 and verification methodologies set forth in the international
20 performance measurement and verification protocol. If, due to
21 existing data limitations or the nonconformance of specific
22 project characteristics, none of the methods listed in the
23 international performance measurement and verification protocol
24 is sufficient for measuring guaranteed savings and efficiency
25 gains, the qualified provider shall develop and document an
26 alternate method that is compatible with the protocol.

27 b. The performance-based efficiency contract shall
28 provide for reimbursement by the qualified provider to the
29 governmental unit for any shortfall of guaranteed savings
30 and efficiency gains. Savings and efficiency gains shall be
31 measured, verified, and documented by the qualified provider,
32 at a minimum, during each of the first three years following
33 completion of installation of the improvement measures, after
34 which time the governmental unit may elect, at its discretion,
35 to discontinue the measurement, verification, and documentation

1 services and associated guarantee.

2 5. An improvement that is not causally connected
3 to an energy conservation measure may be included in a
4 performance-based efficiency contract if the value of the
5 improvement does not exceed fifteen percent of the total value
6 of the performance-based efficiency contract, and either the
7 improvement is necessary to conform to a federal, state, or
8 local law, rule, or ordinance, or an analysis within the
9 performance-based efficiency contract demonstrates that there
10 is an economic advantage to the governmental unit implementing
11 the improvement as part of the performance-based efficiency
12 contract.

13 6. A facility alteration which includes expenditures that
14 are required to properly implement other energy conservation
15 measures may be included as part of a performance-based
16 efficiency contract. In such a case, notwithstanding any other
17 provision of law, the installation of these additional measures
18 may be supervised by the qualified provider.

19 7. A governmental unit may enter into a third-party
20 installment payment or lease-purchase agreement to finance
21 the costs associated with the performance-based efficiency
22 contract. The installment payment or lease-purchase agreement
23 may provide for payments over a period of time not to exceed
24 twenty years commencing on the completion of installation
25 of the energy conservation measures. Notwithstanding any
26 other provision of law to the contrary, a governmental unit
27 may use funds designated for operating, utility, or capital
28 expenditures to fund any performance-based efficiency contract,
29 including, without limitation, funding any installment payment
30 or lease-purchase agreement. Payments under an installment
31 payment or lease-purchase agreement for energy conservation
32 measures shall not constitute indebtedness of the governmental
33 unit within the meaning of a constitutional or statutory debt
34 limitation, nor shall such payments constitute a tax-supported
35 obligation.

1 8. Any amount of the performance-based efficiency contract
2 or installment payment or lease-purchase agreements costs that
3 is guaranteed by the qualified provider shall be excluded from
4 any limits or requirements imposed by sections 297.36, 331.402,
5 and 384.24A.

6

EXPLANATION

7 This bill authorizes governmental units to enter into
8 performance-based energy contracts.

9 The bill provides legislative intent detailing the benefits
10 of investment in energy conservation measures and identifying
11 a state policy of encouraging governmental units to implement
12 energy conservation and facility improvement measures that
13 reduce utility or operating costs and maximize utility savings
14 and other efficiencies, and to reinvest resulting savings and
15 revenues into additional and continued energy conservation
16 efforts through performance-based efficiency contracts and
17 other appropriate measures.

18 The bill provides several definitions. The bill defines
19 an "energy conservation measure" or "facility improvement
20 measure" to mean a program, facility alteration, equipment
21 installation, remodeling of a new or existing building, or
22 technology upgrade, which is designed to reduce energy, water,
23 wastewater, or other utility or operating costs, or enhance
24 billable revenue. The bill provides a nonexclusive listing
25 of specified actions or measures encompassed within the
26 definition. The bill defines a "governmental unit" to mean any
27 authority, board, bureau, commission, department, agency, or
28 institution of a government agency, including but not limited
29 to any state agency, or any county, city, district, municipal
30 corporation, municipality, municipal authority, political
31 subdivision, school district, educational institution,
32 incorporated town, township, other incorporated district,
33 or other public instrumentality which has the authority to
34 contract for the construction, reconstruction, alteration, or
35 repair of any public building or other public work or public

1 improvement. The bill defines a "performance-based efficiency
2 contract" to mean a contract between a governmental unit and
3 a qualified provider for the evaluation and recommendation of
4 energy conservation or facility improvement measures and for
5 implementation of one or more such measures. The bill defines
6 a "qualified provider" to mean a person with a record of
7 documented performance-based efficiency contract projects who
8 is experienced in the design, implementation, and installation
9 of energy conservation or facility improvement measures; and
10 has the technical capabilities to verify that such measures
11 generate energy and operational cost savings or enhanced
12 revenues.

