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JASON D. GEDDES, PH.D.
ASSEMBLYMAN
District No. 24



DISTRICT OFFICE:
750 Putnam Drive
Reno, Nevada 89503-5900
Office: (775) 750-2402
Fax No.: (775) 784-4553

COMMITTEES:
Member
Education
Judiciary
Natural Resources, Agriculture,
and Mining

LEGISLATIVE BUILDING:
401 S. Carson Street
Carson City, Nevada 89701-4747
Office: (775) 684-8559
Fax No.: (775) 684-8815

State of Nevada Assembly

Seventy-Second Session

NEVADA MODEL OPERATING SAVINGS PERFORMANCE CONTRACTING LEGISLATION

PURPOSE

The purpose of this legislation is to add a new code section allowing state departments and all other public entities, universities and colleges, public schools, cities and counties, etc., to enter into energy, water, waste disposal and other resource saving (collectively referred to as "operating cost savings") performance contracts, either as installment payment or lease-purchase contracts, without going through a lowest-bid process.

For example, an energy savings performance contract is an affordable way for a public entity to make investments in new energy-efficient equipment. The upgrades are made now--with no up-front capital—and are paid for later through the energy savings that result. The benefits are immediate, getting new equipment and expertise from energy service professionals, ongoing maintenance services, the ability to eliminate need for deferred maintenance or equipment replacement costs from capital improvements plan budgets, and the ability to accomplish many needs all at once as part of a package. In addition, implementation of operating cost savings projects will reduce or eliminate loss of employee productivity in buildings that do not meet comfort, health, and safety needs of occupants, including those of the general public. Best of all, these savings can be guaranteed.

FISCAL IMPACT

There will be no negative impact to the General Fund. In fact, a **positive** impact may be achieved as capital improvement projects are financed through operating savings rather than through appropriations from the General Fund.

C1 of 16

ASSEMBLY GOVERNMENT AFFAIRS C1-16
DATE: 4/8/03 ROOM: 3143 EXHIBIT C
SUBMITTED BY: Assemblyman Jason Geddes

PROPOSED AMENDMENTS TO A.B. 398

Presented by Jason Geddes, Ph.D., Washoe District 24

1. Repeal of NRS 338.1907. Purpose: this bill provides a much needed, comprehensive overhaul of the existing statute in order to significantly expand the types of operating costs, and buildings and non-building public works infrastructure that can be addressed through operational savings performance contracting.
2. Need for policy statement: Purpose: to state it is the intention of the legislature that the new sections created by this bill are to be used as the single means of approving operational savings performance contract projects entered into by the state where such contracts do not create debt in accord with the provisions of this bill. State projects developed in accord with NRS 338.1906, that create debt, must continue to comply with NRS 353.500.
The purpose of this legislation is to add a new code section allowing state departments and all other public entities, universities and colleges, public schools, cities and counties, etc., to enter into energy, water, waste disposal and other resource saving (collectively referred to as "operating cost savings") performance contracts, either as installment payment or lease-purchase contracts, without going through a lowest-bid process.
3. Clarify definition of "Building" in Section 3 and Section 17: Purpose: To expand definition to include all manner of proposed construction as well as existing public works infrastructure, including occupied and non-occupied buildings, structures, or other improvements that incur operating costs as defined in this bill.
4. Modify Section 5(1) and 19(1) to eliminate "water" Purpose: subsection refers to energy supplies.
5. Eliminate Section 5(2) and 19(2): Purpose: wording is same as that covered in existing subsection 6 of sections 5 and 19.
6. Move section 5(4) and 19(4) to subsections 6 of each respective section: Purpose: More logical placement of this wording
7. Eliminate last sentence in Section 8(1) and section 22(1): Purpose: Will reduce project scope of operating savings measures that can cost-effectively be included in a project, as savings would have to pay for materials/equipment/labor that doesn't result in savings of some kind.
8. Modify Section 8(4) and 22(4) to include "Company financial health statements and ratings and required Nevada design, engineering, and construction licenses"
9. Modify first line, Section 9(2)(a) and section 23(2)(a) to change "energy" to "operating". Purpose: to be consistent with intent of bill.
10. Change "25" to "20" in section 10(2) and section 25(2): Purpose: to make length of contract term consistent with the Constitutional contract term limit that applies to projects that create debt per Article 9, section 3.
11. Eliminate subsection 4 of section 10 Purpose: subsection's intent can easily be misinterpreted to require a separate budget appropriation that is unnecessary.
12. Revise subsection 2 of section 22 to read: "The State Public Works Board shall be responsible for the pre-qualification of qualified service companies. In so doing, the Board shall enlist the assistance of staff of the Nevada State Office of Energy, Buildings and

