

STATE AND LOCAL ENERGY EFFICIENCY PROGRAMS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jack R. Draxler

Senate Sponsor: Kevin T. Van Tassell

LONG TITLE

General Description:

This bill addresses state and local energy efficiency programs.

Highlighted Provisions:

This bill:

- ▶ modifies and renames the Facility Energy Efficiency Act;
- ▶ modifies provisions relating to the State Building Energy Efficiency Program; and
- ▶ modifies state and local provisions relating to energy efficiency programs.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-44-101, as enacted by Laws of Utah 2010, Chapter 244

11-44-102, as enacted by Laws of Utah 2010, Chapter 244

11-44-201, as enacted by Laws of Utah 2010, Chapter 244

11-44-202, as last amended by Laws of Utah 2012, Chapter 347

11-44-203, as enacted by Laws of Utah 2010, Chapter 244

11-44-301, as last amended by Laws of Utah 2012, Chapter 347

11-44-302, as enacted by Laws of Utah 2010, Chapter 244



28 **63A-1-112**, as last amended by Laws of Utah 2008, Chapter 382

29 **63A-5-701**, as last amended by Laws of Utah 2012, Chapter 242



31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **11-44-101** is amended to read:

33 **CHAPTER 44. PERFORMANCE EFFICIENCY ACT**

34 **11-44-101. Title.**

35 This chapter is known as the "[~~Facility Energy~~] Performance Efficiency Act."

36 Section 2. Section **11-44-102** is amended to read:

37 **11-44-102. Definitions.**

38 As used in this chapter:

39 (1) "Alternative fuel vehicle" means a motor vehicle that is not powered exclusively by
40 a petroleum fuel source.

41 ~~[(+)]~~ (2) "Cost savings" means a decrease in an expenditure, including a future
42 replacement expenditure, by a political subdivision resulting from [~~an energy~~] a performance
43 efficiency measure adopted under this chapter.

44 ~~[(4)]~~ (3) (a) "Facility" means a building, structure, or other improvement that is
45 constructed on property owned by a political subdivision.

46 (b) "Facility" does not mean a privately owned structure that is located on property
47 owned by a political subdivision.

48 ~~[(3)]~~ "Energy savings" (4) "Performance efficiency agreement" means [~~a contract~~] an
49 agreement between a political subdivision and a qualified [~~energy~~] performance efficiency
50 service provider for evaluation, recommendation, and implementation of one or more [~~energy~~]
51 performance efficiency measures.

52 ~~[(2)]~~ (5) (a) "[~~Energy~~] Performance efficiency measure" means an action taken by a
53 political subdivision that reduces the political subdivision's:

- 54 (i) energy consumption;
- 55 (ii) water use; [~~or~~]
- 56 (iii) sewage use[~~;~~]; or
- 57 (iv) operation and maintenance costs.

58 (b) [~~"Energy~~] "Performance efficiency measure" includes:

- 59 (i) insulation installed in a wall, roof, floor, foundation, or heating and cooling
60 distribution system;
- 61 (ii) a storm window or door, multiglazed window or door, heat absorbing or heat
62 reflective glazed and coated window or door system, additional glazing, or reduction in glass
63 area;
- 64 (iii) an automatic energy control system;
- 65 (iv) a heating, ventilating, or air conditioning and distribution system modification or
66 replacement in a facility;
- 67 (v) caulking and weatherstripping;
- 68 (vi) a replacement or modification of a lighting fixture to increase the energy efficiency
69 of the lighting system without increasing the overall illumination of a facility unless the
70 increase in illumination is necessary to conform to the applicable building code for the
71 proposed lighting system;
- 72 (vii) an energy recovery system;
- 73 (viii) a cogeneration system that produces steam or another form of energy for use
74 primarily within a facility;
- 75 (ix) a renewable energy or alternate energy system;
- 76 (x) a change in operation or maintenance practice;
- 77 (xi) a procurement of a low-cost energy supply, including electricity, natural gas, or
78 water;
- 79 (xii) an indoor air quality improvement that conforms to applicable building code
80 requirements;
- 81 (xiii) a daylighting system;
- 82 (xiv) a building operation program that provides cost savings, including computerized
83 energy management and consumption tracking programs or staff and occupant training; ~~or~~
- 84 (xv) a service to reduce utility costs by identifying utility errors and optimizing rate
85 schedules[-]; or
- 86 (xvi) the purchase and operation of an alternative fuel vehicle and the infrastructure to
87 support the operation of alternative fuel vehicles.
- 88 [~~(5) "Facility energy]~~ (6) "Performance efficiency program" means a program
89 established by a political subdivision under this chapter to adopt [~~an energy]~~ a performance

90 efficiency measure.

