



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 26, 2019

GOV. MSG. NO. 1246

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 26, 2019, the following bill was signed into law:

HB401 HD1 SD2 CD1

RELATING TO CONTRACTING FOR PUBLIC
FACILITIES
ACT 144 (19)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO CONTRACTING FOR PUBLIC FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that energy performance
2 contracting for energy efficiency retrofits at public facilities
3 has saved taxpayers in the State hundreds of millions of dollars
4 over the last decade. Energy performance contracts allow public
5 agencies to leverage private sector partnerships and provide
6 financing to implement capital-intensive projects that offer
7 guaranteed energy savings over the term of a contract.

8 In addition to promoting public sector energy efficiency,
9 the State has established ambitious goals to adopt renewable
10 energy and clean transportation technologies and is actively
11 developing opportunities for public agencies and facilities to
12 contribute to these goals.

13 The legislature also finds that allowing public agencies to
14 use innovative public-private partnership tools, such as energy
15 performance contracting, to procure and use additional
16 distributed energy resources, including solar, batteries,
17 electric vehicles, and electric vehicle charging stations, will



1 enhance the public sector's ability to support state energy
2 goals while saving taxpayer dollars on energy and fuel costs.

3 The legislature notes that both the United States armed
4 forces and Colorado have already expanded the use of energy
5 performance contracting to support their energy and
6 transportation goals. Furthermore, the legislature finds that
7 public facilities will increasingly incorporate electric vehicle
8 charging infrastructure to support public vehicle fleets. The
9 legislature further finds that this infrastructure will interact
10 with the public facilities' electrical systems. Accordingly,
11 the legislature believes that the procurement of electric
12 vehicles and facility infrastructure should be coordinated to
13 maximize synergies and energy savings.

14 SECTION 2. Chapter 36, Hawaii Revised Statutes, is amended
15 by adding a new section to be appropriately designated and to
16 read as follows:

17 "§36- Vehicle fleet performance contracts for vehicle
18 fleet energy efficiency programs. (a) All agencies shall
19 identify and evaluate vehicle fleet energy efficiency programs
20 that the agency may implement using vehicle fleet performance
21 contracts.



1 (b) Any agency may enter into a multi-year vehicle fleet
2 performance contract for the purpose of undertaking or
3 implementing a vehicle fleet energy efficiency program and
4 acquiring vehicles, vehicle fleets, necessary vehicle charging
5 or fueling infrastructure, and renewable energy systems that
6 supply charging or fueling infrastructure.

7 (c) Any agency evaluating and implementing an energy
8 performance contract under section 36-41 may incorporate vehicle
9 fleet operational and fuel cost-savings measures into that
10 energy performance contract; provided that these measures comply
11 with the contracting provisions for vehicle fleet performance
12 contracts provided for in subsection (e) (6), (7), and (8).

13 (d) A vehicle fleet performance contract for vehicle fleet
14 energy efficiency may include financing options, including
15 leasing, lease-purchase, financing agreements, third-party joint
16 ventures, guaranteed-savings plans, vehicle or vehicle fleet
17 service contracts, or any combination thereof. Except as
18 otherwise provided by law, the agency that is responsible for a
19 particular vehicle fleet shall review and approve vehicle fleet
20 performance contract arrangements.



1 (e) Notwithstanding any law relating to the award of
2 public contracts to the contrary, any agency desiring to enter
3 into a vehicle fleet performance contract, pursuant to this
4 section, shall comply with the following:

5 (1) The agency shall issue a public request for proposals,
6 advertised in the same manner as provided in chapter
7 103D, concerning the provision of the vehicle fleet or
8 the design, operation, and maintenance of a vehicle
9 fleet energy efficiency program, fleet vehicles,
10 necessary charging or fueling infrastructure, or
11 renewable energy systems that supply charging or
12 fueling infrastructure; provided that the request for
13 proposals shall contain terms and conditions relating
14 to the submission of proposals, evaluation and
15 selection of proposals, financial terms, legal
16 responsibilities, and any other matters as may be
17 required by law or determined by the agency to be
18 appropriate;

19 (2) Upon receiving responses to the request for proposals
20 pursuant to paragraph (1), the agency may select the
21 most qualified proposal or proposals on the basis of



1 the experience and qualifications of the proposers,
2 technical approach, financial arrangements, overall
3 benefits to the agency, and any other factors
4 determined by the agency to be relevant and
5 appropriate;

6 (3) The agency may negotiate and enter into a vehicle
7 fleet performance contract with the person or company
8 whose proposal is selected as the most qualified based
9 on the criteria established by the agency pursuant to
10 paragraph (2);

11 (4) The term of the vehicle fleet performance contract
12 shall not exceed twenty years;

13 (5) The vehicle fleet performance contract shall contain
14 the following annual allocation dependency clause:
15 "The continuation of this contract is contingent upon
16 the appropriation of funds to fulfill the requirements
17 of the contract by the applicable funding authority.
18 If that authority fails to appropriate sufficient
19 funds to provide for the continuation of the contract,
20 the contract shall terminate on the last day of the
21 fiscal year for which allocations were made";



