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ASSEMBLY BILL NO. 398—ASSEMBLYMEN GEDDES, HETRICK, HARDY, BEERS, KNECHT, ANDERSON, ANDONOV, ARBERRY, BUCKLEY, CARPENTER, CHOWNING, CHRISTENSEN, COLLINS, CONKLIN, GIBBONS, GIUNCHIGLIANI, GOICOECHEA, GOLDWATER, GRADY, GRIFFIN, GUSTAVSON, HORNE, KOIVISTO, LESLIE, MABEY, MANENDO, MARVEL, MORTENSON, PARKS, PERKINS, PIERCE, SHERER AND WEBER

MARCH 17, 2003

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JOINT SPONSORS: SENATORS TOWNSEND AND AMODEI

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Referred to Committee on Government Affairs

SUMMARY—Revises procedure pursuant to which certain performance contracts for cost-savings energy measures in buildings occupied by governmental entities are bid. (BDR 27-1115)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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AN ACT relating to purchasing; revising the procedures pursuant to which certain performance contracts for the installation or purchase of cost-savings energy measures in buildings occupied by state and local governmental entities are bid; providing the types and terms of such performance contracts; providing limitations on such performance contracts entered into by state agencies; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:



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

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

8       **Sec. 3.** *“Building” means any structure, building or facility,*  
9 *including any equipment, furnishings or appliances within the*  
10 *structure, building or facility, that is owned or operated by a local*  
11 *government.*

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

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

26       1. *Procurement of low-cost energy supplies, including*  
27 *electricity, natural gas and water.*

28       2. *Procurement and installation of energy efficient*  
29 *technologies, including, without limitation, technologies that use*  
30 *combined heat and power, and technologies that use renewable*  
31 *energy.*

32       3. *Procurement of cost savings as a result of outsourcing*  
33 *energy needs for electrical power, heating and cooling.*

34       4. *Material and labor costs required to replace old equipment*  
35 *with new, more efficient equipment.*

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

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



- 1 (a) *Installation of insulating products or materials in the*
- 2 *structure or systems of a building.*
- 3 (b) *Storm windows or doors, caulking or weather stripping,*
- 4 *multiglazed windows or doors, heat-absorbing or heat-reflective*
- 5 *glazed or coated windows or doors, reductions in glass area, and*
- 6 *other modifications to windows and doors that will reduce energy*
- 7 *consumption.*
- 8 (c) *Automated or computerized energy control systems.*
- 9 (d) *Replacement of, or modifications to, heating, ventilation or*
- 10 *air-conditioning systems.*
- 11 (e) *Replacement of, or modifications to, lighting fixtures.*
- 12 (f) *Improvements to the indoor air quality of a building that*
- 13 *conform to all requirements of an applicable building code.*
- 14 (g) *Energy recovery systems.*
- 15 (h) *Systems for combined cooling, heating and power that*
- 16 *produce steam or other forms of energy, for use primarily within*
- 17 *the building or a complex of buildings.*
- 18 (i) *Installation of, or modifications to, existing systems for*
- 19 *daylighting, including lighting control systems.*
- 20 (j) *Installation of, or modification to, technologies that use*
- 21 *renewable or alternative energy sources.*
- 22 (k) *Programs relating to building operation that reduce*
- 23 *operating costs, including, without limitation, computerized*
- 24 *programs, training and other similar activities.*
- 25 (l) *Programs for improvement of steam traps to reduce*
- 26 *operating costs.*
- 27 (m) *Devices that reduce water consumption in buildings, for*
- 28 *lawns and for other irrigation applications.*
- 29 (n) *Any additional improvements to building infrastructures*
- 30 *that produce energy and operating cost savings, improve safety,*
- 31 *significantly reduce energy consumption or increase the operating*
- 32 *efficiency of the buildings for their appointed functions, provided*
- 33 *that such improvements comply with applicable building codes.*
- 34 (o) *Trash compaction.*
- 35 7. *Investment in training and educational programs for*
- 36 *operators of buildings.*
- 37 8. *Investment in educational programs relating to*
- 38 *occupational behavior that are designed to reduce the*
- 39 *consumption of energy or water, or both, and the generation of*
- 40 *waste.*
- 41 **Sec. 6.** *“Performance contract” means a contract between a*
- 42 *local government and a qualified service company for the*
- 43 *evaluation, recommendation and implementation of one or more*
- 44 *operating cost-savings measures.*



