

Bill No. CS for SB 278

Barcode 555456

CHAMBER ACTION

Senate

House

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The Committee on General Government Appropriations (Lawson)
recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

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

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

(2) LEGISLATIVE FINDINGS.--The Legislature finds that
investment in energy, water, and wastewater efficiency or
conservation measures in agency facilities can reduce the
amount of energy and water consumed and wastewater to be
treated and produce immediate and long-term savings. It is the
policy of this state to encourage each agency ~~agencies~~ to
invest in energy, water, and wastewater efficiency or
conservation measures that provide such reductions ~~reduce~~

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

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

14 (a) "Agency" means the state, a municipality, or a
15 political subdivision.

16 (b) "Energy, water, and wastewater efficiency or
17 conservation measure" means a training program, facility
18 alteration, or equipment purchase to be used in new facilities
19 or in retrofitting or adding to existing facilities or
20 infrastructure ~~new construction, including an addition to an~~
21 ~~existing facility~~, which reduces energy, water, wastewater, or
22 operating costs and produces tangible and measurable
23 efficiency and performance savings that have conservation
24 results and includes, but is not limited to:

25 1. Insulation of the facility structure and systems
26 within the facility.

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

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1 reduce energy consumption.

2 3. Automatic energy control systems.

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

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

9 6. Energy recovery systems.

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

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

16 9. Renewable energy systems, such as solar, biomass,
17 or wind systems.

18 10. Devices that reduce water consumption or
19 wastewater ~~sewer~~ charges.

20 11. Equipment upgrades that improve the accuracy of
21 billable revenue generating systems.

22 12. Automated electronic or remotely controlled
23 systems or measures that reduce direct personnel costs.

24 13. Such other energy, water, or wastewater efficiency
25 or conservation measures as may provide measurable operating
26 cost reductions or billable revenue increases.

27 ~~14.11.~~ Energy storage systems, such as fuel cells and
28 thermal storage.

29 ~~15.12.~~ Energy generating technologies, such as
30 microturbines.

31 ~~16.13.~~ Any other repair, replacement, or upgrade of

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1 existing equipment.

2 17. Cool roof coating.

3 (c) "Energy, water, and wastewater cost savings" means
4 a measured reduction in the cost of fuel, energy or water
5 consumption, or wastewater production, and stipulated
6 improvement in the operation and maintenance created from the
7 implementation of one or more energy, water, and wastewater
8 efficiency or conservation measures when compared with an
9 established baseline for the previous cost of fuel, energy, or
10 water consumption, or wastewater production, and stipulated
11 operation and maintenance.

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

16 1. The design and installation of equipment to
17 implement one or more of such measures and, if applicable,
18 operation and maintenance of such measures. Such measures must
19 be continued through the life of any financing such that
20 subsequent replacement costs are included in the total cost of
21 all measures.

22 2. The amount of any actual annual savings that meet
23 or exceed total annual contract payments made by the agency
24 for the contract.

25 3. The finance charges incurred by the agency over the
26 life of the contract.

27 (e) "Guaranteed ~~energy~~ performance savings contractor"
28 means a person or business that is licensed under chapter 471,
29 chapter 481, or this chapter, and is experienced in the
30 analysis, design, implementation, or installation of energy,
31 water, or wastewater efficiency or conservation measures

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1 through ~~energy~~ performance contracts.

2 (4) PROCEDURES.--

3 (a) An agency may enter into a guaranteed ~~energy~~
4 performance savings contract with a guaranteed ~~energy~~
5 performance savings contractor to significantly reduce energy,
6 water, or wastewater or operating costs of an agency facility
7 through one or more energy, water, and wastewater efficiency
8 or conservation measures.

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

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

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1 providers give a written guarantee that such ~~the energy~~ cost
2 savings will ~~meet or~~ exceed the costs of the system. Such
3 savings shall be based on the life cycle cost calculations
4 provided in s. 255.255 and may not exceed the lesser of 20
5 years from the date of installation or the useful life of the
6 system. The contract may provide for installment payments for
7 a period not to exceed the lesser of 20 years or the useful
8 life of the system.

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

15 (e) Before entering into a guaranteed ~~energy~~
16 performance savings contract, an agency must provide published
17 notice of the meeting in which it proposes to award the
18 contract, the names of the parties to the proposed contract,
19 and the contract's purpose.

20 (f) A guaranteed ~~energy~~ performance savings contract
21 may provide for financing, including tax exempt financing, by
22 a third party. The contract for third party financing may be
23 separate from the ~~energy~~ performance savings contract. A
24 separate contract for third party financing must include a
25 provision that the third party financier must not be granted
26 rights or privileges that exceed the rights and privileges
27 available to the guaranteed ~~energy~~ performance savings
28 contractor.

29 (g) In determining the amount the agency will finance
30 to acquire the efficiency or ~~energy~~ conservation measures, the
31 agency may reduce such amount by the application of any grant

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1 moneys, rebates, or capital funding available to the agency
 2 for the purpose of buying down the cost of the guaranteed
 3 ~~energy~~ performance savings contract. However, in calculating
 4 the life cycle cost as required in paragraph (c), the agency
 5 shall not apply any grants, rebates, or capital funding.

6 (5) CONTRACT PROVISIONS.--

7 (a) A guaranteed ~~energy~~ performance savings contract
 8 must include a written guarantee that may include, but is not
 9 limited to the form of, a letter of credit, insurance policy,
 10 or corporate guarantee by the guaranteed ~~energy~~ performance
 11 savings contractor that annual associated ~~energy~~ cost savings
 12 will meet or exceed the amortized cost of the efficiency and
 13 ~~energy~~ conservation measures.

