

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

11 (3) DEFINITIONS.--As used in this section, the term:

12 (a) "Agency" means the state, a municipality, or a
13 political subdivision.

14 (b) "Energy, water, and wastewater efficiency or
15 conservation measure" means a training program, facility
16 alteration, or equipment purchase to be used in constructing
17 new facilities or retrofitting or adding to existing
18 facilities or infrastructure ~~new construction, including an~~
19 ~~addition to an existing facility,~~ which reduces energy, water,
20 wastewater, or operating costs and includes, but is not
21 limited to:

22 1. Insulation of the facility structure and systems
23 within the facility.

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

30 3. Automatic energy control systems.

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1 4. Heating, ventilating, or air-conditioning system
2 modifications or replacements.

3 5. Replacement or modifications of lighting fixtures
4 to increase the energy efficiency of the lighting system,
5 which, at a minimum, must conform to the applicable state or
6 local building code.

7 6. Energy recovery systems.

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

11 8. Energy conservation measures that provide long-term
12 operating cost reductions or significantly reduce Btu
13 consumed.

14 9. Renewable energy systems, such as solar, biomass,
15 or wind systems.

16 10. Devices that reduce water consumption or
17 wastewater ~~sewer~~ charges.

18 11. Equipment upgrades that improve the accuracy of
19 billable revenue generating systems.

20 12. Automated electronic or remotely controlled
21 systems or measures that reduce direct personnel costs.

22 13. Such other energy, water, or wastewater efficiency
23 or conservation measures as may provide measurable, long-term
24 operating cost reductions or billable revenue increases.

25 ~~14.11.~~ Energy storage systems, such as fuel cells and
26 thermal storage.

27 ~~15.12.~~ Energy generating technologies, such as
28 microturbines.

29 ~~16.13.~~ Any other repair, replacement, or upgrade of
30 existing equipment.
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1 (c) "Energy, water, and wastewater cost savings" means
2 a measured reduction in the cost of fuel, energy or water
3 consumption, or wastewater production, and stipulated
4 improvement in the operation and maintenance created from the
5 implementation of one or more energy, water, and wastewater
6 efficiency or conservation measures when compared with an
7 established baseline for the previous cost of fuel, energy, or
8 water consumption, or wastewater production, and stipulated
9 operation and maintenance.

10 (d) "Guaranteed ~~energy~~ performance savings contract"
11 means a contract for the evaluation, recommendation, and
12 implementation of energy, water, and wastewater efficiency or
13 conservation measures, which, at a minimum, shall include:

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

17 2. The amount of any actual annual savings that meet
18 or exceed total annual contract payments made by the agency
19 for the contract.

20 3. The finance charges incurred by the agency over the
21 life of the contract.

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

28 (4) PROCEDURES.--

29 (a) An agency may enter into a guaranteed ~~energy~~
30 performance savings contract with a guaranteed ~~energy~~
31 performance savings contractor to significantly reduce energy,
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1 water, or wastewater or operating costs of an agency facility
2 through one or more energy, water, and wastewater efficiency
3 or conservation measures.

4 (b) Before design and installation of energy, water,
5 and wastewater efficiency and conservation measures, the
6 agency must obtain from a guaranteed ~~energy~~ performance
7 savings contractor a report that summarizes the costs
8 associated with the ~~energy conservation~~ measures and provides
9 an estimate of the amount of the associated energy cost
10 savings or operational improvements. The agency and the
11 guaranteed ~~energy~~ performance savings contractor may enter
12 into a separate agreement to pay for costs associated with the
13 preparation and delivery of the report; however, payment to
14 the contractor shall be contingent upon the report's
15 projection of ~~energy~~ cost savings being equal to or greater
16 than the total projected costs of the design and installation
17 of the report's ~~energy~~ conservation or efficiency measures.

18 (c) The agency may enter into a guaranteed ~~energy~~
19 performance savings contract with a guaranteed ~~energy~~
20 performance savings contractor if the agency finds that the
21 amount the agency would spend on the ~~energy~~ conservation or
22 efficiency measures will not likely exceed the amount of the
23 associated energy cost savings for up to 20 years from the
24 date of installation, based on the life cycle cost
25 calculations provided in s. 255.255, if the recommendations in
26 the report were followed and if the qualified provider or
27 providers give a written guarantee that such ~~the energy~~ cost
28 savings will meet or exceed the costs of the system. The
29 contract may provide for installment payments for a period not
30 to exceed 20 years.

