

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: General Government Appropriations Committee

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BILL: CS/CS/SB 278

INTRODUCER: General Government Appropriations Committee, Regulated Industries, Senator Wise, and others

SUBJECT: Efficiency/Conservation Contracting

DATE: April 25, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
2.	<u>Tomkiewicz</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
3.	<u>Kynoch</u>	<u>Hayes</u>	<u>GA</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill adds water and wastewater efficiency and conservation measures to the Guaranteed Energy Performance Savings Contracting Act, and adds water and wastewater efficiency and conservation measures to the types of guaranteed performance savings contracts that may be entered into by agencies. Also revises the definition of “energy, water, and wastewater efficiency or conservation” to produce tangible and measurable efficiency and performance savings with conservation results.

It requires the replacement cost of measures with a useful life less than the financing term to be included through the life of the financing. Also specifies that savings may be calculated and the resulting contract financed based on the lesser of 20 years from the date of installation or the useful life of the system or measure.

It requires the contract to be supported from available recurring funds in a proper appropriation category and requires a state agency to submit a legislative budget request or, for Fiscal Year 2006-2007, to have an approved budget amendment prior to approval of the contract.

The bill deletes from current law the inclusion of shared savings provisions for guaranteed performance savings contracts.

This bill substantially amends sections 489.145 and 287.064, Florida Statutes.

## II. Present Situation:

### Overview of the Guaranteed Energy Performance Savings Contracting Act

In 1994, the Legislature enacted the Guaranteed Energy Savings Program<sup>1</sup>, later amended<sup>2</sup> to become the Guaranteed Energy Performance Savings Contracting Act. The program permits agencies, defined as “the state, a municipality, or a political subdivision,” to enter into a guaranteed energy performance savings contract, under specified circumstances.<sup>3</sup>

The purpose of a guaranteed energy savings contract is for a guaranteed energy performance savings contractor<sup>4</sup> to significantly reduce the energy or operating costs of an agency facility. A “guaranteed energy performance savings contract” is defined as:

[A] contract for the evaluation, recommendation, and implementation of energy conservation measures, which, at a minimum, shall include:

- The design and installation of equipment to implement one or more of such measures and, if applicable, operation and maintenance of such measures.
- The amount of any actual annual savings that meet or exceed total annual contract payments made by the agency for the contract.
- The finance charges incurred by the agency over the life of the contract.<sup>5</sup>

An “energy conservation measure” is a training program, facility alteration, or equipment purchase to be used in new construction, including an addition to an existing facility, which reduces energy or operating costs and includes, but is not limited to:

- Insulation of the building structure and systems within the building.
- 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.
- Automatic energy control systems.
- Heating, ventilating, or air-conditioning system modifications or replacements.
- Replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system, which, at a minimum, must conform to the applicable state or local building code.
- Energy recovery systems.
- Cogeneration systems that produce steam or forms of energy such as heat and electricity, for use primarily within a facility or complex of facilities.

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<sup>1</sup> Ch. 94-112, L.O.F., codified at s. 489.145, F.S.

<sup>2</sup> Ch. 2001-81, L.O.F.

<sup>3</sup> Section 489.145(4), F.S.

<sup>4</sup> Section 489.145(3)(e), F.S.: A “guaranteed energy performance savings contractor” is a person or business that is licensed under chapters 471 or 481, F.S., or this chapter, and is experienced in the analysis, design, implementation, or installation of energy conservation measures through energy performance contracts.

<sup>5</sup>Section 489.145(3)(d), F.S.

- Energy conservation measures that provide long-term operating cost reductions and significantly reduce Btu consumed.
- Renewable energy systems, such as solar, biomass, or wind systems.
- Devices that reduce water consumption or sewer charges.
- Storage systems, such as fuel cells and thermal storage.
- Generating technologies, such as microturbines.
- Any other repair, replacement, or upgrade of existing equipment.<sup>6</sup>

In order for an agency to consider entering a guaranteed energy savings contract, it must first obtain a report from a qualified provider that estimates the anticipated reduction in energy or operating costs.<sup>7</sup> The agency and contractor may enter a separate agreement to pay for the report. However, the agency need not pay for the report unless the report indicates that the energy cost savings will be equal to or greater than the cost of the energy conservation measure and the measure is installed. The agency may then enter the contract only if it finds that the amount it would spend on the energy conservation measures is unlikely to exceed its savings in energy and operating costs for 20 years from the date of installation. This determination must be made based on the life-cycle cost calculations provided in s. 255.255, F.S.

The qualified provider must be selected in compliance with s. 287.055, F.S., which sets forth competitive bidding requirements for agencies wishing to procure professional architectural, engineering, or surveying and mapping services. However, if fewer than three firms are qualified to perform the required services, the competitive bidding requirements in ss. 287.055(4)(b) and 287.057, F.S., do not apply. The agency must publicly notice the meeting in which it intends to award the contract.

The guaranteed energy performance contract may provide for financing, including tax exempt financing by a third party. The third-party financing contract may be separate from the guaranteed energy performance contract. It 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. In calculating the amount the agency will finance, the agency is permitted to reduce that amount by grants, rebates, or capital funding. However, when calculating the life-cycle cost, the agency may not apply grants, rebates, or capital funding.

The contract must contain the following provisions:

- A written energy guarantee by the qualified provider that the energy or operating cost savings will meet or exceed the cost of energy conservation measures.
- A provision that all payments may be made over time, but may not exceed 20 years from the date of installation and acceptance by the agency.
- A requirement that the qualified contractor provide a 100 percent project value bond to the state for its faithful performance, as required by s. 255.05, F.S.
- Provision for an allocation of any excess savings among the parties.

