

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

585-2177-05

1 A bill to be entitled
2 An act relating to contracting for efficiency
3 or conservation measures by state agencies;
4 amending s. 489.145, F.S.; including water and
5 wastewater efficiency and conservation in the
6 measures encouraged by the Legislature;
7 providing definitions; providing for inclusion
8 of water and wastewater efficiency and
9 conservation measures in guaranteed performance
10 savings contracts entered into by a state
11 agency; amending s. 287.064, F.S., to conform;
12 providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Section 489.145, Florida Statutes, is
17 amended to read:

18 489.145 Guaranteed ~~energy~~ performance savings
19 contracting.--

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

22 (2) LEGISLATIVE FINDINGS.--The Legislature finds that
23 investment in energy, water, and wastewater efficiency or
24 conservation measures in agency facilities can reduce the
25 amount of energy and water consumed and wastewater to be
26 treated and produce immediate and long-term savings. It is the
27 policy of this state to encourage each agency ~~agencies~~ to
28 invest in energy, water, and wastewater efficiency or
29 conservation measures that provide such reductions ~~reduce~~
30 ~~energy consumption~~, produce a cost savings for the agency,
31 and, for energy measures, improve the quality of indoor air in

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 new facilities
17 or in retrofitting or adding to existing facilities or
18 infrastructure ~~new construction, including an addition to an~~
19 ~~existing facility,~~ which reduces energy, water, wastewater, or
20 operating costs and includes, but is not limited to:

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

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

29 3. Automatic energy control systems.

30 4. Heating, ventilating, or air-conditioning system
31 modifications or replacements.

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

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 or complex of facilities.

9 8. Energy conservation measures that provide long-term
10 operating cost reductions or 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
15 wastewater ~~sewer~~ charges.

16 11. Equipment upgrades that improve the accuracy of
17 billable revenue generating systems.

18 12. Automated electronic or remotely controlled
19 systems or measures that reduce direct personnel costs.

20 13. Such other energy, water, or wastewater efficiency
21 or conservation measures as may provide measurable operating
22 cost reductions or billable revenue increases.

23 ~~14.11.~~ Energy storage systems, such as fuel cells and
24 thermal storage.

25 ~~15.12.~~ Energy generating technologies, such as
26 microturbines.

27 ~~16.13.~~ Any other repair, replacement, or upgrade of
28 existing equipment.

29 (c) "Energy, water, and wastewater cost savings" means
30 a measured reduction in the cost of fuel, energy or water
31 consumption, or wastewater production, and stipulated

1 improvement in the operation and maintenance created from the
2 implementation of one or more energy, water, and wastewater
3 efficiency or conservation measures when compared with an
4 established baseline for the previous cost of fuel, energy, or
5 water consumption, or wastewater production, and stipulated
6 operation and maintenance.

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

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

14 2. The amount of any actual annual savings that meet
15 or exceed total annual contract payments made by the agency
16 for the contract.

17 3. The finance charges incurred by the agency over the
18 life of the contract.

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

25 (4) PROCEDURES.--

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

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

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

28 (d) A guaranteed ~~energy~~ performance savings contractor
29 must be selected in compliance with s. 287.055; except that if
30 fewer than three firms are qualified to perform the required
31 services, the requirement for agency selection of three firms,

1 as provided in s. 287.055(4)(b), and the bid requirements of
2 s. 287.057 do not apply.

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

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

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

25 (5) CONTRACT PROVISIONS.--

26 (a) A guaranteed ~~energy~~ performance savings contract
27 must include a written guarantee that may include, but is not
28 limited to the form of, a letter of credit, insurance policy,
29 or corporate guarantee by the guaranteed ~~energy~~ performance
30 savings contractor that annual associated ~~energy~~ cost savings
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1 will meet or exceed the amortized cost of the efficiency and
2 ~~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 not to exceed 20 years from the date of
7 complete installation and acceptance by the agency, and that
8 the annual savings are guaranteed to the extent necessary to
9 make annual payments to satisfy the guaranteed ~~energy~~
10 performance savings contract.

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

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

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

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

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

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

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

1 such proposed contract or lease to the Office of the Chief
2 Financial Officer for review and approval.

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

5 287.064 Consolidated financing of deferred-payment
6 purchases.--

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

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

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18 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
19 COMMITTEE SUBSTITUTE FOR
20 Senate Bill 1554

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22 Deletes the words "constructing" and "long-term" to provide
23 clarity.

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