Ground Division, and State Purchasing Division. The Board shall prepare and issue a request for qualifications, request for proposals, or a combination thereof, to no less than three or more than six service companies meeting the definition of this act". Purpose: to assign pre-qualification responsibility to the State Public Works Board instead of the Purchasing Division, to be consistent with NRS 338.1906.

13. Revise subsection 3 of section 22 to change reference to the Purchasing Division to instead reference the State Public Works Board and to state that the balance of subsections and 4 of section 22 will also be placed into subsections 1-5 of NRS 338.1906. Purpose: To provide consistency between related sections of NRS 333 and 338.
14. Insert into section 22, a subsection that states the following: "Where using agency staff does not possess sufficient technical expertise to review and select appropriate project savings measures in coordination with the performance contractor(s), then upon request by the agency, the Purchasing Division will procure sufficient funding from the performance contractor, through negotiation, the professional services of a third-party consultant with the requisite technical expertise documented to the same or equal to the "Certified Energy Manager" accreditation offered by the Association of Energy Engineers. This consultant will then work on behalf of the using agency staff in coordination with the performance contractor(s)." Purpose: To provide for technical assistance as necessary.
15. Insert new subsection in section 22 before existing subsection 5 to read: "For the purposes of the new section created by this act in Chapter 333 of NRS, the Purchasing Division will work directly with state agencies interested in entering into a operating savings performance contract project and using the list of pre-qualified service companies developed by the State Public Works Board in accord with NRS 338.1906. The Division, in conjunction with the using agency, will coordinate an opportunity for all qualified service companies to perform a preliminary and comprehensive audit and assessment of all operating savings measure opportunities within the agency's facility(ies), including those specifically desired by the using agency, and provide for opportunity of the pre-qualified service companies to submit a proposal and make a related presentation to the using agency. The using agency will then select the service company that it believes is most responsive to its needs to enter into a performance contract, under the direction of the Purchasing Division." Purpose: to revise the existing language of subsection 5 of section 22 of AB 398 to properly reflect my intent.
16. Modify the numbering and wording in the first sentence of existing subsection 5 of section 22 to replace "Purchasing Division" with "using agency", and to replace "energy audit or utility" with "operating cost". Purpose: to clarify wording for consistency with the Act.
17. Reword and renumber as necessary, in light of other amendments included in this list, existing section 24 to read: "Notwithstanding any provision of sections 16 to 29, inclusive, of this act to the contrary, a performance contract entered into pursuant to sections 16 to 29, inclusive, of this act may create no debt for the purposes of Nevada Constitution Article 9, section 3 and such a contract may extend beyond the biennium in which the contract is executed but it must containing a provision ("non-appropriations clause") which states that all of the state's obligations under the contract are extinguished at the end of a fiscal year by the failure of the legislature of appropriate money for the ensuing fiscal year for payment of the amounts then due under the contract. In the event the state does fail to appropriate money for any such contract, there shall be no remedy against the state, however, if the state has granted a security interest in property being acquired pursuant to

that contract , the owner of the security interest is entitled to enforce its rights against the property in which the security interest was granted. The term of any such contract may not exceed 15 years after the date such debt is created or 20 years after adoption of this act.

Purpose: to provide strongly needed clarity per the request of the state's bond counsel, State Treasurer's Office, contract project stakeholders, and all bill supporters.

