

HB1129 of 2014 INTERIM REPORT
Requiring the Development of an Energy
Efficiency Implementation Plan

Submitted by the Office of Energy and Planning

November 3, 2014

I. Introduction

House Bill 1129 (2014) includes two main directives. It directs the office of energy and planning (OEP), in consultation with the department of environmental services (DES) and the public utilities commission (PUC), to coordinate development of an implementation plan for capturing all cost effective energy efficiency in the state. The bill recognizes energy efficiency as an energy resource, and notes that efficiency can be obtained at a lower cost than conventional energy supply, and provides a range of benefits for the citizens and businesses of the state. The legislation notes that significant remaining opportunities exist to capture additional cost effective efficiency in the state. The bill also notes that several studies and reports provide details on the state's efficiency potential and ways to ensure that the state benefits from reducing energy costs through efficiency. It directs the agencies to review these reports, conduct additional analysis, and engage stakeholders in determining the most appropriate path forward for New Hampshire.

HB 1129 also requires, in addition to the development of an energy efficiency implementation plan, a report on the status of state agencies' compliance with executive order 2011-1, and an evaluation of RSA 21-I:14-c, and RSA 21-I:19-a through 19-i, relative to energy efficiency in state government buildings and fleets. Significant progress has been made relative to EO 2011-1 largely through the efforts of the DAS State Energy Manager's office, the DAS Fleet Manager, and the State Government Energy Committee (SGEC).¹ Since 2011, concerted efforts have resulted in the state nearly achieving our fossil fuel reduction goal of 25% by 2025. Because more efficiency opportunities exist, the legislature directed the SGEC and agencies to consider new savings goals.

Specifically, HB1129 requires that the agencies consider:

- Whether the state is currently fulfilling the directives of executive order 2011-1 to lead by example in energy efficiency;
- Whether additional goals may be appropriate for state-owned and leased buildings and fleet vehicles; and
- What tools are available or needed to help meet those goals.

As directed by HB 1129, this work will also focus on five specific areas:

- Whether and how the provisions of RSA 21-I:19-a through RSA 21-I:19-i should be updated to provide agencies with the necessary incentives to undertake performance contracts;
- Whether the establishment of a revolving loan fund administered by the department of administrative services would increase the ability of the state to undertake efficiency upgrades in state buildings;
- Whether and how to allow the department of administrative services to utilize a portion of funds available to implement energy efficiency measures to offset the cost of administration and oversight of energy efficiency projects;

¹ The State Government Energy Committee is co-chaired by the DES Commissioner and OEP Director. Committee members include the State Energy Manager and representatives from the larger, property owning agencies including DAS, DES, DHHS, DOC, DOS, DOT, DRED, F&G, OEP, PUC, NH Hospital, Veteran's Home, and Employment Security.

- The level of capital investment necessary to implement all cost-effective energy efficiency measures in state-owned buildings; and
- Whether and how to allow energy savings to be used for additional projects or maintenance of existing equipment to ensure its continued efficient operation.

This interim report reviews the work that has been done to date on each topic required by HB 1129, and provides several specific recommendations to the New Hampshire General Court on potential changes to legislation related to state government efficiency efforts. Further work is necessary to thoroughly explore possible ways to increase resources available to make additional efficiency investments in state buildings, in order to continue to reduce the state's energy costs and improve the state's buildings. More work will be done on the issue of fleet management opportunities as well, and will be presented in the final report on July 1, 2015. The same is true for the efforts related to the task of exploring how best to move the state forward on capturing all cost effective energy efficiency, which is discussed further below.

II. State Building and Fleet Energy Efficiency

A. Background

Executive Order 2005-4 required development of an Energy Efficiency Management System (EEMS) to track all state agency energy and water usage; benchmarking the energy use and costs for all state buildings; and directed state government to reduce energy use in state facilities by ten percent. Through the work of the SGEC (initially named the Interagency Energy Efficiency Committee, but later changed due to the use of that name by a legislative study committee) the state was in compliance with the requirements of this order prior to issuance of EO 2011-1.

Senate Bill 73 (2010) created RSA 21-I:14-c, which requires a 25% reduction in fossil fuel use in state-owned buildings on a square foot basis by 2025. The law requires annual energy conservation plans by state agencies that identify energy efficiency measures taken in the previous year, and potential efficiency projects for future implementation.

