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SENATE FILE **2347**  
BY COMMITTEE ON NATURAL  
RESOURCES AND ENVIRONMENT

(SUCCESSOR TO SSB 3229)

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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SC 2347

TLSB 5789SV 81

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1 Section 1. NEW SECTION. 297A.1 STATE POLICY --  
2 RULEMAKING.

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

21 2. The department of natural resources, in consultation  
22 with the department of education, shall adopt rules pursuant  
23 to chapter 17A for the administration of this chapter.

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

25 As used in this chapter, unless the context otherwise  
26 requires:

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

33 a. Insulation of the facility structure or systems within  
34 the facility.

35 b. Storm windows or doors, caulking or weather stripping,

1 multiple-glazed windows or doors, heat-absorbing or heat-  
2 reflective glazed and coated window or door systems,  
3 additional glazing, reductions in glass area, or other window  
4 and door system modifications that reduce energy consumption.

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

15 d. Heating, ventilating, or air conditioning system  
16 modifications or replacements.

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

21 f. Energy recovery systems.

22 g. Renewable energy systems, such as solar, biomass, and  
23 wind.

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

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

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

33 3. "Energy performance-based contract" means a contract  
34 for the recommendation and implementation of energy  
35 conservation measures or facility technology infrastructure

1 upgrades which includes, at a minimum, all of the following:

2 a. The design and installation of equipment to implement  
3 one or more energy conservation measures or facility  
4 technology infrastructure upgrades, and, if applicable,  
5 operation and maintenance of such measures or upgrades.

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

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

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

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

34 7. "Qualified provider" means a business or person that  
35 has been qualified by the department of natural resources.

1 The department of natural resources shall adopt rules pursuant  
2 to chapter 17A to establish a qualifications process. The  
3 process shall consider accreditation by the national  
4 association of energy service companies, certification by the  
5 association of energy engineers, or professional licensure as  
6 an engineer or registered architect 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 considers whether to award an  
6 energy performance-based contract. The public corporation  
7 shall analyze each qualified provider's estimate of the cost  
8 of design, engineering, installation, maintenance, repairs,  
9 debt service, conversions to a different energy or fuel  
10 source, and postinstallation project monitoring, data  
11 collection, and reporting. The evaluation shall include a  
12 detailed analysis of whether the energy consumed or the  
13 operating costs, or both, will be reduced. Selection of the  
14 qualified provider shall, through either a request for  
15 proposals process or other purchasing method, constitute  
16 selection of the best value based on life cycle cost analysis  
17 of the component parts and systems to the public corporation.  
18 The public corporation shall determine whether to enter into  
19 an energy performance-based contract.

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

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

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

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

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

1 companies.

2 4. A selected qualified provider shall provide a one  
3 hundred percent performance guarantee bond to the public  
4 corporation for the installation and faithful performance of  
5 the installed energy conservation measures or facility  
6 technology infrastructure upgrades as outlined in the energy  
7 performance-based contract.

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

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

1 shortfall shall be made whole by the qualified provider within  
2 sixty days. Excess documented and mutually agreed upon  
3 savings may be carried over to future years. A qualified  
4 provider shall provide the public corporation with a one  
5 hundred percent performance guarantee bond for installation  
6 and retrofit projects. A qualified provider shall guarantee  
7 the savings for the length of the contract and shall also  
8 provide the guaranteed performance bonds on an annual basis  
9 renewed each year for the term of the contract. An energy  
10 performance-based contract may provide for payments over a  
11 period of time, not to exceed twenty years.

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

18 Sec. 5. NEW SECTION. 297A.5 ENERGY PERFORMANCE-BASED  
19 CONTRACTS -- SUPPORT PROGRAM ESTABLISHED -- FEES.

20 1. The department of natural resources shall establish a  
21 support program to provide assistance to public corporations  
22 entering into energy performance-based contracts. The support  
23 program shall be available to public corporations on an  
24 optional, discretionary basis and may provide services to  
25 include but not be limited to prenegotiated and standardized  
26 energy performance-based contracts; third-party verification  
27 of energy audits; streamlined financing arrangements;  
28 providing information and guidance throughout the energy  
29 performance-based contract process, including installation of  
30 energy conservation measures, upgrades, and new construction;  
31 third-party assistance with dispute resolution; and follow-up  
32 assistance through savings guarantee resolutions and warranty  
33 replacements, if necessary.

34 2. The department shall establish procedures relating to  
35 the administration of the support program by rule and may

1 collect fees in an amount determined necessary to offset the  
2 costs associated with offering the program. Fees collected  
3 pursuant to this section shall be considered repayment  
4 receipts as defined in section 8.2 and may be retained by the  
5 department to administer the program.

