

NH State Government Energy Committee (SGEC)

Proposed Potential Legislative Language

July 9, 2019

Reference: Current Statutory Language

RSA 21-I:19-a Energy Efficient Measures; State Policy. –

I. It shall be the policy of the state of New Hampshire to maximize the use of economical energy efficient measures in the construction, renovation, and maintenance of buildings owned or leased by the state. Further, it shall be the policy of the state to encourage municipalities to incorporate such measures into their buildings to the greatest extent possible.

II. The department of administrative services shall consider energy efficiency and the life cycle costing of energy cost saving measures a significant criterion in its purchasing and leasing decisions.

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

Other Language:

RSA 4-E:1 State Energy Strategy

II. The strategy shall include a review of all state policies related to energy, including the issues in paragraph I, and recommendations for policy changes and priorities necessary to ensure the reliability, safety, fuel diversity, and affordability of New Hampshire's energy sources, while protecting natural, historic, and aesthetic resources and encouraging local and renewable energy resources. The strategy shall also include consideration of the extent to which demand-side measures including efficiency, conservation, demand response, and load management can cost-effectively meet the state's energy needs, and proposals to increase the use of such demand resources to reduce energy costs and increase economic benefits to the state.

125-O:1 Findings and Purpose.

I. The general court finds that while air quality has improved in recent years, scientific advances have demonstrated that adequate protection of public health, environmental quality, and economic well-being- the 3 cornerstones of New Hampshire's quality of life-requires additional, concerted reductions in air pollutant emissions. The general court also finds that the state's tradition of environmental leadership- setting an example for similarly feasible air pollution reductions from upwind jurisdictions- is also well served by additional emission reductions.

378:37 New Hampshire Energy Policy. – The general court declares that it shall be the energy policy of this state to meet the energy needs of the citizens and businesses of the state at the lowest reasonable cost while providing for the reliability and diversity of energy sources; to maximize the use of cost effective energy efficiency and other demand side resources; and to protect the safety and health of the citizens, the physical environment of the state, and the future supplies of resources, with consideration of the financial stability of the state's utilities.

RSA 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," for the purposes of this section, means 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. 2015, 276:9, eff. July 1, 2015.

RSA 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.

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.

Source. 1993, 74:1. 1999, 225:7. 2000, 276:6, 7, eff. June 16, 2000. 2012, 149:1, 2, eff. Aug. 6, 2012. 2015, 276:10, 11, eff. July 1, 2015.

RSA 21-I:17-b Purchase of Electricity by Competitive Bidding. –

I. When evaluating bids for electric power supply and services, the quality of service, the reliability of service, the coordination of services, and other reasonable factors shall be considered in addition to the price of electricity. The bidding process shall be open to bids which serve less than the entire needs of the state, or which provide electric power supply or services separately, in order to increase the number of potential suppliers.

II. When submitting electric power supply bids, vendors should include information, to the extent practicable, on the fuel sources and air pollutant emission profiles of significant sources of generation under the proposed bid.

Source. 1996, 79:3.

Reference:

21-I:81 Competitive Bidding. –

No project subject to the competitive bidding requirements of RSA 21-I:80 shall be awarded to any independent contractor except:

I. If the commissioner decides that the bid of the lowest bidder should be accepted, he or she shall prepare a contract of acceptance of the lowest bid within 60 days from the opening of bids. He or she shall execute the contract in the name of the state. After the contract is executed by the lowest bidder, the form of it approved by the attorney general, and the availability of funds approved by the commissioner of administrative services, he or she shall transmit the contract to the governor and council. Upon approval by the governor and council, it shall become a valid contract of the state.

II. The state reserves the right to reject any and all bids or to negotiate with the lowest qualified bidder who meets all project specifications.

III. If the commissioner decides that for just cause shown the lowest bid submitted should be rejected, he or she shall promptly transmit to the governor and council the recommendation for rejection including reasons. The governor and council shall review the recommendation and any other facts available to them, and make such determination as in their judgment shall be for the best interest of the state. They shall require a public hearing upon request of any bidder or on their own motion to fully establish such facts. Their determination shall be entered upon the records of the secretary of state.

IV. If not more than one bid is received on any state project advertised for contract construction, the commissioner may negotiate a contract for such construction upon terms which he or she may deem most advantageous to the state, subject to the approval of the governor and council. For projects built with federal aid, if any provision of this section is inconsistent with the requirements of applicable federal law and regulations, the latter shall control.

RSA 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 general fund.

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

RSA 21-I:19-f Energy Fund. – There is hereby established an energy fund into which shall only be deposited moneys received by the state for participating in demand response or utility or public utility commission programs, or both. 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, division of public works design and construction, for costs of providing 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. 2017, 135:1, eff. Aug. 15, 2017.