

By Senator Campbell

33-722A-98

1                                   A bill to be entitled  
 2           An act relating to energy performance  
 3           contracting; amending s. 489.145, F.S.;  
 4           providing legislative findings; redefining the  
 5           terms "agency," "energy conservation measure,"  
 6           "energy savings," "guaranteed energy savings  
 7           contract," and "qualified provider"; revising  
 8           procedures for contracting; establishing  
 9           criteria for energy performance contracts;  
 10          authorizing the Department of Management  
 11          Services to provide technical assistance;  
 12          providing an effective date.

13  
 14 Be It Enacted by the Legislature of the State of Florida:

15  
 16           Section 1. Section 489.145, Florida Statutes, is  
 17 amended to read:

18           489.145 Energy performance ~~efficiency~~ contracting.--

19           (1) TITLE.--This section may be cited as the Energy  
 20 Performance Contracting Act.

21           (2) LEGISLATIVE FINDINGS.--The Legislature finds that  
 22 investment in energy conservation measures in agency  
 23 facilities can reduce the amount of energy consumed and  
 24 produce immediate and long-term savings. It is the policy of  
 25 this state to encourage agencies to invest in energy  
 26 conservation measures that reduce energy consumption, produce  
 27 a cost savings for the agency, and improve the quality of  
 28 indoor air in public facilities; and to operate, maintain,  
 29 and, when economically feasible, build or renovate existing  
 30 agency facilities in such a manner as to minimize energy  
 31 consumption and maximize energy savings. It is further the

1 policy of this state to encourage agencies to reinvest any  
2 energy savings resulting from energy conservation measures  
3 into additional energy conservation efforts.

4 (3)~~(1)~~ DEFINITIONS.--As used in this section, the  
5 term:

6 (a) "Agency" means the state, a municipality, ~~a school~~  
7 ~~district or school board,~~ or a another political subdivision.

8 (b) "Energy conservation measure" means a training  
9 program, ~~or~~ facility alteration, or equipment purchase to be  
10 used in new construction, including an addition to an existing  
11 facility, which ~~that~~ reduces energy ~~consumption or operating~~  
12 costs and includes, but is not limited to:

13 1. Insulation of the facility ~~building~~ structure and  
14 systems within the facility ~~building~~.

15 2. Storm windows and doors, caulking or  
16 weatherstripping, multiglazed windows and doors,  
17 heat-absorbing, or heat-reflective, glazed and coated window  
18 and door systems, additional glazing, reductions in glass  
19 area, and other window and door system modifications that  
20 reduce energy consumption.

21 3. Automatic energy control systems.

22 4. Heating, ventilating, or air-conditioning system  
23 modifications or replacements.

24 5. Replacement or modifications of lighting fixtures  
25 to increase the energy efficiency of the lighting system,  
26 which, at a minimum, must ~~without increasing the overall~~  
27 ~~illumination of a facility, unless an increase in illumination~~  
28 ~~is necessary to conform to the applicable state or local~~  
29 ~~building code for the lighting system after the proposed~~  
30 ~~modifications are made.~~

31 6. Energy recovery systems.

1           7. Cogeneration systems that produce steam or forms of  
2 energy such as heat, as well as electricity, for use primarily  
3 within a facility building or complex of facilities buildings.

4           8. Energy conservation measures that provide long-term  
5 operating cost reductions or ~~and~~ significantly reduce Btu  
6 consumed.

7           9. Renewable energy systems, such as solar, biomass,  
8 and wind systems.

9           10. Devices that reduce water consumption or sewer  
10 charges.

11           11. Any other repair, replacement, or upgrade of  
12 existing equipment.

13           (c) "Energy cost savings" means:

14           1. A measured reduction in fuel, ~~and~~ energy, or  
15 operation and maintenance costs created from the  
16 implementation of one or more energy conservation measures  
17 when compared with an established baseline for previous fuel,  
18 ~~and~~ energy, or operation and maintenance costs, ~~or~~

19           2. For new construction, a projected reduction in  
20 fuel, energy, or operation and maintenance costs created from  
21 the implementation of one or more energy conservation measures  
22 when compared with the projected fuel, energy, or operation  
23 and maintenance costs for equipment if the minimum standards  
24 of the State Energy Uniform Building Code were implemented.

25           (d) "~~Guaranteed~~ Energy performance ~~savings~~ contract"  
26 means a contract for the evaluation, and recommendation, and  
27 implementation of energy conservation measures, which, at a  
28 minimum, must include:~~including~~

29           1. The design and installation of equipment to  
30 implement one or more of such measures ~~and, if applicable,~~  
31 operation and maintenance of such measures;~~-~~

1           2. The amount of any actual annual savings that meet  
2 or exceed total annual contract payments made by the agency  
3 for the contract; and

4           3. The finance charges incurred by the agency over the  
5 life of the contract.~~The contract may cover repair or~~  
6 ~~replacement of existing equipment in a state-owned building or~~  
7 ~~a state-owned hospital, professional fees, and financing~~  
8 ~~charges to be paid from the energy savings less agreed-upon~~  
9 ~~inflation factors, and maintenance services if applicable.~~

10           (e) "Energy performance contractor ~~Qualified provider~~"  
11 means a person or business that is licensed under chapter 471,  
12 chapter 481, or this chapter, and is experienced in the  
13 analysis, design, implementation, or installation of energy  
14 conservation measures through ~~guaranteed~~ energy performance  
15 savings contracts.

