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SENATE FILE 397
BY COMMITTEE ON GOVERNMENT
OVERSIGHT

(SUCCESSOR TO SSB 1296)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for energy performance-based contracts for
2 certain public entities and public educational facilities.

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

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SF 397

1 Section 1. NEW SECTION. 297A.1 STATE POLICY.

2 The general assembly finds that investment in energy
3 conservation measures by public facilities can reduce the
4 amount of energy consumed by the facilities and produce both
5 immediate and long-term cost savings. It is the policy of
6 this state to encourage school districts, area education
7 agencies, community colleges, public universities,
8 municipalities, counties, and state institutions to invest in
9 facility technology infrastructure upgrades and energy
10 conservation measures that reduce energy consumption, produce
11 a cost savings, or improve the quality of indoor air, or when
12 economically feasible, to build, operate, maintain, or
13 renovate public facilities in a manner which will minimize
14 energy consumption or maximize energy savings. It is
15 additionally the policy of this state to encourage
16 reinvestment of energy savings resulting from energy
17 conservation measures and facility technology infrastructure
18 upgrades into additional and continued energy conservation
19 efforts. The department of natural resources, in consultation
20 with the department of education, shall adopt rules pursuant
21 to chapter 17A for the administration of this chapter.

22 Sec. 2. NEW SECTION. 297A.2 DEFINITIONS.

23 As used in this chapter, unless the context otherwise
24 requires:

25 1. "Energy conservation measure or facility technology
26 infrastructure upgrade" means a training program, facility
27 alteration, or equipment to be used in new construction,
28 including an addition to an existing facility, that reduces
29 energy costs and includes, but is not limited to, any of the
30 following:

31 a. Insulation of the facility structure or systems within
32 the facility.

33 b. Storm windows or doors, caulking or weather stripping,
34 multiple-glazed windows or doors, heat-absorbing or heat-
35 reflective glazed and coated window or door systems,

1 additional glazing, reductions in glass area, or other window
2 and door system modifications that reduce energy consumption.

3 c. Automated or computerized energy control systems
4 including related software-required network communication
5 wiring, computer devices, wiring and support services for
6 building maintenance or delivery of energy conservation
7 services. Such energy control system technology
8 infrastructure may be used, as applicable, for other public
9 corporation technology needs. Other technology infrastructure
10 improvements may be implemented if the cost is supported by
11 the energy savings generated by other energy conservation
12 measures or facility technology infrastructure upgrades.

13 d. Heating, ventilating, or air conditioning system
14 modifications or replacements.

15 e. Replacement or modification of lighting fixtures to
16 increase the energy efficiency of the lighting system which,
17 at a minimum, shall conform to the applicable state or local
18 building code.

19 f. Energy recovery systems.

20 g. Renewable energy systems, such as solar, biomass, and
21 wind.

22 h. Devices that reduce water consumption or sewer charges.

23 i. Any measure not otherwise defined that produces energy
24 cost savings or British thermal unit reductions.

25 2. "Energy cost savings" means a measured reduction in
26 fuel, energy, or operation and maintenance cost savings
27 created from the implementation of one or more energy
28 conservation measures or facility technology infrastructure
29 upgrades when compared with an established baseline for
30 previous fuel, energy, or operation and maintenance costs.

31 3. "Energy performance-based contract" means a contract
32 for the recommendation and implementation of energy
33 conservation measures or facility technology infrastructure
34 upgrades which includes, at a minimum, all of the following:

35 a. The design and installation of equipment to implement

1 one or more energy conservation measures or facility
2 technology infrastructure upgrades, and, if applicable,
3 operation and maintenance of such measures or upgrades.

4 b. The amount of any actual annual energy and operational
5 cost savings. The amount shall be guaranteed in the contract
6 by the qualified provider and verified by a professional
7 engineer or registered architect who is not employed or has
8 contracted with the qualified provider. The verification
9 shall occur using a process established by the department of
10 natural resources.

