

**POLITICAL SUBDIVISION FACILITY**

**ENERGY EFFICIENCY**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Fred R Hunsaker**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill authorizes a political subdivision to enter into an energy savings agreement.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ permits a political subdivision to:
  - enter into an energy savings agreement with a qualified energy service provider;
  - develop and administer a facility energy efficiency program;
  - analyze energy consumption; and
  - designate a staff member who is responsible for the facility energy efficiency program;
- ▶ permits certain state entities to provide assistance to a political subdivision;
- ▶ defines length and type of contracts to be entered into;
- ▶ requires a political subdivision to follow the Utah Procurement Code for an energy savings agreement;
- ▶ requires an investment grade energy audit to be performed;
- ▶ requires the Division of Purchasing to maintain a list of qualified energy service providers; and
- ▶ requires a qualified energy service provider to issue an annual report.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **53A-3-402**, as last amended by Laws of Utah 2009, Chapters 277 and 388

35 ENACTS:

36 **11-44-101**, Utah Code Annotated 1953

37 **11-44-102**, Utah Code Annotated 1953

38 **11-44-201**, Utah Code Annotated 1953

39 **11-44-202**, Utah Code Annotated 1953

40 **11-44-203**, Utah Code Annotated 1953

41 **11-44-301**, Utah Code Annotated 1953

42 **11-44-302**, Utah Code Annotated 1953



44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **11-44-101** is enacted to read:

46 **CHAPTER 44. FACILITY ENERGY EFFICIENCY ACT**

47 **Part 1. General Provisions**

48 **11-44-101. Title.**

49 This chapter is known as the "Facility Energy Efficiency Act."

50 Section 2. Section **11-44-102** is enacted to read:

51 **11-44-102. Definitions.**

52 As used in this chapter:

53 (1) "Cost savings" means a decrease in an expenditure, including a future replacement  
54 expenditure, by a political subdivision resulting from an energy efficiency measure adopted  
55 under this chapter.

56 (2) (a) "Energy efficiency measure" means an action taken by a political subdivision  
57 that reduces the political subdivision's:

58 (i) energy consumption;

- 59           (ii) water use; or  
60           (iii) sewage use.  
61           (b) "Energy efficiency measure" includes:  
62           (i) insulation installed in a wall, roof, floor, foundation, or heating and cooling  
63 distribution system;  
64           (ii) a storm window or door, multiglazed window or door, heat absorbing or heat  
65 reflective glazed and coated window or door system, additional glazing, or reduction in glass  
66 area;  
67           (iii) an automatic energy control system;  
68           (iv) a heating, ventilating, or air conditioning and distribution system modification or  
69 replacement in a facility;  
70           (v) caulking and weatherstripping;  
71           (vi) a replacement or modification of a lighting fixture to increase the energy efficiency  
72 of the lighting system without increasing the overall illumination of a facility unless the  
73 increase in illumination is necessary to conform to the applicable building code for the  
74 proposed lighting system;  
75           (vii) an energy recovery system;  
76           (viii) a cogeneration system that produces steam or another form of energy for use  
77 primarily within a facility;  
78           (ix) a renewable energy or alternate energy system;  
79           (x) a change in operation or maintenance practice;  
80           (xi) a procurement of a low-cost energy supply, including electricity, natural gas, or  
81 water;  
82           (xii) an indoor air quality improvement that conforms to applicable building code  
83 requirements;  
84           (xiii) a daylighting system;  
85           (xiv) a building operation program that provides cost savings, including computerized  
86 energy management and consumption tracking programs or staff and occupant training; or  
87           (xv) a service to reduce utility costs by identifying utility errors and optimizing rate  
88 schedules.  
89           (3) "Energy savings agreement" means a contract between a political subdivision and a

90 qualified energy service provider for evaluation, recommendation, and implementation of one  
91 or more energy efficiency measures.

92 (4) "Facility energy efficiency program" means a program established by a political  
93 subdivision under this chapter to adopt an energy efficiency measure.

94 (5) (a) "Facility" means a building, structure, or other improvement that is constructed  
95 on property owned by a political subdivision.

