

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

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

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

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

27 1. Insulation of the facility structure and systems
28 within the facility.

29 2. Storm windows and doors, caulking or
30 weatherstripping, multiglazed windows and doors,
31 heat-absorbing, or heat-reflective, glazed and coated window

1 and door systems, additional glazing, reductions in glass
2 area, and other window and door system modifications that
3 reduce energy consumption.

4 3. Automatic energy control systems.

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

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

11 6. Energy recovery systems.

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

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

18 9. Renewable energy systems, such as solar, biomass,
19 or wind systems.

20 10. Devices that reduce water consumption or
21 wastewater ~~sewer~~ charges.

22 11. Equipment upgrades that improve the accuracy of
23 billable revenue generating systems.

24 12. Automated electronic or remotely controlled
25 systems or measures that reduce direct personnel costs.

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

29 ~~14.11.~~ Energy storage systems, such as fuel cells and
30 thermal storage.

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1 ~~15.12.~~ Energy generating technologies, such as
2 microturbines.

3 ~~16.13.~~ Any other repair, replacement, or upgrade of
4 existing equipment.

5 17. Cool roof coating.

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

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

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

25 2. The amount of any actual annual savings that meet
26 or exceed total annual contract payments made by the agency
27 for the contract.

28 3. The finance charges incurred by the agency over the
29 life of the contract.

30 (e) "Guaranteed ~~energy~~ performance savings contractor"
31 means a person or business that is licensed under chapter 471,

1 chapter 481, or this chapter, and is experienced in the
2 analysis, design, implementation, or installation of energy,
3 water, or wastewater efficiency or conservation measures
4 through ~~energy~~ performance contracts.

5 (4) PROCEDURES.--

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

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

26 (c) The agency may enter into a guaranteed ~~energy~~
27 performance savings contract with a guaranteed ~~energy~~
28 performance savings contractor if the agency finds that the
29 amount the agency would spend on the ~~energy~~ conservation or
30 efficiency measures will not likely exceed the amount of the
31 associated energy cost savings ~~for up to 20 years from the~~

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

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

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

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

1 (g) In determining the amount the agency will finance
2 to acquire the efficiency or ~~energy~~ conservation measures, the
3 agency may reduce such amount by the application of any grant
4 moneys, rebates, or capital funding available to the agency
5 for the purpose of buying down the cost of the guaranteed
6 ~~energy~~ performance savings contract. However, in calculating
7 the life cycle cost as required in paragraph (c), the agency
8 shall not apply any grants, rebates, or capital funding.

9 (5) CONTRACT PROVISIONS.--

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

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

26 (c) The guaranteed ~~energy~~ performance savings contract
27 must require that the guaranteed ~~energy~~ performance savings
28 contractor to whom the contract is awarded provide a
29 100-percent public construction bond to the agency for its
30 faithful performance, as required by s. 255.05.

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1 ~~(d)~~ The guaranteed energy performance savings contract
2 may contain a provision allocating to the parties to the
3 contract any annual energy cost savings that exceed the amount
4 of the energy cost savings guaranteed in the contract.

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

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

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

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

4 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
5 Department of Management Services, with the assistance of the
6 Office of the Chief Financial Officer, may, within available
7 resources, provide technical assistance to state agencies
8 contracting for energy, water, and wastewater efficiency or
9 conservation measures and engage in other activities
10 considered appropriate by the department for promoting and
11 facilitating guaranteed ~~energy~~ performance contracting by
12 state agencies. The Office of the Chief Financial Officer,
13 with the assistance of the Department of Management Services,
14 may, within available resources, develop model contractual and
15 related documents for use by state agencies. Prior to entering
16 into a guaranteed ~~energy~~ performance savings contract, any
17 contract or lease for third-party financing, or any
18 combination of such contracts, a state agency shall submit
19 such proposed contract or lease to the Office of the Chief
20 Financial Officer for review and approval. Any such contract
21 for a state agency must be supported from available recurring
22 funds appropriated to the agency in an appropriation category,
23 other than the expense appropriation category as defined in
24 chapter 216, that the Chief Financial Officer has determined
25 is appropriate or that the Legislature has designated for
26 payment of the obligation incurred under this section. Before
27 approval of any such contract, a state agency must include in
28 its legislative budget request the total cost of the equipment
29 and request transfer of available recurring budget authority
30 to the proper appropriation category, pursuant to s.
31 216.023(4)(a)5. for payment of the obligation incurred under

1 this section. For fiscal year 2006-2007, a budget amendment
2 transferring funds to the proper appropriation category must
3 be approved for a state agency before approval of such
4 contract.

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

7 287.064 Consolidated financing of deferred-payment
8 purchases.--

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

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

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS for SB 278
4 Revises the definition of an energy, water, and wastewater
5 efficiency or conservation measure.
6 Requires that replacement costs of measures with a useful life
7 less than the financing term be included through the life of
8 the financing.
9 Requires savings to be calculated based on the lesser of 20
10 years from the date of installation or the useful life of the
11 system or measure.
12 Deletes from current law a contractual entitlement related to
13 shared savings.
14 Provides that guaranteed performance savings contracts may be
15 financed for the lesser of 20 years or the useful life of the
16 system.
17 Requires that guaranteed performance savings contracts be
18 supported from available recurring funds in the proper
19 appropriation category.
20 Requires a state agency to submit a legislative budget request
21 for issues related to guaranteed performance contracts.
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