Executive Order 2011-1 superseded EO 2005-4 and built upon the framework it had established. Building upon RSA 21-I:14-c, it also reaffirmed the requirement to reduce fossil fuel use in state buildings by 25 percent over a 2005 baseline by 2025, and annual updates to agency energy conservation plans. EO 2011-1 also includes requirements for the purchase of energy-saving ENERGY STAR rated equipment, acquisition of renewable electric energy where feasible, enhanced building design criteria for new construction and major renovations in order to reduce energy usage and costs, and adherence to a clean fleet policy to reduce transportation fuel usage and costs.

B. Compliance With Executive Order 2011-1

In compliance with the Executive Order, and to enable compliance with RSA 21-I:14-c, all state agencies have appointed an energy coordinator and are now entering energy and water use data into the Energy Efficiency Management System (EEMS) with the technical assistance from DAS and OEP. Annual energy reports are posted on the DAS website by the state energy manager.² In fiscal year (FY) 2013 the State's energy use declined approximately 23% as compared to a FY2005 baseline. Energy use for space heating and transportation is directly tied to temperature and weather, so in years with a warmer winter the data indicate a high percent reduction relative to baseline, while colder and snowier winters may roll back those gains. The State anticipates FY14 data will reflect a smaller reduction over 2005 than presented by FY13 data due to the colder winter and more snow to plow. Since 2009, the state has saved over \$9 million by switching to lower cost and renewable fuels, and through implementing energy efficiency and conservation measures, with approximately \$4 million of those savings occurring in FY2014 alone.³

Starting in September 2012, all agencies also submit annual energy conservation plans that summarize their progress in reducing energy use and propose projects or actions to further reduce energy and fossil fuel use.⁴ Such proposals can include energy efficiency measures, fuel switching to non-fossil fuels or lower cost fuels, or behavioral changes to conserve energy. Through these conservation plans numerous measures have been identified and many have been implemented by state agencies. With funding and appropriate staffing to oversee those projects, the state could implement more measures to capture additional savings.

Relative to the remaining requirements of EO 2011-1 and related statutes, DAS has modified bid requirements for equipment purchases to include a requirement for ENERGY STAR certified equipment where available. DAS has also secured a contract with an electric supplier that currently provides 25 percent renewable power. Executive Order 2011-1 also requires that DAS and DES develop and review design criteria to meet performance, efficiency and sustainability design standards for construction or major renovation of state buildings. The SGEC will continue to evaluate this requirement and make any necessary recommendations regarding changes. Currently, DAS is finalizing an energy performance contract that will meet the intent of this requirement in the buildings to be upgraded, and also will include a renewable energy component.

EO 2011-1 also includes a requirement aimed at reducing energy use in the state vehicle fleet through the development of a Clean Fleets Program that establishes minimum fuel economy and emission standards for state vehicle purchases. The current Clean Fleets policy set minimum fuel economy standards for model year light duty vehicles at 32 miles per gallon and light duty trucks at 27 mpg. These standards are being revised for model year 2015 vehicles and are designed to result in the purchase of cost effective, efficient vehicles and fuel and cost savings. The Clean Fleets Program also includes a "clean driver" segment that is part of the defensive driving training required for all state employees who operate state vehicles, as well as a "Best Management Practices" document that provides guidance to both fleet managers and vehicle operators on standard practices to reduce fuel use

² <http://das.nh.gov/EnergyManagement/index.asp>.

³ Includes changes from high cost fuels such as fuel oil and propane to lower cost biomass and natural gas.

⁴ <http://das.nh.gov/EnergyManagement/index.asp>.

and improve fuel economy during vehicle operation. In the coming months the SGEC will continue to work on new goals for both reduction in use of fossil fuels and improvements in fleet fuel economy.

In light of the progress to date toward the goals established by EO 2011-1 and the related statutes, now is an appropriate time to evaluate new goals to reduce total energy costs to the state through further investments in cost effective energy efficiency and conservation measures, and to continue to incorporate renewable energy to support the New Hampshire economy and further reduce air pollution caused by conventional energy generation. In order to pursue such a goal, additional tools and resources will be necessary. Some specific recommendations for legislative changes in Section C below will assist in these efforts.