96 (b) "Facility" does not mean a privately owned structure that is located on property  
97 owned by a political subdivision.

98 (6) "Qualified energy service provider" means a person who:

99 (a) has a record of successful energy savings agreements; or

100 (b) has:

101 (i) experience in the design, implementation, and installation of energy efficiency  
102 measures;

103 (ii) technical capabilities to ensure that an energy efficient measure generates cost  
104 savings; and

105 (iii) the ability to secure the financing necessary to support the proposed energy  
106 efficiency measure.

107 Section 3. Section **11-44-201** is enacted to read:

108 **Part 2. Energy Savings by Political Subdivisions**

109 **11-44-201. Political subdivision responsibilities -- State responsibilities.**

110 (1) A political subdivision may:

111 (a) enter into an energy savings agreement;

112 (b) develop and administer a facility energy efficiency program;

113 (c) analyze energy consumption by the political subdivision;

114 (d) designate a staff member who is responsible for a facility energy efficiency  
115 program; and

116 (e) provide the governing body of the political subdivision with information regarding  
117 the facility energy efficiency program.

118 (2) The following entities may provide information, technical resources, and other  
119 assistance to a political subdivision acting under this chapter:

120 (a) the Utah Geological Survey, created in Section 79-3-201;

121 (b) the State Board of Education, under Title 53A, Chapter 1, Administration of Public  
122 Education at the State Level;

123 (c) the Division of Purchasing and General Services, created in Section 63A-2-101;  
124 and

125 (d) the Division of Facilities Construction and Management, created in Section  
126 63A-5-201.

127 Section 4. Section **11-44-202** is enacted to read:

128 **11-44-202. Types of agreements.**

129 Notwithstanding Section 63G-6-416, a political subdivision shall structure an energy  
130 service agreement as a guaranteed energy savings performance contract, which shall include:

- 131 (1) the design and installation of an energy efficiency measure, if applicable;  
132 (2) operation and maintenance of any energy efficiency measure implemented; and  
133 (3) guaranteed annual cost savings that meet or exceed the total annual contract  
134 payments by the political subdivision under the contract, including financing charges incurred  
135 by the political subdivision over the life of the contract.

136 Section 5. Section **11-44-203** is enacted to read:

137 **11-44-203. Length of agreements.**

138 A political subdivision may only enter into an energy savings agreement for more than  
139 one year if the political subdivision finds that the amount the political subdivision would spend  
140 on the energy efficiency measure will not exceed the amount of the cost savings over 20 years  
141 from the date of installation of the energy efficiency measure.

142 Section 6. Section **11-44-301** is enacted to read:

143 **Part 3. Qualified Energy Service Providers**

144 **11-44-301. Selection.**

145 (1) A political subdivision shall follow the procedures outlined in Title 63G, Chapter 6,  
146 Utah Procurement Code, when selecting a qualified energy service provider.

147 (2) The Division of Purchasing shall maintain a list of qualified energy service  
148 providers.

149 (3) The qualified energy service provider selected from the bid process shall prepare an  
150 investment grade energy audit, which shall become part of the final contract between the  
151 political subdivision and the qualified energy service provider.

152           (4) The audit shall include:

153           (a) a detailed description of the energy efficiency measure;

154           (b) an estimated cost; and

155           (c) a projected cost savings.

156           Section 7. Section **11-44-302** is enacted to read:

157           **11-44-302. Annual reports.**

158           During the term of an energy savings agreement, the qualified energy service provider

159 shall submit an annual report to the political subdivision that provides the cost savings

160 attributable to the energy efficiency measures taken by the political subdivision.

161           Section 8. Section **53A-3-402** is amended to read:

162           **53A-3-402. Powers and duties generally.**

163           (1) Each local school board shall:

164           (a) implement the core curriculum utilizing instructional materials that best correlate to  
165 the core curriculum and graduation requirements;

166           (b) administer tests, required by the State Board of Education, which measure the  
167 progress of each student, and coordinate with the state superintendent and State Board of  
168 Education to assess results and create plans to improve the student's progress which shall be  
169 submitted to the State Office of Education for approval;

170           (c) use progress-based assessments as part of a plan to identify schools, teachers, and  
171 students that need remediation and determine the type and amount of federal, state, and local  
172 resources to implement remediation;

173           (d) develop early warning systems for students or classes failing to make progress;

174           (e) work with the State Office of Education to establish a library of documented best  
175 practices, consistent with state and federal regulations, for use by the local districts; and

176           (f) implement training programs for school administrators, including basic  
177 management training, best practices in instructional methods, budget training, staff  
178 management, managing for learning results and continuous improvement, and how to help  
179 every child achieve optimal learning in core academics.

