

By Senator Garcia

39-908-01

See HB 453

1 A bill to be entitled
2 An act relating to guaranteed energy
3 performance savings contracting; amending s.
4 489.145, F.S.; changing provisions relating to
5 energy efficiency contracting to provisions
6 relating to guaranteed energy performance
7 savings contracting; providing a short title;
8 providing legislative intent; revising
9 definitions, procedures, and contract
10 provisions; providing criteria, requirements,
11 procedures, and limitations for energy
12 performance contracts; authorizing the
13 Department of Management Services or the Office
14 of the Comptroller to provide technical
15 assistance to agencies for certain purposes;
16 providing an effective date.

17

18 Be It Enacted by the Legislature of the State of Florida:

19

20 Section 1. Section 489.145, Florida Statutes, is
21 amended to read:

22 489.145 Guaranteed energy performance savings
23 ~~efficiency~~ contracting.--

24 (1) SHORT TITLE.--This section may be cited as the
25 "Guaranteed Energy Performance Savings Contracting Act."

26 (2) LEGISLATIVE FINDINGS.--The Legislature finds that
27 investment in energy conservation measures in agency
28 facilities can reduce the amount of energy consumed and
29 produce immediate and long-term savings. It is the policy of
30 this state to encourage agencies to invest in energy
31 conservation measures that reduce energy consumption, produce

1 a cost savings for the agency, and improve the quality of
2 indoor air in public facilities and to operate, maintain, and,
3 when economically feasible, build or renovate existing agency
4 facilities in such a manner as to minimize energy consumption
5 and maximize energy savings. It is further the policy of this
6 state to encourage agencies to reinvest any energy savings
7 resulting from energy conservation measures in additional
8 energy conservation efforts.

9 (3)(1) DEFINITIONS.--As used in this section, the
10 term:

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

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

18 1. Insulation of the facility building structure and
19 systems within the facility building.

20 2. Storm windows and doors, caulking or
21 weatherstripping, multiglazed windows and doors,
22 heat-absorbing, or heat-reflective, glazed and coated window
23 and door systems, additional glazing, reductions in glass
24 area, and other window and door system modifications that
25 reduce energy consumption.

26 3. Automatic energy control systems.

27 4. Heating, ventilating, or air-conditioning system
28 modifications or replacements.

29 5. Replacement or modifications of lighting fixtures
30 to increase the energy efficiency of the lighting system,
31 which, at a minimum, must ~~without increasing the overall~~

1 ~~illumination of a facility, unless an increase in illumination~~
2 ~~is necessary to conform to the applicable state or local~~
3 ~~building code for the lighting system after the proposed~~
4 ~~modifications are made.~~

5 6. Energy recovery systems.

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

9 8. Energy conservation measures that provide long-term
10 operating cost reductions or ~~and~~ significantly reduce Btu
11 consumed.

12 9. Renewable energy systems, such as solar, biomass,
13 or wind systems.

14 10. Devices that reduce water consumption or sewer
15 charges.

16 11. Storage systems, such as fuel cells and thermal
17 storage.

18 12. Generating technologies, such as microturbines.

19 13. Any other repair, replacement, or upgrade of
20 existing equipment.

21 (c) "Energy cost savings" means:

22 1. A measured reduction in fuel or ~~and~~ energy
23 consumption or stipulated operation and maintenance costs
24 created from the implementation of one or more energy
25 conservation measures when compared with an established
26 baseline for previous fuel or ~~and~~ energy consumption, or
27 stipulated operation and maintenance costs; or.

28 2. For new construction, a projected reduction in
29 fuel, energy, or operation and maintenance costs created from
30 the implementation of one or more energy conservation measures
31 when compared with the projected fuel or energy consumption,

1 or operation and maintenance costs, for equipment if the
2 minimum standards of the state Uniform Building Code were
3 implemented.

4 (d) "Guaranteed energy performance savings contract"
5 means a contract for the evaluation, and recommendation, and
6 implementation of energy conservation measures, which, at a
7 minimum, shall include:~~including~~

8 1. The design and installation of equipment to
9 implement one or more of such measures and, if applicable,
10 operation and maintenance of such measures.

11 2. The amount of any actual annual savings that meet
12 or exceed total annual contract payments made by the agency
13 for the contract.

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

20 (e) "Guaranteed energy performance savings contractor
21 ~~Qualified provider~~" means a person or business that is
22 licensed under chapter 471, chapter 481, or this chapter, and
23 is experienced in the analysis, design, implementation, or
24 installation of energy conservation measures through
25 guaranteed energy performance savings contracts.

26 ~~(4)(2)~~ PROCEDURES.--

27 (a) An agency may enter into a guaranteed energy
28 performance savings contract with a guaranteed energy
29 performance savings contractor ~~qualified provider or providers~~
30 to significantly reduce energy or operating costs of an agency
31

1 ~~facility~~ agency-owned building or an agency-owned hospital
2 through one or more energy conservation measures.

3 (b) Before design and installation of energy
4 conservation measures ~~entering into the contract~~, the agency
5 must obtain from a guaranteed energy performance savings
6 contractor ~~qualified provider or providers~~ a report that
7 summarizes the costs associated with ~~of~~ the energy
8 conservation measures and provides an estimate of the amount
9 of the energy and or operating cost savings ~~costs will be~~
10 ~~reduced~~. The agency and the guaranteed energy performance
11 savings contractor may enter into a separate agreement to pay,
12 within 120 days after the execution of the separate agreement,
13 for costs associated with the preparation and delivery of the
14 report or may agree to include the cost of such report in the
15 guaranteed energy performance savings contract upon subsequent
16 execution.