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

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

23       **2.** *The local government shall prepare and issue a request for*  
24 *qualifications to not less than three or more than five qualified*  
25 *service companies. The local government may request assistance*  
26 *from any state agency in the review and selection of qualified*  
27 *service companies to receive performance contracts.*

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

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

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

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

39       **(a)** *Design;*

40       **(b)** *Engineering;*

41       **(c)** *Installation;*

42       **(d)** *Maintenance and repairs associated with performance*  
43 *contracts;*

44       **(e)** *Experience in conversions to different sources of energy or*  
45 *fuel and other services related to operating cost-savings measures*



- 1 *provided that is done in association with a comprehensive energy,*
- 2 *water or waste disposal cost-savings retrofit;*
- 3 *(f) Monitoring projects after the projects are installed;*
- 4 *(g) Data collection and reporting of savings;*
- 5 *(h) Overall project experience and qualifications;*
- 6 *(i) Management capability;*
- 7 *(j) Ability to access long-term financing;*
- 8 *(k) Experience with projects of similar size and scope; and*
- 9 *(l) Such other factors determined by the local government to*
- 10 *be relevant and appropriate to the ability of the qualified service*
- 11 *company to perform the project.*

12 *5. The qualified service company selected by the local*  
13 *government pursuant to subsection 4 shall prepare a financial-*  
14 *grade energy audit or utility audit, as specified by the local*  
15 *government. Except as otherwise provided in this subsection, the*  
16 *audit prepared by the qualified service company becomes, upon*  
17 *acceptance, a part of the final performance contract and the costs*  
18 *incurred by the qualified service company in preparing the audit*  
19 *shall be deemed to be part of the performance contract. If, after*  
20 *the audit is prepared, the local government decides not to execute*  
21 *the performance contract, the local government shall pay the*  
22 *qualified service company that prepared the audit the costs*  
23 *incurred by the qualified service company in preparing the audit.*

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

26 **2.** *A performance contract may be structured as:*

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

37 *(b) A shared-savings contract which includes provisions*  
38 *mutually agreed upon by the local government and qualified*  
39 *service company as to the negotiated rate of payments based upon*  
40 *operating cost savings and a stipulated maximum consumption*  
41 *level of energy or water, or both energy and water, over the life of*  
42 *the contract.*

43 **Sec. 10. 1.** *A performance contract must provide that all*  
44 *payments, other than any obligations that become due if the*



1 *contract is terminated before the contract the expires, must be*  
2 *made over time.*

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

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

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

19 **Sec. 11.** *A local governmental body may reinvest any savings*  
20 *realized under a performance contract whenever practical into*  
21 *operating cost-savings measures provided the local governmental*  
22 *body is satisfying all its other obligations under the performance*  
23 *contract.*

24 **Sec. 12. 1.** *During the term of a performance contract, the*  
25 *qualified service company shall monitor the reductions in energy*  
26 *or water consumption and other operating cost savings*  
27 *attributable to the operating cost-savings measure purchased or*  
28 *installed under the performance contract, and shall, at least once*  
29 *a year or at such other intervals specified in the performance*  
30 *contract, prepare and provide a report to the local government*  
31 *documenting the performance of the operating cost-savings*  
32 *measures.*

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

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

39 *(b) A change in utility rates.*

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

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

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



1       (f) *A material change in the weather.*  
2       (g) *A material change in the amount of equipment or lighting*  
3 *used at the building.*

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

6       **Sec. 13.** *A qualified service company shall provide to the*  
7 *Office of Energy within the Office of the Governor information*  
8 *concerning each performance contract which the qualified service*  
9 *company enters into pursuant to sections 2 to 14, inclusive, of this*  
10 *act, including, without limitation, the name of the project, the*  
11 *local government for which the project is being carried out and*  
12 *the expected operating cost savings. The Office of Energy may*  
13 *report any energy savings realized as a result of such performance*  
14 *contracts to the United States Department of Energy pursuant to*  
15 *42 U.S.C. § 13385.*