180           (2) Local school boards shall spend minimum school program funds for programs and  
181 activities for which the State Board of Education has established minimum standards or rules  
182 under Section 53A-1-402.

183 (3) (a) A board may purchase, sell, and make improvements on school sites, buildings,  
184 and equipment and construct, erect, and furnish school buildings.

185 (b) School sites or buildings may only be conveyed or sold on board resolution  
186 affirmed by at least two-thirds of the members.

187 (4) (a) A board may participate in the joint construction or operation of a school  
188 attended by children residing within the district and children residing in other districts either  
189 within or outside the state.

190 (b) Any agreement for the joint operation or construction of a school shall:

191 (i) be signed by the president of the board of each participating district;

192 (ii) include a mutually agreed upon pro rata cost; and

193 (iii) be filed with the State Board of Education.

194 (5) A board may establish, locate, and maintain elementary, secondary, and applied  
195 technology schools.

196 (6) Except as provided in Subsection 53A-11-1402(3), a board may enroll children in  
197 school who are at least five years of age before September 2 of the year in which admission is  
198 sought.

199 (7) A board may establish and support school libraries.

200 (8) A board may collect damages for the loss, injury, or destruction of school property.

201 (9) A board may authorize guidance and counseling services for children and their  
202 parents or guardians prior to, during, or following enrollment of the children in schools.

203 (10) (a) A board shall administer and implement federal educational programs in  
204 accordance with Title 53A, Chapter 1, Part 9, Implementing Federal Programs Act.

205 (b) Federal funds are not considered funds within the school district budget under Title  
206 53A, Chapter 19, School District Budgets.

207 (11) (a) A board may organize school safety patrols and adopt rules under which the  
208 patrols promote student safety.

209 (b) A student appointed to a safety patrol shall be at least 10 years old and have written  
210 parental consent for the appointment.

211 (c) Safety patrol members may not direct vehicular traffic or be stationed in a portion  
212 of a highway intended for vehicular traffic use.

213 (d) Liability may not attach to a school district, its employees, officers, or agents or to a

214 safety patrol member, a parent of a safety patrol member, or an authorized volunteer assisting  
215 the program by virtue of the organization, maintenance, or operation of a school safety patrol.

216 (12) (a) A board may on its own behalf, or on behalf of an educational institution for  
217 which the board is the direct governing body, accept private grants, loans, gifts, endowments,  
218 devises, or bequests that are made for educational purposes.

219 (b) These contributions are not subject to appropriation by the Legislature.

220 (13) (a) A board may appoint and fix the compensation of a compliance officer to issue  
221 citations for violations of Subsection 76-10-105(2).

222 (b) A person may not be appointed to serve as a compliance officer without the  
223 person's consent.

224 (c) A teacher or student may not be appointed as a compliance officer.

225 (14) A board shall adopt bylaws and rules for its own procedures.

226 (15) (a) A board shall make and enforce rules necessary for the control and  
227 management of the district schools.

228 (b) All board rules and policies shall be in writing, filed, and referenced for public  
229 access.

230 (16) A board may hold school on legal holidays other than Sundays.

231 (17) (a) Each board shall establish for each school year a school traffic safety  
232 committee to implement this Subsection (17).

233 (b) The committee shall be composed of one representative of:

234 (i) the schools within the district;

235 (ii) the Parent Teachers' Association of the schools within the district;

236 (iii) the municipality or county;

237 (iv) state or local law enforcement; and

238 (v) state or local traffic safety engineering.

