



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

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

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

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

24 | 1. Insulation of the facility structure and systems  
25 | within the facility.

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

- 1           3. Automatic energy control systems.
- 2           4. Heating, ventilating, or air-conditioning system  
3 modifications or replacements.
- 4           5. Replacement or modifications of lighting fixtures  
5 to increase the energy efficiency of the lighting system,  
6 which, at a minimum, must conform to the applicable state or  
7 local building code.
- 8           6. Energy recovery systems.
- 9           7. Cogeneration systems that produce steam or forms of  
10 energy such as heat, as well as electricity, for use primarily  
11 within a facility or complex of facilities.
- 12           8. Energy conservation measures that provide long-term  
13 operating cost reductions or significantly reduce Btu  
14 consumed.
- 15           9. Renewable energy systems, such as solar, biomass,  
16 or wind systems.
- 17           10. Devices that reduce water consumption or  
18 wastewater ~~sewer~~ charges.
- 19           11. Equipment upgrades that improve the accuracy of  
20 billable revenue generating systems.
- 21           12. Automated electronic or remotely controlled  
22 systems or measures that reduce direct personnel costs.
- 23           13. Such other energy, water, or wastewater efficiency  
24 or conservation measures as may provide measurable operating  
25 cost reductions or billable revenue increases.
- 26           ~~14.11.~~ Energy storage systems, such as fuel cells and  
27 thermal storage.
- 28           ~~15.12.~~ Energy generating technologies, such as  
29 microturbines.
- 30           ~~16.13.~~ Any other repair, replacement, or upgrade of  
31 existing equipment.

1           17. Cool roof coating.

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

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

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

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

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

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

29           (4) PROCEDURES.--

30           (a) An agency may enter into a guaranteed ~~energy~~  
31 performance savings contract with a guaranteed ~~energy~~

1 performance savings contractor to significantly reduce energy,  
2 water, or wastewater or operating costs of an agency facility  
3 through one or more energy, water, and wastewater efficiency  
4 or conservation measures.

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

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

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, 2006.

20  
21 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
22 COMMITTEE SUBSTITUTE FOR  
23 Senate Bill 278

24 The CS amends the definition within ss. 489.145, F.S., to  
25 include "cool roof coating" in the list of items that  
26 constitute the new definition of "energy, water, and  
27 wastewater efficiency or conservation measures."  
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