

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Guaranteed Energy Performance Savings Contracting Act

In 1994, the Legislature enacted the Guaranteed Energy Savings Program,¹ later amended to become the Guaranteed Energy Performance Savings Contracting Act.² The program permits agencies, defined as “the state, a municipality, or a political subdivision”,³ to enter into a guaranteed energy performance savings contract, under specified circumstances.⁴

The purpose of a guaranteed energy savings contract is to allow a properly-licensed contractor to create or install energy conservation measures that will reduce the energy or operating costs of an agency facility. The Act contains a number of contract requirements to ensure that the measures will result in a savings to the agency over time, and to ensure that the contractor is financially liable for any failure to achieve such savings.

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.⁵ Examples of such measures include insulation, storm windows and doors, automatic energy control systems, and cogeneration systems.

Current law requires that, before the installation of conservation measures, agencies obtain from a qualified provider a report that summarizes the costs of the conservation measures and provides the amount of cost savings.⁶ The qualified provider must be selected in compliance with s. 287.055, F.S., which provides for competitive bidding requirements for state agencies wanting to procure professional architectural, engineering, or surveying and mapping services.

A guaranteed energy performance contracting 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 provider provide a 100 percent project value bond to the state for its faithful performance, as required by s. 255.05, F.S.
- Provisions for an allocation of any excess savings among the parties.

¹ Ch. 94-112, L.O.F., codified at s. 489.145, F.S.

² Ch. 2001-81, L.O.F.

³ Section 489.145(3)(a), F.S.

⁴ See Section 489.145(4), F.S.

⁵ Section 489.145(3)(b), F.S.

⁶ Section 489.145(4), F.S.

- The qualified provider must provide an annual reconciliation of the cost savings and if there is a shortfall, the provider must be liable.
- A statement that the contract does not constitute a debt, liability, or obligation of the state.

The Department of Management Services may, within reasonable resources, provide technical assistance to state agencies contracting for energy conservation measures and engage in other activities to promote such contracting. The Office of the Chief Financial Officer may develop model contracts and related documents for use by state agencies and require them to submit contracts to the Office for its approval.

Water and Wastewater Conservation and Efficiency

Both the state Department of Environmental Protection (DEP), each of the state's water management districts, and the federal Environmental Protection Agency (EPA) has each established programs for the efficient use of and conservation of water and wastewater. According to the EPA, conserving water means saving costs for electric power, gas, chemicals, and wastewater disposal. Efficient water use can have major environmental, public health, and economic benefits by helping to improve water quality, maintain aquatic ecosystems, and protecting drinking water sources. According to the EPA, the efficient use of water, through behavioral, operational, or equipment changes, if practiced broadly, can help mitigate the effects of drought.

According to the DEP, protecting the amount and quality of our water resources and implementing efficient wastewater management practices is critical to maintaining sufficient and potable water for domestic, industrial, agricultural, and governmental use. Improperly disposing of wastewater can damage drinking water supply, wildlife, and other important environmental resources.

Effect of Proposed Changes

The bill expands the scope of the Act beyond energy conservation to include water and wastewater conservation and efficiency.

The bill adds the following energy conservation measures:

- 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.
- Cool roof coating.

The bill requires the contractor to include in the report a summary of the costs associated with "operational improvements" if such improvements are the basis for the proposed cost savings.

The bill 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," in order to better reflect the additional scope of the act. Similar conforming changes are made throughout the bill. "Water and wastewater" are added to "energy" as the objects of the contracting process, and "efficiency" is added to "conservation" for the types of measures contemplated.

The bill conforms the terminology in s. 287.064, F.S. (addressing the consolidated financing of deferred payment purchases) with the substantive statute by adding "water and wastewater efficiency" to the section.

C. SECTION DIRECTORY:

Section 1 amends s. 489.145, F.S., adding “water and wastewater efficiency” to the scope of the re-titled “Guaranteed Performance Savings Contracting Act,” and adding additional measures to those permitted to achieve conservation and efficiency in energy, water, and wastewater use.

Section 2 amends s. 287.064, F.S., adding “water and wastewater efficiency” to the statute addressing consolidated financing of deferred payment purchases.

Section 3 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies that provide energy, water, or wastewater conservation consulting or equipment may have increased business opportunities.

D. FISCAL COMMENTS:

The bill provides an opportunity for agencies to reduce energy, water, and wastewater costs by increasing conservation and efficiency. If the contractor’s initial analysis is favorable and conservation measures are installed, the resulting savings are guaranteed by the contractor, pursuant to statute. The bill should have the effect of creating an incentive for agencies to procure guaranteed performance savings contracts and for contractors to maximize the potential savings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 8, 2006, the House Governmental Operations Committee adopted an amendment which adds "cool roof coating" to the express list of conservation measures contained in s. 489.145(3)(b), F.S.

The bill was reported favorably with committee substitute.