The SGEC has had preliminary discussions regarding the potential of a revolving loan fund to increase the ability of the state to undertake efficiency upgrades in state buildings – especially for those projects that are not large enough to qualify for a performance contract, in which energy savings pay for efficiency and clean energy investments. The SGEC will continue to discuss this concept and a recommendation will be included in the final report in July.

A key issue for the state to address is how energy savings are reinvested. Today savings from efficiency projects are not earmarked for additional cost saving efficiency programs, which is a missed opportunity. Monetary savings from energy efficiency projects can yield long term energy savings if invested in additional efficiency projects, and providing funds to help agencies become more efficient and reduce their utility costs can be a powerful motivator to pursue further efficiency. While maintenance of equipment is a critical activity to ensure that investments are protected, using efficiency savings to fund routine maintenance is a lost opportunity to achieve additional energy and cost savings.

The SGEC will continue to evaluate how to enable the state to implement more efficiency projects and incorporate renewable energy to meet our energy demand, and to lead by example. One area for further discussion is the use of Power Purchase Agreements (PPAs). In a typical PPA, the power provider retains ownership of the renewable energy source and sells the energy to the customer at a reduced rate. This enables the provider to take advantage of tax credits that are not available to state, thus lowering the cost. It is not clear how the state can enter into an agreement where privately owned equipment is located on state property, but this potential tool is worth investigating.

C. Potential 2015 Legislation

RSA 21-I:19-a establishes a clear policy for state investment in energy efficiency, stating “[i]t shall be the policy . . . to maximize the use of economical energy efficient measures in the construction, renovation, and maintenance of buildings owned or leased by the state” and requires DAS to “consider energy efficiency and the life cycle costing of energy cost saving measures a significant criterion in its purchasing and leasing decisions.” With this vision in mind, DAS and the SGEC reviewed the provisions of RSA 21-I:19-a through RSA 21-I:19-i, with a focus on facilitating more energy and cost savings. Attachment A contains mark-ups of the referenced statutes showing changes that will enable the state to increase the cost effectiveness of proposed efficiency measures, appropriately incentivize agencies to undertake energy efficiency and clean energy projects, and enable proper oversight of such projects. With each proposed revision is a statement to identify the challenges that the revisions seek to address

and, where deemed necessary, some additional explanatory text. It is recommended the General Court consider these changes in the upcoming legislative session.

III. Development of an Energy Efficiency Implementation Plan

A. Background

HB 1129 directs the Office of Energy and Planning (OEP), in consultation with the Department of Environmental Services (DES) and the Public Utilities Commission, to coordinate development of an implementation plan for capturing cost-effective energy efficiency in the state. The legislation requires the agencies to review prior studies, conduct additional analysis, and bring stakeholders together to identify how best to maximize cost-effective energy efficiency across all energy sectors, including electric consumption, heating homes and buildings, and transportation.

The legislation describes the following goals for the stakeholder process:

- (a) To develop recommendations for short and long-term state energy efficiency goals. These goals shall take into account and complement any goals that are developed by the public utilities commission in its development of an electric and gas utility energy efficiency resource standard, and the findings of the state energy advisory council in the development of the state energy strategy.
- (b) To develop a plan for the state with the goal of achieving all cost-effective energy efficiency opportunities that are less expensive than energy supply. The stakeholder process shall use the reports referenced in section 1 of this act as input for the plan, and shall specifically consider:
 - (1) The potential to reduce energy waste in new construction and existing buildings through such measures as ratification of appropriate energy codes, educating municipalities and the public about energy codes, and leveraging support from private and non-government organizations.
 - (2) The appropriateness of and need for a rate recovery mechanism that reconciles utilities' investments in energy efficiency programs with resulting potential lost revenue.
 - (3) How to better engage the private financing market by developing investment opportunities in the energy efficiency industry.
 - (4) Whether the current funding sources and levels for low-income weatherization are adequate.
 - (5) Whether cost-effectiveness tests used in New Hampshire are appropriate.
- (c) To make recommendations for the implementation of the plan in subparagraph (b) including any legislation deemed necessary.

B. Status of Efforts

As the legislature acknowledges in HB1129, much work has been done showing that New Hampshire has significant remaining cost effective energy efficiency opportunities. Developing concrete action plans to take advantage of these opportunities will help businesses, residents, municipalities, state government and others reduce energy usage and costs and provide other benefits such as reduced air emissions and local economic activity.

