

SENATE BILL NO. 426—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE LEGISLATIVE COMMISSION’S  
AUDIT SUBCOMMITTEE)

MARCH 29, 2005

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Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to certain public contracts. (BDR 28-1032)

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 public contracts; clarifying the applicability of prevailing wage requirements; revising the types of projects of the University and Community College System of Nevada that constitute public works; providing that certain documents furnished to a public body may be transmitted and stored electronically; requiring that annual energy savings resulting from energy retrofit projects meet or exceed the total annual contract payments; revising requirements relating to performance contracts for operating cost-savings measures in buildings occupied by state agencies; providing requirements for such performance contracts that are financed as installment-purchase contracts or lease-purchase contracts; authorizing the issuance of refunding obligations relating to performance contracts; requiring that annual operating cost savings resulting from performance contracts meet or exceed the total annual contract payments; and providing other matters properly relating thereto.



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

**Section 1.** Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

*The fact that a particular project or undertaking does not qualify as a public work, as defined in NRS 338.010, does not exempt a person, including, without limitation, a contractor or subcontractor, or a governmental entity, from complying with the provisions of this section and NRS 338.010 to 338.090, inclusive, in the same manner as a public body is required to comply with those provisions if the person or governmental entity is otherwise required to comply with the provisions of this section and NRS 338.010 to 338.090, inclusive, by specific statute.*

**Sec. 2.** NRS 338.010 is hereby amended to read as follows:

338.010 As used in this chapter:

1. "Authorized representative" means a person designated by a governing body to be responsible for the development and award of contracts for public works pursuant to this chapter.

2. "Contract" means a written contract entered into between a contractor and a public body for the provision of labor, materials, equipment or supplies for a public work.

3. "Contractor" means:

(a) A person who is licensed pursuant to the provisions of chapter 624 of NRS or performs such work that he is not required to be licensed pursuant to chapter 624 of NRS.

(b) A design-build team.

4. "Day labor" means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a workman or workmen employed by them on public works by the day and not under a contract in writing.

5. "Design-build contract" means a contract between a public body and a design-build team in which the design-build team agrees to design and construct a public work.

6. "Design-build team" means an entity that consists of:

(a) At least one person who is licensed as a general engineering contractor or a general building contractor pursuant to chapter 624 of NRS; and

(b) For a public work that consists of:

(1) A building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS.

(2) Anything other than a building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS or landscape architecture pursuant



1 to chapter 623A of NRS or who is licensed as a professional  
2 engineer pursuant to chapter 625 of NRS.

3 7. "Design professional" means:

4 (a) A person who is licensed as a professional engineer pursuant  
5 to chapter 625 of NRS;

6 (b) A person who is licensed as a professional land surveyor  
7 pursuant to chapter 625 of NRS;

8 (c) A person who holds a certificate of registration to engage in  
9 the practice of architecture, interior design or residential design  
10 pursuant to chapter 623 of NRS;

11 (d) A person who holds a certificate of registration to engage in  
12 the practice of landscape architecture pursuant to chapter 623A of  
13 NRS; or

14 (e) A business entity that engages in the practice of professional  
15 engineering, land surveying, architecture or landscape architecture.

16 8. "Eligible bidder" means a person who is:

17 (a) Found to be a responsible and responsive contractor by a  
18 local government or its authorized representative which requests  
19 bids for a public work in accordance with paragraph (b) of  
20 subsection 1 of NRS 338.1373; or

21 (b) Determined by a public body or its authorized representative  
22 which awarded a contract for a public work pursuant to NRS  
23 338.1375 to 338.139, inclusive, to be qualified to bid on that  
24 contract pursuant to NRS 338.1379 or 338.1382.

25 9. "General contractor" means a person who is licensed to  
26 conduct business in one, or both, of the following branches of the  
27 contracting business:

28 (a) General engineering contracting, as described in subsection 2  
29 of NRS 624.215.

30 (b) General building contracting, as described in subsection 3 of  
31 NRS 624.215.

32 10. "Governing body" means the board, council, commission  
33 or other body in which the general legislative and fiscal powers of a  
34 local government are vested.

35 11. "Local government" means every political subdivision or  
36 other entity which has the right to levy or receive money from ad  
37 valorem or other taxes or any mandatory assessments, and includes,  
38 without limitation, counties, cities, towns, boards, school districts  
39 and other districts organized pursuant to chapters 244A, 309, 318,  
40 379, 474, 538, 541, 543 and 555 of NRS § and NRS 450.550 to  
41 450.750, inclusive, and any agency or department of a county or city  
42 which prepares a budget separate from that of the parent political  
43 subdivision. The term includes a person who has been designated by  
44 a local government to serve as its authorized representative.

45 12. "Offense" means failing to:



- 1 (a) Pay the prevailing wage required pursuant to this chapter;
- 2 (b) Pay the contributions for unemployment compensation
- 3 required pursuant to chapter 612 of NRS;
- 4 (c) Provide and secure compensation for employees required
- 5 pursuant to chapters 616A to 617, inclusive, of NRS; or
- 6 (d) Comply with subsection 4 or 5 of NRS 338.070.
- 7 13. "Prime contractor" means a contractor who:
- 8 (a) Contracts to construct an entire project;
- 9 (b) Coordinates all work performed on the entire project;
- 10 (c) Uses his own workforce to perform all or a part of the public
- 11 work; and
- 12 (d) Contracts for the services of any subcontractor or
- 13 independent contractor or is responsible for payment to any
- 14 contracted subcontractors or independent contractors.
- 15 ➔ The term includes, without limitation, a general contractor or a
- 16 specialty contractor who is authorized to bid on a project pursuant to
- 17 NRS 338.139 or 338.148.
- 18 14. "Public body" means the State, county, city, town, school
- 19 district or any public agency of this State or its political subdivisions
- 20 sponsoring or financing a public work.
- 21 15. "Public work" means any project for the new construction,
- 22 repair or reconstruction of:
- 23 (a) A project financed in whole or in part from public money
- 24 for:
- 25 (1) Public buildings;
- 26 (2) Jails and prisons;
- 27 (3) Public roads;
- 28 (4) Public highways;
- 29 (5) Public streets and alleys;
- 30 (6) Public utilities;
- 31 (7) Publicly owned water mains and sewers;
- 32 (8) Public parks and playgrounds;
- 33 (9) Public convention facilities which are financed at least in
- 34 part with public money; and
- 35 (10) All other publicly owned works and property.
- 36 (b) A ~~building for~~ *project of* the University and Community
- 37 College System of Nevada ~~[of which 25 percent or more of the costs~~
- 38 ~~of the building as a whole are paid from money appropriated by this~~
- 39 ~~State or from federal money.] for which the estimated cost exceeds~~
- 40 *\$100,000.*
- 41 16. "Specialty contractor" means a person who is licensed to
- 42 conduct business as described in subsection 4 of NRS 624.215.
- 43 17. "Stand-alone underground utility project" means an
- 44 underground utility project that is not integrated into a larger
- 45 project, including, without limitation:



1 (a) An underground sewer line or an underground pipeline for  
2 the conveyance of water, including facilities appurtenant thereto;  
3 and

4 (b) A project for the construction or installation of a storm drain,  
5 including facilities appurtenant thereto,  
6 ➤ that is not located at the site of a public work for the design and  
7 construction of which a public body is authorized to contract with a  
8 design-build team pursuant to subsection 2 of NRS 338.1711.

9 18. "Subcontract" means a written contract entered into  
10 between:

11 (a) A contractor and a subcontractor or supplier; or

12 (b) A subcontractor and another subcontractor or supplier, for  
13 the provision of labor, materials, equipment or supplies for a  
14 construction project.

15 19. "Subcontractor" means a person who:

16 (a) Is licensed pursuant to the provisions of chapter 624 of NRS  
17 or performs such work that he is not required to be licensed pursuant  
18 to chapter 624 of NRS; and

19 (b) Contracts with a contractor, another subcontractor or a  
20 supplier to provide labor, materials or services for a construction  
21 project.

22 20. "Supplier" means a person who provides materials,  
23 equipment or supplies for a construction project.

24 21. "Wages" means:

25 (a) The basic hourly rate of pay; and

26 (b) The amount of pension, health and welfare, vacation and  
27 holiday pay, the cost of apprenticeship training or other similar  
28 programs or other bona fide fringe benefits which are a benefit to  
29 the workman.

30 22. "Workman" means a skilled mechanic, skilled workman,  
31 semiskilled mechanic, semiskilled workman or unskilled workman  
32 in the service of a contractor or subcontractor under any  
33 appointment or contract of hire or apprenticeship, express or  
34 implied, oral or written, whether lawfully or unlawfully employed.  
35 The term does not include a design professional.

36 **Sec. 3.** NRS 338.050 is hereby amended to read as follows:

37 338.050 For the purpose of NRS 338.010 to 338.090, inclusive,  
38 *and section 1 of this act*, except as otherwise provided by specific  
39 statute, every workman who performs work for a public work  
40 covered by a contract therefor is subject to all of the provisions of  
41 NRS 338.010 to 338.090, inclusive, *and section 1 of this act*,  
42 regardless of any contractual relationship alleged to exist between  
43 such workman and his employer.



**Sec. 4.** NRS 338.140 is hereby amended to read as follows:

338.140 1. A public body shall not draft or cause to be drafted specifications for bids, in connection with a public work:

(a) In such a manner as to limit the bidding, directly or indirectly, to any one specific concern.

(b) Except in those instances where the product is designated to match others in use on a particular public improvement either completed or in the course of completion, calling for a designated material, product, thing or service by specific brand or trade name unless the specification lists at least two brands or trade names of comparable quality or utility and is followed by the words "or equal" so that bidders may furnish any equal material, product, thing or service.

(c) In such a manner as to hold the bidder to whom such contract is awarded responsible for extra costs incurred as a result of errors or omissions by the public body in the contract documents.

(d) In such a manner as to require a bidder to furnish to the public body, whether before or after the bid is submitted, documents generated in the preparation or determination of prices included in the bid, except when requested by the public body for:

(1) A determination of the price of additional work performed pursuant to a change order;

(2) An evaluation of claims for costs incurred for the performance of additional work;

(3) Preparation for arbitration or litigation; or

(4) Any combination thereof.

➔ A document furnished to a public body pursuant to this paragraph is confidential and must be returned to the bidder. *Any document furnished to a public body by a bidder pursuant to this paragraph may be transmitted and stored electronically if the manner of transmission ensures that the documents are exclusively accessible to the bidder. Electronic transmission and storage of such documents does not waive or otherwise affect the proprietary interests of the bidder in the documents.*

2. In those cases involving a unique or novel product application required to be used in the public interest, or where only one brand or trade name is known to the public body, it may list only one.

3. Specifications must provide a period of time of at least 7 days after award of the contract for submission of data substantiating a request for a substitution of "an equal" item.

**Sec. 5.** NRS 338.1906 is hereby amended to read as follows:

338.1906 1. Upon request by or consultation with an officer or employee of the State who is responsible for the budget of a department, board, commission, agency or other entity of the State,



1 the appropriate energy retrofit coordinator may request the approval  
2 of the State Board of Examiners to advertise a request for proposals  
3 to retrofit a building, or any portion thereof, that is occupied by the  
4 department, board, commission, agency or other entity, to make the  
5 use of energy in the building, or portion thereof, more efficient.

6 2. Upon approval of the State Board of Examiners, the  
7 coordinator shall prepare a request for proposals for the retrofitting  
8 of one or more buildings, or any portion thereof, which includes:

9 (a) The name and location of the coordinator;

10 (b) A brief description of the requirements for the initial audit of  
11 the use of energy and the retrofitting;

12 (c) Where and how specifications of the requirements for the  
13 initial audit of the use of energy and the retrofitting may be  
14 obtained;

15 (d) The date and time not later than which proposals must be  
16 received by the coordinator; and

17 (e) The date and time when responses will be opened.

18 3. The request for proposals must be published in at least one  
19 newspaper of general circulation in the State.