6 EXPLANATION

7 This bill allows public corporations, through a request for  
8 proposals process, to enter into energy performance-based  
9 contracts with qualified providers for purposes of undertaking  
10 one or more energy conservation measures or facility  
11 technology infrastructure upgrades. The bill provides that a  
12 public corporation may enter into an energy performance-based  
13 contract with a qualified provider if it finds, after  
14 evaluating the proposal, that the total amount it would spend  
15 on the design, implementation, financing, and performance  
16 management of the energy conservation measures or facility  
17 technology infrastructure upgrades recommended in the proposal  
18 would not exceed the amount to be saved in either energy or  
19 operational costs, or both, within a 20-year period from the  
20 date of installation, based on life-cycle costing  
21 calculations, if the recommendations in the proposal are  
22 followed. The bill provides that a qualified provider shall  
23 be responsible for the measurement and verification of the  
24 savings generated by the energy conservation measures or  
25 facility technology infrastructure upgrades. The bill  
26 provides that a public corporation shall have these savings  
27 verified by a qualified independent third party. The bill  
28 provides that a public corporation has the right to terminate  
29 an energy performance-based contract at any time provided that  
30 written notice to the qualified provider is provided at least  
31 30 days prior to termination.

32 The bill provides that an energy performance-based contract  
33 shall include a written guarantee by a qualified provider of  
34 the amount of any actual energy and operational savings. The  
35 bill provides that a qualified provider shall reimburse a

1 public corporation for any shortfall of guaranteed energy cost  
2 performance or payment projected in the contract and that  
3 actual savings documentation shall be reconciled on an annual  
4 basis as provided in the contract. The bill provides that a  
5 qualified provider shall guarantee the savings for the length  
6 of the contract and shall also provide guaranteed performance  
7 bonds on an annual basis renewed each year for the term of the  
8 contract. The bill provides that a public corporation shall  
9 not have any state financial assistance or any appropriations  
10 or reimbursements reduced as a result of energy and  
11 operational savings realized from an energy performance-based  
12 contract for the installation of energy conservation measures  
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14 The bill requires the department of natural resources to  
15 establish a support program to provide assistance to public  
16 corporations entering into energy performance-based contracts.  
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18 discretionary basis to provide services specified in the bill.  
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20 procedures relating to administration of the program by rule  
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**Fiscal Services Division**  
**Legislative Services Agency**  
**Fiscal Note**

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SF 2347 - Energy Performance Contracting (LSB 5789 SV)  
Analyst: David Reynolds (Phone: [515] 281-6934) ([dave.reynolds@legis.state.ia.us](mailto:dave.reynolds@legis.state.ia.us))  
Fiscal Note Version - New

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**Description**

Senate File 2347 establishes a process for allowing public entities to enter into performance-based contracts using a Request for Proposals process for energy-related improvements to facilities owned by public corporations. The Bill defines public corporation as a school district, community college, public university, city, county, public hospital, or State agency.

**Background**

The Bill specifies that an energy performance-based contract is a contract with a qualified provider to implement facility improvements for design and installation of equipment and/or technology to implement energy conservation within buildings. The contract is arranged so that the cost of the design, improvements, financing, and performance management of the energy conservation measures do not exceed the amount to be saved in energy or operational costs within a 20-year period.

The Bill requires the cost savings to be guaranteed in the contract and verified by a professional engineer or registered architect not employed by the contractor. The Bill also requires the provider to reimburse the public corporation for any shortfall of guaranteed energy savings on an annual basis for the life of the contract.

The Bill requires the Department of Natural Resources (DNR) to establish a support program to provide assistance to public corporations entering into energy performance-based contracts at the corporation discretion and allows the DNR to collect a fee to offset the cost of the program.

The DNR currently administers two programs, the Iowa Energy Bank Program and the State of Iowa Facilities Improvement Corporation, that provide similar services to State and local units of government.

**Fiscal Impact**

Senate File 2347 will not have a significant fiscal impact on the State's General Fund. The fiscal impact of SF 2347 on public corporations cannot be determined as it is uncertain how many corporations will elect to use energy performance-based contracts as well as request the assistance of the DNR for support and technical services. The energy performance-based contract process established in SF 2347 is a voluntary program and would be available to public corporations in addition to the Iowa Energy Bank Program and the State of Iowa Facilities Improvement Corporation.

