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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.

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 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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