11 4. "Energy performance-based evaluation" means performance
12 of an energy audit, data collection, or other related analyses
13 preliminary to the undertaking of energy conservation measures
14 or facility technology infrastructure upgrades, and
15 maintenance of project monitoring and data collection to
16 verify postinstallation energy consumption and energy-related
17 operating costs. The department of natural resources shall
18 establish performance guidelines that consider federal energy
19 management program guidelines. Any cost for support services
20 for building maintenance or delivery of energy conservation
21 services that will continue beyond the length of an energy
22 performance-based contract shall be identified specifically in
23 the energy performance-based evaluation.

24 5. "Maintenance cost savings" means auditable operating
25 expenses eliminated and future capital replacement
26 expenditures avoided as a result of new equipment installed or
27 services performed by the qualified provider.

28 6. "Public corporation" means a school district as
29 described in chapter 274, a community college as defined in
30 chapter 260C, a public university, city, county, or state
31 agency.

32 7. "Qualified provider" means a business or person that
33 has been qualified by the department of natural resources.
34 The department of natural resources shall adopt rules pursuant
35 to chapter 17A to establish a qualifications process. The

1 process shall consider accreditation by the national
2 association of energy service companies, certification by the
3 association of energy engineers, or professional licensure as
4 an engineer or registered architect in Iowa. A business or
5 person accredited by the national association of energy
6 service companies shall be qualified in Iowa.

7 Sec. 3. NEW SECTION. 297A.3 REQUESTS FOR PROPOSALS
8 EVALUATION.

9 1. Prior to entering into an energy performance-based
10 contract as provided in section 297A.4, a public corporation
11 shall announce a request for proposals. A request for
12 proposals shall be advertised for public bidding and let
13 publicly. The model request for proposals format developed by
14 the department of natural resources shall be made available
15 for use by public corporations. A public corporation shall
16 administer the public bidding and letting, requesting
17 innovative solutions and proposals for energy conservation
18 measures and facility technology infrastructure upgrades.
19 Proposals submitted shall be sealed. If the model request for
20 proposals format is not used, the request for proposals shall
21 include, at a minimum, all of the following:

- 22 a. Name and address of the public corporation.
- 23 b. Name, address, title, and telephone number of a contact
24 person for the public corporation.
- 25 c. Notice indicating that the public corporation is
26 requesting qualified providers to propose energy conservation
27 measures and facility technology infrastructure upgrades to be
28 provided pursuant to an energy performance-based contract.
- 29 d. Date, time, and place where proposals must be received.
- 30 e. Evaluation criteria for assessing the proposals.
- 31 f. Any other stipulations and clarifications the public
32 corporation may require.

33 2. The public corporation shall evaluate any sealed
34 proposal from a qualified provider. Sealed proposals shall be
35 opened by a designated member or employee of the governing

1 body of the public corporation at a public meeting during
2 which the contents of the proposals shall be announced. Each
3 person submitting a sealed proposal must receive at least ten
4 days' notice of the time and place of the public meeting at
5 which the public corporation proposes to award an energy
6 performance-based contract. The public corporation shall
7 analyze each qualified provider's estimate of the cost of
8 design, engineering, installation, maintenance, repairs, debt
9 service, conversions to a different energy or fuel source, and
10 postinstallation project monitoring, data collection, and
11 reporting. The evaluation shall include a detailed analysis
12 of whether the energy consumed or the operating costs, or
13 both, will be reduced. Selection of the qualified provider
14 shall, through either a request for proposals process or other
15 purchasing method, constitute selection of the best value
16 based on life cycle cost analysis of the component parts and
17 systems to the public corporation. The public corporation
18 shall enter into an energy performance-based contract.