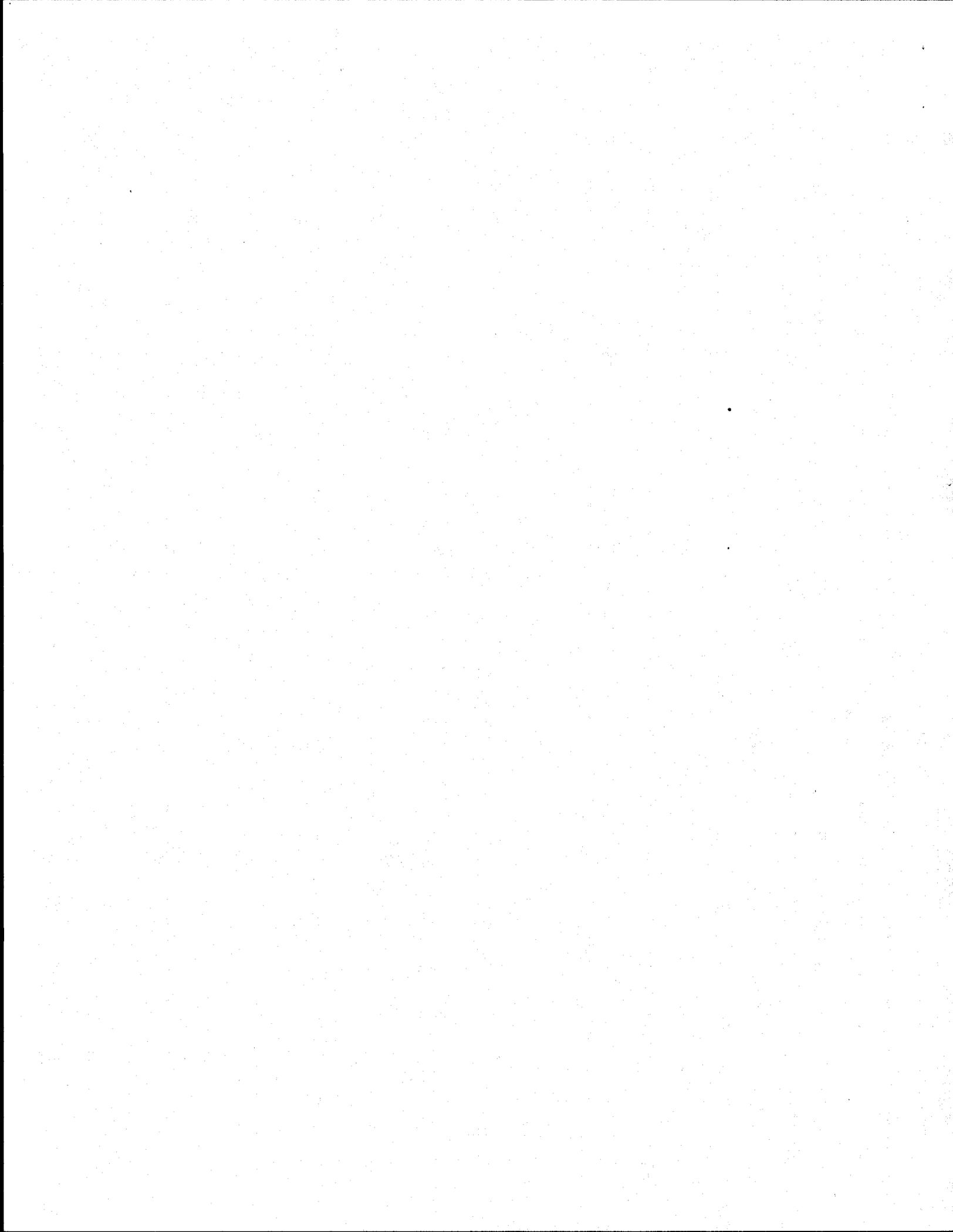
**Sources**

Department of Natural Resources  
LSA: Fiscal Services Division

/s/ Holly M. Lyons

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March 10, 2006



Lundby Co-chair  
Bolkeom co-chair  
Kettering  
Hancock

Succeeded By  
HF 2347  
SSB# 3229  
Natural Resources

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED GOVERNOR'S BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
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3 energy conservation measures or facility technology  
4 infrastructure upgrades and modernization measures recommended  
5 in the proposal would not exceed the amount to be saved in  
6 either energy or operational costs, or both, within a twenty-  
7 year period from the date of installation of such measures or  
8 upgrades, based on life-cycle costing calculations, if the  
9 recommendations in the proposal are followed.