91 ~~[(6)]~~ (7) "Qualified [~~energy~~] performance efficiency service provider" means a person
92 who:

93 (a) has a record of successful [~~energy savings~~] performance efficiency agreements; or

94 (b) has:

95 (i) experience in the design, implementation, and installation of [~~energy~~] performance
96 efficiency measures;

97 (ii) technical capabilities to ensure that [~~an energy efficient~~] a performance efficiency
98 measure generates cost savings; and

99 (iii) the ability to secure the financing necessary to support the proposed [~~energy~~]
100 performance efficiency measure.

101 Section 3. Section **11-44-201** is amended to read:

102 **11-44-201. Political subdivision responsibilities -- State responsibilities.**

103 (1) A political subdivision may:

104 (a) enter into [~~an energy savings~~] a performance efficiency agreement;

105 (b) develop and administer a [~~facility energy~~] performance efficiency program;

106 (c) analyze energy consumption by the political subdivision;

107 (d) designate a staff member who is responsible for a [~~facility energy~~] performance
108 efficiency program; and

109 (e) provide the governing body of the political subdivision with information regarding
110 the [~~facility energy~~] performance efficiency program.

111 (2) The following entities may provide information, technical resources, and other
112 assistance to a political subdivision acting under this chapter:

113 (a) the Utah Geological Survey, created in Section [79-3-201](#);

114 (b) the State Board of Education, under Title 53A, Chapter 1, Administration of Public
115 Education at the State Level;

116 (c) the Division of Purchasing and General Services, created in Section [63A-2-101](#);

117 and

118 (d) the Division of Facilities Construction and Management, created in Section
119 [63A-5-201](#).

120 Section 4. Section **11-44-202** is amended to read:

121 **11-44-202. Types of agreements.**

122 Notwithstanding Section [63G-6a-1205](#), a political subdivision shall structure [~~an energy~~
123 ~~service~~] a performance efficiency agreement as a guaranteed [~~energy savings~~] performance
124 [~~contract~~] efficiency agreement, which shall include:

125 (1) the design and installation of [~~an energy~~] a performance efficiency measure, if
126 applicable;

127 (2) operation and maintenance of [~~any energy~~] a performance efficiency measure
128 implemented; and

129 (3) guaranteed annual cost savings that meet or exceed the total annual [~~contract~~]
130 agreement payments by the political subdivision under the [~~contract~~] agreement, including
131 financing charges incurred by the political subdivision over the life of the [~~contract~~] agreement.

132 Section 5. Section **11-44-203** is amended to read:

133 **11-44-203. Length of agreements.**

134 A political subdivision may only enter into [~~an energy savings~~] a performance
135 efficiency agreement for more than one year if the political subdivision finds that the amount
136 the political subdivision would spend on the [~~energy~~] performance efficiency measure will not
137 exceed the amount of the cost savings over 20 years from the date of installation of the
138 [~~energy~~] performance efficiency measure.

139 Section 6. Section **11-44-301** is amended to read:

140 **11-44-301. Selection.**

141 (1) A political subdivision shall follow the procedures outlined in Title 63G, Chapter
142 6a, Utah Procurement Code, when selecting a qualified [~~energy~~] performance efficiency service
143 provider.

144 (2) The Division of Purchasing shall maintain a list of qualified [~~energy~~] performance
145 efficiency service providers.

146 (3) The qualified [~~energy~~] performance efficiency service provider selected from the
147 bid process shall prepare an investment grade [~~energy~~] audit, which shall become part of the
148 final [~~contract~~] agreement between the political subdivision and the qualified [~~energy~~]
149 performance efficiency service provider.

150 (4) The audit shall include:

151 (a) a detailed description of the [~~energy~~] performance efficiency measure;

152 (b) an estimated cost; and

153 (c) a projected cost savings.

154 Section 7. Section **11-44-302** is amended to read:

155 **11-44-302. Annual reports.**

156 During the term of [~~an energy savings~~] a performance efficiency agreement, the
157 qualified [~~energy~~] performance efficiency service provider shall submit an annual report to the
158 political subdivision that provides the cost savings attributable to the [~~energy~~] performance
159 efficiency measures taken by the political subdivision.

160 Section 8. Section **63A-1-112** is amended to read:

161 **63A-1-112. Certificates of participation -- Legislative approval required --**

162 **Definition -- Exception.**

163 (1) (a) Certificates of participation for either capital facilities or capital improvements
164 may not be issued by the department, its subdivisions, or any other state agency after July 1,
165 1985, without prior legislative approval.

166 (b) Nothing in this section affects the rights and obligations surrounding certificates of
167 participation that were issued prior to July 1, 1985.

168 (2) (a) As used in this section, "certificate of participation" means an instrument that
169 acts as evidence of the certificate holder's undivided interest in property being lease-purchased,
170 the payment on which is subject to appropriation by the Legislature.