The State Energy Strategy released in September includes several recommendations for how to increase savings from efficiency. They include:

- Establish an Energy Efficiency Goal
- Address Utility Disincentives to Investing in Efficiency
- Improve Coordination and Design of Efficiency Programs
- Improve Consumer Access to Financing
- Better Serve the Low Income Population
- Increase State Lead by Example Efforts
- Continually Adopt the Newest Building Codes

Many of these recommendations can be achieved through agency and private sector action, much of which is under discussion at this time. For example, New Hampshire's regulated electric and natural gas utilities are exploring how best to engage private lenders in financing energy efficiency. OEP and DES will participate in and monitor those efforts to ensure that they can inform the development of an efficiency implementation plan as required by HB1129. More detail can be found in Section four of the Strategy, which is available at <http://www.nh.gov/oep/energy/programs/SB191.htm>.

The Public Utilities Commission (PUC), which has regulatory authority over the utility-administered efficiency programs, has recently undertaken a process to explore the development of an Energy Efficiency Resource Standard (EERS) or similar mechanism to help move the state toward capturing all cost effective efficiency. The PUC undertook an extensive stakeholder outreach process to gather a broad range of perspectives to inform its work, and is expected to release its work in the coming months for consideration by stakeholders. It is the intention of OEP and DES to review the PUC's work and use it as input to additional discussions about the most appropriate path forward for New Hampshire.

Beginning in early 2015, OEP and DES, in cooperation with the PUC, will continue the stakeholder dialogue started by the PUC, in order to fulfill the requirements of HB1129 and develop an implementation plan. We will keep the relevant legislative committees informed of our progress, and hope that legislators will participate in these important discussions.

OEP wishes to thank Becky Ohler and Chris Skoglund of the Department of Environmental Services Air Resources Division and Karen Rantamaki, the State Energy Manager at the Department of Administrative Services for their significant assistance in preparing this report.

Respectfully submitted,



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Problem Statement: State agencies do not get the previous fiscal year's energy data entered into the Energy Information System until late July. The data needs to be reviewed and approved by DAS before it can be used as the basis for the energy reports. The September 1st due date for the agency reports is difficult to meet and the recommendation is to extend this by one month. Likewise, compiling the statewide report by December 1st is difficult for the same reason and the recommendation is to also extend this date by one month.

General Provisions

Section 21-I:14-c

21-I:14-c Energy Consumption Reduction Goal; Reports. –

I. Each state department shall identify cost-effective measures to reduce fossil fuel consumption by 25 percent by 2025 in state buildings, on a square foot basis, compared to a 2005 baseline. Implementation of any measures shall be subject to the appropriate budgetary process and approval. Cost effectiveness for the purposes of this section shall mean a return on investment based on energy savings and reduced operational costs within the expected lifetime of the measure.

II. Beginning in calendar year 2012, each state department shall submit an annual report to the commissioner of administrative services on or before ~~September~~ **October 15** which details any cost-effective measures it is utilizing and those potential measures, subject to budgetary approval, to comply with the energy consumption reduction goal established in paragraph I and its annual progress in complying with this goal.

III. Beginning in calendar year 2012, the commissioner shall submit an annual report to be made available to the public on or before ~~December~~ **January 15** compiling the annual reports submitted under paragraph II, with findings on the departments' annual progress in complying with the energy consumption reduction goal established in paragraph I and problems which may prevent the departments from achieving this goal, to the governor, the senate president, the speaker of the house of representatives, the chair of the senate energy and natural resources committee and the chair of the house science, technology and energy committee.

Source. 2010, 328:2, eff. July 20, 2010. 2012, 281:1, eff. Jan. 1, 2013.

Problem Statement: To ensure consistency in the implementation of renewable energy projects on state property a definition of the term “renewable energy” is proposed.

State Facility Energy Cost Reduction

Section 21-I:19-b

21-I:19-b Definitions. – In this subdivision:

I. "Energy cost saving measure" means any construction, improvement, repair, alteration, or betterment of any building or facility or any equipment, fixture, or furnishing to be added to or used in any building or facility that will be a cost effective energy-related project. This shall include any project that will lower energy or utility costs in connection with the operation or maintenance of such building or facility and will achieve energy cost savings sufficient to recover any project costs or incurred debt service within 20 years from the date of project implementation.

