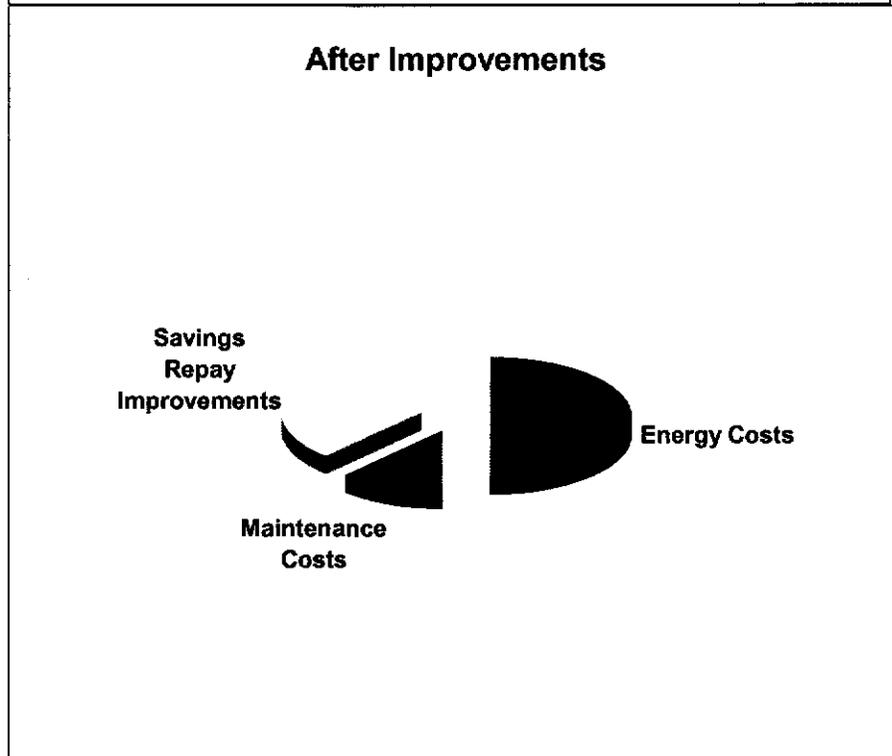
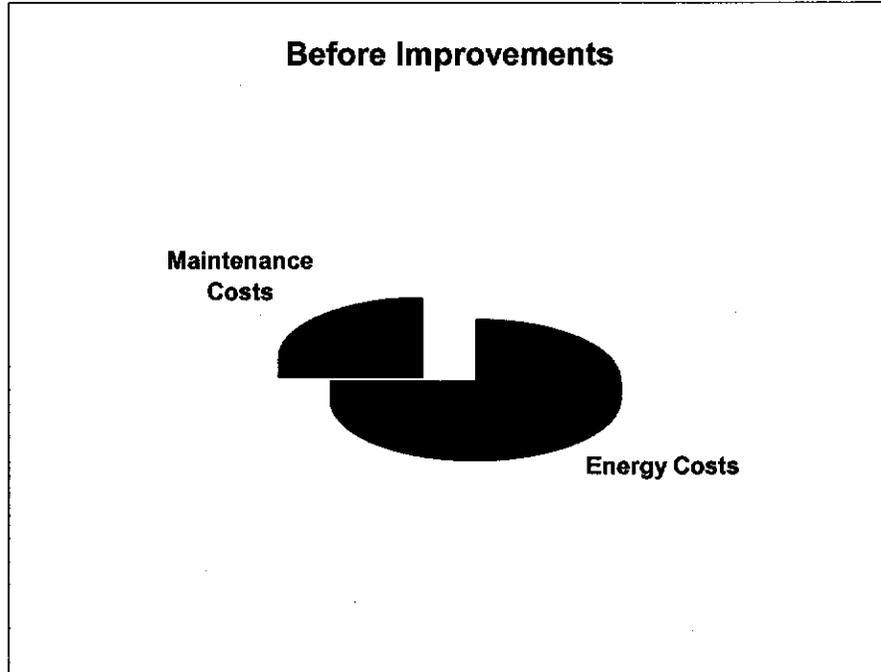


What is Energy Performance Contracting?

A way to fund building improvements through existing budgets.



Once improvements are paid for, savings can be used for other needs.