20 4. After receiving the proposals but before making a decision  
21 on the proposals, the coordinator shall consider:

22 (a) The best interests of the State;

23 (b) The experience and financial stability of the persons  
24 submitting the proposals;

25 (c) Whether the proposals conform with the terms of the request  
26 for proposals;

27 (d) The prices of the proposals; and

28 (e) Any other factor disclosed in the request for proposals.

29 5. The coordinator shall determine the relative weight of each  
30 factor before a request for proposals is advertised. The weight of  
31 each factor must not be disclosed before the date proposals are  
32 required to be submitted to the coordinator.

33 6. After reviewing the proposals, if the coordinator determines  
34 that ~~that sufficient energy could be saved to justify retrofitting the~~  
35 ~~building or buildings, or portion thereof,~~ *the dollar value of the*  
36 *annual energy savings resulting from the retrofit will meet or*  
37 *exceed the total annual contract payments to be made by the State,*  
38 *including any financing charges to be incurred by the State over*  
39 *the life of the contract,* the coordinator shall select the best proposal  
40 and request the approval of the State Board of Examiners to award  
41 the contract. The request for approval must include the proposed  
42 method of financing the audit and retrofit, which may include an  
43 installment contract, a shared savings contract or any other contract  
44 for a reasonable financing arrangement. Such a contract may  
45 commit the State to make payments beyond the biennium in which



1 the contract is executed, but the interest due on any debt created  
2 pursuant to this section must be paid at least semiannually,  
3 payments must be made on the principal at least annually and the  
4 debt must be fully repaid on or before May 1, 2013.

5 7. Before approving a retrofit pursuant to this section, the State  
6 Board of Examiners shall evaluate any projects that would utilize  
7 shared savings as a method of payment or any method of financing  
8 that would commit the State to make payments beyond the biennium  
9 in which the contract is executed to ensure that:

10 (a) The ~~[amount of energy to be saved will likely justify the~~  
11 ~~cost]~~ *dollar value of the annual energy savings resulting from the*  
12 *retrofit ~~[-]~~ will meet or exceed the total annual contract payments*  
13 *to be made by the State, including any financing charges to be*  
14 *incurred by the State over the life of the contract;*

15 (b) The State is likely to continue to occupy the building for the  
16 entire period required to recoup the cost of the retrofit in energy  
17 savings; and

18 (c) The limitation set forth in subsection 9 will not be exceeded.

19 8. Upon approval of the State Board of Examiners, the  
20 coordinator shall execute the contract and notify:

21 (a) The State Board of Examiners of the total amount of money  
22 committed by the contract per year; and

23 (b) Each officer or employee who is responsible for the budget  
24 of a department, board, commission, agency or other entity which  
25 occupies a portion of a building that will be retrofitted of the amount  
26 of money it will be required to pay annually for its portion of the  
27 retrofit.

28 9. The total amount of money committed beyond the biennium  
29 for all contracts executed pursuant to this section must not exceed  
30 \$15,000,000 at any one time.

31 10. The Legislature hereby pledges that a tax will be levied to  
32 pay the principal and interest on any indebtedness resulting from a  
33 contract executed pursuant to this section as they become due if the  
34 required payments will not be made by the entity that executed the  
35 contract from its budgeted accounts and the proceeds from any such  
36 taxes are hereby specially appropriated for this purpose.

37 11. *A change order to a contract executed pursuant to this*  
38 *section may not be approved by the State if the cost of the change*  
39 *order would cause the dollar value of the annual energy savings*  
40 *resulting from the retrofit to be less than the total annual contract*  
41 *payments to be made by the State, including any financing*  
42 *charges to be incurred by the State over the life of the contract,*  
43 *unless approval of the change order is more economically feasible*  
44 *than termination of the retrofit.*





1       **12.** NRS 338.1385 does not apply to a project for which a  
2 request for proposals is advertised and the contract is awarded  
3 pursuant to the provisions of this section.

4       **Sec. 6.** NRS 338.1907 is hereby amended to read as follows:

5       338.1907 1. A governing body may designate one or more  
6 energy retrofit coordinators for the buildings occupied by the local  
7 government.

8       2. If such a coordinator is designated, upon request by or  
9 consultation with an officer or employee of the local government  
10 who is responsible for the budget of a department, board,  
11 commission or other entity of the local government, the coordinator  
12 may request the approval of the governing body to advertise a  
13 request for proposals to retrofit a building, or any portion thereof,  
14 that is occupied by the department, board, commission or other  
15 entity, to make the use of energy in the building, or portion thereof,  
16 more efficient.

17       3. Upon approval of the governing body, the coordinator shall  
18 prepare a request for proposals for the retrofitting of one or more  
19 buildings, or any portion thereof, which includes:

20       (a) The name and location of the coordinator;

21       (b) A brief description of the requirements for the initial audit of  
22 the use of energy and the retrofitting;

23       (c) Where and how specifications of the requirements for the  
24 initial audit of the use of energy and the retrofitting may be  
25 obtained;

26       (d) The date and time not later than which proposals must be  
27 received by the coordinator; and

28       (e) The date and time when responses will be opened.

29       4. The request for proposals must be published in a newspaper  
30 qualified pursuant to chapter 238 of NRS that is published in the  
31 county where the public work will be performed. If no qualified  
32 newspaper is published in the county where the public work will be  
33 performed, the required advertisement must be published in some  
34 qualified newspaper that is printed in the State of Nevada and has a  
35 general circulation in the county where the public work will be  
36 performed.

37       5. After receiving the proposals but before making a decision  
38 on the proposals, the coordinator shall consider:

39       (a) The best interests of the local government;

40       (b) The experience and financial stability of the persons  
41 submitting the proposals;

42       (c) Whether the proposals conform with the terms of the request  
43 for proposals;

44       (d) The prices of the proposals; and

45       (e) Any other factor disclosed in the request for proposals.



6. The coordinator shall determine the relative weight of each factor before a request for proposals is advertised. The weight of each factor must not be disclosed before the date proposals are required to be submitted to the coordinator.