II. "Energy performance contract" means an agreement for the provision of energy services or equipment or both. This shall include, but shall not be limited to, energy conservation-enhancing projects in buildings and alternate energy technologies, in which a private sector person or company agrees to finance, design, construct, install, maintain, operate, or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a state government agency or facility in exchange for a portion of the energy cost savings or specified revenues. The level of payments made would be contingent upon measured energy cost savings or energy production.

III. "Positive cash flow financing" means an agreement among an agency, a capital leasing firm, and a provider of design/build energy management services under which the leasing cost of the project, including all interest payments, is equal to or less than the energy cost the project avoids.

IV. "Shared-savings contract" means an agreement under which a private sector person or company undertakes to design, implement, install, operate, and maintain improvements to the agency's or municipality's procedures, equipment or facilities, and the agency or municipality agrees to pay a contractually specified amount of measured or estimated energy cost savings.

V. "Date of project implementation" means the expected date established in the energy performance contract that the construction, improvement, repair, alteration, or betterment is to be completed and become operational. If the energy performance contract includes more than one energy cost saving measure, the "date of project implementation" may be alternatively defined by the contracting state agency or municipality to be the date that the last of the energy cost saving measures is expected to become operational.

VI. "Demand response program" means a program under which the state receives payment for voluntarily reducing electricity demand in response to grid instability as dictated by the regional independent system operator or in response to high wholesale electricity prices.

VII. “Renewable energy” means, for the purposes of this section, wind energy; biomass energy; geothermal energy, if the geothermal energy output is in the form of useful thermal energy; hydrogen derived from biomass fuels or methane gas; ocean thermal, wave, current, or tidal energy; methane gas; solar thermal or electric energy; or hydropower.

Source. 1993, 74:1. 1999, 225:6. 2000, 276:5. 2008, 166:2, eff. July 1, 2008. 2012, 149:3, eff. Aug. 6, 2012.

Problem Statement:

The statute establishing the Interagency Energy Efficiency Committee (IEEC) has been repealed. If the State borrows money to implement renewable energy or efficiency projects there will be interest charged on that loan.

Section 21-I:19-d

21-I:19-d Energy Performance Contracting. –

I. Any state agency or municipality may enter into an energy performance contract for the purpose of undertaking or implementing energy conservation or alternate energy measures in a facility. An energy performance contract may include, but shall not be limited to, options such as joint ventures, shared-savings contracts, positive cash flow financing or energy service contracts, or any combination thereof, provided that at the conclusion of the contract the agency will receive title to the energy system being financed, if the agency so desires. ~~The agency that is responsible for a particular facility shall review and make recommendations regarding energy performance contract arrangements for the facility to the IEEC.~~

II. Notwithstanding any law to the contrary relating to the award of public contracts, any agency desiring to enter into an energy performance contract shall do so in accordance with usual contracting procedures and the following provisions:

(a) The agency shall issue a public request for proposals, advertised in the same manner as other programs, concerning the provision of energy efficiency services or the design, installation, operation, and maintenance of energy equipment, or both. The request for proposals shall contain terms and conditions relating to submission of proposals, evaluation and selection of proposals, financial terms, legal responsibilities, and other matters as may be required by law and as the agency determines appropriate.

(b) Upon receiving responses to the request for proposals, the agency may select the most qualified proposal or proposals on the basis of the experience and qualifications of the proposals, the technical approach, the financial arrangements, the overall benefits to the agency, and other factors determined by the agency to be relevant and appropriate.

(c) Upon the approval by the ~~IEEC~~ and governor and council, the agency may enter into an energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency.

(d) The term of any energy performance contract entered into pursuant to this section shall not exceed 20 years from the date of project implementation.

(e) Any contract entered into shall contain the following annual allocation dependency clause: "The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the applicable funding authority. If that authority fails to appropriate sufficient funds to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which allocations were made."

(f) Any energy performance contract should require the contractor to include all energy efficiency improvement in selected buildings that are calculated to recover all costs within 20 years from the date of project implementation at existing energy prices. The contract shall require that the public utility or energy services provider be repaid only to the extent of energy cost savings guaranteed by the contractor to accrue over the term of the contract. ~~Repayments to the public utility or energy services provider shall be interest-free.~~

Source. 1993, 74:1. 1999, 225:7. 2000, 276:6, 7, eff. June 16, 2000. 2012, 149:1, 2, eff. Aug. 6, 2012.