19 Sec. 4. NEW SECTION. 297A.4 AWARD OF GUARANTEED ENERGY
20 COST SAVINGS CONTRACT.

21 1. A public corporation shall select a qualified provider
22 that best meets the needs of the public corporation based on
23 life cycle cost analysis. After completing its evaluation of
24 the proposals received pursuant to section 297A.3, the public
25 corporation shall provide public notice of the public meeting
26 at which it proposes to award an energy performance-based
27 contract. The public notice shall contain the names of the
28 parties to the proposed contract and the purpose of the
29 contract. The public notice shall be published at least ten
30 days prior to the public meeting. A public corporation may
31 enter into an energy performance-based contract with a
32 qualified provider if it finds, after evaluating the proposal
33 pursuant to section 297A.3, that the total amount the public
34 corporation would spend on the design, implementation,
35 financing, and performance management of the energy

1 conservation measures or facility technology infrastructure
2 upgrades and modernization measures recommended in the
3 proposal would not exceed the amount to be saved in either
4 energy or operational costs, or both, within a twenty-year
5 period from the date of installation of such measures or
6 upgrades, based on life-cycle costing calculations, if the
7 recommendations in the proposal are followed.

8 2. A public corporation may enter into a financing
9 agreement as provided in sections 473.19, 473.20, and 473.20A,
10 for the purchase and installation of energy conservation
11 measures or facility technology infrastructure upgrades and
12 modernization measures. Energy performance-based contracts
13 may extend beyond the fiscal year in which they become
14 effective, and may be automatically renewed annually for up to
15 twenty years.

16 3. A qualified provider shall be responsible for the
17 measurement and verification of the savings generated by the
18 energy conservation measures or facility technology
19 infrastructure upgrades and modernization measures. The
20 process to be used for the measurement and verification shall
21 follow the guidelines of the federal energy management
22 program. A public corporation shall have these savings
23 verified by a qualified independent third party on an annual
24 basis. The verification shall also include an annual
25 reconciliation of the guaranteed energy cost savings for the
26 life of any financing agreement obligations or until the
27 project is repaid from energy savings. The cost of this
28 verification shall be a part of the contract with the
29 qualified provider. The department of natural resources shall
30 establish the qualifications necessary for a business or
31 person to become a qualified independent third party. A
32 business or person accredited by the national association of
33 energy service companies shall be qualified in Iowa.

34 4. A selected qualified provider shall provide a one
35 hundred percent performance guarantee bond to the public

1 corporation for the installation and faithful performance of
2 the installed energy conservation measures or facility
3 technology infrastructure upgrades as outlined in the energy
4 performance-based contract.

5 5. A public corporation has the right to terminate an
6 energy performance-based contract at any time provided that
7 written notice to the qualified provider is provided at least
8 thirty days prior to termination. All qualified providers
9 shall include clear statements and requirements regarding
10 contract termination as part of the contract documentation.
11 The documentation shall clearly state the options of the
12 public corporation to satisfy the contract early and include
13 all associated costs. The documentation shall also state the
14 rights of a public corporation under a contract for
15 terminating the contract due to nonperformance, for exercising
16 rights pursuant to the performance guarantee bond, and for
17 listing all costs and responsibilities for payment of any
18 remaining debt associated with energy and operational savings
19 projects already implemented. The information and associated
20 costs described in this subsection shall be provided to a
21 public corporation before an energy performance-based contract
22 is approved.

23 6. An energy performance-based contract shall include a
24 written guarantee by a qualified provider that the amount of
25 any actual energy and operational savings shall be guaranteed.
26 The amount must also meet or exceed the total annual contract
27 payments, including financing charges, made by the public
28 corporation over the life of the contract. A qualified
29 provider shall reimburse a public corporation for any
30 shortfall of guaranteed energy cost savings projected in the
31 contract. Actual savings documentation shall be reconciled on
32 an annual basis as provided in the contract. Any savings
33 shortfall shall be made whole by the qualified provider within
34 sixty days. Excess documented and mutually agreed upon
35 savings may be carried over to future years. A qualified

1 provider shall provide the public corporation with a one
2 hundred percent performance guarantee bond for installation
3 and retrofit projects. A qualified provider shall guarantee
4 the savings for the length of the contract and shall also
5 provide the guaranteed performance bonds on an annual basis
6 renewed each year for the term of the contract. An energy
7 performance-based contract may provide for payments over a
8 period of time, not to exceed twenty years.