How does it work?

- Enter into an agreement with a private energy service company (ESCO)
- The ESCO identifies energy saving opportunities and recommends a package of improvements to be paid for through savings. This is done through an investment grade energy audit.
- Financing is arranged by ESCO or local government unit and may include utility rebates or other incentives.
- ESCO manages the project from design to installation to monitoring of savings.
- ESCO guarantees that savings meet or exceed annual payments to cover all project costs—usually over a contract term of 7-10 years. (HB 212 allows a maximum of 20 years.)
- The guarantee is spelled out in a contract that includes how the building will be operated, how the savings will be verified, and how adjustments will be made due to increases in the cost for energy.
- If the savings don't materialize, the ESCO pays the difference.

What experience is there with Energy Performance Contracting?

- 32 states have comprehensive enabling legislation for energy performance contracting.
- The federal government uses energy performance contracting in their facilities.
- A few energy performance contracts have been completed in Montana.

Why do we need legislation?

- Schools and local governments are not prohibited from using energy performance contracts, and some have done so.
- However, it is not clear that schools and local governments can use energy performance contracts.
- Current process is cumbersome, and makes using energy performance contracts difficult.
- Currently projects are designed by architects and engineers, and then bid out for construction.
- Currently architects and engineers cannot guarantee performance savings as bonds or insurance are cost prohibitive and most architecture and engineering firms do not have adequate capital for this guarantee.
- Energy performance contracts are most effective with a process where the design and construction are completed by the same entity. Because the ESCO must guarantee the savings from the improvements, they are allowed to control both the design and the construction process.

How does HB 212 work?

Section 1. Legislative findings and policy

- Establishes state policy to promote the efficient use of energy and water resources in local government buildings and energy conservation in vehicles by authorizing local government units to enter into energy performance contracts.

Section 2. Definitions

- Conservation measures include both energy and water savings
- Energy performance contract includes evaluation, recommendation, and implementation of conservation measures, evaluation of savings and a guarantee of cost savings.
- Investment grade energy audit is a comprehensive building energy systems audit performed by a professional engineer licensed in the state of Montana.
- Local government unit includes schools, community colleges and local governments.
- Qualified provider is person experienced in the design, implementation and installation of conservation measures, has the technical capabilities to ensure that the measures generate the cost savings, and has the financial ability to guarantee performance.

Section 3. Authority to enter into energy performance contracts

- Allows that a local government may enter into an energy performance contract through provisions in this bill.
- Specifies that local governments may still contract for conservation measures under any other authority.

Section 4. Selection of qualified providers for energy performance contracts

- This section would establish the process for a school or local government that wants to manage its own complete selection process.
- Requires public notice of request for qualifications and proposals
- Establishes criteria for selection including knowledge of design, engineering, installation, maintenance and repairs; experience with post installation monitoring; ability to arrange long-term financing, ability to guarantee savings, management capability, and experience with similar projects.

Amendments to section 4 are proposed

- The selection process will be based on qualifications. The proposed amendment to HB 212 makes it clear that the selection process will be

based on professional qualifications and negotiations in the same manner that engineering services are commonly selected.

Section 5. Alternative selection process

- Provides for DEQ to select a group of qualified providers that local governments may use.
- Requires DEQ to use the same selection criteria as a local government would use in Section 4.
- Allows DEQ to negotiate energy performance contract terms with each qualified provider that may be used by a local government. This would be a type of master agreement and is similar to the way that local governments may use state term contracts to purchase goods and services.

Section 6. Award of energy performance contracts

- Local government enters into a contract with a qualified provider.
- Investment grade energy audit completed by professional engineer licensed in Montana to evaluate conservation related cost savings.
- Local government decides to move forward with energy performance contract, or
- Local government may opt out after paying for the investment grade audit. (This would be done if the conservation related cost savings are not sufficient for a project)
- Plans for the project that meet all applicable building codes are produced by the qualified provider.
- An energy performance contract is negotiated.
- Costs for the investment grade energy audit and the plans produced may be financed as part of the energy performance contract. However, the payment for the investment grade audit is made to the provider at the time it is completed.

Amendments to Section 6 are proposed

Amendments are proposed to make it clear that the local governmental unit must pay for the investment grade energy audit when the audit is completed, but they may include the costs of the audit in the amount that they finance.

