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**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR READY INFRASTRUCTURE
ANALYSIS**

BILL #: CS/CS/HB 453

RELATING TO: Guaranteed Energy Performance Savings Contracting

SPONSOR(S): Council for Ready Infrastructure, Committee on Utilities & Telecommunications and Representative(s) Prieguez

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES AND TELECOMMUNICATIONS (RIC) YEAS 14 NAYS 0
- (2) FISCAL POLICY & RESOURCES YEAS 11 NAYS 0
- (3) COUNCIL FOR READY INFRASTRUCTURE YEAS 19 NAYS 0
- (4)
- (5)

I. SUMMARY:

This bill establishes the "Guaranteed Energy Performance Savings Contracting Act." It amends s. 489.145, F.S., to establish legislative intent that investment in energy conservation measures can reduce the amount of energy consumed and produce immediate and long-term savings.

It provides additional energy conservation measures, establishes that operation and maintenance costs are included in energy cost savings, and establishes "guaranteed energy performance savings contracts" and "guaranteed energy performance savings contractors." The procedures required by the contracts are expanded and can include financing. The contract provisions are amended to provide for cost allocation between the parties, annual savings reconciliation, and allocation of savings shortfalls or excess savings.

The Department of Management Services is required, within available resources, to provide technical assistance to agencies contracting for energy conservation measures and the Office of the Comptroller with the department's assistance may provide model documentation within available resources.

The bill does not appear to have a fiscal impact on state and local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Legislature established energy efficiency contracting in agency buildings in 1994 by enacting chapter 94-112, Laws of Florida, codified at s. 489.145, F.S. Agency is defined as "the state, a municipality, a school district or school board, or another political subdivision."

Under section 489.145(2), F.S., an agency may enter into a guaranteed energy savings contract with a qualified provider to significantly reduce the energy or operating costs of an agency-owned building or hospital. A qualified provider is defined as a person licensed under chapter 471 (engineers), chapter 481 (architecture, interior design, or landscape architect), or chapter 489 (construction, electrical, or septic tank contractors) and experienced in the design, implementation, or installation of energy conservation measures through guaranteed energy savings contracts. See section 489.145(1)(c), F.S.

A guaranteed energy savings contract is defined in section 489.145(1)(d), F.S., as:

[A] contract for the evaluation and recommendation of energy conservation measures, including the design and installation of equipment to implement one or more of such measures. The contract may cover repair or replacement of existing equipment in a state-owned building or a state-owned hospital, professional fees, and financing charges to be paid from the energy savings less agreed-upon inflation factors, and maintenance services if applicable.

An agency may enter into a guaranteed energy savings contract through one or more energy conservation measures. An energy conservation measure, under section 489.145(1)(b), F.S., means a "training program or facility alteration that reduces energy consumption or operating costs." It may include the following:

1. Insulation of the building structure and systems within the building;
2. 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;
3. Automatic energy control systems;
4. Heating, ventilating, or air-conditioning system modifications or replacements;
5. Replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;
6. Energy recovery systems;
7. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings; and
8. Energy conservation measures that provide long-term operating cost reductions and significantly reduce Btu consumed.

However, before an agency may enter into the contract, it must obtain a report from the qualified provider that delineates the costs of the energy conservation measures and the estimated energy or operating cost savings. The agency may enter into the contract if it finds that the amount it would spend on the measures would not likely exceed the savings over a 10-year period from the date of the installation. The qualified provider must also give a written guarantee that the savings will meet or exceed the cost of the system. The contract can include installment payments over a period of time not to exceed 10 years.

The qualified provider must be selected pursuant to s. 287.055, F.S., the Consultants' Competitive Negotiation Act. If only two firms are qualified, the requirement for three firms pursuant to s. 287.055(4)(b), F.S., and the bidding requirements of s. 287.057, F.S., do not apply. Notice of the meeting to award the contract must also be published.

Section 489.145(3), F.S., provides for the contract provisions. It requires that each contract must include: a written guarantee that the savings will be greater than the costs, payment may be made over time, not to exceed 10 years with the savings guaranteed necessary to make the payments, and the qualified provider has a 100 percent project value bond. The contract may extend beyond the fiscal year, but it expires each fiscal year with automatic annual renewals subject to annual appropriations based upon continued energy savings. Finally, the contract must provide for:

payments of not less than one-tenth of the price to be paid within 2 years from the date of the complete installation and acceptance by the state, and the remaining costs to be paid at least quarterly, not to exceed a 10-year term.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 489.145, F.S., to establish the "Guaranteed Energy Performance Savings Contracting Act." The bill makes legislative findings that investment in energy conservation

measures for agency facilities can reduce energy usage and produce immediate and long-term savings. It establishes a policy to invest in energy conservation measures.

The definition of "agency" is amended to eliminate school districts and school boards. Chapter 97-384, Laws of Florida, amended s. 235.215, F.S., enact changes that are similar to this bill for school districts, community colleges, and state universities.