9 7. A public corporation shall not have any state financial
10 assistance or any appropriations or reimbursements reduced as
11 a result of energy and operational savings realized from an
12 energy performance-based contract for the installation of
13 energy conservation measures or facility technology
14 infrastructure upgrades.

15 EXPLANATION

16 This bill allows public corporations, through a request for
17 proposals process, to enter into energy performance-based
18 contracts with qualified providers for purposes of undertaking
19 one or more energy conservation measures or facility
20 technology infrastructure upgrades. The bill provides that a
21 public corporation may enter into an energy performance-based
22 contract with a qualified provider if it finds, after
23 evaluating the proposal, that the total amount it would spend
24 on the design, implementation, financing, and performance
25 management of the energy conservation measures or facility
26 technology infrastructure upgrades recommended in the proposal
27 would not exceed the amount to be saved in either energy or
28 operational costs, or both, within a 20-year period from the
29 date of installation, based on life-cycle costing
30 calculations, if the recommendations in the proposal are
31 followed. The bill provides that a qualified provider shall
32 be responsible for the measurement and verification of the
33 savings generated by the energy conservation measures or
34 facility technology infrastructure upgrades. The bill
35 provides that a public corporation shall have these savings

1 verified by a qualified independent third party. The bill
2 provides that a public corporation has the right to terminate
3 an energy performance-based contract at any time provided that
4 written notice to the qualified provider is provided at least
5 30 days prior to termination.

6 The bill provides that an energy performance-based contract
7 shall include a written guarantee by a qualified provider of
8 the amount of any actual energy and operational savings. The
9 bill provides that a qualified provider shall reimburse a
10 public corporation for any shortfall of guaranteed energy cost
11 performance or payment projected in the contract and that
12 actual savings documentation shall be reconciled on an annual
13 basis as provided in the contract. The bill provides that a
14 qualified provider shall guarantee the savings for the length
15 of the contract and shall also provide guaranteed performance
16 bonds on an annual basis renewed each year for the term of the
17 contract. The bill provides that a public corporation shall
18 not have any state financial assistance or any appropriations
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Lundby
Courtney

Succeeded By
SF/HF 397

SSB# 1296
Government
Oversight

SENATE FILE _____

BY (PROPOSED COMMITTEE ON
GOVERNMENT OVERSIGHT
BILL BY CO-CHAIRPERSONS
COURTNEY AND LUNDBY)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

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2 certain public entities and public educational facilities.

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

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29 upgrades when compared with an established baseline for
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2 technology infrastructure upgrades, and, if applicable,
3 operation and maintenance of such measures or upgrades.

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5 cost savings. The amount shall be guaranteed in the contract
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7 engineer or registered architect who is not employed or has
8 contracted with the qualified provider. The verification
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19 management program guidelines. Any cost for support services
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21 services that will continue beyond the length of an energy
22 performance-based contract shall be identified specifically in
23 the energy performance-based evaluation.

24 5. "Maintenance cost savings" means auditable operating
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26 expenditures avoided as a result of new equipment installed or
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29 described in chapter 274, a community college as defined in
30 chapter 260C, a public university, city, county, or state
31 agency.

32 7. "Qualified provider" means a business or person that
33 has been qualified by the department of natural resources.
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35 to chapter 17A to establish a qualifications process. The

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7 Sec. 3. NEW SECTION. 297A.3 REQUESTS FOR PROPOSALS
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17 innovative solutions and proposals for energy conservation
18 measures and facility technology infrastructure upgrades.
19 Proposals submitted shall be sealed. If the model request for
20 proposals format is not used, the request for proposals shall
21 include, at a minimum, all of the following:

- 22 a. Name and address of the public corporation.
23 b. Name, address, title, and telephone number of a contact
24 person for the public corporation.
25 c. Notice indicating that the public corporation is
26 requesting qualified providers to propose energy conservation
27 measures and facility technology infrastructure upgrades to be
28 provided pursuant to an energy performance-based contract.
29 d. Date, time, and place where proposals must be received.
30 e. Evaluation criteria for assessing the proposals.
31 f. Any other stipulations and clarifications the public
32 corporation may require.