Section 7. Term and conditions of energy performance contracts

- Sets term as the useful life of the measures, or 20 years, whichever is less. (normally 7-10 years)
- Requires the qualified provider to guarantee conservation related savings, monitor the savings, and prepare an annual report for the local government

Amendments to Section 7 are proposed

- An amendment is proposed to allow units of local governments to contract for performance guarantees for a minimum of three years, and up to the useful life of the project. This will allow for local government units to stop

contracting for energy performance after they are satisfied that the savings are being achieved. It will be helpful with long projects.

Section 8. Assistance to local governments

- Allows DEQ to develop model documents and provide technical assistance

Section 9. Contracts and agreements not general obligation of local government unit

- This section is so that it is clear that performance contracting is not part of the bonding capacity of schools or local governments

Section 10. Pecuniary interest, letting contracts, and calling for bids (schools)

- Exempts energy performance contracts from the normal school district selection process including the requirement that contracts for work done on school buildings be selected based on lowest bid.

Section 11. Pecuniary interest and letting of contracts (community colleges)

- Exempts energy performance contracts from the normal community college selection process for contractors including the requirement that contracts for work done on buildings be selected based on lowest bid.
- The exemptions in sections 10 and 11 are important when a qualified provider is guaranteeing the savings.

Section 12. Energy performance contracts exempt (local governments)

- Exempts energy performance contracts from the normal local government selection process including the requirement that contracts for work done on local government buildings be selected based on lowest bid.
- Types of local governments exempted are found in Section 13.

