

**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, other public entity or
21 nonprofit organization responsible for an individual
22 facility or group of 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 shall be
8 considered trade secrets pursuant to the provisions of the
9 Wyoming Public Records Act, W.S. 16-4-201 through 16-4-205.
10 After a contract has been executed by an agency, the
11 contract and all proposals from energy service companies
12 shall be open records available for public inspection in
13 accordance with the Wyoming Public Records Act.

14

15 (d) The energy performance contract shall require the
16 energy services company to provide to the facility owner an
17 annual reconciliation of the guaranteed energy savings. If
18 the reconciliation reveals a shortfall in annual energy
19 savings, the energy services company shall be liable for
20 compensation to the facility owner for such shortfall. If
21 the reconciliation reveals an excess in annual energy
22 savings, the excess savings shall be retained by the
23 facility owner and shall not be used to cover potential

1 energy savings shortages in subsequent contract years.

2 [Staff Note: It is unclear how these provision would be

3 monitored or could be enforced.]

4

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

13

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

1 [Staff Note: It is unclear what resources means. If it is
2 state money, then the issue of public benefit is present if
3 private facility owners are involved.]

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

11 [Staff Note: It is unclear how these provision would be
12 monitored or could be enforced. Again, if it is state
13 money, then the issue of public benefit is present if
14 private facility owners are involved.]

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

20
21 (j) The state loan and investment board may provide
22 grants for investment grade audits and energy conservation
23 measures to facility owner municipal corporations,

1 counties, special districts and joint powers boards in
2 Wyoming.

3 [Staff Note: What is the source of the money? Are there
4 any other parameters on this money?]

5
6 (k) The Wyoming business council shall submit to the
7 joint minerals, business and economic development interim
8 committee by November 15, 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 [Staff Note: The majority of this bill relates to
17 contracts between parties other than the state. It is
18 unclear exactly what the state's role is and what the
19 requirements of the program are.

20
21 **Section 2.** W.S. 9-12-102(a)(viii) is amended to read:

22
23 **9-12-102. Definitions.**

1

2 (a) As used in this act, the following terms have the
3 following meanings, except where the context clearly
4 indicates otherwise:

5

6 (viii) "This act" means W.S. 9-12-101 through
7 ~~9-12-905~~ 9-12-1203.

8

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

10

11

(END)