

SENATE BILL NO. 703

BY SENATORS HEITMEIER AND MOUNT

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AN ACT

To amend and reenact R.S. 33:4547.1(B), 4547.2(B) through (E), and 4547.3 and to enact R.S. 33:4547.1(C) and (D), and 4547.2(F) through (H), relative to performance-based energy efficiency contracts; to provide for award of certain performance-based energy efficiency contracts by political subdivisions; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 33:4547.1(B), 4547.2(B) through (E), and 4547.3 are hereby amended and reenacted and R.S. 33:4547.1(C) and (D), and 4547.2(F) through (H) are hereby enacted to read as follows:

§4547.1. Authorization; definition

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B. For the purposes of this Chapter, a performance-based energy efficiency contract shall be defined as a contract for energy efficiency services and equipment in which the payment obligation for each year of the contract is ~~either~~:

(1) Set as a percentage of the annual energy cost savings attributable to the services or equipment under the contract; or

(2) Guaranteed by the person under contract to be less than the annual energy cost savings attributable to the services or equipment under the contract.

(3) Energy efficiency contracts shall be contracts that are utilized for purposes that include but are not limited to the following:

(a) Insulation and reduced air infiltration of the building structure, including walls, ceilings, and roofs or systems within the building.

(b) Storm windows or doors, caulking or weather-stripping, multi-glazed windows or doors, heat absorbing or heat reflective glazed and

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

3 (c) Automated or computerized energy control systems, including
4 computer software and technical data licenses.

5 (d) Heating, ventilating, or air conditioning system modifications or
6 replacements.

7 (e) Replacement or modification of lighting fixtures to increase the
8 energy efficiency of the lighting system without increasing the overall
9 illumination of a facility, unless an increase in illumination is necessary to
10 conform to the applicable state or local building code for the lighting system
11 after the proposed modifications are made.

12 (f) Indoor air quality improvements.

13 (g) Energy recovery systems.

14 (h) Electric system improvements.

15 (i) Building operation programs that reduce operating costs.

16 (j) Other energy conservation-related improvements or equipment,
17 including improvements or equipment related to renewable energy.

18 (k) Water and other natural resource conservation, including accuracy
19 and measurement of water distribution and consumption.

20 (l) An alteration or measure identified through a comprehensive audit
21 or assessment of new or existing facilities.

22 (4) For the purposes of this Section, the following terms shall be defined
23 as follows:

24 (a) "Energy efficiency" shall mean an alteration to an existing facility
25 that is designed for the reduction of the consumption of energy or natural
26 resources or the reduction of operating costs as a result of changes that meet the
27 following criteria:

28 (i) They do not degrade the level of service or working conditions below
29 recognized acceptable standards.

30 (ii) They are measurable and verifiable under the International

1 Performance Measurement and Verification Protocol as it existed on January
2 1, 2006, or subsequently amended verification protocols or alternative protocols
3 and verification standards and methodologies acceptable to political
4 subdivisions.

5 (b) "Reduction of operating costs" shall mean the elimination of
6 operating expenses or the avoidance of future capital replacement expenditures
7 as a result of new equipment installed or services performed by the
8 performance contractor. A contract which otherwise satisfies the requirements
9 of this Section shall satisfy the requirements allowing use of a
10 performance-based energy efficiency contract even if the sole cost being
11 eliminated or reduced is cost related to maintenance, or as otherwise defined as
12 "Annual energy savings" below.

13 C. "Annual energy savings" shall mean, when calculating annual energy
14 cost savings attributable to the services or equipment installed pursuant to a
15 performance-based energy efficiency contract as defined in R.S. 39:1484(14),
16 the savings in electricity, gas, water, propane, oil, diesel, steam or other like
17 utility costs increased revenues obtained from upgrades or modifications to a
18 water, wastewater, gas or electric utility infrastructure, systems or accounting
19 and billing systems and shall include future capital expenditures avoided and
20 maintenance savings. Capital replacement expenditures avoided and
21 maintenance savings shall be itemized separately.

22 D. "Performance contracting" shall mean all programs designed to save
23 energy that are guaranteed by a company or contractor for the political
24 subdivision. The company or contractor guaranteeing such programs may
25 include, but are not limited to, lighting, water conservation, water management
26 companies, or contractors that specialize in servicing such energy savings
27 equipment such as mechanical or electrical systems and energy services
28 companies (hereinafter referred to ESCO).