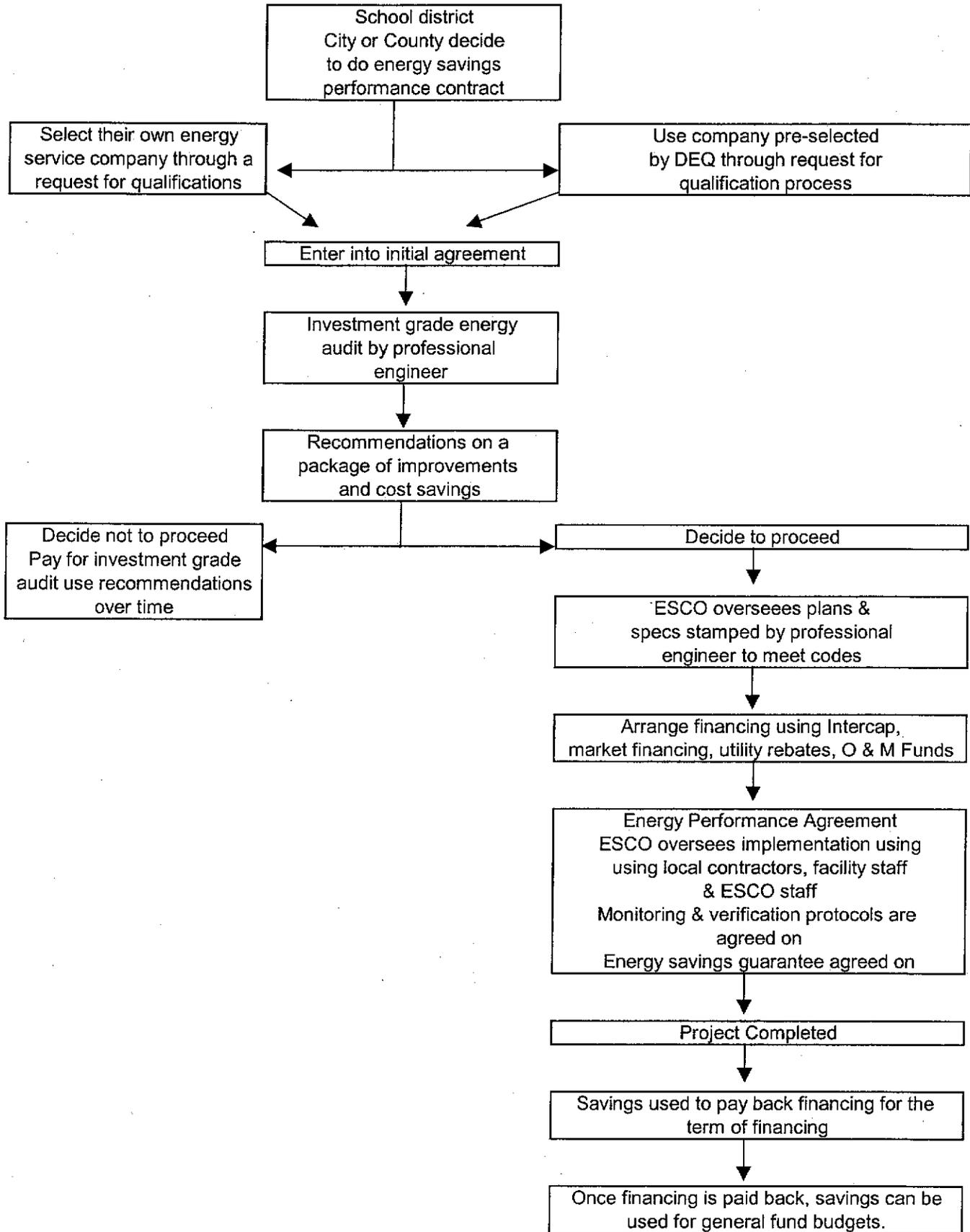
Section 13. Codification instructions

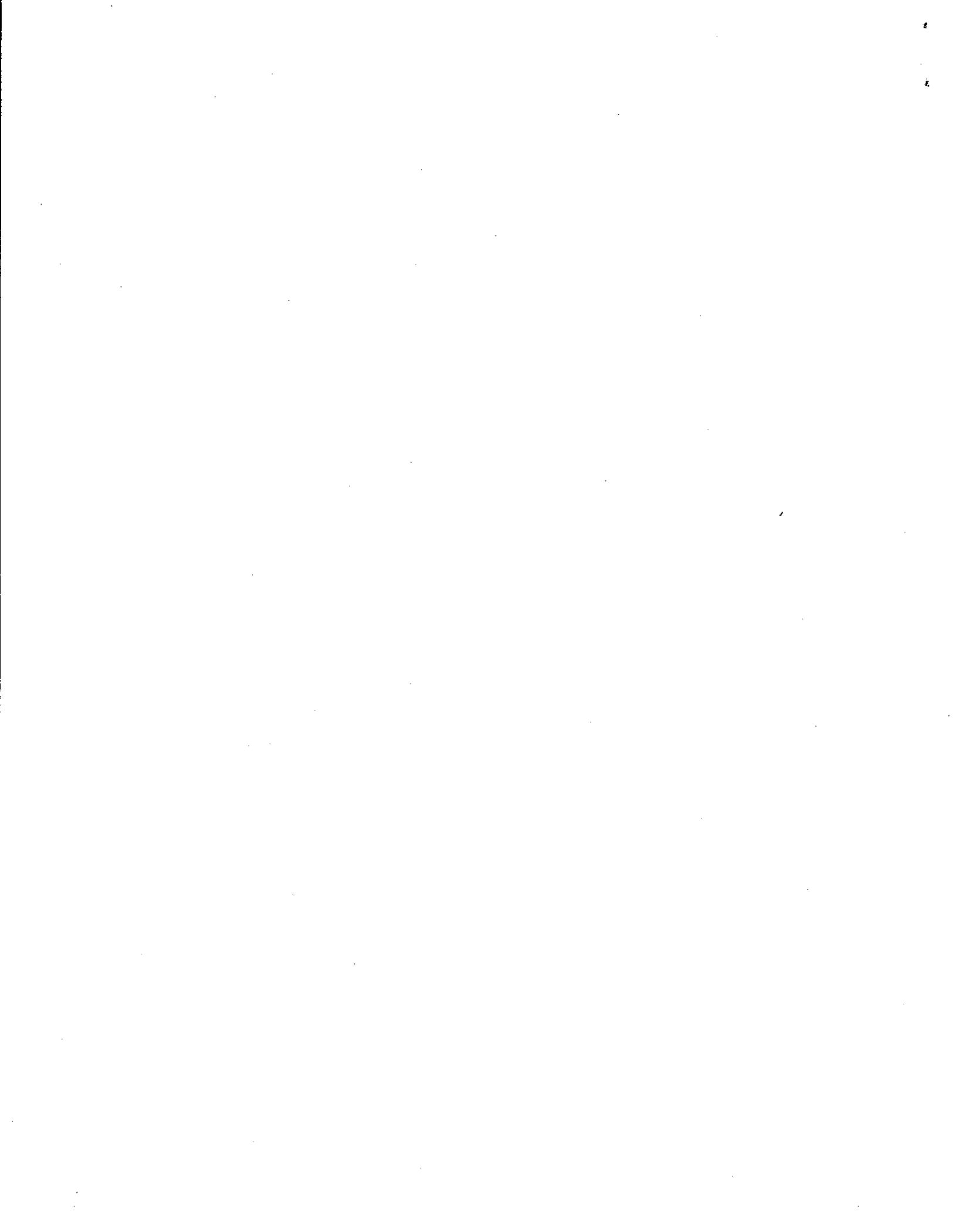
- Because of the many different types of local governments, the exemption in section 12 is applied to local government agreements by codifying the exemption in the following areas:
 - Title 7 chapter 5, part 21 county contracts
 - Title 7, chapter 5, part 43 municipal contracts and franchises
 - Title 7, chapter 12, part 21 rural improvement districts
 - Title 7, chapter 12, part 41 special improvement districts