16           ~~(4)(2)~~ PROCEDURES.--

17           (a) An agency may enter into an ~~a~~ guaranteed energy  
18 performance savings contract with an energy performance  
19 contractor ~~a qualified provider or providers~~ to significantly  
20 reduce energy or operating costs of an agency facility  
21 ~~agency-owned building or an agency-owned hospital~~ through one  
22 or more energy conservation measures.

23           (b) Before the design and installation of energy  
24 conservation measures ~~entering into the contract~~, the agency  
25 must obtain from an energy performance contractor ~~a qualified~~  
26 ~~provider or providers~~ a report that discloses all of  
27 ~~summarizes~~ the costs associated with ~~of~~ the energy  
28 conservation measures and provides an estimate of the amount  
29 of the energy cost savings or operating costs will be reduced.

30           (c) ~~After a review of the report,~~The agency may enter  
31 into an energy performance ~~a~~ contract with an energy

1 performance contractor if it finds that the amount the agency  
2 ~~it~~ would spend on the energy conservation measures will is not  
3 likely to exceed the amount of the to be saved in energy cost  
4 savings and operating costs for up to 20 10 years from the  
5 date of installation, based on life-cycle costing  
6 calculations.~~if the recommendations in the report were~~  
7 ~~followed and if the qualified provider or providers give a~~  
8 ~~written guarantee that the energy or operating cost savings~~  
9 ~~will meet or exceed the costs of the system. The contract may~~  
10 ~~provide for installment payments for a period not to exceed 10~~  
11 ~~years.~~

12 (d) An energy performance contractor ~~A qualified~~  
13 ~~provider or providers~~ must be selected in compliance with s.  
14 287.055; except that if fewer than three firms are qualified  
15 to perform the required services, the requirement for agency  
16 selection of three firms, as provided in s. 287.055(4)(b), and  
17 the bid requirements of s. 287.057 do not apply.

18 (e) Before entering into an energy performance ~~a~~  
19 ~~contract under this section~~, an agency must provide published  
20 notice of the meeting in which it proposes to award the  
21 contract, the names of the parties to the proposed contract,  
22 and the contract's purpose.

23 (f) Before entering into an energy performance  
24 contract with an energy performance contractor, any state  
25 agency must submit the proposed contract to the Office of the  
26 Comptroller for review and approval. A reasonable construction  
27 of this act by the Office of the Comptroller is binding on all  
28 state agencies involved in the administration of or purchases  
29 made under this act, and the Office of the Comptroller is  
30 authorized to adopt rules governing the construction or  
31 application of this act for state agencies.

1           (g) An energy performance contract may provide for  
2 financing, including tax exempt financing, by a third party.  
3 The contract for third party financing may be separate from  
4 the energy performance contract. A separate contract for third  
5 party financing must include a provision that the third party  
6 financier must not be granted rights or privileges that exceed  
7 the rights and privileges available to the energy performance  
8 contractor, and must specify that the agency is not obligated  
9 to make payments that exceed the energy savings for the  
10 applicable period or in the event of any other material  
11 deficiency in performance of the underlying energy performance  
12 contract, including, but not limited to, an event or events of  
13 material equipment failure.

14           ~~(5)(3)~~ CONTRACT PROVISIONS.--

15           (a) An ~~A~~ guaranteed energy performance savings  
16 contract must include a ~~written energy~~ guarantee by the energy  
17 performance contractor ~~qualified provider or providers~~ that  
18 annual energy cost savings will meet or exceed the amortized  
19 cost of energy conservation measures.

20           (b) The energy performance contract must provide that  
21 all payments, except obligations on termination of the  
22 contract before its expiration, may be made over time, but not  
23 to exceed 20 ~~10~~ years from the date of complete installation  
24 and acceptance by the agency state, and that the annual  
25 savings are guaranteed to the extent necessary to make annual  
26 payments to satisfy the energy performance contract ~~for the~~  
27 ~~systems~~.

28           (c) The energy performance contract must require that  
29 the energy performance contractor ~~a qualified provider or~~  
30 ~~providers~~ to whom the contract is awarded provide a  
31 100-percent public construction ~~project value~~ bond to the

1 agency state for its faithful performance, as required by s.  
2 255.05 chapter 287.

3 (d) The energy performance contract may contain a  
4 provision allocating to the parties to the contract any annual  
5 energy cost savings that exceed the amount of the energy cost  
6 savings guaranteed in the contract.

7 (e) The energy performance contract must require the  
8 energy performance contractor to provide to the agency an  
9 annual reconciliation of the guaranteed energy cost savings.  
10 If the reconciliation reveals a shortfall in annual energy  
11 cost savings, the energy performance contractor is liable. If  
12 the reconciliation reveals an excess in annual energy cost  
13 savings, the excess savings may be allocated under paragraph  
14 (d), but may not be used to cover potential energy cost  
15 savings shortages in subsequent contract years.

16 (f)(d) The energy performance contract must provide  
17 for payments of not less than one-twentieth ~~one-tenth~~ of the  
18 price to be paid within 2 years from the date of the complete  
19 installation and acceptance by the agency state, and the  
20 remaining costs to be paid at least quarterly, not to exceed a  
21 20-year ~~10-year~~ term, based on the life-cycle cost  
22 calculations.

23 (g)(e) The energy performance contract may extend  
24 beyond the fiscal year in which it becomes effective; however,  
25 the term of any contract expires at the end of each fiscal  
26 year and may be automatically renewed annually for up to 20 ~~10~~  
27 years, subject to the agency making sufficient annual  
28 appropriations based upon continued realized energy savings.

29 (h)(f) The energy performance contract must stipulate  
30 that it does not constitute a debt, liability, or obligation  
31 of the state.

