

CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to contracting for efficiency or
7 conservation measures by state agencies; amending s.
8 489.145, F.S.; including water and wastewater efficiency
9 and conservation in the measures encouraged by the
10 Legislature; revising definitions; providing for inclusion
11 of water and wastewater efficiency and conservation
12 measures in guaranteed performance savings contracts
13 entered into by a state agency, municipality, or political
14 subdivision; amending s. 287.064, F.S., relating to
15 consolidated financing of deferred-payment purchases, to
16 conform; providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 489.145, Florida Statutes, is amended
21 to read:

22 489.145 Guaranteed ~~energy~~ performance savings
23 contracting.--

HB 597

2006
CS

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

26 (2) LEGISLATIVE FINDINGS.--The Legislature finds that
27 investment in energy, water, and wastewater efficiency or
28 conservation measures in agency facilities can reduce the amount
29 of energy and water consumed and wastewater to be treated and
30 produce immediate and long-term savings. It is the policy of
31 this state to encourage each agency ~~agencies~~ to invest in
32 energy, water, and wastewater efficiency or conservation
33 measures that provide such reductions ~~reduce energy consumption,~~
34 produce a cost savings for the agency, and, for energy measures,
35 improve the quality of indoor air in public facilities and to
36 operate, maintain, and, when economically feasible, build or
37 renovate existing agency facilities in such a manner as to
38 minimize energy and water consumption or wastewater production
39 and maximize energy, water, and wastewater savings. It is
40 further the policy of this state to encourage agencies to
41 reinvest any ~~energy~~ savings resulting from energy, water, and
42 wastewater efficiency or conservation measures in additional
43 energy, water, and wastewater efficiency or conservation
44 measures ~~efforts~~.

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

46 (a) "Agency" means the state, a municipality, or a
47 political subdivision.

48 (b) "Energy, water, and wastewater efficiency or
49 conservation measure" means a training program, facility
50 alteration, or equipment purchase to be used in new facilities
51 or in retrofitting or adding to existing facilities or

HB 597

2006
CS

52 infrastructure ~~new construction, including an addition to an~~
53 ~~existing facility,~~ which reduces energy, water, wastewater, or
54 operating costs and includes, but is not limited to:

55 1. Insulation of the facility structure and systems within
56 the facility.

57 2. Storm windows and doors, caulking or weatherstripping,
58 multiglazed windows and doors, heat-absorbing, or heat-
59 reflective, glazed and coated window and door systems,
60 additional glazing, reductions in glass area, and other window
61 and door system modifications that reduce energy consumption.

62 3. Automatic energy control systems.

63 4. Heating, ventilating, or air-conditioning system
64 modifications or replacements.

65 5. Replacement or modifications of lighting fixtures to
66 increase the energy efficiency of the lighting system, which, at
67 a minimum, must conform to the applicable state or local
68 building code.

69 6. Energy recovery systems.

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

73 8. Energy conservation measures that provide long-term
74 operating cost reductions or significantly reduce Btu consumed.

75 9. Renewable energy systems, such as solar, biomass, or
76 wind systems.

77 10. Devices that reduce water consumption or wastewater
78 ~~sewer~~ charges.

79 11. Equipment upgrades that improve the accuracy of
80 billable revenue generating systems.

81 12. Automated electronic or remotely controlled systems or
82 measures that reduce direct personnel costs.

83 13. Such other energy, water, or wastewater efficiency or
84 conservation measures as may provide measurable operating cost
85 reductions or billable revenue increases.

86 ~~14.11.~~ Energy storage systems, such as fuel cells and
87 thermal storage.

88 ~~15.12.~~ Energy generating technologies, such as
89 microturbines.

90 16. Cool roof coating.

91 ~~17.13.~~ Any other repair, replacement, or upgrade of
92 existing equipment.

93 (c) "Energy, water, and wastewater cost savings" means a
94 measured reduction in the cost of fuel, energy or water
95 consumption, or wastewater production, and stipulated
96 improvement in the operation and maintenance created from the
97 implementation of one or more energy, water, and wastewater
98 efficiency or conservation measures when compared with an
99 established baseline for the previous cost of fuel, energy, or
100 water consumption, or wastewater production, and stipulated
101 operation and maintenance.