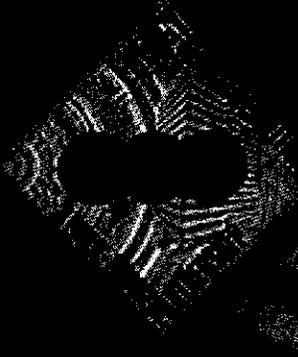
Section 14. Effective date

Upon passage and approval

Performance Contracting







Representative Alan Olson
Chair, Federal Relations, Energy
and Telecommunications Committee
Montana Legislature
P.O. Box 201706
Helena, MT 59620

Representative Olson:

On behalf of the Energy Services Coalition (ESC) to express our support for House Bill 212, authorizing performance contracting for local government in Montana.

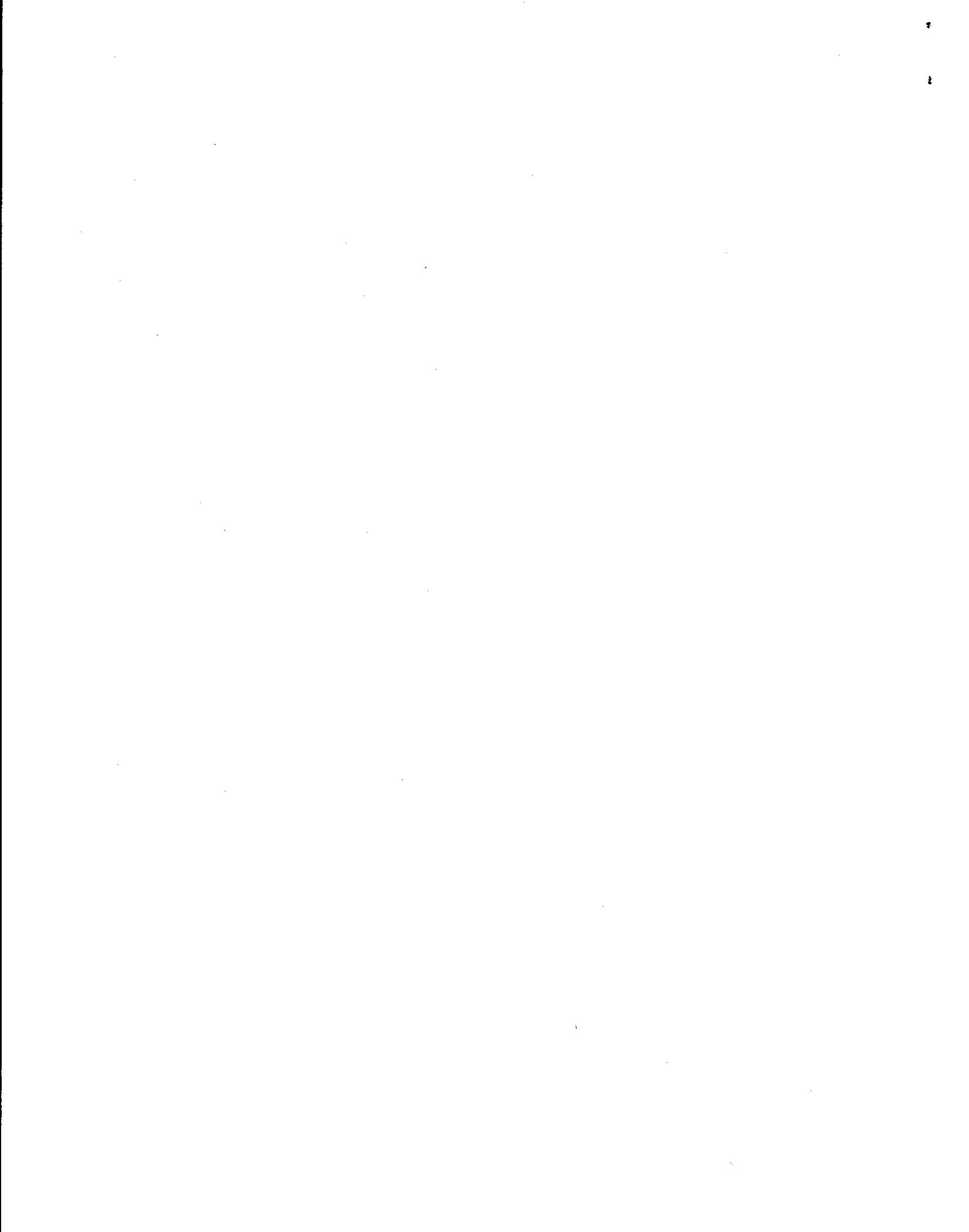
The Energy Services Coalition (ESC) is a national nonprofit organization composed of a wide range of experts from a wide range of organizations working together at the national level to increase energy efficiency and building upgrades through performance contracting. Our membership is composed of representatives from both public and private sectors that come together to promote this wide-ranging spectrum of benefits it continues to provide. Our members include state energy officials, federal employees, representatives of some of the largest financial organizations, businesses devoted to energy savings through performance contracting nationally and worldwide, representatives of a whole host of manufacturing manufacturers, and many of the nation's energy specialists.

Performance Contracting has a tried and true track record of being able to reduce the cost of operation and improvement of facility infrastructure using dollars more budgeted to pay the utility bills and we're confident the program will serve the patrons of Montana well.

The historic impact of this concept is broader still. Performance Contracting allows construction improvements to occur where budgets are so tight that reductions are considered everyday, where schools nurses and other employees are being dismissed because the roof leaks must be fixed before the winter is in such disrepair that it's been condemned. Contractors are being laid off as they had been considering unemployment wages as their new reality. Learning environments are improving allowing students their best chance at success in a world faced with academic competition. Indoor air quality issues are avoided by solving building problems for which no budget line

exists. Protecting and preserving our natural resources are well served and only enhanced by this work that reduces our strain and demand on our natural energy supply.





...well document how we, the taxpayers are wasting our investments
...ment and school structures by not being able to afford the everyday
... easily overlooked with money is tight.

...contracting is a working model in Montana's state buildings and we
...positive support of House Bill 212 to extend these benefits to local
...territs.

...and local government of all of Montana deserve the opportunity to use
...vehicle to allow them to be the great steward's of money that we



...condition





January 12, 2005

Representative Alan Olson
Chair, Federal Relations, Energy
and Telecommunications Committee
Montana Legislature
P.O. Box 201706
Helena, MT 59620

Dear Representative Olson:

I am writing on behalf of the National Association of Energy Service Companies (NAESCO) to express our support for House Bill 212, legislation which will authorize local government units in Montana to implement energy performance contracts.