171 (b) (i) [~~For purposes of~~] As used in this Subsection (2)(b), "[~~energy savings~~]
172 performance efficiency agreement" [~~has the meaning as~~] means the same as that term is defined
173 in Section **63A-5-701**.

174 (ii) "Certificate of participation" does not include [~~an energy savings~~] a performance
175 efficiency agreement.

176 Section 9. Section **63A-5-701** is amended to read:

177 **63A-5-701. State Building Energy Efficiency Program.**

178 (1) For purposes of this section:

179 (a) "Division" means the Division of Facilities Construction and Management
180 established in Section **63A-5-201**.

181 [~~(b) "Energy efficiency measures" means actions taken or initiated by a state agency~~
182 ~~that reduce the state agency's energy use, increase the state agency's energy efficiency, reduce~~

183 ~~source energy consumption, reduce water consumption, or lower the costs of energy or water to~~
184 ~~the state agency.]~~

185 (b) "Energy efficiency measure" means an action taken or initiated by a state agency
186 that:

187 (i) reduces the state agency's energy or fuel use or resource energy consumption, water
188 or other resource consumption, operation and maintenance costs, or cost of energy, fuel, water,
189 or other resource; or

190 (ii) increases the state agency's energy or fuel efficiency or resource consumption
191 efficiency.

192 (c) [~~Energy savings~~] "Performance efficiency agreement" means an agreement entered
193 into by a state agency whereby the state agency implements one or more energy efficiency
194 measures and finances the costs associated with implementation of [~~energy~~] performance
195 efficiency measures using the stream of expected savings in [~~utility~~] costs resulting from
196 implementation of the [~~energy~~] performance efficiency measures as [~~the~~] a funding source for
197 repayment.

198 (d) "State agency" means each executive, legislative, and judicial branch department,
199 agency, board, commission, or division, and includes a state institution of higher education as
200 defined in Section [53B-3-102](#).

201 (e) "State Building Energy Efficiency Program" means a program established under
202 this section for the purpose of improving energy efficiency measures and reducing the energy
203 costs for state facilities.

204 (f) (i) "State facility" means any building, structure, or other improvement that is
205 constructed on property owned by the state, its departments, commissions, institutions, or
206 agencies, or a state institution of higher education.

207 (ii) "State facility" does not mean:

208 (A) an unoccupied structure that is a component of the state highway system;

209 (B) a privately owned structure that is located on property owned by the state, its
210 departments, commissions, institutions, or agencies, or a state institution of higher education;
211 or

212 (C) a structure that is located on land administered by the School and Institutional
213 Trust Lands Administration under a lease, permit, or contract with the School and Institutional

214 Trust Lands Administration.

215 (2) The division shall:

216 (a) develop and administer the state building energy efficiency program, which shall
217 include guidelines and procedures to improve energy efficiency in the maintenance and
218 management of state facilities;

219 (b) provide information and assistance to state agencies in their efforts to improve
220 energy efficiency;

221 (c) analyze energy consumption by state agencies to identify opportunities for
222 improved energy efficiency;

223 (d) establish an advisory group composed of representatives of state agencies to
224 provide information and assistance in the development and implementation of the state
225 building energy efficiency program; and

226 (e) submit to the governor and to the Infrastructure and General Government
227 Appropriations Subcommittee of the Legislature an annual report that:

228 (i) identifies strategies for long-term improvement in energy efficiency;

229 (ii) identifies goals for energy conservation for the upcoming year; and

230 (iii) details energy management programs and strategies that were undertaken in the
231 previous year to improve the energy efficiency of state agencies and the energy savings
232 achieved.

233 (3) Each state agency shall:

234 (a) designate a staff member that is responsible for coordinating energy efficiency
235 efforts within the agency;

236 (b) provide energy consumption and costs information to the division;

237 (c) develop strategies for improving energy efficiency and reducing energy costs; and

238 (d) provide the division with information regarding the agency's energy efficiency and
239 reduction strategies.

240 (4) (a) A state agency may enter into [~~an energy savings~~] a performance efficiency
241 agreement for a term of up to 20 years.

242 (b) Before entering into [~~an energy savings~~] a performance efficiency agreement, the
243 state agency shall:

244 (i) utilize the division to oversee the project unless the project is exempt from the

245 division's oversight or the oversight is delegated to the agency under the provisions of Section
246 [63A-5-206](#);
247 (ii) obtain the prior approval of the governor or the governor's designee; and
248 (iii) provide the Office of Legislative Fiscal Analyst with a copy of the proposed
249 agreement before the agency enters into the agreement.

Legislative Review Note
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Office of Legislative Research and General Counsel