Problem Statement: It is too difficult to discern and or track the amount of excess energy savings that may result from an energy performance contract. As a result any excess energy savings are retained in the agency utility class line and revert back to the respective funding source in the form of a lapse at the end of the fiscal year. We are requesting this modification to make the law consistent with current practice.

Section 21-I:19-e

21-I:19-e Energy Cost Savings Revert to General Fund. – The cost savings remaining after meeting the obligations under an energy performance contract, shared-savings contract, or lease of energy saving equipment or services or any similar program shall revert to the **respective state agency** ~~general fund~~.

Source. 1993, 74:1, eff. April 23, 1993.

Problem Statement: Currently there is a non-lapsing fund managed by DAS, State Energy Management. Money that is earned through the State's participation in ISO-NE's Demand Response program is placed in the fund. This program is a way for facilities to earn money based on their response to emergency power events and tests. By turning on and operating emergency generators instead of using grid power, facilities can ease the strain on electric power plants on high demand days. Payment for this response gets deposited into the fund. These funds are available to participating agencies for expenses related to the program (ex. installing or moving emergency generators, adding load to generators, installing transfer switches on generators, etc.) or for energy efficiency improvements to their buildings.

An additional source of funding available to the State is energy efficiency rebates from the utilities. When the State, or any other customer of the electric and gas utilities in NH, completes an energy saving project, it may be eligible for a rebate. Currently these rebates are either a.) received as a check and deposited into the General Fund, b.) applied to the cost of the project with vendor agreement to reduce the overall price of the project, or c.) applied as a bill credit to the account number where the improvements took place. While all of these options are beneficial to the State, a specific fund where money could be reinvested into energy efficiency would be ideal.

Other potential sources for funding that could be deposited into this fund are renewable energy incentives from the Public Utilities Commission or other energy related grants that meet the requirements of the fund.

Section 21-I:19-f

21-I:19-f Energy Efficiency Fund. – There is hereby established an energy efficiency fund into which shall only be deposited moneys received by the state for participating in demand response **or utility and or public utility commission** programs. The state treasurer may invest moneys in the fund as provided by law, with interest received on such investment credited to the fund. Moneys in the fund shall be nonlapsing and continually appropriated to the division of plant and property to be used exclusively to fund energy efficiency **or renewable energy** projects and energy efficiency **or renewable energy** contracts to **reimburse the department of administrative services, bureau of public works design and construction for any costs to provide construction administration services including, but not limited to, design and oversight of design and construction of energy saving or renewable energy measures** and to reimburse state agencies for demand response program expenses or completing energy saving **or renewable energy** measures.

Source. 2008, 166:3, eff. July 1, 2008. 2014, 327:21, eff. Aug. 2, 2014.

Problem Statement: To ensure new energy saving or renewable energy measures are built to code and new structures are built to a fifty year standard appropriate project oversight is necessary. Such oversight should be delegated to department of administrative services, bureau of public works and the cost to provide such oversight should be included in the cost of the energy saving or renewable energy measures.

Public Works Design and Construction

Section 21-I:80

21-I:80 Major Projects. –

I. Each state project whose estimated cost is more than \$25,000 shall be built under contracts awarded to the lowest qualified bidder who meets all project specifications through competitive bidding. The following are excluded from this competitive bidding requirement:

(a) Projects executed under RSA 481 with approval of the governor and council.

(b) Projects for the department of fish and game, the adjutant general's department, and the department of resources and economic development whose estimated total cost is not more than \$250,000. Such projects may be done on a force account basis, by contracts awarded through competitive bidding, by short term rental of construction equipment, or by any combination of these methods. These departments are authorized to rent construction equipment for periods not exceeding 6 months at rates the departments deem competitive through the use of quotes or bids.

(c) In an emergency, projects may be done on a force account basis upon the recommendation of the commissioner, with the approval of the governor and council.