7. After reviewing the proposals, if the coordinator determines that ~~[sufficient energy could be saved to justify retrofitting the building or buildings, or portion thereof,]~~ *the dollar value of the annual energy savings resulting from the retrofit will 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 contract,* the coordinator shall select the best proposal and request the approval of the governing body to award the contract. The request for approval must include the proposed method of financing the audit and retrofit, which may include an installment contract, a shared savings contract or any other contract for a reasonable financing arrangement. Such a contract may commit the local government to make payments beyond the fiscal year in which the contract is executed or beyond the terms of office of the governing body, or both.

8. Before approving a retrofit pursuant to this section, the governing body shall evaluate any projects that would utilize shared savings as a method of payment or any method of financing that would commit the local government to make payments beyond the fiscal year in which the contract is executed or beyond the terms of office of the governing body to ensure that:

(a) The ~~[amount of energy to be saved will likely justify the cost]~~ *dollar value of the annual energy savings resulting from the retrofit [:] will meet or exceed the total annual contract payments to be made by the local government related to the retrofit, including any financing charges to be incurred by the local government over the life of the contract;* and

(b) The local government is likely to continue to occupy the building for the entire period required to recoup the cost of the retrofit in energy savings.

9. Upon approval of the governing body, the coordinator shall execute the contract and notify each officer or employee who is responsible for the budget of a department, board, commission or other entity which occupies a portion of a building that will be retrofitted of the amount of money it will be required to pay annually for its portion of the retrofit.

10. *A change order to a contract executed pursuant to this section may not be approved by the local government if the cost of the change order would cause the dollar value of the annual energy savings resulting from the retrofit to be less than the total annual contract payments to be made by the local government,*



1 *including financing charges to be incurred by the local*  
2 *government over the life of the contract, unless approval of the*  
3 *change order is more economically feasible than termination of*  
4 *the retrofit.*

5 **11.** NRS 338.1385 and 338.143 do not apply to a project for  
6 which a request for proposals is advertised and the contract is  
7 awarded pursuant to the provisions of this section.

8 **Sec. 7.** Chapter 333A of NRS is hereby amended by adding  
9 thereto the provisions set forth as sections 8 to 22, inclusive, of this  
10 act.

11 **Sec. 8. “Board” means:**

12 **1.** *If the using agency that enters into a performance contract*  
13 *is the University and Community College System of Nevada, the*  
14 *Board of Regents of the University of Nevada; or*

15 **2.** *For any other using agency that enters into a performance*  
16 *contract, the State Board of Examiners.*

17 **Sec. 9. 1.** *Notwithstanding any provision of chapter 333 of*  
18 *NRS, NRS 333A.010 to 333A.150, inclusive, and sections 8 to 22,*  
19 *inclusive, of this act, and chapter 338 of NRS to the contrary, a*  
20 *using agency may enter into a performance contract with a*  
21 *qualified service company for the purchase and installation of one*  
22 *or more operating cost-savings measures to reduce costs related to*  
23 *energy, water and the disposal of waste, and related labor costs.*

24 **2.** *Any operating cost-savings measures put into place as a*  
25 *result of a performance contract must comply with all applicable*  
26 *building codes.*

27 **Sec. 10. 1.** *The Purchasing Division of the Department of*  
28 *Administration shall work directly with any using agency*  
29 *interested in entering into a performance contract, using the list of*  
30 *qualified service companies compiled by the State Public Works*  
31 *Board pursuant to NRS 333A.080. The Purchasing Division, in*  
32 *conjunction with the using agency, shall ensure that each*  
33 *appropriate qualified service company is notified of the using*  
34 *agency’s interest in entering into a performance contract and*  
35 *coordinate an opportunity for each such qualified service*  
36 *company to:*

37 **(a)** *Visit the site pertaining to which the using agency wishes*  
38 *to enter into a performance contract;*

39 **(b)** *Perform a comprehensive audit in the manner prescribed*  
40 *in section 11 of this act; and*

41 **(c)** *Submit a proposal, including, without limitation, the*  
42 *comprehensive audit, and make a related presentation to the using*  
43 *agency for all operating cost-savings measures that the qualified*  
44 *service company determines would be practicable to implement.*

45 **2.** *The using agency shall:*



1       (a) Evaluate the proposals and presentations made pursuant to  
2 subsection 1;

3       (b) Evaluate the financial stability of the qualified service  
4 companies that made proposals and presentations pursuant to  
5 subsection 1 based on the financial statements and ratings of the  
6 qualified service companies; and

7       (c) Select a qualified service company,  
8       ➤ pursuant to the provisions of NRS 333A.010 to 333A.150,  
9 inclusive, and sections 8 to 22, inclusive, of this act, and any  
10 regulations adopted pursuant thereto, for evaluating and awarding  
11 contracts.

12       3. A qualified service company selected by a using agency  
13 pursuant to subsection 2 shall prepare a financial-grade  
14 operational audit, which must include, without limitation:

15       (a) A detailed explanation of the operating cost savings that  
16 will result from the performance contract; and

17       (b) A comparison of the costs of implementing the operating  
18 cost-savings measures to the operating cost savings that are  
19 anticipated as a result of the performance contract.

20       4. Except as otherwise provided in this subsection, the  
21 financial-grade operational audit prepared by the qualified service  
22 company pursuant to subsection 3 becomes, upon acceptance, a  
23 part of the final performance contract and the costs incurred by  
24 the qualified service company in preparing the financial-grade  
25 operational audit shall be deemed to be part of the performance  
26 contract. If, after the financial-grade operational audit is  
27 prepared, the using agency decides not to execute the performance  
28 contract, the using agency shall pay the qualified service company  
29 that prepared the financial-grade operational audit the costs  
30 incurred by the qualified service company in preparing the  
31 financial-grade operational audit, if the Legislature has  
32 specifically appropriated money for that purpose. An  
33 appropriation by the Legislature for the purchase and installation  
34 of an operating cost-savings measure creates no presumption that  
35 the using agency for which the money was appropriated is  
36 required to enter into such a performance contract.