18. Modify fourth line 37 of subsection 2 of section 25 to delete "appropriation of money by the legislature" and replace with "the requirement of section 24. Purpose: This change will eliminate the concerns of the bill's supporters that there is no need for this wording because of the non-appropriations clause and the ability for the using agency to make its contract payments out of the project's operating savings.
19. Amend subsection 4 of section 25 to read: "A using agency shall be allowed to maintain sufficient funds in its related operating expense budget(s) to make payment of any amounts payable under the performance contract and to pay post-project operating budget expenses." Purpose: to address the concern of state agency and industry concerns that the legislature will take away existing budgeted revenue needed to make the necessary contract payments over the term of the contract.
20. Eliminate section 26 in its entirety. Purpose: This section is unnecessary and served to create considerable uncertainty and concern with respect to the concern addressed by amendments #18 and #19.

In addition, there are amendments being brought forth by Clark County and I am in full agreement with them and will incorporate.

PROPOSED AMENDMENT TO ASSEMBLY BILL NO. 398

PREPARED FOR ASSEMBLYMEN GEDDES
APRIL 8, 2003

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~green bold double strikethrough~~ is language proposed to be deleted in this amendment and (5) ~~green bold dashed underlining~~ is deleted language in the original bill that is proposed to be retained in this amendment.

Section 1. Chapter 332 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this act.

Sec. 2. *As used in sections 2 to 14, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 3. *“Building” means any structure, building or facility, including any equipment, furnishings or appliances within the structure, building or facility, that is owned or operated by a local government including occupied and non-occupied buildings, structures, or other improvements that incur operating costs.*

Sec. 4. *“Operating cost savings” means any expenses that are eliminated or avoided on a long-term basis as a result of the installation or modification of equipment, or services performed by a qualified service company. The term does not include any savings that are realized solely because of a shift in the cost of personnel or other similar short-term cost savings.*

Sec. 5. *“Operating cost-savings measure” means any improvement, repair or alteration to a building, or any equipment, fixture or furnishing to be added or used in a building that is designed to reduce operating costs, including those costs related to electrical energy and demand, thermal energy, water consumption, waste disposal and contract-labor costs, and increase the operating efficiency of the building for the appointed functions that are cost-effective. The term includes, without limitation:*

- 1. Procurement of low-cost energy supplies, including electricity and natural gas ~~and water.~~*
- 2. Procurement and installation of energy efficient technologies, including, without limitation, ~~technologies that use combined heat and power, and technologies that use renewable energy.~~*
- ~~3. Procurement of cost savings as a result of outsourcing energy needs for electrical power, heating and cooling.~~*
- ~~4. Material and labor costs required to replace old equipment with new, more efficient equipment.~~*

~~5.~~ 3. *Operational or maintenance labor savings resulting from reduced costs for maintenance contracts as provided through reduction of required maintenance or operating tasks, including, without limitation, replacement of filters and lighting products, and equipment failures.*

~~6.~~ 4. *Investment in equipment, products and materials, and strategies for building operation, or any combination thereof, designed to reduce energy and other utility expenses, including, without limitation:*

(a) Installation of insulating products or materials in the structure or systems of a building.

(b) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated windows or doors, reductions in glass area, and other modifications to windows and doors that will reduce energy consumption.

(c) Automated or computerized energy control systems.

(d) Replacement of, or modifications to, heating, ventilation or air-conditioning systems.

(e) Replacement of, or modifications to, lighting fixtures.

(f) Improvements to the indoor air quality of a building that conform to all requirements of an applicable building code.

(g) Energy recovery systems.

(h) Systems for combined cooling, heating and power that produce steam or other forms of energy, for use primarily within the building or a complex of buildings.

(i) Installation of, or modifications to, existing systems for daylighting, including lighting control systems.

(j) Installation of, or modification to, technologies that use renewable or alternative energy sources.

(k) Programs relating to building operation that reduce operating costs, including, without limitation, computerized programs, training and other similar activities.

(l) Programs for improvement of steam traps to reduce operating costs.

(m) Devices that reduce water consumption in buildings, for lawns and for other irrigation applications.

(n) Any additional improvements to building infrastructures that produce energy and operating cost savings, improve safety, significantly reduce energy consumption or increase the operating efficiency of the buildings for their appointed functions, provided that such improvements comply with applicable building codes.