- 1 (6) The agency may include in the vehicle fleet
2 performance contract a requirement that the agency
3 shall ultimately receive title to the vehicles,
4 vehicle charging and fueling infrastructure, and
5 renewable energy systems that supply charging or
6 fueling infrastructure being financed under the
7 contract;
- 8 (7) The agency shall include in the vehicle fleet
9 performance contract a requirement that the total
10 annual payments for vehicle fleet operational and fuel
11 cost-savings measures shall not exceed total vehicle
12 fleet operational and fuel cost savings achieved by
13 the implementation of the measures;
- 14 (8) For any guaranteed-savings plan, the payment
15 obligation for each year of the contract, including
16 the year of acquisition, shall be guaranteed by the
17 private sector person or company to be less than the
18 annual vehicle fleet operational and fuel cost savings
19 attributable under the contract to the vehicles and
20 necessary charging or fueling infrastructure; provided
21 that this guarantee, at the option of the agency,



1 shall be a bond or insurance policy, or other type of
2 guarantee determined by the agency to be sufficient to
3 provide a similar level of assurance to that of a bond
4 or insurance policy; and provided further that, if the
5 actual annual verified savings are less than the
6 annual amount guaranteed by the vehicle fleet company,
7 the vehicle fleet company, within thirty days of being
8 invoiced, shall pay the agency, or cause the agency to
9 be paid, the difference between the guaranteed amount
10 and the actual verified amount; and

11 (9) No vehicle, vehicle fleet, vehicle charging or fueling
12 infrastructure, or renewable energy system contracted
13 for or procured under a vehicle fleet performance
14 contract shall qualify for or claim a state tax
15 credit, state rebate, or other state financial
16 incentive of any kind.

17 (f) For the purposes of this section:

18 "Agency" means any executive department, independent
19 commission, board, bureau, office, or other establishment of the
20 State or any county government, the judiciary, the University of



1 Hawaii, or any quasi-public institution that is supported in
2 whole or in part by state or county funds.

3 "Energy performance contract" shall have the same meaning
4 as in section 36-41.

5 "Financing agreement" shall have the same meaning as in
6 section 37D-2.

7 "Guaranteed-savings plan" means an agreement under which a
8 private sector person or company undertakes to design, operate,
9 and maintain a vehicle fleet energy efficiency program and
10 related vehicle fleet operational and fuel cost-savings measures
11 for an agency and the agency agrees to pay a contractually
12 specified amount of verified vehicle fleet operational and fuel
13 cost savings.

14 "Vehicle" means every device in, upon, or by which any
15 person or property is or may be transported or drawn upon a
16 highway.

17 "Vehicle fleet operational and fuel cost savings" means a
18 measurable decrease in the operational and maintenance costs of
19 vehicles that is associated with fuel or maintenance based on
20 higher efficiency ratings or alternative fueling methods,
21 including but not limited to savings from the reduction in



1 maintenance requirements and a reduction in or the elimination
2 of projected fuel purchase expenses as a direct result of
3 investment in electric or alternative fuel vehicles, vehicle
4 charging or fueling infrastructure, and renewable energy systems
5 that supply vehicle charging or fueling infrastructure.

6 "Vehicle fleet operational and fuel cost-savings measure"
7 means any acquisition, installation, modification, or service
8 that is designed to reduce energy consumption and related
9 operating costs in vehicles and includes the following:

- 10 (1) Vehicle purchase or lease costs, either in full or in
11 part; and
12 (2) Charging or fueling infrastructure, including
13 renewable energy systems that supply this
14 infrastructure, necessary to charge or fuel
15 alternative fuel vehicles included in a vehicle fleet
16 performance contract.

17 "Vehicle fleet performance contract" means an energy
18 performance contract, shared-savings contract, or any other
19 agreement in which vehicle fleet operational and fuel cost
20 savings are used to pay for the cost of vehicles or associated
21 capital investments in charging or fueling infrastructure.



1 "Verified" means the technique used in the determination of
 2 baseline vehicle fleet operational and fuel costs, post-vehicle
 3 fleet energy efficiency program vehicle fleet operational and
 4 fuel costs, and vehicle fleet operational and fuel cost savings,
 5 including engineering calculations, metering and monitoring,
 6 meter analysis, computer simulations, mathematical models, and
 7 agreed-upon stipulations by the customer and the vehicle fleet
 8 company."