14 (b) The guaranteed ~~energy~~ performance savings contract
 15 must provide that all payments, except obligations on
 16 termination of the contract before its expiration, may be made
 17 over time, but not to exceed the lesser of 20 years from the
 18 date of complete installation or the useful life of the
 19 measure and acceptance by the agency, and that the annual
 20 savings are guaranteed to the extent necessary to make annual
 21 payments to satisfy the guaranteed ~~energy~~ performance savings
 22 contract.

23 (c) The guaranteed ~~energy~~ performance savings contract
 24 must require that the guaranteed ~~energy~~ performance savings
 25 contractor to whom the contract is awarded provide a
 26 100-percent public construction bond to the agency for its
 27 faithful performance, as required by s. 255.05.

28 ~~(d) The guaranteed energy performance savings contract~~
 29 ~~may contain a provision allocating to the parties to the~~
 30 ~~contract any annual energy cost savings that exceed the amount~~
 31 ~~of the energy cost savings guaranteed in the contract.~~

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1 ~~(d)(e)~~ The guaranteed ~~energy~~ performance savings
 2 contract shall require the guaranteed ~~energy~~ performance
 3 savings contractor to provide to the agency an annual
 4 reconciliation of the guaranteed associated ~~energy~~ cost
 5 savings. If the reconciliation reveals a shortfall in such
 6 annual ~~energy~~ cost savings, the guaranteed ~~energy~~ performance
 7 savings contractor is liable for such shortfall. If the
 8 reconciliation reveals an excess in such annual ~~energy~~ cost
 9 savings, the excess savings may be allocated under paragraph
 10 (d) but may not be used to cover potential ~~energy~~ cost savings
 11 shortages in subsequent contract years.

12 ~~(e)(f)~~ The guaranteed ~~energy~~ performance savings
 13 contract must provide for payments of not less than
 14 one-twentieth of the price to be paid within 2 years from the
 15 date of the complete installation and acceptance by the
 16 agency, and the remaining costs to be paid at least quarterly,
 17 not to exceed a 20-year term or the useful life of the
 18 measure, based on life cycle cost calculations.

19 ~~(f)(g)~~ The guaranteed ~~energy~~ performance savings
 20 contract may extend beyond the fiscal year in which it becomes
 21 effective; however, the term of any contract expires at the
 22 end of each fiscal year and may be automatically renewed
 23 annually for the lesser of ~~up to~~ 20 years or the useful life
 24 of the measure, subject to the agency making sufficient annual
 25 appropriations based upon continued realized energy, water, or
 26 wastewater savings.

27 ~~(g)(h)~~ The guaranteed ~~energy~~ performance savings
 28 contract must stipulate that it does not constitute a debt,
 29 liability, or obligation of the state.

30 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
 31 Department of Management Services, with the assistance of the

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1 Office of the Chief Financial Officer, may, within available
2 resources, provide technical assistance to state agencies
3 contracting for energy, water, and wastewater efficiency or
4 conservation measures and engage in other activities
5 considered appropriate by the department for promoting and
6 facilitating guaranteed ~~energy~~ performance contracting by
7 state agencies. The Office of the Chief Financial Officer,
8 with the assistance of the Department of Management Services,
9 may, within available resources, develop model contractual and
10 related documents for use by state agencies. Prior to entering
11 into a guaranteed ~~energy~~ performance savings contract, any
12 contract or lease for third-party financing, or any
13 combination of such contracts, a state agency shall submit
14 such proposed contract or lease to the Office of the Chief
15 Financial Officer for review and approval. Any such contract
16 for a state agency must be supported from available recurring
17 funds appropriated to the agency in an appropriation category,
18 other than the expense appropriation category as defined in
19 chapter 216, that the Chief Financial Officer has determined
20 is appropriate or that the Legislature has designated for
21 payment of the obligation incurred under this section. Before
22 approval of any such contract, a state agency must include in
23 its legislative budget request the total cost of the equipment
24 and request transfer of available recurring budget authority
25 to the proper appropriation category, pursuant to s.
26 216.023(4)(a)5. for payment of the obligation incurred under
27 this section. For fiscal year 2006-2007, a budget amendment
28 transferring funds to the proper appropriation category must
29 be approved for a state agency before approval of such
30 contract.

31 Section 2. Subsection (10) of section 287.064, Florida
9
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1 Statutes, is amended to read:

2 287.064 Consolidated financing of deferred-payment
3 purchases.--

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

13 Section 3. This act shall take effect July 1, 2006.

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15

16 ===== T I T L E A M E N D M E N T =====

17 And the title is amended as follows:

18 Delete everything before the enacting clause

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20 and insert:

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A bill to be entitled

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An act relating to contracting for efficiency

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or conservation measures by state agencies;

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amending s. 489.145, F.S.; including water and

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wastewater efficiency and conservation in the

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measures encouraged by the Legislature;

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revising definitions; providing for inclusion

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of water and wastewater efficiency and

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conservation measures in guaranteed performance

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savings contracts entered into by a state

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agency, municipality, or political subdivision;

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1 providing additional requirements for
2 contracts; amending s. 287.064, F.S., relating
3 to consolidated financing of deferred-payment
4 purchases, to conform; providing an effective
5 date.

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