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

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

1 companies.

2 4. A selected qualified provider shall provide a one  
3 hundred percent performance guarantee bond to the public  
4 corporation for the installation and faithful performance of  
5 the installed energy conservation measures or facility  
6 technology infrastructure upgrades as outlined in the energy  
7 performance-based contract.

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

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

1 shortfall shall be made whole by the qualified provider within  
2 sixty days. Excess documented and mutually agreed upon  
3 savings may be carried over to future years. A qualified  
4 provider shall provide the public corporation with a one  
5 hundred percent performance guarantee bond for installation  
6 and retrofit projects. A qualified provider shall guarantee  
7 the savings for the length of the contract and shall also  
8 provide the guaranteed performance bonds on an annual basis  
9 renewed each year for the term of the contract. An energy  
10 performance-based contract may provide for payments over a  
11 period of time, not to exceed twenty years.

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

18 Sec. 5. NEW SECTION. 297A.5 ENERGY PERFORMANCE-BASED  
19 CONTRACTS -- SUPPORT PROGRAM ESTABLISHED -- FEES.

20 1. The department of natural resources shall establish a  
21 support program to provide assistance to public corporations  
22 entering into energy performance-based contracts. The support  
23 program shall be available to public corporations on an  
24 optional, discretionary basis and may provide services to  
25 include but not be limited to prenegotiated and standardized  
26 energy performance-based contracts; third-party verification  
27 of energy audits; streamlined financing arrangements;  
28 providing information and guidance throughout the energy  
29 performance-based contract process, including installation of  
30 energy conservation measures, upgrades, and new construction;  
31 third-party assistance with dispute resolution; and follow-up  
32 assistance through savings guarantee resolutions and warranty  
33 replacements, if necessary.

34 2. The department shall establish procedures relating to  
35 the administration of the support program by rule and may

1 collect fees in an amount determined necessary to offset the  
2 costs associated with offering the program. Fees collected  
3 pursuant to this section shall be considered repayment  
4 receipts as defined in section 8.2 and may be retained by the  
5 department to administer the program.

6

EXPLANATION

7 This bill allows public corporations, through a request for  
8 proposals process, to enter into energy performance-based  
9 contracts with qualified providers for purposes of undertaking  
10 one or more energy conservation measures or facility  
11 technology infrastructure upgrades. The bill provides that a  
12 public corporation may enter into an energy performance-based  
13 contract with a qualified provider if it finds, after  
14 evaluating the proposal, that the total amount it would spend  
15 on the design, implementation, financing, and performance  
16 management of the energy conservation measures or facility  
17 technology infrastructure upgrades recommended in the proposal  
18 would not exceed the amount to be saved in either energy or  
19 operational costs, or both, within a 20-year period from the  
20 date of installation, based on life-cycle costing  
21 calculations, if the recommendations in the proposal are  
22 followed. The bill provides that a qualified provider shall  
23 be responsible for the measurement and verification of the  
24 savings generated by the energy conservation measures or  
25 facility technology infrastructure upgrades. The bill  
26 provides that a public corporation shall have these savings  
27 verified by a qualified independent third party. The bill  
28 provides that a public corporation has the right to terminate  
29 an energy performance-based contract at any time provided that  
30 written notice to the qualified provider is provided at least  
31 30 days prior to termination.

32 The bill provides that an energy performance-based contract  
33 shall include a written guarantee by a qualified provider of  
34 the amount of any actual energy and operational savings. The  
35 bill provides that a qualified provider shall reimburse a

1 public corporation for any shortfall of guaranteed energy cost  
2 performance or payment projected in the contract and that  
3 actual savings documentation shall be reconciled on an annual  
4 basis as provided in the contract. The bill provides that a  
5 qualified provider shall guarantee the savings for the length  
6 of the contract and shall also provide guaranteed performance  
7 bonds on an annual basis renewed each year for the term of the  
8 contract. The bill provides that a public corporation shall  
9 not have any state financial assistance or any appropriations  
10 or reimbursements reduced as a result of energy and  
11 operational savings realized from an energy performance-based  
12 contract for the installation of energy conservation measures  
13 or facility technology infrastructure upgrades.

14 The bill requires the department of natural resources to  
15 establish a support program to provide assistance to public  
16 corporations entering into energy performance-based contracts.  
17 The support program shall be available on an optional,  
18 discretionary basis to provide services specified in the bill.  
19 The bill provides that the department shall establish  
20 procedures relating to administration of the program by rule  
21 and may collect and retain fees to offset the costs associated  
22 with offering the program.

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