(o) Trash compaction and waste minimization.

(p) Material and labor costs required to replace old equipment with new, more efficient equipment.

~~7.~~ 5. *Investment in training and educational programs for operators of buildings.*

~~—§ 6.~~ *Investment in educational programs relating to occupational behavior that are designed to reduce the consumption of energy or water, or both, and the generation of waste.*

Sec. 6. "Performance contract" means a contract between a local government and a qualified service company for the evaluation, recommendation and implementation of one or more operating cost-savings measures.

Sec. 7. "Qualified service company" means a person with a record of established projects or a person with demonstrated technical, operational, financial and managerial capabilities to design and carry out operating cost-savings measures and other similar building improvements, and who has the ability to secure necessary financial measures to ensure related guarantees for operating cost savings.

Sec. 8. 1. Notwithstanding any provision of this chapter and chapter 338 of NRS to the contrary, a local government may enter into a performance contract with a qualified service company for the purchase and installation of an operating cost-savings measure to reduce costs related to energy, water and the disposal of waste, and related labor costs. Such a performance contract may be in the form of an installment payment contract or a lease-purchase contract. Any operating cost-savings measures put into place as a result of a performance contract must comply with all applicable building codes. ~~A local government may carry out an operating cost-savings measure pursuant to a performance contract in conjunction with other capital improvements provided that the operating cost-savings measures being carried out to achieve energy, water or contract labor operating cost savings represent a majority of the overall project.~~

2. ~~The~~ Upon request of a using agency, the local government shall prepare and issue a request for qualifications to not less than three or more than five qualified service companies. ~~The local government may request assistance from any state agency in the review and selection of qualified service companies to receive performance contracts.~~

3. In sending out a request for qualifications, the local government:

- (a) Shall attempt to identify at least one qualified service company located within this state; and*
- (b) May consider whether and to what extent the qualified service company, to which the request for qualifications will be sent, will use local contractors.*

4. The local government shall use objective criteria in selecting a qualified service company. The objective criteria for evaluation must include the following areas as substantive factors to assess the capability of the qualified service company:

- (a) Design;*
- (b) Engineering;*
- (c) Installation;*
- (d) Maintenance and repairs associated with performance contracts;*

(e) Experience in conversions to different sources of energy or fuel and other services related to operating cost-savings measures provided that is done in association with a comprehensive energy, water or waste disposal cost-savings retrofit;

(f) Monitoring projects after the projects are installed;

(g) Data collection and reporting of savings;

(h) Overall project experience and qualifications;

(i) Management capability;

(j) Ability to access long-term financing;

(k) Experience with projects of similar size and scope; and

(l) Such other factors determined by the local government to be relevant and appropriate to the ability of the qualified service company to perform the project.

(m) Company financial health statements and ratings and required Nevada design, engineering, and construction licenses.

5. The qualified service company selected by the local government pursuant to subsection 4 shall prepare a financial-grade ~~energy audit or utility~~ operational audit, as specified by the local government. Except as otherwise provided in this subsection, the audit prepared by the qualified service company becomes, upon acceptance, a part of the final performance contract and the costs incurred by the qualified service company in preparing the audit shall be deemed to be part of the performance contract. If, after the audit is prepared, the local government decides not to execute the performance contract, the local government shall pay the qualified service company that prepared the audit the costs incurred by the qualified service company in preparing the audit if the local government specifically appropriated money for that purpose.

Sec. 9. 1. A performance contract may be financed through a person other than the qualified service company.

2. A performance contract may be structured as:

(a) A performance contract that guarantees ~~energy~~ operational savings, which includes, without limitation, the design and installation of equipment, the operation and maintenance, if applicable, of any of the operating cost-savings measures and the guaranteed annual savings which must meet or exceed the total annual contract payments to be made by the local government, including any financing charges to be incurred by the local government over the life of the performance contract. The local government may require that these savings be verified annually or over a sufficient period that demonstrates savings.

(b) A shared-savings contract which includes provisions mutually agreed upon by the local government and qualified service company as to the negotiated rate of payments based upon operating

cost savings and a stipulated maximum consumption level of energy or water, or both energy and water, over the life of the contract.

