

By the Committee on Governmental Oversight and Productivity;
and Senator Garcia

302-1583-01

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; providing for program
13 administration and contract review by the
14 Department of Management Services and the
15 Office of the Comptroller; providing an
16 effective date.

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

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

28 (d) "Guaranteed energy performance savings contract"
29 means a contract for the evaluation, and recommendation, and
30 implementation of energy conservation measures, which, at a
31 minimum, shall include:including

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

4 2. The amount of any actual annual savings that meet
5 or exceed total annual contract payments made by the agency
6 for the contract.

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

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

19 (4)(2) PROCEDURES.--

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

26 (b) Before design and installation of energy
27 conservation measures ~~entering into the contract,~~ the agency
28 must obtain from a guaranteed energy performance savings
29 contractor ~~qualified provider or providers~~ a report that
30 summarizes the costs associated with ~~of~~ the energy
31 conservation measures and provides an estimate of the amount

1 ~~of the energy cost savings or operating costs will be reduced.~~
2 The agency and the guaranteed energy performance savings
3 contractor may enter into a separate agreement to pay for
4 costs associated with the preparation and delivery of the
5 report; however, payment to the contractor shall be contingent
6 upon the report's projection of energy cost savings being
7 equal to or greater than the total projected costs of the
8 design and installation of the report's energy conservation
9 measures.

10 (c) ~~After a review of the report,~~The agency may enter
11 into a guaranteed energy performance savings contract with a
12 guaranteed energy performance savings contractor if the agency
13 ~~it~~ finds that the amount the agency ~~it~~ would spend on the
14 energy conservation measures will ~~is~~ not likely ~~to~~ exceed the
15 amount of the to be saved in energy cost savings and operating
16 costs for up to 20 ~~10~~ years from the date of installation,
17 based on the life cycle cost calculations provided in s.
18 255.255, if the recommendations in the report were followed
19 and if the qualified provider or providers give a written
20 guarantee that the energy ~~or operating~~ cost savings will meet
21 or exceed the costs of the system. The contract may provide
22 for installment payments for a period not to exceed 20 ~~10~~
23 years.

24 (d) A guaranteed energy performance savings contractor
25 ~~qualified provider or providers~~ must be selected in compliance
26 with s. 287.055; except that if fewer than three firms are
27 qualified to perform the required services, the requirement
28 for agency selection of three firms, as provided in s.
29 287.055(4)(b), and the bid requirements of s. 287.057 do not
30 apply.

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

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

14 (g) In determining the amount the agency will finance
15 to acquire the energy conservation measures, the agency may
16 reduce such amount by the application of any grant moneys,
17 rebates, or capital funding available to the agency for the
18 purpose of buying down the cost of the guaranteed energy
19 performance savings contract. However, in calculating the life
20 cycle cost as required in paragraph (c), the agency shall not
21 apply any grants, rebates, or capital funding.

22 ~~(5)(3)~~ CONTRACT PROVISIONS.--

23 (a) A guaranteed energy performance savings contract
24 must include a written ~~energy~~ guarantee that may include, but
25 is not limited to the form of, a letter of credit, insurance
26 policy, or corporate guarantee by the guaranteed energy
27 performance savings contractor ~~qualified provider or providers~~
28 that annual energy cost savings will meet or exceed the
29 amortized cost of energy conservation measures.

30 (b) The guaranteed energy performance savings contract
31 must provide that all payments, except obligations on

1 termination of the contract before its expiration, may be made
2 over time, but not to exceed 20 ~~10~~ years from the date of
3 complete installation and acceptance by the agency state, and
4 that the annual savings are guaranteed to the extent necessary
5 to make annual payments to satisfy the guaranteed energy
6 performance savings contract for the systems.

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

13 (d) The guaranteed energy performance savings contract
14 may contain a provision allocating to the parties to the
15 contract any annual energy cost savings that exceed the amount
16 of the energy cost savings guaranteed in the contract.

17 (e) The guaranteed energy performance savings contract
18 shall require the guaranteed energy performance savings
19 contractor to provide to the agency an annual reconciliation
20 of the guaranteed energy cost savings. If the reconciliation
21 reveals a shortfall in annual energy cost savings, the
22 guaranteed energy performance savings contractor is liable for
23 such shortfall. If the reconciliation reveals an excess in
24 annual energy cost savings, the excess savings may be
25 allocated under paragraph (d) but may not be used to cover
26 potential energy cost savings shortages in subsequent contract
27 years.

28 (f)~~(d)~~ The guaranteed energy performance savings
29 contract must provide for payments of not less than
30 one-twentieth ~~one-tenth~~ of the price to be paid within 2 years
31 from the date of the complete installation and acceptance by

1 the agency state, and the remaining costs to be paid at least
2 quarterly, not to exceed a 20-year ~~10-year~~ term, based on life
3 cycle cost calculations.

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

11 ~~(h)(f)~~ The guaranteed energy performance savings
12 contract must stipulate that it does not constitute a debt,
13 liability, or obligation of the state.

14 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
15 Department of Management Services, with the assistance of the
16 Office of the Comptroller, may, within available resources,
17 provide technical assistance to state agencies contracting for
18 energy conservation measures and engage in other activities
19 considered appropriate by the department for promoting and
20 facilitating guaranteed energy performance contracting by
21 state agencies. The Office of the Comptroller, with the
22 assistance of the Department of Management Services, may,
23 within available resources, develop model contractual and
24 related documents for use by state agencies. Prior to
25 entering into a guaranteed energy performance savings
26 contract, any contract or lease for third-party financing, or
27 any combination of such contracts, a state agency shall submit
28 such proposed contract or lease to the Office of the
29 Comptroller for review and approval.

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

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 1012

Deletes the bill's provision concerning projected costs for new construction. Provides that the agency need not pay for the projected energy cost savings report if the conservation measure is installed. Provides that the agency may not reduce life cycle cost calculations by amounts received from grants, rebates, or capital funding. Changes the Department of Management Services' and Office of the Comptroller's responsibilities under the act. Requires agencies to submit contracts to the Office of the Comptroller.