

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 revising 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, municipality, or political subdivision;
12 providing additional requirements for
13 contracts; amending s. 287.064, F.S., relating
14 to consolidated financing of deferred-payment
15 purchases, to conform; amending s. 287.055,
16 F.S.; redefining the term "continuing contract"
17 for purposes of the Consultants' Competitive
18 Negotiation Act; providing an effective date.
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20 Be It Enacted by the Legislature of the State of Florida:
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22 Section 1. Section 489.145, Florida Statutes, is
23 amended to read:

24 489.145 Guaranteed ~~energy~~ performance savings
25 contracting.--

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

28 (2) LEGISLATIVE FINDINGS.--The Legislature finds that
29 investment in energy, water, and wastewater efficiency or
30 conservation measures in agency facilities can reduce the
31 amount of energy and water consumed and wastewater to be

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

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

18 (a) "Agency" means the state, a municipality, or a
 19 political subdivision.

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

29 1. Insulation of the facility structure and systems
 30 within the facility.
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1 2. Storm windows and doors, caulking or
2 weatherstripping, multiglazed windows and doors,
3 heat-absorbing, or heat-reflective, glazed and coated window
4 and door systems, additional glazing, reductions in glass
5 area, and other window and door system modifications that
6 reduce energy consumption.

7 3. Automatic energy control systems.

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

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

14 6. Energy recovery systems.

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

18 8. Energy conservation measures that provide long-term
19 operating cost reductions or significantly reduce Btu
20 consumed.

21 9. Renewable energy systems, such as solar, biomass,
22 or wind systems.

23 10. Devices that reduce water consumption or
24 wastewater ~~sewer~~ charges.

25 11. Equipment upgrades that improve the accuracy of
26 billable revenue generating systems.

27 12. Automated electronic or remotely controlled
28 systems or measures that reduce direct personnel costs.

29 13. Such other energy, water, or wastewater efficiency
30 or conservation measures as may provide measurable operating
31 cost reductions or billable revenue increases.

1 ~~14.11.~~ Energy storage systems, such as fuel cells and
2 thermal storage.

3 ~~15.12.~~ Energy generating technologies, such as
4 microturbines.

5 ~~16.13.~~ Any other repair, replacement, or upgrade of
6 existing equipment.

7 17. Cool roof coating.

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

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

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

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

30 3. The finance charges incurred by the agency over the
31 life of the contract.

1 (e) "Guaranteed ~~energy~~ performance savings contractor"
2 means a person or business that is licensed under chapter 471,
3 chapter 481, or this chapter, and is experienced in the
4 analysis, design, implementation, or installation of energy,
5 water, or wastewater efficiency or conservation measures
6 through ~~energy~~ performance contracts.

7 (4) PROCEDURES.--

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

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

28 (c) The agency may enter into a guaranteed ~~energy~~
29 performance savings contract with a guaranteed ~~energy~~
30 performance savings contractor if the agency finds that the
31 amount the agency would spend on the ~~energy~~ conservation or

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

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

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

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

1 available to the guaranteed ~~energy~~ performance savings
2 contractor.

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

11 (5) CONTRACT PROVISIONS.--

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

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

28 (c) The guaranteed ~~energy~~ performance savings contract
29 must require that the guaranteed ~~energy~~ performance savings
30 contractor to whom the contract is awarded provide a
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1 100-percent public construction bond to the agency for its
2 faithful performance, as required by s. 255.05.

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

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

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

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

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

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

1 to the proper appropriation category, pursuant to s.
 2 216.023(4)(a)5. for payment of the obligation incurred under
 3 this section. For fiscal year 2006-2007, a budget amendment
 4 transferring funds to the proper appropriation category must
 5 be approved for a state agency before approval of such
 6 contract.

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

9 287.064 Consolidated financing of deferred-payment
 10 purchases.--

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

20 Section 3. Paragraph (g) of subsection (2) of section
 21 287.055, Florida Statutes, is amended to read:

22 287.055 Acquisition of professional architectural,
 23 engineering, landscape architectural, or surveying and mapping
 24 services; definitions; procedures; contingent fees prohibited;
 25 penalties.--

26 (2) DEFINITIONS.--For purposes of this section:

27 (g) A "continuing contract" is a contract for
 28 professional services entered into in accordance with all the
 29 procedures of this act between an agency and a firm whereby
 30 the firm provides professional services to the agency for
 31 projects in which construction costs do not exceed ~~\$1.5\$1~~

1 million, for study activity when the fee for such professional
2 service does not exceed \$50,000, or for work of a specified
3 nature as outlined in the contract required by the agency,
4 with no time limitation except that the contract must provide
5 a termination clause. Firms providing professional services
6 under continuing contracts shall not be required to bid
7 against one another.

8 Section 4. This act shall take effect July 1, 2006.

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