13 The bill provides that if awarding a contract by a particular
14 governmental unit requires action at a public meeting, a
15 governmental unit may award a performance-based efficiency
16 contract at such a meeting, if it has provided public notice
17 in the manner prescribed under applicable law relating to open
18 meetings, and the notice shall include the names of the parties
19 to the proposed contract and the purpose of the contract.
20 For governmental units that are not required to take actions
21 on contracts at public meetings, the bill provides that the
22 governmental unit may award a performance-based efficiency
23 contract in accordance with the procedures adopted by the
24 governmental unit and the requirements of all applicable
25 laws. The bill states that, notwithstanding provisions in
26 chapter 8A or 26, or other provisions relating to the awarding
27 of public contracts, new Code chapter 297A contained in the
28 bill shall constitute the sole authority necessary for a
29 governmental unit to select a qualified provider and enter into
30 a performance-based efficiency contract.

31 The bill provides that after reviewing the qualifications
32 of one or more qualified providers, a governmental unit may
33 enter into a performance-based efficiency contract with a
34 qualified provider if it finds that the amount it would spend
35 on the energy conservation and facility improvement measures

1 recommended in the proposal would not exceed the amount of
2 energy and operational cost savings or revenue enhancements
3 derived from the measures within a 20-year period from the date
4 of installation. A qualified provider to whom a contract is
5 awarded shall be required to provide a 100 percent performance
6 bond to the governmental unit to assure the provider's faithful
7 and complete performance of the contract. The bill provides
8 that a contract shall include a written guarantee by the
9 qualified provider that the savings and efficiency gains, in
10 the aggregate, will meet or exceed the cost of the energy
11 conservation or facility improvement measures to be installed
12 under the contract. The bill specifies that the qualified
13 provider shall be responsible, pursuant to the contract, for
14 measuring and verifying the guaranteed savings and efficiency
15 gains provided by the installed measures by using one of
16 the measurement and verification methodologies set forth in
17 the international performance measurement and verification
18 protocol. The bill provides that the contract shall provide
19 for reimbursement by the qualified provider for any shortfall
20 of guaranteed savings and efficiency gains, and that such
21 savings and gains shall be measured, verified, and documented
22 by the qualified provider, at a minimum, during each of the
23 first three years following completion of installation of the
24 improvement measures.

25 The bill states that an improvement that is not causally
26 connected to an energy conservation measure may be included in
27 a performance-based efficiency contract if the total value of
28 the improvement does not exceed 15 percent of the total value
29 of the contract, and either the improvement is necessary to
30 conform to a federal, state, or local law, rule or ordinance,
31 or an analysis within the performance-based efficiency contract
32 demonstrates that there is an economic advantage to the
33 governmental unit implementing the improvement as part of the
34 contract.

35 The bill specifies that a facility alteration which includes

1 expenditures that are required to properly implement other
2 energy conservation measures may be included as part of
3 a performance-based efficiency contract. In such a case,
4 notwithstanding any other provision of law, the bill provides
5 that the installation of these additional measures may be
6 supervised by the qualified provider.

7 The bill authorizes a governmental unit to enter into a
8 third-party installment payment or lease-purchase agreement
9 to finance the costs associated with the performance-based
10 efficiency contract. The bill states that a governmental unit
11 may use funds designated for operating, utility, or capital
12 expenditures to fund any performance-based efficiency contract,
13 including, without limitation, any installment payment or
14 lease-purchase agreement, and that payments under such an
15 agreement shall not constitute indebtedness of the governmental
16 unit within the meaning of a constitutional or statutory debt
17 limitation, nor shall such payments constitute a tax-supported
18 obligation.

19 The bill provides that any amount of the contract or
20 agreement costs that is guaranteed by the qualified provider
21 shall be excluded from any limits or requirements imposed by
22 Code section 384.24A dealing with loan agreements entered into
23 by cities, Code section 331.402 dealing with county powers
24 relating to finances, and Code section 297.36 dealing with
25 school district loan agreements.