(d) Notwithstanding any other provision of law, the commissioner is authorized to use the design build and construction management methods of contracting for any project. The capital budget overview committee shall approve preliminary plans prior to construction, reconstruction, alteration, or maintenance if the project is part of a capital project and:

(1) The construction management method of contracting is used; or

(2) The design build method of contracting is used and the estimated cost is more than \$500,000. If the design-build method of contracting is used and the estimated cost is \$500,000 or less, preapproval of the capital budget overview committee shall not be required, but the department shall notify the committee of all such projects and shall provide quarterly reports on project status.

II. Any state project whose estimated cost is more than \$500,000 shall be designed by a registered architect or professional engineer unless, upon recommendation of the commissioner, the governor and council shall find that it is in the best interests of the state to provide for in-house design. He or she shall prepare plans and specifications which meet the requirements of all applicable codes and shall provide on-site observation and inspection services. Each registered architect or professional engineer shall carry professional liability insurance in an amount satisfactory to the commissioner consistent with industry standards.

III. After written application to the capital budget overview committee, the requirements of paragraph II may be waived upon approval of the capital budget overview committee and the governor and council.

IV. State capital budget projects shall not be awarded through cost-plus contracts.

V. Any repair project authorized in the capital budget which requires consultant services shall be put into effect within 90 days after the adoption of the capital budget.

VI. (a) Prior to any work being done by an individual contractor on any major project under this section, such contractor, including all subcontractors and independent contractors, excluding deliveries to and removals from a project administered by the department, shall provide to the commissioner of administrative services:

(1) A certificate of insurance of his or her current workers' compensation coverage in New Hampshire for the classification of work to be completed on the project;

(2) A sworn statement that this coverage shall remain in effect for the duration of his or her anticipated work on the project;

(3) A completed work certificate, provided pursuant to RSA 281-A:4-b, that shall include the total

number of employees anticipated to be employed by such contractor, subcontractor, or independent contractor on the project during the contract period, delineated by the National Council on Compensation Insurance (NCCI) classification code applicable to the scope of work to be performed;

(4) A copy of the contractor's compliance with a current written safety program, if applicable, as filed with the commissioner of labor under RSA 281-A:64, II and proof of an existing joint loss management committee as required under RSA 281-A:64, III, if applicable; and

(5) The department may develop procedures to obtain the requirements in this section on an annual basis or by a prequalification procedure rather than on a project-by-project basis.

(b) If any construction contractor, subcontractor, or independent contractor who might otherwise claim an exclusion under RSA 281-A:18-a is directly performing the work on a project covered under this section, such contractor, subcontractor, or independent contractor shall comply with the provisions of this section.

(c) The commissioner of labor may assess any contractor, subcontractor, or independent contractor who falsifies information or fails to comply with this section a civil penalty of up to \$2,500 and in addition, such an employer shall be assessed a civil penalty of up to \$100 per employee per day of noncompliance. Notwithstanding any other provision of law to the contrary, any person with control or responsibility over the decisions to disburse funds and salaries and who knowingly falsified information or knowingly failed to comply with this section shall be held personally liable for the payment of penalties under this section and such contractor, subcontractor, or independent contractor shall not be allowed to bid or work on state projects for up to 5 years. The state shall be entitled to recover from the violator all costs and fees directly associated with uncovering falsified information supplied under this section.

(d) All funds collected under this paragraph shall be deposited into the general fund.

(e) The commissioner of labor shall appoint as many individuals as necessary to carry out the department's responsibilities under this paragraph.

(f) On a quarterly basis, the commissioners of administrative services and labor shall post electronically for public access and shall also circulate to all other public works construction or renovation awarding authorities of state government, including the college and university systems and the department of education office of building aid, a list of any construction contractors, subcontractors, or independent contractors found to be in violation of this section, including the amount fined and the period of time such persons or entities shall not be allowed to bid or work on state projects.

VII. Any energy saving or renewable energy measure or project over \$100,000 shall be overseen by the department of administrative services, bureau of public works design and construction. The bureau of public works design and construction shall provide construction administration services including, but not limited to, design and oversight of the energy cost saving or renewable energy measures to ensure that they are constructed in accordance with current codes and regulations. Any costs to provide these construction administration services may be include in the cost of the energy saving or renewable energy measure.

Source. 2005, 291:9. 2007, 323:3, 8. 2008, 270:2, 3, 5. 2010, 209:3, eff. Aug. 27, 2010. 2012, 247:12, eff. Aug. 17, 2012. 2013, 86:1, eff. Aug. 18, 2013.