37       **Sec. 11.** 1. Each comprehensive audit performed pursuant  
38 to paragraph (b) of subsection 1 of section 10 of this act must  
39 include, without limitation:

40       (a) An assessment of any operating cost-savings measure that  
41 might be implemented within the building of the using agency,  
42 including, without limitation, any operating cost-savings measure  
43 specifically requested by the using agency;

44       (b) An estimate of the costs associated with implementing an  
45 operating cost-savings measure described in paragraph (a);



1       (c) *A comparison of the energy and water consumption in the*  
2 *building of the using agency to the energy and water consumption*  
3 *in similar buildings; and*

4       (d) *A report that compares the current pattern of the costs to*  
5 *the using agency associated with energy consumption, water*  
6 *consumption and the disposal of waste, and related labor costs, to*  
7 *the projected costs if the using agency implements operating cost-*  
8 *savings measures.*

9       2. *A comprehensive audit must be based on:*

10      (a) *A review and analysis of the historical energy and water*  
11 *usage of the using agency; and*

12      (b) *Surveys, plans, specifications or drawings that provide*  
13 *details of the structure or design of the building of the using*  
14 *agency.*

15       3. *The using agency shall provide to each qualified service*  
16 *company that intends to perform a comprehensive audit the*  
17 *records of the energy and water consumption of the building.*

18       **Sec. 12.** 1. *A using agency that selects a qualified service*  
19 *company pursuant to section 10 of this act shall retain the*  
20 *professional services of a third-party consultant to work on behalf*  
21 *of the using agency in coordination with the qualified service*  
22 *company.*

23       2. *A third-party consultant retained pursuant to subsection 1*  
24 *must be certified by the Association of Energy Engineers as a*  
25 *“Certified Energy Manager” or hold similar credentials from a*  
26 *comparable nationally recognized organization.*

27       3. *The duties of a third-party consultant retained pursuant to*  
28 *subsection 1 may include, without limitation:*

29      (a) *Assisting the using agency in reviewing the operating cost-*  
30 *savings measures proposed by the qualified service company;*

31      (b) *Overseeing the construction of the operating cost-savings*  
32 *measures; and*

33      (c) *Monitoring the operating cost savings after the*  
34 *construction of the operating cost-savings measures is completed.*

35       4. *The Purchasing Division of the Department of*  
36 *Administration may procure sufficient funding from the qualified*  
37 *service company, through negotiation, to pay for the third-party*  
38 *consultant out of the proceeds relating to the performance*  
39 *contract. A qualified service company shall not pay a third-party*  
40 *consultant directly for the work described in subsection 3.*

41       5. *A third-party consultant retained pursuant to subsection 1*  
42 *may recommend that the using agency not execute the*  
43 *performance contract. If the using agency does not execute the*  
44 *performance contract, the using agency shall pay the third-party*



1 *consultant a pre-negotiated fee based on the work completed by*  
2 *the third-party consultant.*

3 **Sec. 13.** *In connection with any installment-purchase*  
4 *contract or lease-purchase contract entered into to finance a*  
5 *performance contract, the Board may:*

6 1. *Grant a security interest in any property that is the subject*  
7 *of the installment-purchase contract or lease-purchase contract*  
8 *and execute an instrument to evidence such a security interest,*  
9 *including, without limitation, a deed of trust, a leasehold interest*  
10 *deed of trust, a mortgage or a financing agreement.*

11 2. *Offer certificates of participation.*

12 3. *If the installment-purchase contract or lease-purchase*  
13 *contract involves an improvement to property owned by the State*  
14 *of Nevada or the using agency, enter into a lease of the property to*  
15 *which the improvement will be made and any property that is*  
16 *adjacent to that property if the installment-purchase contract or*  
17 *lease-purchase contract:*

18 (a) *Except as otherwise provided in section 20 of this act, has a*  
19 *term of not more than 15 years beyond the date on which*  
20 *construction of the work required by the installment-purchase*  
21 *contract or lease-purchase contract is completed; and*

22 (b) *Provides for rental payments that approximate the fair*  
23 *market rental of the property before the improvement is made, as*  
24 *determined by the Board at the time the parties enter into the*  
25 *lease, which must be paid if the installment-purchase contract or*  
26 *lease-purchase contract terminates before the expiration of the*  
27 *lease because the Legislature fails to appropriate money for*  
28 *payments due pursuant to the installment-purchase contract or*  
29 *lease-purchase contract.*

30 ➡ *A lease entered into pursuant to this subsection may provide for*  
31 *nominal rental payments to be paid pursuant to the lease before*  
32 *the installment-purchase contract or lease-purchase contract*  
33 *terminates.*

34 4. *Enter into any other agreement, contract or arrangement*  
35 *that the Board determines would be beneficial to the purpose of*  
36 *the installment-purchase contract or lease-purchase contract,*  
37 *including, without limitation, contracts for professional services,*  
38 *trust indentures, paying agent agreements and contracts of*  
39 *insurance.*

40 **Sec. 14.** *For the period during which an installment-*  
41 *purchase contract or lease-purchase contract that was entered into*  
42 *to finance a performance contract is in effect, the property that is*  
43 *the subject of the installment-purchase contract or lease-purchase*  
44 *contract:*



1     1. *Is exempt from ad valorem property taxation by this State*  
2 *and its political subdivisions if:*

3     (a) *An improvement is being constructed on the property*  
4 *pursuant to the installment-purchase contract or lease-purchase*  
5 *contract; or*

6     (b) *This State or a using agency is in possession of the*  
7 *property.*

8     2. *Shall be deemed to be the property of this State or the*  
9 *using agency that is a party to the installment-purchase contract*  
10 *or lease-purchase contract for the purposes of statutory limits on*  
11 *damages that may be awarded against this State, including,*  
12 *without limitation, the limits in chapter 41 of NRS, with respect to*  
13 *any action or claim, including a claim for civil damages, that*  
14 *arises from or is related to the property and is brought by a person*  
15 *who is not a party to the installment-purchase contract or lease-*  
16 *purchase contract if:*

17     (a) *An improvement is being constructed on the property*  
18 *pursuant to the installment-purchase contract or lease-purchase*  
19 *contract; or*

20     (b) *This State or the using agency is in possession of the*  
21 *property.*