239 (c) The committee shall:

240 (i) receive suggestions from parents, teachers, and others and recommend school traffic  
241 safety improvements, boundary changes to enhance safety, and school traffic safety program  
242 measures;

243 (ii) review and submit annually to the Department of Transportation and affected  
244 municipalities and counties a child access routing plan for each elementary, middle, and junior

245 high school within the district;

246 (iii) consult the Utah Safety Council and the Division of Family Health Services and  
247 provide training to all school children in kindergarten through grade six, within the district, on  
248 school crossing safety and use; and

249 (iv) help ensure the district's compliance with rules made by the Department of  
250 Transportation under Section 41-6a-303.

251 (d) The committee may establish subcommittees as needed to assist in accomplishing  
252 its duties under Subsection (17)(c).

253 (e) The board shall require the school community council of each elementary, middle,  
254 and junior high school within the district to develop and submit annually to the committee a  
255 child access routing plan.

256 (18) (a) Each school board shall adopt and implement a comprehensive emergency  
257 response plan to prevent and combat violence in its public schools, on school grounds, on its  
258 school vehicles, and in connection with school-related activities or events.

259 (b) The board shall implement its plan by July 1, 2000.

260 (c) The plan shall:

261 (i) include prevention, intervention, and response components;

262 (ii) be consistent with the student conduct and discipline policies required for school  
263 districts under Title 53A, Chapter 11, Part 9, School Discipline and Conduct Plans;

264 (iii) require inservice training for all district and school building staff on what their  
265 roles are in the emergency response plan; and

266 (iv) provide for coordination with local law enforcement and other public safety  
267 representatives in preventing, intervening, and responding to violence in the areas and activities  
268 referred to in Subsection (18)(a).

269 (d) The State Board of Education, through the state superintendent of public  
270 instruction, shall develop comprehensive emergency response plan models that local school  
271 boards may use, where appropriate, to comply with Subsection (18)(a).

272 (e) Each local school board shall, by July 1 of each year, certify to the State Board of  
273 Education that its plan has been practiced at the school level and presented to and reviewed by  
274 its teachers, administrators, students, and their parents and local law enforcement and public  
275 safety representatives.

276 (19) (a) Each local school board may adopt an emergency response plan for the  
277 treatment of sports-related injuries that occur during school sports practices and events.

278 (b) The plan may be implemented by each secondary school in the district that has a  
279 sports program for students.

280 (c) The plan may:

281 (i) include emergency personnel, emergency communication, and emergency  
282 equipment components;

283 (ii) require inservice training on the emergency response plan for school personnel who  
284 are involved in sports programs in the district's secondary schools; and

285 (iii) provide for coordination with individuals and agency representatives who:

286 (A) are not employees of the school district; and

287 (B) would be involved in providing emergency services to students injured while  
288 participating in sports events.

289 (d) The board, in collaboration with the schools referred to in Subsection (19)(b), may  
290 review the plan each year and make revisions when required to improve or enhance the plan.

291 (e) The State Board of Education, through the state superintendent of public  
292 instruction, shall provide local school boards with an emergency plan response model that local  
293 boards may use to comply with the requirements of this Subsection (19).

294 (20) A board shall do all other things necessary for the maintenance, prosperity, and  
295 success of the schools and the promotion of education.

296 (21) (a) Before closing a school or changing the boundaries of a school, a board shall:

297 (i) hold a public hearing, as defined in Section 10-9a-103; and

298 (ii) provide public notice of the public hearing, as specified in Subsection (21)(b).

299 (b) The notice of a public hearing required under Subsection (21)(a) shall:

300 (i) indicate the:

301 (A) school or schools under consideration for closure or boundary change; and

302 (B) date, time, and location of the public hearing; and

303 (ii) at least 10 days prior to the public hearing, be:

304 (A) published:

305 (I) in a newspaper of general circulation in the area; and

306 (II) as required in Section 45-1-101; and

307 (B) posted in at least three public locations within the municipality or on the district's  
308 official website.

309 (22) A board may implement a facility energy efficiency program established under  
310 Title 11, Chapter 44, Facility Energy Efficiency Act.

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**Legislative Review Note**  
**as of 1-27-10 1:15 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 116 - Political Subdivision Facility Energy Efficiency**

**Fiscal Note**

2010 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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