

ACT 192

H.B. NO. 1695

A Bill for an Act Relating to Energy Performance Contracting for Public Facilities.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 36-41, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

“(b) Notwithstanding any law to the contrary relating to the award of public contracts, any agency desiring to enter into an energy performance contract shall do so in accordance with the following provisions:

- (1) The agency shall issue a public request for proposals, advertised in the same manner as provided in chapter 103D, concerning the provision of energy efficiency services or the design, installation, operation, and maintenance of energy equipment or both. The request for proposals shall contain terms and conditions relating to submission of proposals,

evaluation and selection of proposals, financial terms, legal responsibilities, and other matters as may be required by law and as the agency determines appropriate;

- (2) Upon receiving responses to the request for proposals, the agency may select the most qualified proposal or proposals on the basis of the experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the agency, and other factors determined by the agency to be relevant and appropriate;
- (3) The agency thereafter may negotiate and enter into an energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency;
- (4) The term of any energy performance contract entered into pursuant to this section shall not exceed [ten] fifteen years;
- (5) Any contract entered into shall contain the following annual allocation dependency clause:

“The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the applicable funding authority. If that authority fails to appropriate sufficient funds to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which allocations were made”; [and]

- (6) Any energy performance contract may provide that the agency ultimately shall receive title to the energy system being financed under the contract[.]; and
- (7) Any energy performance contract shall provide that total payments shall not exceed total savings.

(c) Any agency may enter into an energy performance contract pursuant to this section for a period not to exceed [ten] fifteen years.

(d) For purposes of this section:

“Agency” means any executive department, independent commission, board, bureau, office, or other establishment of the State or any county government, the judiciary, the University of Hawaii, or any quasi-public institution that is supported in whole or in part by state or county funds.

“Energy performance contract” means an agreement for the provision of energy services and equipment, including but not limited to building energy conservation enhancing retrofits and alternate energy technologies, in which a private sector person or company agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a facility in exchange for a portion of the [energy] cost savings, lease payments, or specified revenues, and the level of payments is made contingent upon the measured energy cost savings [or], energy production[.], avoided maintenance, avoided energy equipment replacement, or any combination of the foregoing bases.

“Facility” means a building or buildings or similar structure owned or leased by, or otherwise under the jurisdiction of, the agency.

“Shared-savings plan” means an agreement under which the private sector person or company undertakes to design, install, operate, and maintain improvements to the agency’s facility or facilities and the agency agrees to pay a contractually specified amount of measured energy cost savings.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

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SECTION 3. This Act, upon its approval, shall have retroactive effect upon all existing contracts executed by any agency under section 36-41, Hawaii Revised Statutes.

(Approved June 16, 1997.)