22     **Sec. 15.** *Any obligations of this State issued in accordance*  
23 *with NRS 333A.010 to 333A.150, inclusive, and sections 8 to 22,*  
24 *inclusive, of this act may be refunded on behalf of the State by the*  
25 *Board without the necessity of the refunding obligations being*  
26 *authorized by NRS 333A.010 to 333A.150, inclusive, and sections*  
27 *8 to 22, inclusive, of this act, by the adoption of a resolution by the*  
28 *Board authorizing the issuance of obligations to refund, pay and*  
29 *discharge all or any part of such outstanding obligations of any*  
30 *one or more or all outstanding issues:*

31     1. *For the acceleration, deceleration or other modification of*  
32 *the payment of such obligations, including, without limitation, any*  
33 *interest on such obligations that is in arrears or about to become*  
34 *due for any period not exceeding 3 years after the date of the*  
35 *issuance of the refunding obligations, unless the capitalization of*  
36 *interest on obligations constituting an indebtedness increases the*  
37 *debt of the State in excess of the limitation set forth in Section 3 of*  
38 *Article 9 of the Nevada Constitution.*

39     2. *For the purpose of reducing interest costs or effecting*  
40 *other economies.*

41     3. *For the purpose of modifying or eliminating restrictive*  
42 *contractual limitations appertaining to the issuance of additional*  
43 *obligations, otherwise concerning the outstanding obligations, or*  
44 *otherwise relating to any operating cost-savings measure*  
45 *appertaining thereto.*





1     4. For any combination of the purposes set forth in  
2 subsections 1, 2 and 3.

3     **Sec. 16.** 1. Except as otherwise provided in sections 15 to  
4 20, inclusive, of this act, the proceeds of refunding obligations  
5 issued pursuant to section 15 of this act must be immediately  
6 applied to the retirement of the obligations to be refunded or be  
7 placed in escrow or trust in any trust bank or trust banks within or  
8 without or both within and without this State to be applied to the  
9 payment of the refunded obligations or the refunding obligations,  
10 or both, upon their presentation for payment to the extent, in such  
11 priority and otherwise in the manner which the using agency may  
12 determine.

13     2. The incidental costs of refunding obligations may be paid  
14 by the purchaser of the refunding obligations or be defrayed from  
15 any revenues in the State General Fund, subject to appropriations  
16 for such revenues as otherwise provided by law, or other available  
17 revenues of the State under the control of the Board or from the  
18 proceeds of the refunding obligations, or from the interest or other  
19 yield derived from the investment of the proceeds of any refunding  
20 obligations or other money in escrow or trust, or from any other  
21 sources legally available therefor, or any combination thereof, as  
22 the using agency may determine.

23     3. Any accrued interest and any premium appertaining to a  
24 sale of refunding obligations may be applied to the payment of the  
25 interest on or principal of those refunding obligations, or both, or  
26 may be deposited in a reserve therefor, or may be used to refund  
27 obligations by deposit in escrow, trust or otherwise, or may be used  
28 to defray any incidental costs appertaining to the refunding, or  
29 any combination thereof, as the using agency may determine, but  
30 in no event by the incurrence of additional debt in excess of the  
31 limitation on state debt set forth in Section 3 of Article 9 of the  
32 Nevada Constitution.

33     **Sec. 17.** 1. Any escrow or trust into which the proceeds of  
34 refunding obligations are placed pursuant to section 16 of this act  
35 must not necessarily be limited to proceeds of refunding  
36 obligations but may include other money available for its purpose.

37     2. Any proceeds of refunding obligations placed in escrow or  
38 trust, pending such use, may be invested or reinvested in federal  
39 securities, and in the case of an escrow or trust for the refunding  
40 of outstanding obligations issued in accordance with sections 15 to  
41 20, inclusive, of this act in other securities issued by the Federal  
42 Government if the resolution by the Board authorizing the  
43 issuance of such outstanding state securities or any trust  
44 indenture or other proceedings appertaining thereto expressly





1 *allows any such investment or reinvestment in such securities*  
2 *issued by the Federal Government other than federal securities.*

3 3. *A trust bank accounting for federal securities and other*  
4 *securities issued by the Federal Government in such escrow or*  
5 *trust may place the securities for safekeeping wholly or in part in*  
6 *any trust bank or trust banks within or without or both within and*  
7 *without this State.*

8 4. *A trust bank shall continuously secure any money placed*  
9 *in escrow or trust and not so invested or reinvested in federal*  
10 *securities and other securities issued by the Federal Government*  
11 *by a pledge in any trust bank or trust banks within or without or*  
12 *both within and without the State of federal securities in an*  
13 *amount at all times at least equal to the total uninvested amount of*  
14 *such money accounted for in such escrow or trust.*

15 5. *Such proceeds and investments in escrow or trust, together*  
16 *with any interest or other gain to be derived from any such*  
17 *investment, must be in an amount at all times at least sufficient to*  
18 *pay principal, interest, any prior redemption premiums due, and*  
19 *any charges of the escrow agent or trustee and any other*  
20 *incidental expenses payable therefrom, except to the extent*  
21 *provision may have been previously otherwise made therefor, as*  
22 *such obligations become due at their respective maturities or due*  
23 *at designated prior redemption date or dates in connection with*  
24 *which the using agency has exercised or is obligated to exercise a*  
25 *prior redemption option on behalf of the State.*

26 6. *The computations made in determining such sufficiency*  
27 *must be verified by a certified public accountant licensed to*  
28 *practice in this State or in any other state.*

29 7. *Any purchaser of any refunding obligation issued*  
30 *pursuant to sections 15 to 20, inclusive, of this act is not*  
31 *responsible for the application of the proceeds of the refunding*  
32 *obligation by the State, the Board, the using agency or any of the*  
33 *officers, agents or employees of the State.*

34 8. *As used in this section, "federal securities" means bills,*  
35 *notes, certificates of indebtedness, bonds or other similar*  
36 *securities which are direct obligations of the United States or*  
37 *which are unconditionally guaranteed as to payment, both of*  
38 *principal and of interest, by the United States.*

39 **Sec. 18.** *Obligations for refunding and obligations for any*  
40 *other purpose authorized pursuant to sections 15 to 20, inclusive,*  
41 *of this act or by any other law may be issued separately or issued*  
42 *in combination in one series or more by the State in accordance*  
43 *with the provisions of sections 15 to 20, inclusive, of this act.*