Sec. 10. 1. A performance contract must provide that all payments, other than any obligations that become due if the contract is terminated before the contract expires, must be made over time.

2. Except as otherwise provided in this subsection, a performance contract, and the payments provided thereunder, may extend beyond the fiscal year in which the performance contract becomes effective for costs incurred in future fiscal years. The performance contract may extend for a term not to exceed ~~25~~ 20 years. The length of a performance contract may reflect the useful life of the operating cost-savings measure being installed or purchased under the performance contract.

3. A performance contract may provide for payments over a period not to exceed the deadlines in the performance contract from the date of the final installation of the operating cost-savings measures.

~~4. A local government shall include in its budget sufficient money for each fiscal year to make payment of any amounts payable by the local government under its performance contracts during the fiscal year.~~

Sec. 11. ~~A local governmental body~~ local government may reinvest any savings realized under a performance contract whenever practical into operating cost-savings measures provided the ~~local governmental body~~ local government is satisfying all its other obligations under the performance contract.

Sec. 12. 1. During the term of a performance contract, the qualified service company shall monitor the reductions in energy or water consumption and other operating cost savings attributable to the operating cost-savings measure purchased or installed under the performance contract, and shall, at least once a year or at such other intervals specified in the performance contract, prepare and provide a report to the local government documenting the performance of the operating cost-savings measures. The performance contract shall define the methodology that the local government shall use to validate the cost savings identified by the qualified service company.

2. A qualified service company and the local government may agree to make modifications in the calculation of savings based on:

(a) Subsequent material changes to the baseline consumption of energy or water identified at the beginning of the term of the performance contract.

(b) A change in utility rates.

(c) A change in the number of days in the billing cycle of a utility.

(d) A change in the total square footage of the building.

(e) A change in the operational schedule, and any corresponding change in the occupancy and indoor temperature, of the building.

(f) *A material change in the weather.*

(g) *A material change in the amount of equipment or lighting used at the building.*

(h) *Any other change which reasonably would be expected to modify the use of energy or the cost of energy.*

Sec. 13. *A qualified service company shall provide to the Office of Energy within the Office of the Governor information concerning each performance contract which the qualified service company enters into pursuant to sections 2 to 14, inclusive, of this act, including, without limitation, the name of the project, the local government for which the project is being carried out and the expected operating cost savings. The Office of Energy may report any energy savings realized as a result of such performance contracts to the United States Department of Energy pursuant to 42 U.S.C. § 13385.*

Sec. 14. *A performance contract may include appropriate financial mechanisms determined to be necessary to guarantee that operating cost savings are realized by the local government if the actual cost savings do not meet the predicted cost savings.*

New Section Notwithstanding any provision of sections 2 to 14, inclusive, of this act to the contrary, a performance contract entered into pursuant to sections 2 to 14, inclusive, of this act must include a clause that sets out the rights of the local government and the qualified service company if the local government does not appropriate sufficient money for payments to be continued under the performance contract.

Sec. 15. Chapter 333 of NRS is hereby amended by adding thereto the provisions set forth as sections 16 to 29, inclusive, of this act.

Sec. 16. *As used in sections 16 to 29, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 17 to 21, inclusive, of this act, have the meanings ascribed to them in those sections.*

Sec. 17. *“Building” means any structure, building or facility, including any equipment, furnishings or appliances within the structure, building or facility, that is owned or operated by a using agency including occupied and non-occupied buildings, structures, or other improvements that incur operating costs.*

Sec. 18. *“Operating cost savings” means any expenses that are eliminated or avoided on a long-term basis as a result of the installation or modification of equipment, or services performed by a qualified service company. The term does not include any savings that are realized solely because of a shift in the cost of personnel or other similar short-term cost savings.*

Sec. 19. *“Operating cost-savings measure” means any improvement, repair or alteration to a building, or any equipment, fixture or furnishing to be added or used in a building that is designed to reduce operating costs, including those costs related to electrical energy and demand, thermal energy,*

water consumption, waste disposal and contract-labor costs, and increase the operating efficiency of the building for the appointed functions that are cost-effective. The term includes, without limitation:

