

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO. _____

Energy performance contracting.

Sponsored by: Joint Minerals, Business and Economic
Development Interim Committee

A BILL

for

1 AN ACT relating to economic development; providing for the
2 support, development and implementation of energy
3 performance contract projects; providing for the use of
4 energy efficient measures for local governmental entities;
5 requiring a report; and providing for an effective date.

6

7 *Be It Enacted by the Legislature of the State of Wyoming:*

8

9 **Section 1.** W.S. 9-12-1201 and 9-12-1203 are created

10 to read:

11

12

ARTICLE 12

13

WYOMING ENERGY PERFORMANCE PROGRAM

1

2 **9-12-1201. Definitions.**

3

4 (a) As used in this article:

5

6 (i) "Agency" means a branch, agency, department,
7 board, instrumentality or institution of the state of
8 Wyoming, a county, a municipal corporation, a school
9 district, a community college district, the University of
10 Wyoming, the joint business council of the Eastern Shoshone
11 and Northern Arapaho Indian tribes, the business council of
12 the Eastern Shoshone Indian tribe, the business council of
13 the Northern Arapaho Indian tribe, a joint powers board
14 formed pursuant to this act or a special district
15 specifically involved in providing facilities or functions
16 enumerated in W.S. 16-1-104(c);

17

18 (ii) "Energy conservation measure" means an
19 energy study, audit, improvement or equipment that is
20 designed to provide energy, water and operational cost
21 savings at least equivalent to the amount expended by a
22 facility owner for such energy study, audit, improvement or
23 equipment over a period of not more than twenty (20) years

1 after the date such improvement or equipment is installed
2 or becomes operational;

3

4 (iii) "Energy performance contract" means the
5 contract that allows a facility owner to accomplish energy
6 or water efficiency projects without upfront capital costs
7 or capital appropriations;

8

9 (iv) "Energy services company" means the
10 contractor with demonstrated technical, operational,
11 financial and managerial capabilities to design and
12 implement energy conservation measures and the ability to
13 secure necessary financial measures to ensure related
14 guarantees for operational cost savings and who is
15 responsible for the audit, design, implementation,
16 measurement, verification and guarantee of savings for
17 individual projects;

18

19 (v) "Facility owner" means an agency or group of
20 agencies, a public hospital or other public entity
21 responsible for an individual facility or group of
22 facilities;

23

1 (vi) "Investment grade energy audit" means the
2 detailed engineering investigation and report of a
3 facility's current energy and water consuming equipment
4 inventory, condition, operation, maintenance and
5 performance, energy baseline, potential energy and water
6 efficiency upgrades, life cycle costs and risks for future
7 performance that provides the justification for the energy
8 performance contract project;

9

10 (vii) "Wyoming Energy Conservation Improvement
11 Program" means the Wyoming business council state energy
12 office program designed to enable and support development
13 and implementation of energy performance contract projects.

14

15 **9-12-1202. Energy performance contracting.**

16

17 The council shall establish a Wyoming energy conservation
18 improvement program which provides support development and
19 implementation of energy performance contract projects to
20 facility owners voluntarily participating in the program.
21 In order to participate in the program, facility owners and
22 energy services companies shall be subject to the

1 provisions of this article and rules adopted pursuant to
2 this article.

3

4 **9-12-1203. Energy performance contracting.**

5

6 (a) Upon receipt of a request from a facility owner,
7 the Wyoming business council shall provide the facility
8 owner with a list of energy service companies interested in
9 providing services to the facility owner and qualified by
10 the Wyoming business council to participate in the Wyoming
11 energy conservation improvement program.

12

13 (b) The energy services company shall provide an
14 investment grade audit showing the estimated energy and
15 operational cost savings that would result from the
16 proposed energy conservation measures. Before executing

17 any contract or lease-purchase agreement under subsection

18 (c) of this section, the energy services company shall
19 provide the facility owner with plans for the proposed
20 energy conservation measures prepared by an engineer
21 licensed to practice in Wyoming.

22

1 (c) Subject to the provisions of subsection (e) of
2 this section, a facility owner may enter into an
3 installment payment contract or lease purchase agreement
4 for an energy or water conservation measure which meets the
5 criteria of this section. Any documents related to
6 negotiations entered into pursuant to this section with
7 individual energy services companies by an agency or
8 facility owner shall be considered trade secrets pursuant
9 to the provisions of the Wyoming Public Records Act, W.S.
10 16-4-201 through 16-4-205. After a contract has been
11 executed by an agency, the contract and all proposals from
12 energy service companies shall be open records available
13 for public inspection in accordance with the Wyoming Public
14 Records Act.

15

16 (d) The energy performance contract shall require the
17 energy services company to provide to the facility owner an
18 annual reconciliation of the guaranteed energy savings. If
19 the reconciliation reveals a shortfall in annual energy
20 savings, the energy services company shall be liable for
21 compensation to the facility owner for such shortfall under
22 the provisions of the energy performance contract. If the
23 reconciliation reveals an excess in annual energy savings,

1 the excess savings shall be retained by the facility owner
2 and shall not be used to cover potential energy savings
3 shortages in subsequent contract years.

4 [Staff Note: It is unclear how these provision would be
5 monitored or could be enforced.]

6

7 (e) An energy performance contract may provide for
8 financing, including tax exempt financing, by a third
9 party. The contract for third party financing may be
10 separate from the energy performance contract. A separate
11 contract for third party financing shall include a
12 provision that the third party financier shall not be
13 granted rights or privileges that exceed the rights and
14 privileges available to the energy services company.

15

16 (f) The Wyoming business council may provide support
17 under the Wyoming Energy Conservation Improvement Program
18 as requested by facility owners for purposes of this
19 section. The Wyoming business council state energy office
20 may fix, charge and collect reasonable fees for any
21 administrative support and resources or other services
22 provided by the Wyoming business council pursuant to this
23 subsection.

1

2 (g) If the facility owner fails to appropriate or
3 receive an appropriation of money for a periodic payment
4 due for improvements made through an energy performance
5 contract, any security interest in any property created
6 pursuant to the energy performance contract, may be
7 enforced by the holder of such a security interest against
8 the property.

9 [Staff Note: Again, it is unclear how these provision
10 would be monitored or could be enforced.]

11

12 (h) The term of an energy performance contract shall
13 not exceed twenty (20) years after the date on which the
14 work required by the energy performance contract to
15 implement all energy conservation measures are completed.

16

17 (j) The Wyoming business council shall submit to the
18 joint minerals, business and economic development interim
19 committee by October 1, an annual report on the energy
20 performance contracting performed under the Wyoming energy
21 conservation improvement program. The report shall include
22 the number of applications submitted, the number of
23 facility owners, the number of energy performance

1 contracts, the results of the investment grade energy
2 audits and the results of the energy performance contracts.

3

4 [Staff Note: The majority of this bill relates to
5 contracts between parties other than the state. It is
6 unclear exactly what the state's role is and what the
7 requirements of the program are.

8

9 **Section 2.** W.S. 9-12-102(a)(viii) is amended to read:

10

11 **9-12-102. Definitions.**

12

13 (a) As used in this act, the following terms have the
14 following meanings, except where the context clearly
15 indicates otherwise:

16

17 (viii) "This act" means W.S. 9-12-101 through
18 ~~9-12-905~~ 9-12-1203.

19

20 **Section 3.** This act is effective July 1, 2009.

21

22

(END)