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1 (d) A guaranteed ~~energy~~ performance savings contractor
2 must be selected in compliance with s. 287.055; except that if
3 fewer than three firms are qualified to perform the required
4 services, the requirement for agency selection of three firms,
5 as provided in s. 287.055(4)(b), and the bid requirements of
6 s. 287.057 do not apply.

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

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

21 (g) In determining the amount the agency will finance
22 to acquire the efficiency or ~~energy~~ conservation measures, the
23 agency may reduce such amount by the application of any grant
24 moneys, rebates, or capital funding available to the agency
25 for the purpose of buying down the cost of the guaranteed
26 ~~energy~~ performance savings contract. However, in calculating
27 the life cycle cost as required in paragraph (c), the agency
28 shall not apply any grants, rebates, or capital funding.

29 (5) CONTRACT PROVISIONS.--

30 (a) A guaranteed ~~energy~~ performance savings contract
31 must include a written guarantee that may include, but is not

1 limited to the form of, a letter of credit, insurance policy,
2 or corporate guarantee by the guaranteed ~~energy~~ performance
3 savings contractor that annual associated ~~energy~~ cost savings
4 will meet or exceed the amortized cost of the efficiency and
5 ~~energy~~ conservation measures.

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

14 (c) The guaranteed ~~energy~~ performance savings contract
15 must require that the guaranteed ~~energy~~ performance savings
16 contractor to whom the contract is awarded provide a
17 100-percent public construction bond to the agency for its
18 faithful performance, as required by s. 255.05.

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

24 (e) The guaranteed ~~energy~~ performance savings contract
25 shall require the guaranteed ~~energy~~ performance savings
26 contractor to provide to the agency an annual reconciliation
27 of the guaranteed associated ~~energy~~ cost savings. If the
28 reconciliation reveals a shortfall in such annual ~~energy~~ cost
29 savings, the guaranteed ~~energy~~ performance savings contractor
30 is liable for such shortfall. If the reconciliation reveals an
31 excess in such annual ~~energy~~ cost savings, the excess savings

1 may be allocated under paragraph (d) but may not be used to
2 cover potential ~~energy~~ cost savings shortages in subsequent
3 contract years.

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

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

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

20 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
21 Department of Management Services, with the assistance of the
22 Office of the Chief Financial Officer, may, within available
23 resources, provide technical assistance to state agencies
24 contracting for energy, water, and wastewater efficiency or
25 conservation measures and engage in other activities
26 considered appropriate by the department for promoting and
27 facilitating guaranteed ~~energy~~ performance contracting by
28 state agencies. The Office of the Chief Financial Officer,
29 with the assistance of the Department of Management Services,
30 may, within available resources, develop model contractual and
31 related documents for use by state agencies. Prior to entering

1 into a guaranteed ~~energy~~ performance savings contract, any
2 contract or lease for third-party financing, or any
3 combination of such contracts, a state agency shall submit
4 such proposed contract or lease to the Office of the Chief
5 Financial Officer for review and approval.

6 Section 2. Subsection (10) of section 287.064, Florida
7 Statutes, is amended to read:

8 287.064 Consolidated financing of deferred-payment
9 purchases.--

10 (10) Costs incurred pursuant to a guaranteed ~~energy~~
11 performance savings contract, including the cost of energy,
12 water, and wastewater efficiency and conservation measures,
13 each as defined in s. 489.145, may be financed pursuant to a
14 master equipment financing agreement; however, the costs of
15 training, operation, and maintenance may not be financed. The
16 period of time for repayment of the funds drawn pursuant to
17 the master equipment financing agreement under this subsection
18 may exceed 5 years but may not exceed 10 years.

19 Section 3. This act shall take effect July 1, 2005.

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22 SENATE SUMMARY

23 Includes water and wastewater efficiency and conservation
24 in the measures encouraged by the Legislature. Provides
25 definitions. Provides for inclusion of water and
26 wastewater efficiency and conservation measures in
27 guaranteed performance savings contracting by a state
28 agency. Makes conforming amendment.
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