- 1. Procurement of low-cost energy supplies, including electricity, and natural gas and water.*
- 2. Procurement and installation of energy efficient technologies, including, without limitation, technologies that use combined heat and power, and technologies that use renewable energy.*
- ~~*3. Procurement of cost savings as a result of outsourcing energy needs for electrical power, heating and cooling.*~~
- ~~*4. Material and labor costs required to replace old equipment with new, more efficient equipment.*~~
- ~~*5. 3. Operational or maintenance labor savings resulting from reduced costs for maintenance contracts as provided through reduction of required maintenance or operating tasks, including, without limitation, replacement of filters and lighting products, and equipment failures.*~~
- ~~*6. 4. Investment in equipment, products and materials, and strategies for building operation, or any combination thereof, designed to reduce energy and other utility expenses, including, without limitation:*~~

- (a) Installation of insulating products or materials in the structure or systems of a building.*
- (b) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated windows or doors, reductions in glass area, and other modifications to windows and doors that will reduce energy consumption.*
- (c) Automated or computerized energy control systems.*
- (d) Replacement of, or modifications to, heating, ventilation or air-conditioning systems.*
- (e) Replacement of, or modifications to, lighting fixtures.*
- (f) Improvements to the indoor air quality of a building that conform to all requirements of an applicable building code.*
- (g) Energy recovery systems.*
- (h) Systems for combined cooling, heating and power that produce steam or other forms of energy, for use primarily within the building or a complex of buildings.*
- (i) Installation of, or modifications to, existing systems for daylighting, including lighting control systems.*
- (j) Installation of, or modification to, technologies that use renewable or alternative energy sources.*
- (k) Programs relating to building operation that reduce operating costs, including, without limitation, computerized programs, training and other similar activities.*
- (l) Programs for improvement of steam traps to reduce operating costs.*

Purchasing Division. The Board shall prepare and issue a request for qualifications, request for proposals, or a combination thereof, to no less than three or more than six service companies meeting the definition of this act

3. In sending out a request for qualifications, the Purchasing Division:

(a) Shall attempt to identify at least one qualified service company located within this state; and

(b) May consider whether and to what extent the qualified service company, to which the request for qualifications will be sent, will use local contractors.

4. ~~The Purchasing Division~~ State Public Works Board shall use objective criteria in selecting a qualified service company. The objective criteria for evaluation must include the following areas as substantive factors to assess the capability of the qualified service company:

(a) Design;

(b) Engineering;

(c) Installation;

(d) Maintenance and repairs associated with performance contracts;

(e) Experience in conversions to different sources of energy or fuel and other services related to operating cost-savings measures provided that is done in association with a comprehensive energy, water or waste disposal cost-savings retrofit;

(f) Monitoring projects after the projects are installed;

(g) Data collection and reporting of savings;

(h) Overall project experience and qualifications;

(i) Management capability;

(j) Ability to access long-term financing;

(k) Experience with projects of similar size and scope; and

(l) Such other factors determined by the Purchasing Division to be relevant and appropriate to the ability of the qualified service company to perform the project.

(m) Company financial health statements and ratings and required Nevada design, engineering, and construction licenses

5. For the purposes of the new section created by this act in Chapter 333 of NRS, the Purchasing Division will work directly with state agencies interested in entering into a operating savings performance contract project and using the list of pre-qualified service companies developed by the State Public Works Board in accord with NRS 338.1906. The Division, in conjunction with the using agency, will coordinate an opportunity for all qualified service companies to perform a preliminary and comprehensive audit and assessment of all operating savings measure opportunities within the agency's facility(ies), including those specifically desired by the using agency, and provide for

(m) Devices that reduce water consumption in buildings, for lawns and for other irrigation applications.

(n) Any additional improvements to building infrastructures that produce energy and operating cost savings, improve safety, significantly reduce energy consumption or increase the operating efficiency of the buildings for their appointed functions, provided that such improvements comply with applicable building codes.

(o) Trash compaction and waste minimization.

(p) Material and labor costs required to replace old equipment with new, more efficient equipment.