33 2. The public corporation shall evaluate any sealed
34 proposal from a qualified provider. Sealed proposals shall be
35 opened by a designated member or employee of the governing

1 body of the public corporation at a public meeting during
2 which the contents of the proposals shall be announced. Each
3 person submitting a sealed proposal must receive at least ten
4 days' notice of the time and place of the public meeting at
5 which the public corporation proposes to award an energy
6 performance-based contract. The public corporation shall
7 analyze each qualified provider's estimate of the cost of
8 design, engineering, installation, maintenance, repairs, debt
9 service, conversions to a different energy or fuel source, and
10 postinstallation project monitoring, data collection, and
11 reporting. The evaluation shall include a detailed analysis
12 of whether the energy consumed or the operating costs, or
13 both, will be reduced. Selection of the qualified provider
14 shall, through either a request for proposals process or other
15 purchasing method, constitute selection of the best value
16 based on life cycle cost analysis of the component parts and
17 systems to the public corporation. The public corporation
18 shall enter into an energy performance-based contract.

19 Sec. 4. NEW SECTION. 297A.4 AWARD OF GUARANTEED ENERGY
20 COST SAVINGS CONTRACT.

21 1. A public corporation shall select a qualified provider
22 that best meets the needs of the public corporation based on
23 life cycle cost analysis. After completing its evaluation of
24 the proposals received pursuant to section 297A.3, the public
25 corporation shall provide public notice of the public meeting
26 at which it proposes to award an energy performance-based
27 contract. The public notice shall contain the names of the
28 parties to the proposed contract and the purpose of the
29 contract. The public notice shall be published at least ten
30 days prior to the public meeting. A public corporation may
31 enter into an energy performance-based contract with a
32 qualified provider if it finds, after evaluating the proposal
33 pursuant to section 297A.3, that the total amount the public
34 corporation would spend on the design, implementation,
35 financing, and performance management of the energy

1 conservation measures or facility technology infrastructure
2 upgrades and modernization measures recommended in the
3 proposal would not exceed the amount to be saved in either
4 energy or operational costs, or both, within a twenty-year
5 period from the date of installation of such measures or
6 upgrades, based on life-cycle costing calculations, if the
7 recommendations in the proposal are followed.

8 2. A public corporation may enter into a financing
9 agreement as provided in sections 473.19, 473.20, and 473.20A,
10 for the purchase and installation of energy conservation
11 measures or facility technology infrastructure upgrades and
12 modernization measures. Energy performance-based contracts
13 may extend beyond the fiscal year in which they become
14 effective, and may be automatically renewed annually for up to
15 twenty years.

16 3. A qualified provider shall be responsible for the
17 measurement and verification of the savings generated by the
18 energy conservation measures or facility technology
19 infrastructure upgrades and modernization measures. The
20 process to be used for the measurement and verification shall
21 follow the guidelines of the federal energy management
22 program. A public corporation shall have these savings
23 verified by a qualified independent third party on an annual
24 basis. The verification shall also include an annual
25 reconciliation of the guaranteed energy cost savings for the
26 life of any financing agreement obligations or until the
27 project is repaid from energy savings. The cost of this
28 verification shall be a part of the contract with the
29 qualified provider. The department of natural resources shall
30 establish the qualifications necessary for a business or
31 person to become a qualified independent third party. A
32 business or person accredited by the national association of
33 energy service companies shall be qualified in Iowa.

34 4. A selected qualified provider shall provide a one
35 hundred percent performance guarantee bond to the public

1 corporation for the installation and faithful performance of
2 the installed energy conservation measures or facility
3 technology infrastructure upgrades as outlined in the energy
4 performance-based contract.