29 §4547.2. Procedures

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1 B. The request for proposals shall indicate the relative importance of price
2 and other evaluation factors and shall clearly define the criteria to be used in
3 evaluating the proposals and the time frames within which the work must be
4 completed. **Fifty percent of the total weighted evaluation criteria of the proposal**
5 **shall be determined by shortest payback, maximum savings, scope of the work,**
6 **quality of the product, cost of maintenance, and quoted amount of the energy**
7 **conservation measure (hereinafter referred to as ECM) selected.**

8 **C. Every request for proposals shall include the following mandatory**
9 **provisions:**

10 **(1) Each ECM shall be listed separately and for each such proposed**
11 **ECM the energy savings, operational savings, total savings, cost and payback**
12 **shall be provided separately. Energy Conservation Measure (ECM) also means**
13 **measures that are applied to existing buildings that improve energy efficiency**
14 **and are life cycle cost effective. Operational savings means reduction of actual**
15 **budget line items currently being expended or savings realized from the**
16 **implementation or installation of energy cost savings measures.**

17 **(2) Detailed scope shall be provided for each ECM proposed, which**
18 **describes each piece of equipment proposed and provides details for all services**
19 **proposed.**

20 **(3) The required maintenance that must be performed to guarantee the**
21 **savings forecast shall be described in detail for each ECM proposed and the cost**
22 **of maintenance, if included in the proposed contract.**

23 **D.** Award shall be made to the responsible offerer whose proposal is
24 determined by the using agency of the governing body of the political subdivision
25 to be the most advantageous, taking into consideration price and the evaluation
26 factors set forth in the request for proposals.

27 ~~**D.E.**~~ Written or oral discussions shall be conducted with all responsible
28 offerers who submit proposals determined to be reasonably susceptible of being
29 selected for award. ~~Discussions need not be conducted.~~

30 ~~(1) With respect to prices, where such prices are fixed by law or regulation;~~

1 except that consideration shall be given to competitive terms and conditions; or
2 (2) ~~Where time of delivery or performance will not permit discussions; or~~
3 (3) ~~Where it can be clearly demonstrated and documented from the existence~~
4 of adequate competition or accurate prior cost experience with that particular service
5 that acceptance of an initial offer without discussion would result in fair and
6 reasonable prices, and the request for proposals notifies all offerers of the possibility
7 that the award may be made on the basis of the initial offers.

8 E.F. A request for proposals or other solicitation may be cancelled or all
9 proposals may be rejected if it is determined that such action is taken in the best
10 interest of the political subdivision.

11 **G. For any systems, including, but not limited to, facility automation**
12 **and control systems proposed pursuant to this Chapter, there shall be provided**
13 **full capabilities to operate, maintain, repair, update, reconfigure and engineer**
14 **changes necessary to accommodate facility or operational changes or**
15 **incorporate new energy savings control strategies. Such shall be available to the**
16 **using political subdivision or its designee. There is no requirement under this**
17 **law to provide any political subdivision with access to the operating system of**
18 **the contractor. However, the user interface software must provide for all**
19 **capabilities listed in this Section.**

20 **H. Each proposal shall clearly identify any and all responsibility of the**
21 **political subdivision, if any, under the guarantee for each ECM including, but**
22 **not limited to, operating hours, maintenance requirements, and operating**
23 **protocols.**

24 §4547.3. Term; guarantee of energy savings

25 A. Notwithstanding any other provision of the law to the contrary, any
26 performance-based energy efficiency contract shall be for a period equal to the lesser
27 of twenty years or the average life of the equipment installed by the performance
28 contractor and shall contain a guarantee of energy savings, **for at least the term of**
29 **the bonds sold or financing arrangement of the political subdivision to support**
30 **the terms of the energy performance contract.**

1 B. When calculating "annual energy cost savings attributable to the services
2 or equipment" installed pursuant to a performance-based energy efficiency contract
3 as defined in R.S. 39:1484(14), maintenance savings shall be included.
4 "Maintenance savings" means ~~operation~~ **operating** expenses eliminated and future
5 capital replacement expenditures avoided as a result of new equipment installed or
6 services performed by the performance contractor.

7 Section 2. This Act shall become effective on July 1, 2006; if vetoed by the governor
8 and subsequently approved by the legislature, this Act shall become effective on July 1,
9 2006, or on the day following such approval by the legislature, whichever is later.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____