~~7-5. Investment in training and educational programs for operators of buildings.~~

~~8-6. Investment in educational programs relating to occupational behavior that are designed to reduce the consumption of energy or water, or both, and the generation of waste.~~

Sec. 20. "Performance contract" means a contract between a using agency and a qualified service company for the evaluation, recommendation and implementation of one or more operating cost-savings measures.

Sec. 21. "Qualified service company" means a person with a record of established projects or a person with demonstrated technical, operational, financial and managerial capabilities to design and carry out operating cost-savings measures and other similar building improvements, and who has the ability to secure necessary financial measures to ensure related guarantees for operating cost savings.

Sec. 22. 1. Notwithstanding any provision of this chapter and chapter 338 of NRS to the contrary, a using agency may enter into a performance contract with a qualified service company for the purchase and installation of an operating cost-savings measure to reduce costs related to energy, water and the disposal of waste, and related labor costs. Such a performance contract may be in the form of an installment payment contract or a lease-purchase contract. Any operating cost-savings measures put into place as a result of a performance contract must comply with all applicable building codes. ~~A using agency may carry out an operating cost-savings measure pursuant to a performance contract in conjunction with other capital improvements provided that the operating cost-savings measures being carried out to achieve energy, water or contract labor operating cost savings represent a majority of the overall project.~~

2. ~~Upon the request of a using agency, the Purchasing Division shall prepare and issue a request for qualifications to not less than three or more than five qualified service companies. The Purchasing Division may request assistance from any other state agency in the review and selection of qualified service companies to receive performance contracts. The State Public Works Board shall be responsible for the pre-qualification of qualified service companies. In so doing, the Board shall enlist the assistance of staff of the Nevada State Office of Energy, Buildings and Ground Division, and State~~

opportunity of the pre-qualified service companies to submit a proposal and make a related presentation to the using agency. The using agency will then select the service company that it believes is most responsive to its needs to enter into a performance contract, under the direction of the Purchasing Division

6. The qualified service company selected by the ~~Purchasing Division~~ using agency pursuant to subsection 4 shall prepare a financial-grade ~~energy audit or utility~~ operating cost audit, as specified by the Purchasing Division. Except as otherwise provided in this subsection, the audit prepared by the qualified service company becomes, upon acceptance, a part of the final performance contract and the costs incurred by the qualified service company in preparing the audit shall be deemed to be part of the performance contract. If, after the audit is prepared, the using agency decides not to execute the performance contract, the using agency shall pay the qualified service company that prepared the audit the costs incurred by the qualified service company in preparing the audit, if the Legislature has specifically appropriated money for that purpose. An appropriation by the Legislature for the purchase and installation of an operating cost-savings measure creates no presumption that the using agency for whom the money was appropriated is required to enter into such a contract.

7. Where using agency staff does not possess sufficient technical expertise to review and select appropriate project savings measures in coordination with the performance contractor(s), then upon request by the agency, the Purchasing Division will procure sufficient funding from the performance contractor, through negotiation, the professional services of a third-party consultant with the requisite technical expertise documented to the same or equal to the "Certified Energy Manager" accreditation offered by the Association of Energy Engineers. This consultant will then work on behalf of the using agency staff in coordination with the performance contractor(s).

Sec. 23. 1. A performance contract may be financed through a person other than the qualified service company.

2. A performance contract may be structured as:

(a) A performance contract that guarantees ~~energy~~ operational savings, which includes, without limitation, the design and installation of equipment, the operation and maintenance, if applicable, of any of the operating cost-savings measures and the guaranteed annual savings which must meet or exceed the total annual contract payments to be made by the using agency, including any financing charges to be incurred by the using agency over the life of the performance contract. The using agency may require that these savings be verified annually or over a sufficient period that demonstrates savings.

(b) A shared-savings contract which includes provisions mutually agreed upon by the using agency and qualified service company as to the negotiated rate of payments based upon operating cost savings

and a stipulated maximum consumption level of energy or water, or both energy and water, over the life of the contract.