5 5. A public corporation has the right to terminate an
6 energy performance-based contract at any time provided that
7 written notice to the qualified provider is provided at least
8 thirty days prior to termination. All qualified providers
9 shall include clear statements and requirements regarding
10 contract termination as part of the contract documentation.
11 The documentation shall clearly state the options of the
12 public corporation to satisfy the contract early and include
13 all associated costs. The documentation shall also state the
14 rights of a public corporation under a contract for
15 terminating the contract due to nonperformance, for exercising
16 rights pursuant to the performance guarantee bond, and for
17 listing all costs and responsibilities for payment of any
18 remaining debt associated with energy and operational savings
19 projects already implemented. The information and associated
20 costs described in this subsection shall be provided to a
21 public corporation before an energy performance-based contract
22 is approved.

23 6. An energy performance-based contract shall include a
24 written guarantee by a qualified provider that the amount of
25 any actual energy and operational savings shall be guaranteed.
26 The amount must also meet or exceed the total annual contract
27 payments, including financing charges, made by the public
28 corporation over the life of the contract. A qualified
29 provider shall reimburse a public corporation for any
30 shortfall of guaranteed energy cost savings projected in the
31 contract. Actual savings documentation shall be reconciled on
32 an annual basis as provided in the contract. Any savings
33 shortfall shall be made whole by the qualified provider within
34 sixty days. Excess documented and mutually agreed upon
35 savings may be carried over to future years. A qualified

1 provider shall provide the public corporation with a one
2 hundred percent performance guarantee bond for installation
3 and retrofit projects. A qualified provider shall guarantee
4 the savings for the length of the contract and shall also
5 provide the guaranteed performance bonds on an annual basis
6 renewed each year for the term of the contract. An energy
7 performance-based contract may provide for payments over a
8 period of time, not to exceed twenty years.

9 7. A public corporation shall not have any state financial
10 assistance or any appropriations or reimbursements reduced as
11 a result of energy and operational savings realized from an
12 energy performance-based contract for the installation of
13 energy conservation measures or facility technology
14 infrastructure upgrades.

15

EXPLANATION

16 This bill allows public corporations, through a request for
17 proposals process, to enter into energy performance-based
18 contracts with qualified providers for purposes of undertaking
19 one or more energy conservation measures or facility
20 technology infrastructure upgrades. The bill provides that a
21 public corporation may enter into an energy performance-based
22 contract with a qualified provider if it finds, after
23 evaluating the proposal, that the total amount it would spend
24 on the design, implementation, financing, and performance
25 management of the energy conservation measures or facility
26 technology infrastructure upgrades recommended in the proposal
27 would not exceed the amount to be saved in either energy or
28 operational costs, or both, within a 20-year period from the
29 date of installation, based on life-cycle costing
30 calculations, if the recommendations in the proposal are
31 followed. The bill provides that a qualified provider shall
32 be responsible for the measurement and verification of the
33 savings generated by the energy conservation measures or
34 facility technology infrastructure upgrades. The bill
35 provides that a public corporation shall have these savings

1 verified by a qualified independent third party. The bill
2 provides that a public corporation has the right to terminate
3 an energy performance-based contract at any time provided that
4 written notice to the qualified provider is provided at least
5 30 days prior to termination.

6 The bill provides that an energy performance-based contract
7 shall include a written guarantee by a qualified provider of
8 the amount of any actual energy and operational savings. The
9 bill provides that a qualified provider shall reimburse a
10 public corporation for any shortfall of guaranteed energy cost
11 performance or payment projected in the contract and that
12 actual savings documentation shall be reconciled on an annual
13 basis as provided in the contract. The bill provides that a
14 qualified provider shall guarantee the savings for the length
15 of the contract and shall also provide guaranteed performance
16 bonds on an annual basis renewed each year for the term of the
17 contract. The bill provides that a public corporation shall
18 not have any state financial assistance or any appropriations
19 or reimbursements reduced as a result of energy and
20 operational savings realized from an energy performance-based
21 contract for the installation of energy conservation measures
22 or facility technology infrastructure upgrades.

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