44 **Sec. 19.** *Except as otherwise provided in sections 15 to 20,*  
45 *inclusive, of this act, the relevant provisions elsewhere herein*



1 *appertaining generally to the issuance of obligations to defray the*  
2 *cost of any operating cost-savings measure are equally applicable*  
3 *in the authorization and issuance of refunding obligations,*  
4 *including, without limitation, their terms and security, the*  
5 *covenants and other provisions of the resolution authorizing the*  
6 *issuance of the obligations, or other instrument or proceedings*  
7 *appertaining thereto, and other aspects of the obligations.*

8 **Sec. 20.** 1. *An obligation may not be refunded pursuant to*  
9 *sections 15 to 20, inclusive, of this act unless the holder of the*  
10 *obligation voluntarily surrenders the obligation for exchange or*  
11 *payment, or unless the obligation matures or is callable for prior*  
12 *redemption under its terms within 25 years after the date of*  
13 *issuance of the refunding obligations. Provision must be made for*  
14 *paying the securities within that period.*

15 2. *The maturity of any obligation refunded may not be*  
16 *extended beyond 25 years, or beyond 1 year next following the*  
17 *date of the last outstanding maturity, whichever limitation is later.*

18 3. *The principal amount of the refunding obligations may:*

19 (a) *Exceed the principal amount of the refunded obligations;*  
20 *or*

21 (b) *Be less than or equal to the principal amount of the*  
22 *obligations being refunded if provision is duly and sufficiently*  
23 *made for their payment.*

24 **Sec. 21.** *The determination of the using agency that the*  
25 *limitations imposed upon the issuance of obligations pursuant to*  
26 *NRS 333A.010 to 333A.150, inclusive, and sections 8 to 22,*  
27 *inclusive, of this act, including, without limitation, any obligations*  
28 *for funding or refunding obligations, have been met shall be*  
29 *conclusive in the absence of fraud or arbitrary and gross abuse of*  
30 *discretion regardless of whether the authorizing resolution or the*  
31 *obligations authorized by that resolution contain a recital as*  
32 *authorized by section 22 of this act.*

33 **Sec. 22.** *A resolution providing for the issuance of a*  
34 *performance contract, including, without limitation, an*  
35 *installment-purchase contract or lease-purchase contract or other*  
36 *proceedings appertaining thereto, may provide that the obligations*  
37 *contain a recital that the obligations are issued pursuant to NRS*  
38 *333A.010 to 333A.150, inclusive, and sections 8 to 22, inclusive, of*  
39 *this act, which recital is conclusive evidence of the validity of the*  
40 *obligations.*

41 **Sec. 23.** *NRS 333A.010 is hereby amended to read as follows:*

42 333A.010 *As used in NRS 333A.010 to 333A.150, inclusive,*  
43 *and sections 8 to 22, inclusive, of this act, unless the context*  
44 *otherwise requires, the words and terms defined in NRS 333A.020*



1 to 333A.070, inclusive, *and section 8 of this act* have the meanings  
2 ascribed to them in those sections.

3 **Sec. 24.** NRS 333A.080 is hereby amended to read as follows:

4 333A.080 1. ~~[Notwithstanding any provision of this chapter~~  
5 ~~and chapters 333 and 338 of NRS to the contrary, a using agency~~  
6 ~~may enter into a performance contract with a qualified service~~  
7 ~~company for the purchase and installation of an operating cost~~  
8 ~~savings measure to reduce costs related to energy, water and the~~  
9 ~~disposal of waste, and related labor costs. Such a performance~~  
10 ~~contract may be in the form of an installment payment contract or a~~  
11 ~~lease purchase contract that is subject to the provisions of NRS~~  
12 ~~353.500 to 353.630, inclusive. Any operating cost savings measures~~  
13 ~~put into place as a result of a performance contract must comply~~  
14 ~~with all applicable building codes.~~

15 ~~—2.]~~ The State Public Works Board shall determine those  
16 companies that satisfy the requirements of qualified service  
17 companies for the purposes of NRS 333A.010 to 333A.150,  
18 inclusive ~~[.]~~, *and sections 8 to 22, inclusive, of this act.* In making  
19 such a determination, the State Public Works Board shall enlist the  
20 assistance of the staffs of the Office of Energy within the Office of  
21 the Governor, the Buildings and Grounds Division of the  
22 Department of Administration and the Purchasing Division of the  
23 Department of Administration. The State Public Works Board shall  
24 prepare and issue a request for qualifications to not less than three  
25 potential qualified service companies.

26 ~~[3.]~~ 2. In sending out a request for qualifications, the State  
27 Public Works Board:

28 (a) Shall attempt to identify at least one potential qualified  
29 service company located within this State; and

30 (b) May consider whether and to what extent the companies to  
31 which the request for qualifications will be sent will use local  
32 contractors.

33 ~~[4.]~~ 3. The State Public Works Board shall ~~[use objective]~~  
34 *adopt, by regulation,* criteria to determine those companies that  
35 satisfy the requirements of qualified service companies. The  
36 ~~[objective]~~ criteria for evaluation must include *, without limitation,*  
37 the following areas as substantive factors to assess the capability of  
38 such companies:

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



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 State Public Works

Board to be relevant and appropriate to the ability of a company to perform the ~~[project.]~~ **projects.**

➤ In determining whether a company satisfies the requirements of a qualified service company, the State Public Works Board shall also consider ~~[the financial health of the company as evidenced by its financial statements and ratings and]~~ whether the company holds the appropriate licenses required for the design, engineering and construction which would be completed pursuant to a performance contract.