Sec. 24. ~~Notwithstanding any provision of sections 16 to 29, inclusive, of this act to the contrary, a performance contract entered into pursuant to sections 16 to 29, inclusive, of this act must include a clause that sets out the rights of the using agency and the qualified service company if the Legislature does not appropriate sufficient money to the using agency for payments to be continued under the performance contract.~~ Notwithstanding any provision of sections 16 to 29, inclusive, of this act to the contrary, a performance contract entered into pursuant to sections 16 to 28, inclusive, of this act may create no debt for the purposes of Nevada Constitution Article 9, section 3 and such a contract may extend beyond the biennium in which the contract is executed but it must contain a provision ("non-appropriations clause") which states that all of the state's obligations under the contract are extinguished at the end of a fiscal year by the failure of the legislature of appropriate money for the ensuing fiscal year for payment of the amounts then due under the contract. In the event the state does fail to appropriate money for any such contract, there shall be no remedy against the state, however, if the state has granted a security interest in property being acquired pursuant to that contract, the owner of the security interest is entitled to enforce its rights against the property in which the security interest was granted. The term of any such contract may not exceed 15 years after the date such debt is created or 20 years after adoption of this act.

Sec. 25. 1. A performance contract must provide that all payments, other than any obligations that become due if the contract is terminated before the contract expires, must be made over time.

2. Except as otherwise provided in this subsection, a performance contract, and the payments provided thereunder, may extend beyond the fiscal year in which the performance contract becomes effective, subject to ~~the appropriation of money by the Legislature~~ the requirement of section 24, for costs incurred in future fiscal years. The performance contract may extend for a term not to exceed ~~25~~ 20 years. The length of a performance contract may reflect the useful life of the operating cost-savings measure being installed or purchased under the performance contract.

3. A performance contract may provide for payments over a period not to exceed the deadlines in the performance contract from the date of the final installation of the operating cost-savings measures.

4. ~~A using agency shall include in its budget, subject to appropriations by the Legislature, sufficient money for each fiscal year to make payment of any amounts payable by the using agency under its performance contracts during the fiscal year.~~ A using agency shall be allowed to maintain sufficient funds in its related operating expense budget(s) to make payment of any amounts payable under the performance contract and to pay post-project operating budget expenses.

~~Sec. 26. Any savings realized from a performance contract reverts to the State General Fund, except that a using agency may seek approval of the Legislature, or the Interim Finance Committee if the Legislature is not in session, and the Governor to use the savings to make payments under the performance contract and pay any other expenses under the performance contract as the using agency determines necessary.~~

~~Sec. 27.~~ 1. During the term of a performance contract, the qualified service company shall monitor the reductions in energy or water consumption and other operating cost savings attributable to the operating cost-savings measure purchased or installed under the performance contract, and shall, at least once a year or at such other intervals specified in the performance contract, prepare and provide a report to the using agency documenting the performance of the operating cost-savings measures.

2. A qualified service company and the using agency may agree to make modifications in the calculation of savings based on:

(a) Subsequent material changes to the baseline consumption of energy or water identified at the beginning of the term of the performance contract.

(b) A change in utility rates.

(c) A change in the number of days in the billing cycle of a utility.

(d) A change in the total square footage of the building.

(e) A change in the operational schedule, and any corresponding change in the occupancy and indoor temperature, of the building.

(f) A material change in the weather.

(g) A material change in the amount of equipment or lighting used at the building.

(h) Any other change which reasonably would be expected to modify the use of energy or the cost of energy.

~~Sec. 28.~~ 27. A qualified service company shall provide to the Office of Energy within the Office of the Governor information concerning each performance contract which the qualified service company enters into pursuant to sections 16 to 29, inclusive, of this act, including, without limitation, the name of the project, the using agency for which the project is being carried out and the expected operating cost savings. The Office of Energy may report any energy savings realized as a result of such performance contracts to the United States Department of Energy pursuant to 42 U.S.C. § 13385.

~~Sec. 29.~~ 28. A performance contract may include appropriate financial mechanisms determined to be necessary to guarantee that operating cost savings are realized by the using agency if the actual cost savings do not meet the predicted cost savings.

~~Sec. 30.~~ 29. This act becomes effective on July 1, 2003.

In addition, delete NRS 338.1907 in its entirety.