17 (c) ~~After a review of the report,~~The agency may enter
18 into a guaranteed energy performance savings contract with a
19 guaranteed energy performance savings contractor if the agency
20 ~~it~~ finds that the amount the agency ~~it~~ would spend on the
21 energy conservation measures will ~~is~~ not likely to exceed the
22 amount of the ~~to be saved in~~ energy cost savings and operating
23 cost savings ~~costs~~ for up to 20 ~~10~~ years from the date of
24 installation, based on life cycle cost calculations,if the
25 recommendations in the report were followed and if the
26 qualified provider or providers give a written guarantee that
27 the energy or operating cost savings will meet or exceed the
28 costs of the system. The contract may provide for installment
29 payments for a period not to exceed 20 ~~10~~ years.

30 (d) A guaranteed energy performance savings contractor
31 ~~qualified provider or providers~~ must be selected in compliance

1 with s. 287.055; except that if fewer than three firms are
2 qualified to perform the required services, the requirement
3 for agency selection of three firms, as provided in s.
4 287.055(4)(b), and the bid requirements of s. 287.057 do not
5 apply.

6 (e) Before entering into a guaranteed energy
7 performance savings contract ~~under this section~~, an agency
8 must provide published notice of the meeting in which it
9 proposes to award the contract, the names of the parties to
10 the proposed contract, and the contract's purpose.

11 (f) A guaranteed energy performance savings contract
12 may provide for financing, including tax-exempt financing, by
13 a third party. The contract for third-party financing may be
14 separate from the energy performance contract. A separate
15 contract for third-party financing must include a provision
16 that the third-party financier must not be granted rights or
17 privileges that exceed the rights and privileges available to
18 the guaranteed energy performance savings contractor.

19 (g) In calculating the amount it will spend on the
20 energy conservation measures, the agency is permitted to
21 reduce such amount by applying any grants, rebates, or capital
22 funding made available to it for the purposes of buying down
23 the cost of the guaranteed energy performance savings
24 contract.

25 (5)(3) CONTRACT PROVISIONS.--

26 (a) A guaranteed energy performance savings contract
27 must include a written ~~energy~~ guarantee that may include, but
28 is not limited to the form of, a letter of credit, insurance
29 policy, or corporate guarantee by the guaranteed energy
30 performance savings contractor ~~qualified provider or providers~~
31

1 that annual energy and operational cost savings will meet or
2 exceed the amortized cost of energy conservation measures.

3 (b) The guaranteed energy performance savings contract
4 must provide that all payments, except obligations on
5 termination of the contract before its expiration, may be made
6 over time, but that the time period for repayment may not to
7 exceed 20 ~~10~~ years from the date of complete installation and
8 acceptance by the agency state, and that the annual savings
9 are guaranteed to the extent necessary to make annual payments
10 to satisfy the guaranteed energy performance savings contract
11 for the systems.

12 (c) The guaranteed energy performance savings contract
13 must require that the guaranteed energy performance savings
14 contractor ~~a qualified provider or providers~~ to whom the
15 contract is awarded provide a 100-percent public construction
16 project value bond to the agency state for its faithful
17 performance, as required by s. 255.05 ~~chapter 287~~.

18 (d) The guaranteed energy performance savings contract
19 may contain a provision allocating to the parties to the
20 contract any annual energy cost savings that exceed the amount
21 of the energy cost savings guaranteed in the contract.

22 (e) The guaranteed energy performance savings contract
23 shall require the guaranteed energy performance savings
24 contractor to provide to the agency an annual reconciliation
25 of the guaranteed energy cost savings. If the reconciliation
26 reveals a shortfall in annual energy cost savings, the
27 guaranteed energy performance savings contractor is liable for
28 the shortfall. If the reconciliation reveals an excess in
29 annual energy cost savings, the excess savings may be
30 allocated under paragraph (d) but may not be used to cover
31

1 potential energy cost savings shortages in subsequent contract
2 years.

3 (f)(d) The guaranteed energy performance savings
4 contract must provide for payments of not less than
5 one-twentieth ~~one-tenth~~ of the price to be paid within 2 years
6 from the date of the complete installation and acceptance by
7 the agency ~~state~~, and the remaining costs to be paid at least
8 quarterly, with the total term for repayment not to exceed
9 20-years, based on life cycle cost calculations ~~a 10-year~~
10 ~~term.~~

11 (g)(e) The guaranteed energy performance savings
12 contract may extend beyond the fiscal year in which it becomes
13 effective; however, the term of any contract expires at the
14 end of each fiscal year and may be automatically renewed
15 annually for up to 20 ~~10~~ years, subject to the agency making
16 sufficient annual appropriations based upon continued realized
17 energy savings.

18 (h)(f) The guaranteed energy performance savings
19 contract must stipulate that it does not constitute a debt,
20 liability, or obligation of the state.

21 (6) TECHNICAL ASSISTANCE.--The Department of
22 Management Services or the Office of the Comptroller shall,
23 within available resources, provide technical assistance to
24 agencies contracting for energy conservation measures, develop
25 model contractual and related documents for use by state
26 agencies, establish a technical board for the purpose of
27 reviewing guaranteed energy performance savings contracts, and
28 engage in other activities considered appropriate by the
29 department for promoting and facilitating guaranteed energy
30 performance savings contracting by agencies.

31 Section 2. This act shall take effect October 1, 2001.

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LEGISLATIVE SUMMARY

Changes energy efficiency contracting provisions to provide for guaranteed energy performance savings contracting. (See bill for details.)