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

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

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

27       **Sec. 17.** *“Building” means any structure, building or facility,*  
28 *including any equipment, furnishings or appliances within the*  
29 *structure, building or facility, that is owned or operated by a using*  
30 *agency.*

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

37       **Sec. 19.** *“Operating cost-savings measure” means any*  
38 *improvement, repair or alteration to a building, or any equipment,*  
39 *fixture or furnishing to be added or used in a building that is*  
40 *designed to reduce operating costs, including those costs related to*  
41 *electrical energy and demand, thermal energy, water consumption,*  
42 *waste disposal and contract-labor costs, and increase the*  
43 *operating efficiency of the building for the appointed functions*  
44 *that are cost-effective. The term includes, without limitation:*



- 1     1. *Procurement of low-cost energy supplies, including*
- 2     *electricity, natural gas and water.*
- 3     2. *Procurement and installation of energy efficient*
- 4     *technologies, including, without limitation, technologies that use*
- 5     *combined heat and power, and technologies that use renewable*
- 6     *energy.*
- 7     3. *Procurement of cost savings as a result of outsourcing*
- 8     *energy needs for electrical power, heating and cooling.*
- 9     4. *Material and labor costs required to replace old equipment*
- 10    *with new, more efficient equipment.*
- 11    5. *Operational or maintenance labor savings resulting from*
- 12    *reduced costs for maintenance contracts as provided through*
- 13    *reduction of required maintenance or operating tasks, including,*
- 14    *without limitation, replacement of filters and lighting products,*
- 15    *and equipment failures.*
- 16    6. *Investment in equipment, products and materials, and*
- 17    *strategies for building operation, or any combination thereof,*
- 18    *designed to reduce energy and other utility expenses, including,*
- 19    *without limitation:*
  - 20    (a) *Installation of insulating products or materials in the*
  - 21    *structure or systems of a building.*
  - 22    (b) *Storm windows or doors, caulking or weather stripping,*
  - 23    *multiglazed windows or doors, heat-absorbing or heat-reflective*
  - 24    *glazed or coated windows or doors, reductions in glass area, and*
  - 25    *other modifications to windows and doors that will reduce energy*
  - 26    *consumption.*
  - 27    (c) *Automated or computerized energy control systems.*
  - 28    (d) *Replacement of, or modifications to, heating, ventilation or*
  - 29    *air-conditioning systems.*
  - 30    (e) *Replacement of, or modifications to, lighting fixtures.*
  - 31    (f) *Improvements to the indoor air quality of a building that*
  - 32    *conform to all requirements of an applicable building code.*
  - 33    (g) *Energy recovery systems.*
  - 34    (h) *Systems for combined cooling, heating and power that*
  - 35    *produce steam or other forms of energy, for use primarily within*
  - 36    *the building or a complex of buildings.*
  - 37    (i) *Installation of, or modifications to, existing systems for*
  - 38    *daylighting, including lighting control systems.*
  - 39    (j) *Installation of, or modification to, technologies that use*
  - 40    *renewable or alternative energy sources.*
  - 41    (k) *Programs relating to building operation that reduce*
  - 42    *operating costs, including, without limitation, computerized*
  - 43    *programs, training and other similar activities.*
  - 44    (l) *Programs for improvement of steam traps to reduce*
  - 45    *operating costs.*





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

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

8 (o) *Trash compaction.*

9 7. *Investment in training and educational programs for*  
10 *operators of buildings.*

11 8. *Investment in educational programs relating to*  
12 *occupational behavior that are designed to reduce the*  
13 *consumption of energy or water, or both, and the generation of*  
14 *waste.*

15 **Sec. 20.** *“Performance contract” means a contract between a*  
16 *using agency and a qualified service company for the evaluation,*  
17 *recommendation and implementation of one or more operating*  
18 *cost-savings measures.*

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

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

41 2. *Upon the request of a using agency, the Purchasing*  
42 *Division shall prepare and issue a request for qualifications to not*  
43 *less than three or more than five qualified service companies. The*  
44 *Purchasing Division may request assistance from any other state*



1 *agency in the review and selection of qualified service companies*  
2 *to receive performance contracts.*

