

Amendment No. 705

Senate Amendment to Senate Bill No. 142 First Reprint (BDR 27-676)

Proposed by: Senate Committee on Finance

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/> _____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/> _____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/> _____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

MSN/TMC



Date: 5/18/2013

S.B. No. 142—Makes various changes to provisions governing local government contracting. (BDR 27-676)



SENATE BILL NO. 142—SENATORS JONES, ATKINSON, SEGERBLOM, HAMMOND, SPEARMAN; DENIS, FORD, HARDY, HUTCHISON, KIECKHEFER, KIHUEN, MANENDO, PARKS, SETTELMAYER AND WOODHOUSE

FEBRUARY 18, 2013

JOINT SPONSORS: ASSEMBLYMEN ELLIOT ANDERSON, BOBZIEN, AIZLEY; DALY, ELLISON, FIORE, HARDY, KIRKPATRICK AND OHRENSCHALL

Referred to Committee on Government Affairs

SUMMARY—Makes various changes to provisions governing local government contracting. (BDR 27-676)

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

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

AN ACT relating to local governments; revising provisions governing contracting by school districts; revising provisions governing performance contracts for operating cost-savings measures; requiring the Office of Energy to provide local governments with information ~~and~~ and educational resources ~~and support~~ relating to such performance contracts; authorizing the Office of Energy to provide local governments with support relating to operating cost-savings measures under certain circumstances; authorizing the Office of Energy to charge and collect fees relating to such support; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes local governments, including school districts, to enter into performance contracts for the purchase and installation of operating cost-savings measures to reduce costs related to energy, water and the disposal of waste, and related labor costs. (NRS 332.300-332.440) **Section 2** of this bill ~~provides, with limited exceptions, that before~~ requires the board of trustees of a school district ~~advertises for, requests or solicits bids or proposals for certain contracts for which the estimated cost exceeds \$100,000, the board of trustees or its designee shall evaluate,~~ to adopt a policy setting forth the process for evaluating whether ~~the~~ work to be performed on a building will be performed pursuant to ~~the contract will include certain operating cost-savings measures and qualifies to be performed pursuant to~~ a performance contract ~~and sets forth certain requirements pertaining to the policy.~~ **Section 2** also requires the board of trustees to cause to be produced an annual report ~~on the evaluation at its next regularly scheduled meeting,~~ relating to certain operating cost-savings measures.

Section 3 of this bill requires the Office of Energy to: (1) provide local governments with information ~~and~~ and educational resources ~~and support~~ relating to operating cost-savings

measures and performance contracts; and (2) include on the Internet website maintained by the Office, if any, information and educational resources relating to operating cost-savings measures and performance contracts. Additionally, section 3 authorizes the Office of Energy to provide a local government, upon request, with support relating to operating cost-savings measures and to charge and collect a fee from the local government for the provision of such support. Section 3 creates an account administered by the Director of the Office of Energy into which such fees must be deposited. Section 3 also provides that a local government may include in a performance contract the costs of any such fees charged by the Office of Energy.

Section 4.5 of this bill authorizes a local government, in lieu of retaining the professional services of a third-party consultant, to enter into a contract with the Office of Energy to assist the local government in evaluating certain proposals and presentations by qualified service companies relating to performance contracts.

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

Section 1. Chapter 332 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. ~~1. Except as otherwise provided in subsection 3, before the board of trustees of a school district advertises for, requests or solicits bids or proposals for a contract relating to~~ shall adopt a policy setting forth the process for evaluating whether work to be performed on a building for which the estimated cost exceeds \$100,000, the board of trustees or its designee shall evaluate whether the work to be performed pursuant to the contract:

~~(a) Will include an operating cost savings measure; and~~

~~(b) Qualifies to be performed pursuant to a performance contract.~~

~~2. If the evaluation performed pursuant to subsection 1 indicates that the work to be performed will include an operating cost savings measure and qualifies to be performed pursuant to a performance contract, the board of trustees shall report on the evaluation at the next regularly scheduled meeting of the board of trustees. If the board of trustees determines not to award a performance contract for the work, the board of trustees shall state the reasons for that determination on the record at the meeting and those reasons must be included in the minutes of the meeting.~~

~~3. The provisions of this section do not apply if the board of trustees has performed a comprehensive audit and assessment of all potential operating cost savings measures that might be implemented within the buildings of the school district within the immediately preceding 7 years and a report of the audit and assessment is available on the Internet website, if any, of the school district.~~

~~4. The policy must include, without limitation:~~

(a) The criteria for determining the work which will be evaluated pursuant to the policy;

(b) The requirement that the board of trustees or its designee evaluate whether the work to be performed:

(1) Consists primarily of one or more operating cost-savings measures;

(2) Qualifies to be performed pursuant to a performance contract with a return on investment that the board of trustees determines would make entering into a performance contract in the best interest of the school district; and

(3) Would be more reasonably included under an existing performance contract rather than a new performance contract; and

(c) The requirement that the board of trustees or its designee, if it determines not to enter into a performance contract, document the reasons for that determination.

2. The board of trustees of a school district shall cause to be prepared an annual report which sets forth the operating cost-savings measures, if any, that:

(a) Were identified in a financial-grade operational audit submitted to the board of trustees pursuant to subsection 5 of NRS 332.360 during the immediately preceding year; and

(b) Were not included in a performance contract during the immediately preceding year.

3. As used in this section, "operating cost-savings measure" means an investment in equipment, products and materials, and strategies for building operation, or any combination thereof, designed to reduce energy and other utility expenses, including, without limitation:

(a) Costs for materials and labor required to replace old equipment with new, more efficient equipment.