~~[5-]~~ **4.** The State Public Works Board shall compile a list of those companies that it determines satisfy the requirements of qualified service companies. ~~[The Purchasing Division of the Department of Administration shall work directly with any using agency interested in entering into a performance contract, using the list of qualified service companies compiled by the State Public Works Board. The Purchasing Division, in conjunction with the using agency, shall ensure that each appropriate qualified service company is notified of the using agency's interest in entering into a performance contract and coordinate an opportunity for each such qualified service company to:~~

~~—(a) Perform a preliminary and comprehensive audit and assessment of all potential operating cost savings measures that might be implemented within the buildings of the using agency, including any operating cost savings measures specifically requested by the using agency; and~~

~~—(b) Submit a proposal and make a related presentation to the using agency for all such operating cost savings measures that the qualified service company determines would be practicable to implement.~~

~~—6. The using agency shall:~~

~~—(a) Evaluate the proposals and presentations made pursuant to subsection 5; and~~

~~—(b) Select a qualified service company,~~

~~➤ pursuant to the provisions of this chapter and chapter 333 of NRS, and any regulations adopted pursuant thereto, for evaluating and awarding contracts.~~



~~7. A qualified service company selected by a using agency pursuant to subsection 6 shall prepare a financial grade operational audit. 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 which the money was appropriated is required to enter into such a contract.~~

~~8. The using agency shall retain the professional services of a third party consultant with the requisite technical expertise to assist the using agency in reviewing the operating cost savings measures proposed by the qualified service company. The Purchasing Division of the Department of Administration may procure sufficient funding from the qualified service company, through negotiation, to pay for the third party consultant. Such a third party consultant must be certified by the Association of Energy Engineers as a "Certified Energy Manager" or hold similar credentials from a comparable nationally recognized organization. A third party consultant retained pursuant to this subsection shall work on behalf of the using agency in coordination with the qualified service company.]~~

**Sec. 25.** NRS 333A.090 is hereby amended to read as follows:

333A.090 1. *Any financing related to a performance contract must be approved by the Board.*

2. A performance contract may be financed through [a] :

(a) A person other than the qualified service company.

~~[2.]~~ (b) *An installment-purchase contract or lease-purchase contract. Such an installment-purchase contract or lease-purchase contract is not subject to:*

(1) *The provisions of NRS 353.500 to 353.630, inclusive.*

(2) *Any requirement of competitive bidding or other restriction imposed on the procedure for the awarding of contracts or the procurement of goods or services.*

3. A performance contract may be structured as:

(a) A performance contract that guarantees operating cost savings, which includes, without limitation, the design and installation of equipment, the operation and maintenance, if



1 applicable, of any of the operating cost-savings measures and the  
2 guaranteed annual savings which must meet or exceed the total  
3 annual contract payments to be made by the using agency, including  
4 , *without limitation*, any financing charges to be incurred by the  
5 using agency over the life of the performance contract. The using  
6 agency may require that these savings be verified ~~[annually or over]~~  
7 :

8 *(1) When the work required by the performance contract is*  
9 *completed and 1 year after that work is completed; or*

10 *(2) Over a sufficient period that demonstrates savings.*

11 (b) A shared-savings contract which includes provisions  
12 mutually agreed upon by the using agency and qualified service  
13 company as to the negotiated rate of payments based upon operating  
14 cost savings and a stipulated maximum consumption level of energy  
15 or water, or both energy and water, over the life of the contract.

16 *4. The annual operating cost savings resulting from a*  
17 *performance contract must meet or exceed the total annual*  
18 *contract payments to be made by the using agency, including any*  
19 *financing charges to be incurred by the using agency over the life*  
20 *of the performance contract.*

21 *5. A change order to a performance contract executed*  
22 *pursuant to NRS 333A.080 may not be approved by the using*  
23 *agency if the cost of the change order would cause the annual*  
24 *operating cost savings resulting from the performance contract to*  
25 *be less than the total annual contract payments to be made by the*  
26 *using agency, including any financing charges to be incurred by*  
27 *the using agency over the life of the performance contract, unless*  
28 *approval of the change order is more economically feasible than*  
29 *termination of the operating cost-savings measure.*

30 **Sec. 26.** NRS 333A.100 is hereby amended to read as follows:

31 333A.100 1. Notwithstanding any provision of NRS  
32 333A.010 to 333A.150, inclusive, *and sections 8 to 22, inclusive, of*  
33 *this act* to the contrary, a performance contract entered into pursuant  
34 to NRS 333A.010 to 333A.150, inclusive, *and sections 8 to 22,*  
35 *inclusive, of this act* does not create a debt for the purposes of  
36 Section 3 of Article 9 of the Nevada Constitution.

37 2. Except as otherwise provided in this section, the term of a  
38 performance contract may extend beyond the biennium in which the  
39 contract is executed, provided that the performance contract  
40 contains a provision which states that all obligations of the State  
41 under the performance contract are extinguished at the end of any  
42 fiscal year if the Legislature fails to provide an appropriation to the  
43 using agency for the ensuing fiscal year for payments to be made  
44 under the performance contract. If the Legislature fails to  
45 appropriate money to a using agency for a performance contract,



1 there is no remedy against the State, except that if a security interest  
2 in any property was created pursuant to the performance contract,  
3 the holder of such a security interest may enforce the security  
4 interest against that property. ~~[The]~~ *Except as otherwise provided in*  
5 *section 20 of this act, the* term of a performance contract must not  
6 exceed 15 years ~~[ ] after the date on which the work required by~~  
7 *the performance contract is completed.*

8 3. 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 **Sec. 27.** NRS 333A.130 is hereby amended to read as follows:

12 333A.130 1. During the term of a performance contract, the  
13 qualified service company shall monitor the reductions in energy or  
14 water consumption and other operating cost savings attributable to  
15 the operating cost-savings measure purchased or installed under the  
16 performance contract, and shall ~~[, at least once a year or at such~~  
17 ~~other intervals specified in the performance contract,]~~ prepare and  
18 provide a report to the using agency documenting the performance  
19 of the operating cost-savings measures ~~[ ]~~ :

20 (a) *At the time that the work required by the performance*  
21 *contract is completed and 1 year after that work is completed; or*

22 (b) *At such other intervals as specified in the performance*  
23 *contract.*

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

26 (a) Subsequent material changes to the baseline consumption of  
27 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 corresponding  
34 change in the occupancy and indoor temperature, of the building.

35 (f) A material change in the weather.

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

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

40 **Sec. 28.** 1. This act becomes effective on July 1, 2005.

41 2. Sections 5 and 6 of this act expire by limitation on May 1,  
42 2013.



