

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

BILL: CS/SB 1594

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senator Bradley

SUBJECT: Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act

DATE: April 7, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Fav/CS
2.	Hinton	Uchino	EP	Pre-meeting
3.			CA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1594 adds a county or city school district, or an institution of higher education, including all state universities, colleges, and technical colleges to the list of governmental entities authorized to enter into guaranteed energy, water, and wastewater performance savings contracts.

The CS revises the definition of the term “energy, water, and wastewater efficiency and conservation measure” to expressly include not only an addition to existing facilities or infrastructure but also a building retrofit or renovation. It also authorizes inclusion of a variety of new savings measures in a contract.

Finally, the CS requires that the Office of the Chief Financial Officer complete its review and approval of a performance savings contract, a contract or lease for third-party financing, or any combination of such contracts within 10 business days after receiving the proposed contract or lease. To make this review more efficient, the CS requires that a proposed contract or lease with a state agency must include an investment-grade audit, certified by the Department of Management Services, that states the cost savings are appropriate and sufficient for the term of the contract.

This CS substantially amends s. 489.145 of the Florida Statutes.

II. Present Situation:

Section 489.145, F.S., is the “Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act.” The act is based upon a legislative finding that investment in energy, water, and wastewater efficiency and conservation measures in agency facilities can reduce the amount of energy and water consumed and wastewater produced, and produce immediate and long-term savings. It encourages each agency to invest in these measures to minimize energy and water consumption and wastewater production and maximize energy, water, and wastewater savings, and to reinvest any resulting savings in additional efficiency and conservation measures.

The statute authorizes an agency seeking to achieve energy, water, or wastewater cost savings to enter into a guaranteed energy, water, and wastewater performance savings contract (performance contract) with a guaranteed energy, water, and wastewater performance savings contractor (contractor) and to have the contractor use an energy, water, and wastewater efficiency and conservation measure (measure).¹

Agency is defined as the state, a municipality, or a political subdivision, thus authorizing these entities to enter into performance contracts.²

A performance contract is a contract for the evaluation, recommendation, and implementation of energy, water, or wastewater efficiency or conservation measures. It must, at a minimum, include:

- The design and installation of equipment to implement one or more measures and, if applicable, operation and maintenance of the measures.
- The amount of any actual annual savings that meet or exceed total annual contract payments made by the agency for the contract and may include allowable cost avoidance if determined appropriate by the Chief Financial Officer.
- The finance charges incurred by the agency over the life of the contract.³

A contractor is a person or business with experience in the analysis, design, implementation, or installation of energy, water, and wastewater efficiency and conservation measures through energy performance contracts and that is licensed under:

- Chapter 471, F.S., – providing for the licensing of engineers;
- Chapter 481, F.S., – providing for the licensing of architects, interior designers, and landscape architects; or
- Chapter 489, F.S., – providing for the licensing of construction contractors.⁴

An energy, water, and wastewater efficiency and conservation measure is a training program incidental to the contract, facility alteration, or equipment purchase to be used in new construction, including an addition to existing facilities or infrastructure, which reduces energy

¹ Section 489.145(4)(a), F.S.

² Section 489.145(3)(a), F.S.

³ Section 489.145(3)(d), F.S.

⁴ Section 489.145(3)(e), F.S.

or water consumption, wastewater production, or energy-related operating costs and includes, but is not limited to:

- Insulation of the facility structure and systems within the facility;
- Storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat-absorbing, or heat-reflective, glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;
- Automatic energy control systems;
- Heating, ventilating, or air-conditioning system modifications or replacements;
- Replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system, which, at a minimum, must conform to the applicable state or local building code;
- Energy recovery systems;
- Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a facility or complex of facilities;
- Energy conservation measures that reduce British thermal units (Btu), kilowatts (kW), or kilowatt hours (kWh) consumed or provide long-term operating cost reductions;
- Renewable energy systems, such as solar, biomass, or wind systems;
- Devices that reduce water consumption or sewer charges;
- Energy storage systems, such as fuel cells and thermal storage;
- Energy-generating technologies, such as microturbines; or
- Any other repair, replacement, or upgrade of existing equipment.⁵

Finally, energy, water, or wastewater cost savings is a measured reduction in the cost of fuel, energy or water consumption, wastewater production, and stipulated operation and maintenance created from the implementation of one or more measures when compared with an established baseline for the previous cost of fuel, energy or water consumption, wastewater production, and stipulated operation and maintenance.⁶

An agency may enter into a performance contract only if the agency finds that the amount the agency would spend on the measures is not likely exceed the amount of the cost savings for up to 20 years from the date of installation if the recommendations in the report were followed, with calculations based on the life-cycle cost calculations provided in s. 255.255, F.S. Additionally, the qualified provider or providers must give a written guarantee that the cost savings will meet or exceed the costs of the system. Actual computed cost savings must meet or exceed the estimated cost savings provided in each agency's program approval.⁷

Prior to entering into a performance contract, any contract or lease for third-party financing, or any combination of such contracts, a state agency must submit the proposed contract or lease to the Office of the Chief Financial Officer for review and approval.⁸ Section 489.145, F.S., provides that an investment grade energy audit is a detailed energy, water, and wastewater audit, including an accompanying analysis of proposed energy, water, and wastewater conservation

⁵ Section 489.145(3)(b), F.S.

