

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 117

Introduced by Haar, 21.

Read first time January 09, 2015

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to energy; to amend sections 66-1062, 66-1064,
- 2 66-1065, and 66-1066, Reissue Revised Statutes of Nebraska; to
- 3 redefine terms; to change provisions relating to energy financing
- 4 contracts between energy service companies and governmental units;
- 5 to harmonize provisions; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 66-1062, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 66-1062 For purposes of sections 66-1062 to 66-1066:

4 (1) Energy conservation measure means a training, service, or
5 operations program or facility construction or alteration designed to
6 reduce energy consumption. Energy conservation measure includes:

7 (a) Repair or renovation of heating, ventilation, ~~and~~ air
8 conditioning, or geothermal systems;

9 (b) Installation or repair of automated or computerized energy
10 control systems;

11 (c) Replacement or modification of lighting fixtures;

12 (d) Insulation of a building structure or systems within that
13 structure;

14 (e) Installation of energy recovery systems;

15 (f) Installation of cogeneration systems that produce steam or forms
16 of energy such as heat, as well as electricity, for use primarily within
17 a building or complex of buildings;

18 (g) Replacement, weatherstripping, caulking, or other insulation of
19 windows or doors; or

20 (h) Any other measure designed to reduce energy consumption;

21 (2) Energy financing contract means an agreement between an energy
22 service company and a governmental unit for the implementation of one or
23 more energy conservation measures in a new or an existing facility in
24 order to produce exchange ~~for a portion of the~~ energy cost savings
25 ~~produced~~. Energy financing contract includes, but is not limited to, a
26 performance contract, shared-savings contract, calculated contract,
27 guaranteed contract, and lease-purchase contract;

28 (3) Energy service company means a person or business experienced in
29 the implementation and installation or construction of energy
30 conservation measures; and

31 (4) Governmental unit means a school district, community college

1 area, village, city, county, or department or agency of the State of
2 Nebraska.

3 Sec. 2. Section 66-1064, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 66-1064 (1) Prior to entering into an energy financing contract, a
6 governmental unit shall obtain a written opinion from a professional
7 engineer licensed in the State of Nebraska whose interests are
8 independent from any proposing energy service company and from the
9 financial or energy savings outcome of the contract. The opinion shall
10 contain a review of recommendations proposed by an energy service company
11 pertaining to energy conservation measures designed to reduce energy
12 consumption to the governmental unit.

13 (2) At least fourteen days prior to entering into an energy
14 financing contract, a governmental unit shall furnish public notice of
15 its intention to enter into such contract, the general nature of the
16 proposed work being considered under the contract, and the name and
17 telephone number of a person to be contacted by any energy service
18 company interested in submitting a proposal to contract for such work.
19 The governmental unit shall also directly solicit requests for
20 qualifications from at least three energy service companies relating to
21 the proposed contract.

22 (3) Upon receiving responses to its request for qualifications
23 pursuant to subsection (2) of this section, the governmental unit may
24 select the most qualified energy service company based on the company's
25 experience, technical expertise, and financial arrangements, the overall
26 benefits to the governmental unit, and other factors determined by the
27 governmental unit to be relevant and appropriate. The governmental unit
28 may thereafter negotiate and enter into an energy financing contract
29 pursuant to section 66-1065 with the company selected based on the
30 criteria established by the governmental unit.

31 Sec. 3. Section 66-1065, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 66-1065 (1) Any energy financing contract entered into by a
3 governmental unit shall:

4 (a) Detail the responsibilities of a Nebraska-licensed professional
5 engineer associated with the energy service company in the design,
6 construction, installation, and commissioning of the energy conservation
7 measures selected by the governmental unit. Any design shall conform to
8 all statutes of the State of Nebraska pertaining to engineering design
9 and public health, safety, and welfare;

10 (b) Set forth the calculated energy cost savings during the contract
11 period attributable to the energy conservation measures to be installed
12 by the energy service company. Operational savings may be included in the
13 calculated or guaranteed total savings amount, not guaranteed, but
14 approved by the governmental unit. The calculated or guaranteed energy
15 cost savings shall be reviewed and approved in writing by the independent
16 professional engineer provided for in section 66-1064 prior to
17 commencement of construction or any work under the contract;

18 (c) Estimate the useful life of each of the selected energy
19 conservation measures;

20 (d) Provide that, except for obligations on termination of the
21 contract prior to its expiration, payments on the contract are to be made
22 over time, within a period not to exceed thirty years after the date of
23 the installation of the energy conservation measures provided for under
24 the contract;

25 (e) Provide that the calculated or guaranteed energy savings shall
26 be stated savings for each year of the contract period ~~will meet or~~
27 ~~exceed all payments to be made during each year of the contract;~~

28 (f) Disclose the effective interest rate being charged by the energy
29 service company; and

30 (g) In the case of a guaranteed savings contract, set forth the
31 method by which savings will be calculated and a method of resolving any

1 dispute in the amount of the savings. The energy service company shall
2 have total responsibility for the savings guarantee for each guaranteed
3 savings contract.

4 (2) An energy service company entering into a calculated or
5 guaranteed ~~an~~ energy financing contract shall provide a performance bond
6 to the governmental unit in an amount equal to one hundred percent of the
7 total cost of the contract to assure the company's faithful performance.
8 The energy service company entering into a guaranteed energy contract
9 shall also supply a guarantee bond equal to one hundred percent of the
10 guaranteed energy savings for the entire term of the contract. No
11 guarantee bond is required for a calculated energy contract. For purposes
12 of this section, total cost means all costs associated with the design,
13 construction, installation, modification, commissioning, maintenance, and
14 financing of all energy conservation measures contemplated under the
15 contract.

16 Sec. 4. Section 66-1066, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 66-1066 An energy financing contract may extend beyond the fiscal
19 year in which it becomes effective and shall allow the governmental unit
20 to cancel the contract for the nonappropriation of funds. An obligation
21 created by an energy financing contract entered into or indebtedness
22 incurred pursuant to this section shall not constitute or give rise to an
23 indebtedness or expenditure within the meaning of any constitutional,
24 statutory, or board debt, levy, or spending limitation.

25 Sec. 5. Original sections 66-1062, 66-1064, 66-1065, and 66-1066,
26 Reissue Revised Statutes of Nebraska, are repealed.