NAESCO's current membership of about 100 organizations includes firms involved in the design, manufacture, financing and installation of energy efficiency equipment and the provision of energy efficiency services in the private and public sectors. NAESCO numbers among its members some of the most prominent companies in the world in the HVAC and energy control equipment business, including Honeywell, Johnson Controls, Siemens, Trane and TAC Americas. Our members also include many of the nation's largest utilities: Pacific Gas & Electric, Southern California Edison, New York Power Authority, and TU Electric & Gas. In addition, ESCO members include affiliates of ConEdison, PEPco, FirstEnergy, Sempra, Northeast Utilities, Equitable Resources, Alliant and Southern Company. Prominent national and regional independent members include American Synergy Corporation, Custom Energy, Onsite Energy, EnergySolve, Conservation Services Group, Citizens Conservation Corporation, AMERESCO, Emtor, UCONS, Chevron Energy Solutions and Energy Systems Group. NAESCO members have delivered tens of thousands of projects, worth billions of dollars, to industrial, commercial, institutional and residential customers across the U.S. during the last twenty years.

As you may know, more than 40 states now encourage energy performance contracts in state and/or local government buildings through special legislation. The federal government has a massive program since the 1980s of implementing energy performance contracts in all types of federal facilities – military bases, civilian facilities, hospitals, and others. Government entities typically encourage energy performance contracts because they have experienced the major benefits these contracts can deliver: energy savings, facility modernization, and local economic development.

Representative Alan Olson

January 12, 2005

Page 2

A typical energy performance contract in a public building saves 15-35% of the energy used in the building, as documented by the database of about 2,000 projects maintained by the Lawrence Berkeley National Laboratory under the sponsorship of the U.S. Department of Energy. These energy savings translate into significant dollars, which can be delivered to the local governments either as cash flow or as facility modernization.

Not surprising in these days of meager maintenance and capital budgets, many local governments use energy savings to achieve facility modernization that would otherwise be unaffordable. New lighting and heating systems make schools and other public buildings more comfortable and help students and government employees be more productive every day. Oftentimes, a new roof or windows installed as part of a performance contracting project can actually save a building that has been threatened with serious structural damage because of the lack of maintenance and capital funds.

Finally, energy performance contracts can be a source of significant local economic development. Public building projects typically range from a hundred thousand dollars to several million dollars and typically forty cents of every dollar has local economic impact. Much of that money is spent in the local communities: hiring local architects, engineers and trades people; procuring financing from local banks; and buying equipment and supplies from local or regional dealers. States which have studied the impacts of energy performance contracts have documented the creation of thousand of local jobs due to these contracts.

NAESCO therefore recommends that the Montana Legislature promptly enact House Bill 212. NAESCO and its member companies are ready to assist the state of Montana and its local government units to implement projects across the state, and begin to deliver to Montana the benefits that most other states are already enjoying. We note for the record that NAESCO has a nationally-respected accreditation program for energy service companies that may help Montana jump-start its program by ensuring the selection of highly qualified companies.

Sincerely,

Terry E. Singer
Executive Director

KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR

BRIAN J. MOLINE, CHAIR

ROBERT E. KREHBIEL, COMMISSIONER

MICHAEL C. MOFFET, COMMISSIONER

January 12, 2005

Representative Alan Olson
Chair, Federal Relations, Energy
and Telecommunications Committee
Montana Legislature
P.O. Box 201706
Helena, MT 59620

Dear Representative Olson:

Our office has the responsibility of administrating a successful program that is allowing public agencies – state government, local government and public schools and colleges – to finance energy improvement in public buildings.

Known as the Facility Conservation Improvement Program (FCIP) here in Kansas, the program has provided a streamlined approach to allow public entities to move forward with needed improvements, financed through utility bill savings.

I would like to express support for House Bill 212, authorizing performance contracting for local governments in Montana.

Energy Performance Contracting has matured to a tried and true program of being able to facilitate the modernization and improvement of public facility infrastructure using scarce funds that have been budgeted to pay the utility bills.

Our extremely successful program in Kansas has been well received. We have been able to implement over \$80 million in improvement over the past 24 months alone.

In recent years, performance contracting has become a widely accepted and reliable way to make energy improvements. Today's Energy Service Companies (ESCOs) use industry-standard practices and proven energy-saving technologies and have excellent track records for satisfying their customers. ESCOs have a financial incentive to make sure savings are achieved throughout the contract term.

The schools and local government of Montana deserve the opportunity to use energy savings performance contracting to allow them to be good steward's of public monies.

Performance contracting is a working model in Montana's state buildings. I urge your positive support of House Bill 212 to extend these benefits to local governmental units.

Sincerely,



Jim Ploger, Energy Manager
Kansas Corporation Commission

