

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 881**

Introduced by Schilz, 47.

Read first time January 11, 2016

Committee: Natural Resources

1 A BILL FOR AN ACT relating to energy financing contracts; to amend  
2 sections 66-1062, 66-1064, and 66-1065, Reissue Revised Statutes of  
3 Nebraska; to redefine terms; to change governmental unit duties; to  
4 change provisions relating to contract contents and bond  
5 requirements as prescribed; 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 alteration designed to reduce energy  
6 consumption, or capital equipment acquisition designed to reduce  
7 wastewater or energy, utility, or water consumption, enhance revenue, or  
8 reduce operating or capital costs. Energy conservation measure includes:

9 (a) Repair or renovation of heating, ventilation, and air  
10 conditioning systems;

11 (b) Installation or repair of automated or computerized energy  
12 control systems;

13 (c) Replacement or modification of lighting fixtures;

14 (d) Insulation of a building structure or systems within that  
15 structure;

16 (e) Installation of energy recovery systems;

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

20 (g) Replacement, weatherstripping, caulking, or other insulation of  
21 windows or doors; ~~or~~

22 (h) Meter replacement, installation, or modification or installation  
23 of automated meter reading systems ~~Any other measure designed to reduce~~  
24 ~~energy consumption;~~

25 (i) Replacement or installation of energy or water conservation  
26 equipment or improvements thereto, or the substitution of non-water using  
27 fixtures, appliances, or equipment; or

28 (j) Any other measure designed to reduce wastewater or energy,  
29 utility, or water consumption, enhance revenue, or reduce operating or  
30 capital costs;

31 (2) Energy financing contract means an agreement between an energy

1 service company and a governmental unit for the implementation of one or  
2 more energy conservation measures in a new or an existing facility in  
3 order to reduce wastewater or energy, utility, or water consumption,  
4 enhance revenue, or reduce operating or capital costs ~~exchange for a~~  
5 ~~portion of the energy cost savings produced.~~ Energy financing contract  
6 includes, but is not limited to, a performance contract, shared-savings  
7 contract, guaranteed contract, and lease-purchase contract;

8 (3) Energy service company means a person or business experienced in  
9 the implementation and installation of energy conservation measures; and

10 (4) Governmental unit means a school district, community college  
11 area, village, city, county, or department or agency of the State of  
12 Nebraska.

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

15 66-1064 (1) Prior to entering into an energy financing contract, a  
16 governmental unit shall obtain a written opinion from a professional  
17 engineer licensed in the State of Nebraska whose interests are  
18 independent from the financial savings or other revenue enhancement  
19 outcomes ~~outcome~~ of the contract. The opinion shall contain a review of  
20 recommendations proposed by an energy service company pertaining to  
21 energy conservation measures designed to reduce energy or other utility  
22 consumption or to achieve operational or capital savings or revenue  
23 enhancement for ~~to~~ the governmental unit.

24 (2) At least fourteen days prior to entering into an energy  
25 financing contract, a governmental unit shall furnish public notice of  
26 its intention to enter into such contract, the general nature of the  
27 proposed work being considered under the contract, and the name and  
28 telephone number of a person to be contacted by any energy service  
29 company interested in submitting a proposal to contract for such work.  
30 The governmental unit shall also directly solicit requests for  
31 qualifications from at least three energy service companies relating to

1 the proposed contract.

2 (3) Upon receiving responses to its request for qualifications  
3 pursuant to subsection (2) of this section, the governmental unit may  
4 select the most qualified energy service company based on the company's  
5 experience, technical expertise, and financial arrangements, the overall  
6 benefits to the governmental unit, and other factors determined by the  
7 governmental unit to be relevant and appropriate. The governmental unit  
8 may thereafter negotiate and enter into an energy financing contract  
9 pursuant to section 66-1065 with the company selected based on the  
10 criteria established by the governmental unit.

11 Sec. 3. Section 66-1065, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

13 66-1065 (1) Any energy financing contract entered into by a  
14 governmental unit shall:

15 (a) Detail the responsibilities of a Nebraska-licensed professional  
16 engineer in the design, installation, and commissioning of the energy  
17 conservation measures selected by the governmental unit. Any design shall  
18 conform to all statutes of the State of Nebraska pertaining to  
19 engineering design and public health, safety, and welfare;

20 (b) Set forth the calculated energy, utility, wastewater, or water  
21 cost savings or revenue enhancements, if applicable, during the contract  
22 period attributable to the energy conservation measures to be installed  
23 by the energy service company. Operational or capital savings or revenue  
24 enhancements may be included in the total savings amount, not guaranteed,  
25 but approved by the governmental unit;

26 (c) Estimate the useful life of each of the selected energy  
27 conservation measures;

28 (d) Provide that, except for obligations on termination of the  
29 contract prior to its expiration, payments on the contract are to be made  
30 over time, within a period not to exceed thirty years after the date of  
31 the installation of the energy conservation measures provided for under

1 the contract;

2 (e) Provide that the calculated savings for each year of the  
3 contract period will meet or exceed all payments to be made during each  
4 year of the contract;

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

7 (g) In the case of a guaranteed savings contract, set forth the  
8 method by which savings will be calculated and a method of resolving any  
9 dispute in the amount of the savings. The energy service company shall  
10 have total responsibility for the savings guarantee for each guaranteed  
11 savings contract. Surplus savings realized during any year of the  
12 guaranteed savings contract shall be applied to future years' savings  
13 results.

14 (2) An energy service company entering into an energy financing  
15 contract shall provide a performance bond to the governmental unit in an  
16 amount equal to one hundred percent of the total cost of the  
17 implementation, installation, or construction of the energy conservation  
18 measures under the applicable energy financing contract to assure the  
19 company's faithful performance. The energy service company shall also  
20 supply a guarantee bond equal to one hundred percent of the guaranteed  
21 energy savings for the entire term of the contract. ~~For purposes of this~~  
22 ~~section, total cost means all costs associated with the design,~~  
23 ~~installation, modification, commissioning, maintenance, and financing of~~  
24 ~~all energy conservation measures contemplated under the contract.~~

25 Sec. 4. Original sections 66-1062, 66-1064, and 66-1065, Reissue  
26 Revised Statutes of Nebraska, are repealed.