

Effective 5/12/2015

Chapter 44
Performance Efficiency Act

Part 1
General Provisions

11-44-101 Title.

This chapter is known as the "Performance Efficiency Act."

Amended by Chapter 181, 2015 General Session

11-44-102 Definitions.

As used in this chapter:

- (1) "Alternative fuel vehicle" means a motor vehicle that is not powered exclusively by a petroleum fuel source.
- (2) "Cost savings" means a decrease in an expenditure, including a future replacement expenditure, by a political subdivision resulting from a performance efficiency measure adopted under this chapter.
- (3)
 - (a) "Facility" means a building, structure, or other improvement that is constructed on property owned by a political subdivision.
 - (b) "Facility" does not mean a privately owned structure that is located on property owned by a political subdivision.
- (4) "Performance efficiency agreement" means an agreement between a political subdivision and a qualified performance efficiency service provider for evaluation, recommendation, and implementation of one or more performance efficiency measures.
- (5)
 - (a) "Performance efficiency measure" means an action taken by a political subdivision that reduces the political subdivision's:
 - (i) energy consumption;
 - (ii) water use;
 - (iii) sewage use; or
 - (iv) operation and maintenance costs.
 - (b) "Performance efficiency measure" includes:
 - (i) insulation installed in a wall, roof, floor, foundation, or heating and cooling distribution system;
 - (ii) a storm window or door, multiglazed window or door, heat absorbing or heat reflective glazed and coated window or door system, additional glazing, or reduction in glass area;
 - (iii) an automatic energy control system;
 - (iv) a heating, ventilating, or air conditioning and distribution system modification or replacement in a facility;
 - (v) caulking and weatherstripping;
 - (vi) a replacement or modification of a lighting fixture to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility unless the increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;

- (vii) an energy recovery system;
 - (viii) a cogeneration system that produces steam or another form of energy for use primarily within a facility;
 - (ix) a renewable energy or alternate energy system;
 - (x) a change in operation or maintenance practice;
 - (xi) a procurement of a low-cost energy supply, including electricity, natural gas, or water;
 - (xii) an indoor air quality improvement that conforms to applicable building code requirements;
 - (xiii) a daylighting system;
 - (xiv) a building operation program that provides cost savings, including computerized energy management and consumption tracking programs or staff and occupant training;
 - (xv) a service to reduce utility costs by identifying utility errors and optimizing rate schedules; or
 - (xvi) the purchase and operation of an alternative fuel vehicle and the infrastructure to support the operation of alternative fuel vehicles.
- (6) "Performance efficiency program" means a program established by a political subdivision under this chapter to adopt a performance efficiency measure.
- (7) "Qualified performance efficiency service provider" means a person who:
- (a) has a record of successful performance efficiency agreements; or
 - (b) has:
 - (i) experience in the design, implementation, and installation of performance efficiency measures;
 - (ii) technical capabilities to ensure that a performance efficiency measure generates cost savings; and
 - (iii) the ability to secure the financing necessary to support the proposed performance efficiency measure.

Amended by Chapter 181, 2015 General Session

Part 2 Performance Efficiency Programs and Agreements

11-44-201 Political subdivision responsibilities -- State responsibilities.

- (1) A political subdivision may:
- (a) enter into a performance efficiency agreement;
 - (b) develop and administer a performance efficiency program;
 - (c) analyze energy consumption by the political subdivision;
 - (d) designate a staff member who is responsible for a performance efficiency program; and
 - (e) provide the governing body of the political subdivision with information regarding the performance efficiency program.
- (2) The following entities may provide information, technical resources, and other assistance to a political subdivision acting under this chapter:
- (a) the Utah Geological Survey, created in Section 79-3-201;
 - (b) the State Board of Education;
 - (c) the Division of Purchasing and General Services, created in Section 63A-2-101; and
 - (d) the Division of Facilities Construction and Management, created in Section 63A-5b-301.

Amended by Chapter 152, 2020 General Session

11-44-202 Types of agreements.

Notwithstanding Section 63G-6a-1205, a political subdivision shall structure a performance efficiency agreement as a guaranteed performance efficiency agreement, which shall include:

- (1) the design and installation of a performance efficiency measure, if applicable;
- (2) operation and maintenance of a performance efficiency measure implemented; and
- (3) guaranteed annual cost savings that meet or exceed the total annual agreement payments by the political subdivision under the agreement, including financing charges incurred by the political subdivision over the life of the agreement.

Amended by Chapter 181, 2015 General Session

11-44-203 Length of agreements.

A political subdivision may only enter into a performance efficiency agreement for more than one year if the political subdivision finds that the amount the political subdivision would spend on the performance efficiency measure will not exceed the amount of the cost savings over 20 years from the date of installation of the performance efficiency measure.

Amended by Chapter 181, 2015 General Session

Part 3
Qualified Performance Efficiency Service Providers

11-44-301 Selection.

- (1) A political subdivision shall follow the procedures outlined in Title 63G, Chapter 6a, Utah Procurement Code, when selecting a qualified performance efficiency service provider.
- (2) The Division of Purchasing shall maintain a list of qualified performance efficiency service providers.
- (3) The qualified performance efficiency service provider selected from the bid process shall prepare an investment grade audit, which shall become part of the final agreement between the political subdivision and the qualified performance efficiency service provider.
- (4) The audit shall include:
 - (a) a detailed description of the performance efficiency measure;
 - (b) an estimated cost; and
 - (c) a projected cost savings.

Amended by Chapter 181, 2015 General Session

11-44-302 Annual reports.

During the term of a performance efficiency agreement, the qualified performance efficiency service provider shall submit an annual report to the political subdivision that provides the cost savings attributable to the performance efficiency measures taken by the political subdivision.

Amended by Chapter 181, 2015 General Session