The bill expands the definition of "energy conservation measure" to include additional methods such as renewable energy systems (solar, biomass, or wind systems), devices that reduce water consumption and sewer charges, storage systems (fuel cells and thermal storage), generating technologies (microturbines), and any other repair, replacement, or upgrade of existing equipment. It also includes equipment purchased to be used in construction.

The definition of energy savings is expanded to include "energy cost savings" and includes operation and maintenance costs.

The guaranteed energy savings contract is changed to become a guaranteed energy performance contract. It requires the contract to include operation and maintenance of the equipment in addition to the design and maintenance of that equipment. It must include the amount of actual annual savings and any finance charges incurred by the agency over the life of the contract.

A qualified provider is changed to a guaranteed energy performance savings contractor. A contractor still means a person or business licensed under chapter 471, chapter 481, or chapter 489 that is experienced in providing energy conservation measures through energy performance contracts.

The bill provides that the agency and the guaranteed energy performance savings contractor may enter into a separate agreement to pay, for costs associated with the preparation of the energy savings report required by the section. However, payment for the report is contingent on the projected cost savings being greater than the cost of the conservation measures. The contract term is extended from 10 to up to 20 years.

The guaranteed energy performance contracts may provide for financing, including tax exempt financing by a third party. It may also be a separate contract, but must include provisions that the third party financier is not granted rights or privileges that exceed the rights and privileges of the guaranteed energy performance savings contractor. The agency may reduce the amount it is financing by the amount of any grants, rebates, or capital funding available to the agency for the purpose of buying down the cost of the guaranteed energy performance savings contract. The agency may not apply this type of available funding to the calculation of life cycle costs. Section 255.253(4), F.S., defines "life cycle costs" as "the cost of owning, operating, and maintaining the facility over the life of the structure. This may be expressed as an annual cost for each year of the facility's use." Life cycle cost calculations are provided for in s. 255.255, F.S.

The contract provisions are amended to allow the written guarantee to include letters of credit, insurance policies, or corporate guarantees by the contractor that the annual energy and operational cost savings will meet or exceed the amortized cost of the energy conservation measures. It requires the contract to provide that all payments may be made over time, but not to exceed 20 years from acceptance by the agency. The annual savings must be guaranteed to the extent necessary to make the annual payments to satisfy the guaranteed energy performance savings contract.

The contract must also require that the contractor must provide the agency with an annual reconciliation of the cost savings. If there is a shortfall in the annual savings, the contractor is liable

for the shortfall. If there is excess, the excess savings may be allocated to the parties, but the excess may not be used to cover potential shortfalls in future years.

The Department of Management Services is required, within available resources, to provide technical assistance to agencies contracting for energy conservation measures and engage in other activities considered appropriate by the department to promote and facilitate guaranteed energy performance savings contracting by state agencies.

The Office of the Comptroller, with the assistance of the Department of Management Services may, within available resources, develop model contracts and related documents for use by state agencies. Prior to entering into a guaranteed energy performance savings contract or contract for third party financing, the state agency must submit the contracts to the Office of the Comptroller for review and approval.

D. SECTION-BY-SECTION ANALYSIS:

Please see Present Situation and Effect of Proposed Changes Sections.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Energy service companies may obtain increased business opportunities under the provisions of this bill.

D. FISCAL COMMENTS:

Savings from reduced energy consumption and other energy conservation measures may be obtained by agencies under the provisions of this bill.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Utilities & Telecommunications Committee adopted several amendments and approved a motion to make the bill a committee substitute on March 7, 2001. The amendments made the following changes:

- Strikes the provisions relating to projected costs for new construction.
- Provides that payment for the cost report is contingent on the projected cost savings being greater than the cost of the conservation measures.
- Allows the agency to reduce the amount it is financing by the amount of any grants, rebates, or capital funding available to the agency. However, the agency may not apply this type of funding to the calculation of life cycle costs.
- Provides that the Department of Management Services, within available resources, shall provide technical assistance and other appropriate activities to agencies for promoting and facilitating guaranteed energy performance contracting.
- Provides that the Office of the Comptroller, with the assistance of the Department of Management Services, may, within available resources, develop model contractual and related documents for use by state agencies. Energy contracts and financing agreements must be reviewed and approved by the Office of the Comptroller.

The Council for Ready Infrastructure adopted five amendments and approved a motion to make the bill a council substitute on March 22, 2001. The amendments, which conform the bill to its Senate companion, ensured that the term of art, "energy cost savings" as defined in the bill, is used consistently

throughout the bill and provided a cross-reference to s. 255.255, F.S., which contains the formula for life cycle cost calculations.

VII. SIGNATURES:

COMMITTEE ON UTILITIES & TELECOMMUNICATIONS:

Prepared by:

Staff Director:

Patrick L. "Booter" Imhof

Patrick L. "Booter" Imhof

AS REVISED BY THE COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

Staff Director:

Douglas Pile

Greg Turbeville

AS FURTHER REVISED BY THE COUNCIL FOR READY INFRASTRUCTURE:

Prepared by:

Council Director:

Randy L. Havlicak

Thomas J. Randle