

HOUSE BILL NO. HB0156

Energy performance contracting-2.

Sponsored by: Representative(s) Brechtel and Senator(s)
Vasey

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 through 9-12-1203 are
10 created to read:

11

12 ARTICLE 12

13 WYOMING ENERGY PERFORMANCE PROGRAM

14

15 **9-12-1201. Definitions.**

16

1 (a) As used in this article:

2

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

14

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

23

1 (iii) "Energy performance contract" means the
2 contract that allows a facility owner to accomplish energy
3 or water efficiency projects without upfront capital costs
4 or capital appropriations. An energy performance contract
5 shall not be considered to be a contract for public
6 improvement pursuant to W.S. 15-1-113;

7

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

17

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

22

23 (vi) "Investment grade energy audit" means the
24 detailed engineering investigation and report of a

1 facility's current energy and water consuming equipment
2 inventory, condition, operation, maintenance and
3 performance, energy baseline, potential energy and water
4 efficiency upgrades, life cycle costs and risks for future
5 performance that provides the justification for the energy
6 performance contract project;

7
8 (vii) "Wyoming energy conservation improvement
9 program" means the Wyoming business council state energy
10 office program designed to enable and support development
11 and implementation of energy performance contract projects.

12
13 **9-12-1202. Energy performance contracting.**

14
15 The council shall establish a Wyoming energy conservation
16 improvement program which provides support development and
17 implementation of energy performance contract projects to
18 facility owners voluntarily participating in the program.
19 In order to participate in the program, facility owners and
20 energy services companies shall be subject to the
21 provisions of this article and rules adopted pursuant to
22 this article.

23
24 **9-12-1203. Energy performance contracting.**

1

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

8

9 (b) The energy services company shall provide an
10 investment grade audit showing the estimated energy and
11 operational cost savings that would result from the
12 proposed energy conservation measures. Before executing
13 any contract or lease purchase agreement under subsection
14 (c) of this section, the energy services company shall
15 provide the facility owner with plans for the proposed
16 energy conservation measures prepared by an engineer
17 licensed to practice in Wyoming.

18

19 (c) Notwithstanding W.S. 15-1-113 and subject to the
20 provisions of subsection (e) of this section, a facility
21 owner may enter into an installment payment contract or
22 lease purchase agreement for an energy or water
23 conservation measure which meets the criteria of this
24 section. Any documents related to negotiations entered

1 into pursuant to this section with individual energy
2 services companies by an agency or facility owner shall be
3 considered trade secrets pursuant to the provisions of the
4 Wyoming Public Records Act, W.S. 16-4-201 through 16-4-205.
5 After a contract has been executed by an agency, the
6 contract and all proposals from energy service companies
7 shall be open records available for public inspection in
8 accordance with the Wyoming Public Records Act.

9
10 (d) The energy performance contract shall require the
11 energy services company to provide to the facility owner an
12 annual reconciliation of the guaranteed energy savings. If
13 the reconciliation reveals a shortfall in annual energy
14 savings, the energy services company shall be liable for
15 compensation to the facility owner for such shortfall under
16 the provisions of the energy performance contract. If the
17 reconciliation reveals an excess in annual energy savings,
18 the excess savings shall be retained by the facility owner
19 and shall not be used to cover potential energy savings
20 shortages in subsequent contract years.

21
22 (e) An energy performance contract may provide for
23 financing, including tax exempt financing, by a third
24 party. The contract for third party financing may be

1 separate from the energy performance contract. A separate
2 contract for third party financing shall include a
3 provision that the third party financier shall not be
4 granted rights or privileges that exceed the rights and
5 privileges available to the energy services company.

6
7 (f) The Wyoming business council may provide support
8 under the Wyoming energy conservation improvement program
9 as requested by facility owners for purposes of this
10 section. The Wyoming business council state energy office
11 may fix, charge and collect reasonable fees for any
12 administrative support and resources or other services
13 provided by the Wyoming business council pursuant to this
14 subsection.

15
16 (g) If the facility owner fails to appropriate or
17 receive an appropriation of money for a periodic payment
18 due for improvements made through an energy performance
19 contract, any security interest in any property created
20 pursuant to the energy performance contract, may be
21 enforced by the holder of such a security interest against
22 the property.

1 (h) The term of an energy performance contract shall
2 not exceed twenty (20) years after the date on which the
3 work required by the energy performance contract to
4 implement all energy conservation measures is completed.

5
6 (j) The Wyoming business council shall submit to the
7 joint minerals, business and economic development interim
8 committee by October 1, an annual report on the energy
9 performance contracting performed under the Wyoming energy
10 conservation improvement program. The report shall include
11 the number of applications submitted, the number of
12 facility owners, the number of energy performance
13 contracts, the results of the investment grade energy
14 audits and the results of the energy performance contracts.

15
16 **Section 2.** W.S. 9-12-102(a)(viii) and 15-1-113 by
17 creating a new subsection (s) are amended to read:

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19 **9-12-102. Definitions.**

20
21 (a) As used in this act, the following terms have the
22 following meanings, except where the context clearly
23 indicates otherwise:

1 (viii) "This act" means W.S. 9-12-101 through
2 ~~9-12-905~~ 9-12-1203.

3

4 **15-1-113. Contracts for public improvements.**

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6 (s) As used in this section, a contract for public
7 improvement shall not include an arrangement in which a
8 municipality can accomplish an energy or water efficiency
9 project without upfront capital costs by compensating an
10 energy or water efficiency contractor over time from
11 guaranteed savings in energy or water costs that result
12 from the project.

13

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

15

16 (END)