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

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

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

10 *4. The Purchasing Division shall use objective criteria in*  
11 *selecting a qualified service company. The objective criteria for*  
12 *evaluation must include the following areas as substantive factors*  
13 *to assess the capability of the qualified service company:*

14 *(a) Design;*

15 *(b) Engineering;*

16 *(c) Installation;*

17 *(d) Maintenance and repairs associated with performance*  
18 *contracts;*

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

23 *(f) Monitoring projects after the projects are installed;*

24 *(g) Data collection and reporting of savings;*

25 *(h) Overall project experience and qualifications;*

26 *(i) Management capability;*

27 *(j) Ability to access long-term financing;*

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

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

32 *5. The qualified service company selected by the Purchasing*  
33 *Division pursuant to subsection 4 shall prepare a financial-grade*  
34 *energy audit or utility audit, as specified by the Purchasing*  
35 *Division. Except as otherwise provided in this subsection, the audit*  
36 *prepared by the qualified service company becomes, upon*  
37 *acceptance, a part of the final performance contract and the costs*  
38 *incurred by the qualified service company in preparing the audit*  
39 *shall be deemed to be part of the performance contract. If, after*  
40 *the audit is prepared, the using agency decides not to execute the*  
41 *performance contract, the using agency shall pay the qualified*  
42 *service company that prepared the audit the costs incurred by the*  
43 *qualified service company in preparing the audit, if the*  
44 *Legislature has specifically appropriated money for that purpose.*  
45 *An appropriation by the Legislature for the purchase and*



1 *installation of an operating cost-savings measure creates no*  
2 *presumption that the using agency for whom the money was*  
3 *appropriated is required to enter into such a contract.*

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

6 2. *A performance contract may be structured as:*

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

17 (b) *A shared-savings contract which includes provisions*  
18 *mutually agreed upon by the using agency and qualified service*  
19 *company as to the negotiated rate of payments based upon*  
20 *operating cost savings and a stipulated maximum consumption*  
21 *level of energy or water, or both energy and water, over the life of*  
22 *the contract.*

23 **Sec. 24.** *Notwithstanding any provision of sections 16 to 29,*  
24 *inclusive, of this act to the contrary, a performance contract*  
25 *entered into pursuant to sections 16 to 29, inclusive, of this act*  
26 *must include a clause that sets out the rights of the using agency*  
27 *and the qualified service company if the Legislature does not*  
28 *appropriate sufficient money to the using agency for payments to*  
29 *be continued under the performance contract.*

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

34 2. *Except as otherwise provided in this subsection, a*  
35 *performance contract, and the payments provided thereunder, may*  
36 *extend beyond the fiscal year in which the performance contract*  
37 *becomes effective, subject to the appropriation of money by the*  
38 *Legislature, for costs incurred in future fiscal years. The*  
39 *performance contract may extend for a term not to exceed 25*  
40 *years. The length of a performance contract may reflect the useful*  
41 *life of the operating cost-savings measure being installed or*  
42 *purchased under the performance contract.*

43 3. *A performance contract may provide for payments over a*  
44 *period not to exceed the deadlines in the performance contract*



1 *from the date of the final installation of the operating cost-savings*  
2 *measures.*

3 *4. A using agency shall include in its budget, subject to*  
4 *appropriations by the Legislature, sufficient money for each fiscal*  
5 *year to make payment of any amounts payable by the using agency*  
6 *under its performance contracts during the fiscal year.*

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

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

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

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

29 *(b) A change in utility rates.*

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

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

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

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

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

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

41 **Sec. 28.** *A qualified service company shall provide to the*  
42 *Office of Energy within the Office of the Governor information*  
43 *concerning each performance contract which the qualified service*  
44 *company enters into pursuant to sections 16 to 29, inclusive, of*  
45 *this act, including, without limitation, the name of the project, the*



1 *using agency for which the project is being carried out and the*  
2 *expected operating cost savings. The Office of Energy may report*  
3 *any energy savings realized as a result of such performance*  
4 *contracts to the United States Department of Energy pursuant to*  
5 *42 U.S.C. § 13385.*

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

10 **Sec. 30.** This act becomes effective on July 1, 2003.