9 SECTION 3. Section 36-41, Hawaii Revised Statutes, is
 10 amended by amending subsections (c) and (d) to read as follows:

11 "(c) Notwithstanding any law to the contrary relating to
 12 the award of public contracts, any agency desiring to enter into
 13 an energy performance contract shall do so in accordance with
 14 the following provisions:

15 (1) The agency shall issue a public request for proposals,
 16 advertised in the same manner as provided in chapter
 17 103D, concerning the provision of energy efficiency
 18 services or the design, installation, operation, and
 19 maintenance of energy equipment or both. The request
 20 for proposals shall contain terms and conditions
 21 relating to submission of proposals, evaluation and



1 selection of proposals, financial terms, legal
2 responsibilities, and other matters as may be required
3 by law and as the agency determines appropriate;

4 (2) Upon receiving responses to the request for proposals,
5 the agency may select the most qualified proposal or
6 proposals on the basis of the experience and
7 qualifications of the proposers, the technical
8 approach, the financial arrangements, the overall
9 benefits to the agency, and other factors determined
10 by the agency to be relevant and appropriate;

11 (3) The agency thereafter may negotiate and enter into an
12 energy performance contract with the person or company
13 whose proposal is selected as the most qualified based
14 on the criteria established by the agency;

15 (4) The term of any energy performance contract entered
16 into pursuant to this section shall not exceed twenty
17 years;

18 (5) Any contract entered into shall contain the following
19 annual allocation dependency clause:

20 "The continuation of this contract is contingent upon
21 the appropriation of funds to fulfill the requirements



1 of the contract by the applicable funding authority.

2 If that authority fails to appropriate sufficient
3 funds to provide for the continuation of the contract,
4 the contract shall terminate on the last day of the
5 fiscal year for which allocations were made";

6 (6) Any energy performance contract may provide that the
7 agency shall ultimately receive title to the energy
8 system, vehicles, fleet vehicles, and fueling and
9 charging infrastructure being financed under the
10 contract;

11 (7) Any energy performance contract shall provide that
12 total payments shall not exceed total savings; and

13 (8) For any guaranteed-savings plan:

14 (A) The payment obligation for each year of the
15 contract, including the year of installation,
16 shall be guaranteed by the private sector person
17 or company to be less than the annual energy cost
18 savings attributable under the contract to the
19 energy equipment and services. Such guarantee,
20 at the option of the agency, shall be a bond or
21 insurance policy, or some other guarantee



1 determined sufficient by the agency to provide a
2 level of assurance similar to the level provided
3 by a bond or insurance policy; and

4 (B) In the event that the actual annual verified
5 savings are less than the annual amount
6 guaranteed by the energy service company, the
7 energy service company, within thirty days of
8 being invoiced, shall pay the agency, or cause
9 the agency to be paid, the difference between the
10 guaranteed amount and the actual verified amount.

11 (d) For purposes of this section:

12 "Agency" means any executive department, independent
13 commission, board, bureau, office, or other establishment of the
14 State or any county government, the judiciary, the University of
15 Hawaii, or any quasi-public institution that is supported in
16 whole or in part by state or county funds.

17 "Energy performance contract" means an agreement for the
18 provision of energy services and equipment, including but not
19 limited to building or facility energy conservation enhancing
20 retrofits, water saving technology retrofits, electric vehicle
21 charging infrastructure, and alternate energy technologies, in



1 which a private sector person or company agrees to finance,
2 design, construct, install, maintain, operate, or manage energy
3 systems or equipment to improve the energy efficiency of, or
4 produce energy in connection with, a facility or electric
5 vehicle charging system in exchange for a portion of the cost
6 savings, lease payments, or specified revenues, and the level of
7 payments is made contingent upon the verified energy savings,
8 energy production, avoided maintenance, avoided energy equipment
9 replacement, avoided vehicle maintenance or fuel costs
10 associated with the implementation of a vehicle fleet energy
11 efficiency program pursuant to section 36- , or any combination
12 of the foregoing bases. Energy conservation retrofits also
13 include energy saved off-site by water or other utility
14 conservation enhancing retrofits.

15 "Facility" means a building [~~or~~], buildings,
16 infrastructure, or similar structure, including [~~the~~] any site
17 owned or leased by, or otherwise under the jurisdiction or
18 control of, the agency.

19 "Financing agreement" shall have the same meaning as in
20 section 37D-2.



1 "Guaranteed-savings plan" means an agreement under which a
2 private sector person or company undertakes to design, install,
3 operate, and maintain improvements to an agency's facility or
4 facilities and the agency agrees to pay a contractually
5 specified amount of verified energy cost savings.

6 "Verified" means the technique used in the determination of
7 baseline energy use, post-installation energy use, and energy
8 and cost savings by the following measurement and verification
9 techniques: engineering calculations, metering and monitoring,
10 utility meter billing analysis, computer simulations,
11 mathematical models, and agreed-upon stipulations by the
12 customer and the energy service company."

13 SECTION 4. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect upon its approval.

APPROVED this 26 day of JUN, 2019



GOVERNOR OF THE STATE OF HAWAII



HB No. 401, HD 1, SD 2, CD 1

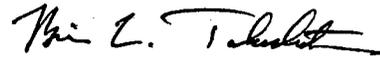
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 1, 2019
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.



Scott K. Saiki
Speaker
House of Representatives

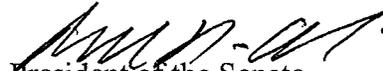


Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: April 30, 2019
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.


President of the Senate


Clerk of the Senate