(b) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated windows or doors, reductions in glass area, and other modifications to windows and doors that will reduce energy consumption.

(c) Automated or computerized energy control systems.

(d) Replacement of, or modifications to, heating, ventilation or air-conditioning systems.

(e) Replacement of, or modifications to, lighting fixtures.

(f) Improvements to the indoor air quality of a building that conform to all requirements of an applicable building code.

(g) Energy recovery systems.

(h) Systems for combined cooling, heating and power that produce steam or other forms of energy, for use primarily within the building or a complex of buildings.

(i) Installation of, or modifications to, existing systems for daylighting, including lighting control systems.

(j) Installation of, or modification to, technologies that use renewable or alternative energy sources.

(k) Programs relating to building operation that reduce operating costs, including, without limitation, computerized programs, training and other similar activities.

(l) Programs for improvement of steam traps to reduce operating costs.

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

(n) Trash compaction and waste minimization.

(o) Ground source systems for heating and cooling.

Sec. 3. 1. The Office of Energy shall:

~~1.1~~ (a) Provide to local governments information ~~and~~ and educational resources ~~and support~~ relating to operating cost-savings measures and performance contracts.

~~1.2~~ (b) Include on the Internet website maintained by the Office, if any, information and educational resources relating to operating cost-savings measures and performance contracts.

2. The Office of Energy may, upon receiving a request from a local government for support relating to operating cost-savings measures:

(a) Provide to the local government support relating to operating cost-savings measures; and

(b) Charge and collect a fee from the local government for the provision of any support described in paragraph (a).

3. All fees charged and collected by the Office of Energy pursuant to subsection 2 must be accounted for separately in the State General Fund. The Director of the Office of Energy shall administer the account. Money in the account must be used only to pay the costs incurred by the Office of Energy to provide support to local governments pursuant to subsection 2 and is hereby authorized for expenditure as a continuing appropriation for this purpose.

4. The Director may apply for and accept any gift, donation, bequest, grant or other source of money for deposit in the account. The interest and income earned on money in the account, after deducting any applicable charges, must be credited to the account. Money that remains in the account at the end of the fiscal year does not revert to the State General Fund, and the balance in the account must be carried forward to the next fiscal year.

5. A local government may include in a performance contract the amount of any fee charged by the Office of Energy pursuant to subsection 2.

6. The Director of the Office of Energy may adopt regulations to carry out the provisions of this section, including, without limitation, regulations which establish the amount of the fees to be charged and collected by the Office of Energy pursuant to subsection 2.

Sec. 4. NRS 332.300 is hereby amended to read as follows:

332.300 As used in NRS 332.300 to 332.440, inclusive, and sections 2 and 3 of this act, unless the context otherwise requires, the words and terms defined in NRS 332.310 to 332.350, inclusive, have the meanings ascribed to them in those sections.

Sec. 4.5. NRS 332.360 is hereby amended to read as follows:

332.360 1. Notwithstanding any provision of this chapter and chapter 338 of NRS to the contrary, a local government may enter into a performance contract with a qualified service company for the purchase and installation of an operating cost-savings measure to reduce costs related to energy, water and the disposal of waste, and related labor costs. Such a performance contract may be in the form of an installment payment contract or a lease-purchase contract. Any operating cost-savings measures put into place as a result of a performance contract must comply with all applicable building codes.

2. If a local government is interested in entering into a performance contract, the local government shall notify each appropriate qualified service company 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 local government, including any operating cost-savings measures specifically requested by the local government; and

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

3. The local government shall:

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

(b) Select a qualified service company,

↪ pursuant to the provisions of NRS 332.300 to 332.440, inclusive.

4. The local government may enter into a contract with the Office of Energy or retain the professional services of a third-party consultant with the requisite technical expertise to assist the local government in evaluating the proposals and presentations pursuant to subsection 3. ~~{Such}~~ If the local government retains the

1 professional services of a third-party consultant, the third-party consultant must
2 possess a business license issued pursuant to chapter 76 of NRS and any other
3 applicable licenses issued by a licensing board in this State in the same discipline in
4 which the consultant will be advising the local government.

5 5. The qualified service company selected by the local government pursuant
6 to subsection 3 shall prepare a financial-grade operational audit. Except as
7 otherwise provided in this subsection, the audit prepared by the qualified service
8 company becomes, upon acceptance, a part of the final performance contract and
9 the costs incurred by the qualified service company in preparing the audit shall be
10 deemed to be part of the performance contract. If, after the audit is prepared, the
11 local government decides not to execute the performance contract, the local
12 government shall pay the qualified service company that prepared the audit the
13 costs incurred by the qualified service company in preparing the audit if the local
14 government has specifically appropriated money for that purpose.

15 6. The local government shall enter into a contract with the Office of Energy
16 or retain the professional services of a third-party consultant with the requisite
17 technical expertise to assist the local government in reviewing the operating cost-
18 savings measures proposed by the qualified service company and may procure
19 sufficient funding from the qualified service company, through negotiation, to pay
20 for the costs incurred by the Office of Energy or the third-party consultant. ~~(Such~~
21 ~~If the local government retains the professional services of a third-party~~
22 ~~consultant, the~~ third-party consultant must be licensed pursuant to chapter 625 of
23 NRS and certified by the Association of Energy Engineers as a "Certified Energy
24 Manager" or hold similar credentials from a comparable nationally recognized
25 organization. ~~+~~ The Office of Energy or a third-party consultant retained
26 pursuant to this subsection shall work on behalf and for the benefit of the local
27 government in coordination with the qualified service company.

28 **Sec. 5.** This act becomes effective on July 1, 2013.