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<sup>6</sup>Section 489.145(3)(b), F.S.

<sup>7</sup>Section 489.145(4), F.S.

- The contractor must provide an annual reconciliation of the cost savings, and if there is a shortfall in expected savings, the contractor is liable.
- The contract must provide that all payments may be made over time, but may not exceed 20 years from the date of installation and acceptance by the agency. At least ten percent of the price must be paid within two years from the date of complete installation and acceptance by the agency. The remaining costs are to be paid at least quarterly, not to exceed a 20 year term, based on life-cycle cost calculations.
- A statement that the term of any contract expires at the end of each fiscal year, but may be automatically renewed, subject to the agency making sufficient annual appropriations based upon realized savings.
- A statement that the contract does not constitute a debt, liability, or obligation of the state.<sup>8</sup>

The Department of Management Services may, within available resources, provide technical assistance to state agencies contracting for energy conservation measures, and engage in other activities to promote such contracting. The Chief Financial Officer (CFO) may develop model contracts and related documents for use by state agencies. In addition, the CFO requires state agencies to submit contracts to the Department of Financial Services for its approval.

### III. Effect of Proposed Changes:

**Section 1** removes the word “energy” from the section heading of s. 489.145, F.S., and changes the short title to the “Guaranteed Performance Savings Contracting Act.” Throughout the bill, “efficiency” is added to “conservation” for the types of measures that are authorized for guaranteed performance savings contracting, and “water and wastewater” are added to “energy” to constitute the objects of such contracting.

The section adds “water and wastewater efficiency” into the legislative findings and definitions sections, and adds the following into the list of items that constitute the new definition of “energy, water, and wastewater efficiency or conservation measure”:

- Equipment upgrades that improve the accuracy of billable revenue generating systems.
- Automated electronic or remotely controlled systems or measures that reduce direct personnel costs.
- Such other energy, water, or wastewater efficiency or conservation measures as may provide measurable, long-term operating cost reductions or billable revenue increases.
- The application of a “cool roof coating.”

Also revises the definition of “energy, water, and wastewater efficiency or conservation” to produce tangible and measurable efficiency and performance savings with conservation results.

Current law requires that, before the installation of conservation measures, agencies must obtain from a “guaranteed energy performance savings contractor” a report that summarizes the costs of the conservation measures and provides the amount of cost savings. The section changes the

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<sup>8</sup> Section 489.145(4) and (5), F.S.

terminology to “guaranteed performance savings contractor” throughout s. 489.145, F.S. It adds “operational improvements” that must be included in the report, if operational improvements are the basis for the proposed cost savings.

This section requires the replacement cost of measures with a useful life less than the financing term to be included through the life of the financing. Also specifies that savings may be calculated and the resulting contract financed based on the lesser of 20 years from the date of installation or the useful life of the system or measure.

This section requires the contract to be supported from available recurring funds in a proper appropriation category and requires a state agency to submit a legislative budget request or, for Fiscal Year 2006-2007, to have an approved budget amendment prior to approval of the contract.

This section deletes from current law the inclusion of shared savings provisions for guaranteed performance savings contracts.

**Section 2** conforms the terminology in s. 287.064, F.S., addressing the consolidated financing of deferred payment purchases, to the new terminology occasioned by section 1 of this bill, by adding “water and wastewater efficiency” to the section.

**Section 3** provides that the bill shall take effect July 1, 2006.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Potentially, companies that provide energy conservation measures and equipment may have increased business opportunities under the provisions of the bill.

### C. Government Sector Impact:

This bill should have a positive fiscal impact on state and local governments. Under the bill, any cost incurred by the agency for the conservation or efficiency measure would be paid for with savings resulting from the reduction in cost. If projected cost savings fall short of expectations, the contractor must pay for the shortfall. If projected cost savings exceed expectations, the excess may be allocated among the parties. Thus, the bill should have the effect of creating an incentive for agencies to procure guaranteed performance contracts and for contractors to maximize the potential savings.

Savings for guaranteed performance contracts are typically a reduction in energy and utility costs. These costs have historically been paid from the Expense appropriation category. Under this assumption, the budget authority available for payment of a guaranteed performance contract would be in the Expense appropriation category.

Under the current program, it is unclear whether the payment of a guaranteed performance contract is for contractual services, the purchase of Other Capital Outlay items, or the payment of debt service to repay a financing obligation. The definition of "expense" in ch. 216, F.S., for the purpose of appropriations excludes the purchase of Other Capital Outlay items. Additionally, ch. 2005-152, L.O.F., revised the definition of "expense" in ch. 216, F.S., to remove "contractual services" from the list of items included in the Expense appropriation category. The 2005 Legislative Budget Instructions required agencies to submit an issue reducing the Expense appropriation category for all contractual services and increasing the proper appropriation category. Finally, debt service payments are generally expended from a special appropriation category entitled "Debt Service."

In order for an agency to remit payment to a vendor for a guaranteed performance contract, it will have to submit a legislative budget request issue requesting transfer of budget authority to the proper appropriation category.

This bill requires the contract to be supported from available recurring funds in a proper appropriation category. It requires a state agency to submit a legislative budget request or, for Fiscal Year 2006-2007, have an approved budget amendment prior to approval of the contract.

### VI. Technical Deficiencies:

None.

### VII. Related Issues:

None.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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