⁶ Section 489.145(3)(c), F.S.

⁷ Section 489.145(4)(c), F.S.

⁸ Section 489.145(6), F.S.

measures along with their costs, savings and benefits, completed prior to entry into an energy savings contract.⁹

III. Effect of Proposed Changes:

Section 1 amends s. 489.145, F.S., to add a county or city school district, or an institution of higher education, including all state universities, colleges, and technical colleges, to the definition of the term “agency,” which allows these entities to enter into performance contracts.

It revises the definition of the term “energy, water, and wastewater efficiency and conservation measure” to include not only an addition to existing facilities or infrastructure, but also a building retrofit or renovation. It also adds to the list of cost savings measures:

- Installing or modifying window and door systems that reduce energy consumption or operating costs;
- Installing or modifying automated, electronic, or remotely controlled technologies, systems, or measures that reduce utility or operating costs;
- Installing or modifying software-based systems that reduce facility management or other facility operating costs;
- Installing or modifying energy information and control systems that monitor consumption, redirect systems to optimal energy sources, and manage energy-using equipment;
- Installing, replacing, or modifying heating, ventilating, air-conditioning systems, or lighting fixtures;
- Implementing a program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, or the use of alternative energy suppliers, including, but not limited to, demand response programs, changes to more favorable rate schedules, negotiation of lower rates using new suppliers, or auditing utility billing and metering;
- An improvement that reduces solid waste and associated removal costs;
- Meter replacement, installation of an automated meter reading system, or other construction, modification, installation, or remodeling of water, electric, gas, fuel, communication, or other supplied utility system;
- Any other energy conservation measure that reduces Btu, kW, or kWh; reduces fuel or water consumption in the building or wastewater production; or reduces an operating cost or provides long-term cost reductions;
- Any other repair, replacement, or upgrade of existing equipment that produces measurable savings, or any other construction, modification, installation, or remodeling that is approved by an agency and that is within the legislative authority granted the agency, such as an energy conservation measure; and
- Any other measure not otherwise defined in ch. 489, F.S., that is designed to reduce utility consumption, revenue enhancements, wastewater cost savings, avoided capital costs, or similar efficiency gains to a governmental unit.

Finally, the CS requires that the Office of the Chief Financial Officer complete its review and approval of a performance savings contract, a contract or lease for third-party financing, or any combination of such contracts within 10 business days after receiving the proposed contract or lease. To make this review more efficient, the CS requires that a proposed contract or lease with

⁹ Section 149.145(3)(f), F.S.

a state agency must include an investment-grade audit, certified by the Department of Management Services, which states that the cost savings are appropriate and sufficient for the term of the contract.

Section 2 provides an effective date of July 1, 2013.

Other Potential Implications:

On lines 97-102, the CS authorizes use of a new measure which includes “implementing a program to reduce energy costs through . . . the use of alternative energy suppliers, including . . . negotiation of lower rates using new suppliers. . . .” The intent and meaning of this language are uncertain, but to the extent that it addresses actual suppliers of electricity, it raises two potential issues. First, Florida law prohibits anyone but an electric utility from supplying electricity to the public.¹⁰ Second, each electric utility has an established, exclusive service territory. No other utility can provide services within it.¹¹

Lines 228-233 allow a performance contract to include “a facility alteration that includes expenditures that are required to properly implement other energy conservation measures may be included as part of a performance contract. In such case, notwithstanding any provision of law, the installation of these additional measures may be supervised by the performance savings contractor.” As was set forth above, a “guaranteed energy, water, and wastewater performance savings contractor” is a person or business that is licensed pursuant to one of three specified chapters in the Florida Statutes and is experienced in the analysis, design, implementation, or installation of energy, water, and wastewater efficiency and conservation measures through energy performance contracts. These three chapters contain approximately 25 different types of licenses, as listed above. This language in the CS may allow a contractor to engage in activities that otherwise would be unlicensed activity and that the contractor is not qualified to do.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ See s. 366.02, F.S., and *PW Ventures, Inc. v. Nichols*, 533 So.2d 281 (Fla. 1988).

¹¹ See s. 366.04(2), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The CS may result in more performance contracts with contractors. The effect is indeterminate at this time.

C. Government Sector Impact:

The CS may result in additional cost savings to agencies entering into performance contracts, including the state, a municipality, a political subdivision, a county or city school district, or an institution of higher education, including all state universities, colleges, and technical colleges. The effect is indeterminate at this time.

VI. Technical Deficiencies:

On lines 121-125, the CS includes in allowable efficiency and conservation measures “[a]ny other measure not otherwise defined in this chapter which is designed to reduce utility consumption, revenue enhancements, wastewater cost savings, avoided capital costs, or similar efficiency gains to a governmental unit.” The word “reduce” appears to modify “utility consumption,” “revenue enhancements,” “wastewater cost savings,” and “avoided capital costs.” This would appear to be a drafting error and needs to be corrected.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Communications, Energy, and Public Utilities on April 1, 2013:

- retains the existing statutory requirement that cost calculations be based on the life-cycle costs provided in s. 255.255, F.S., and the prohibition on applying any grants, etc., in performing these calculations;
- deletes the proposed language allowing a performance contract to include “an improvement that is not causally connected to an energy conservation measure”; and
- requires a proposed contract or lease to include an investment-grade audit certified by the Department of Management Services, which approves cost savings.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
