

AMENDED IN SENATE APRIL 12, 2011

SENATE BILL

No. 467

Introduced by Senator Pavley

February 17, 2011

An act to add Section 15814.37 to the Government Code, relating to state buildings.

LEGISLATIVE COUNSEL'S DIGEST

SB 467, as amended, Pavley. Department of General Services: *contracts for energy efficiency*~~*contracts*~~ *products or services.*

The State Building Construction Act of 1955 requires that all new public buildings be equipped with all energy efficiency measures, materials, and devices that are feasible and cost-effective, as defined, over the life of the building or the life of the energy efficiency measure, whichever is less, and sets forth the duties of the Department of General Services in this regard.

This bill would additionally require the department to deem *a contract for an energy efficiency*~~*contract*~~ *product or service* to be a no-cost or net-neutral cost contract when specified conditions are met. *It would require the department to issue a master services agreement permitting owners, operators, and tenants of state facilities to procure a wide range of energy efficiency products or services according to specified criteria.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 **SECTION 1.** *The Legislature finds and declares as follows:*

1 (a) *The state urgently needs to save state funds and in so doing*
2 *needs to take cost-effective steps to improve energy efficiency.*

3 (b) *These goals should not be impeded simply because there is*
4 *no particular contracting method specifically permitting the state*
5 *to purchase energy saving products or services where the state*
6 *does not have to pay out-of-pocket for those technologies or*
7 *services but nevertheless enjoys the monetary savings from those*
8 *purchases.*

9 SEC. 2. *Section 15814.37 is added to the Government Code,*
10 *to read:*

11 15814.37. (a) *The Department of General Services shall deem*
12 *a contract for an energy efficiency product or service to be a*
13 *no-cost or net-neutral cost contract where funding for the contract*
14 *is provided through either of the following methods:*

15 (1) *The state is required, for the life of the contract, to pay the*
16 *vendor in monthly or other scheduled increments where those*
17 *payments are less than the difference between the amount the state*
18 *was paying for energy, including the cost of maintaining the*
19 *electrical and mechanical energy systems providing that facility's*
20 *energy, for a facility or facilities prior to entering into the contract*
21 *and what the state is paying for the same energy after entering*
22 *into the contract.*

23 (2) *The contract requires the vendor to pay the state a single*
24 *sum at the execution of the contract to provide its technology or*
25 *services, at a calculated net present value figure, in exchange for*
26 *the state paying the vendor monthly or other scheduled increments*
27 *in amounts equal to the difference between what the state was*
28 *paying for energy for a facility prior or facilities to execution of*
29 *the contract and for the same energy after execution of the contract,*
30 *for the life of the contract.*

31 (b) *No later than July 31, 2012, the department shall issue a*
32 *master services agreement permitting owners, operators, and*
33 *tenants of state facilities to procure a wide range of energy*
34 *efficiency products or services from the approved companies*
35 *included in the agreement. The companies included in the*
36 *agreement shall have a record of providing those products or*
37 *services to governmental entities or private sector companies for*
38 *at least two years prior to January 1, 2012. The department shall*
39 *begin to work with relevant university centers no later than January*

1 *1, 2012, for guidance in the development of product and service*
2 *specifications for the agreement.*

3 *(c) Notwithstanding subdivision (b), the agreement shall include,*
4 *among other things, a provision to permit pilot or demonstration*
5 *contracts for energy efficiency products or services. An energy*
6 *efficiency product or service shall not be excluded from this portion*
7 *of the agreement because the companies included have been in*
8 *business for less than two years, or it is an emerging technology*
9 *or service that has been demonstrated to be effective in prototypical*
10 *or limited production, that could become commercially viable and*
11 *successful with appropriate market development efforts. The*
12 *department shall begin to work with relevant university centers*
13 *no later than January 1, 2012, for guidance in the development of*
14 *product and service specifications for the pilot or demonstration*
15 *portion of the agreement.*

16 *(d) For purposes of this section, an energy “efficiency product*
17 *or service” means a technology or technology service where the*
18 *energy cost savings to the state are projected to exceed the*
19 *compensation the state pays for the technology or service within*
20 *12 months of the initial deployment of the product or service.*

21 *(e) For purposes of this section, the difference between the*
22 *amount the state would have paid for energy and the cost of*
23 *maintaining energy consuming devices prior to entering into the*
24 *contract and what it is paying for the same energy and maintenance*
25 *of energy consuming devices after entering into the contract shall*
26 *be based upon either of the following:*

27 *(1) The amount the state paid to a utility and maintenance*
28 *service contractors for a kind of energy at a particular facility in*
29 *the 36 months prior to entering the contract, divided by month or*
30 *another increment of time.*

31 *(2) Another amount calculated by an outside third party selected*
32 *by the state and agreed to by the vendor in the contract.*

33 *(f) Nothing in this section shall be construed to do any of the*
34 *following:*

35 *(1) Limit the department’s ability to determine a vendor is in*
36 *breach of contract.*

37 *(2) Prevent the state from requiring other terms and conditions,*
38 *provided that those terms and conditions are not duplicative of,*
39 *or in conflict with, and do not frustrate the intent of, this section.*

1 (3) Prevent the department from reasonably apportioning
 2 administrative or consulting costs required to implement the
 3 contracting methods set forth in this section over as many contracts
 4 as required to ensure both that the state does not lose the
 5 opportunity to achieve energy savings and the department is able
 6 to be fully reimbursed for those reasonable costs exclusively from
 7 savings.

8 (4) Require the creation of a General Fund obligation in
 9 contravention of Section 1 of Article XVI of the California
 10 Constitution.

11 ~~SECTION 1. Section 15814.37 is added to the Government~~
 12 ~~Code, to read:~~

13 ~~15814.37. The Department of General Services shall deem an~~
 14 ~~energy efficiency contract to be a no-cost contract when both of~~
 15 ~~the following conditions are met:~~

16 ~~(a) The energy savings, guaranteed by a third party, are~~
 17 ~~estimated to be greater than the cost of the investment.~~

18 ~~(b) The contract requires preproject and postproject~~
 19 ~~measurement and verification.~~