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

HB 597

2006
CS

106 1. The design and installation of equipment to implement
107 one or more of such measures and, if applicable, operation and
108 maintenance of such measures.

109 2. The amount of any actual annual savings that meet or
110 exceed total annual contract payments made by the agency for the
111 contract.

112 3. The finance charges incurred by the agency over the
113 life of the contract.

114 (e) "Guaranteed ~~energy~~ performance savings contractor"
115 means a person or business that is licensed under chapter 471,
116 chapter 481, or this chapter, and is experienced in the
117 analysis, design, implementation, or installation of energy,
118 water, or wastewater efficiency or conservation measures through
119 ~~energy~~ performance contracts.

120 (4) PROCEDURES.--

121 (a) An agency may enter into a guaranteed ~~energy~~
122 performance savings contract with a guaranteed ~~energy~~
123 performance savings contractor to significantly reduce energy,
124 water, or wastewater or operating costs of an agency facility
125 through one or more energy, water, and wastewater efficiency or
126 conservation measures.

127 (b) Before design and installation of energy, water, and
128 wastewater efficiency and conservation measures, the agency must
129 obtain from a guaranteed ~~energy~~ performance savings contractor a
130 report that summarizes the costs associated with the ~~energy~~
131 ~~conservation~~ measures and provides an estimate of the amount of
132 the associated energy cost savings or operational improvements.
133 The agency and the guaranteed ~~energy~~ performance savings

HB 597

2006
CS

134 contractor may enter into a separate agreement to pay for costs
135 associated with the preparation and delivery of the report;
136 however, payment to the contractor shall be contingent upon the
137 report's projection of ~~energy~~ cost savings being equal to or
138 greater than the total projected costs of the design and
139 installation of the report's ~~energy~~ conservation or efficiency
140 measures.

141 (c) The agency may enter into a guaranteed ~~energy~~
142 performance savings contract with a guaranteed ~~energy~~
143 performance savings contractor if the agency finds that the
144 amount the agency would spend on the ~~energy~~ conservation or
145 efficiency measures will not likely exceed the amount of the
146 associated ~~energy~~ cost savings for up to 20 years from the date
147 of installation, based on the life cycle cost calculations
148 provided in s. 255.255, if the recommendations in the report
149 were followed and if the qualified provider or providers give a
150 written guarantee that such ~~the energy~~ cost savings will meet or
151 exceed the costs of the system. The contract may provide for
152 installment payments for a period not to exceed 20 years.

153 (d) A guaranteed ~~energy~~ performance savings contractor
154 must be selected in compliance with s. 287.055; except that if
155 fewer than three firms are qualified to perform the required
156 services, the requirement for agency selection of three firms,
157 as provided in s. 287.055(4)(b), and the bid requirements of s.
158 287.057 do not apply.

159 (e) Before entering into a guaranteed ~~energy~~ performance
160 savings contract, an agency must provide published notice of the
161 meeting in which it proposes to award the contract, the names of

HB 597

2006
CS

162 the parties to the proposed contract, and the contract's
163 purpose.

164 (f) A guaranteed ~~energy~~ performance savings contract may
165 provide for financing, including tax exempt financing, by a
166 third party. The contract for third party financing may be
167 separate from the ~~energy~~ performance savings contract. A
168 separate contract for third party financing must include a
169 provision that the third party financier must not be granted
170 rights or privileges that exceed the rights and privileges
171 available to the guaranteed ~~energy~~ performance savings
172 contractor.

173 (g) In determining the amount the agency will finance to
174 acquire the efficiency or ~~energy~~ conservation measures, the
175 agency may reduce such amount by the application of any grant
176 moneys, rebates, or capital funding available to the agency for
177 the purpose of buying down the cost of the guaranteed ~~energy~~
178 performance savings contract. However, in calculating the life
179 cycle cost as required in paragraph (c), the agency shall not
180 apply any grants, rebates, or capital funding.

181 (5) CONTRACT PROVISIONS.--

182 (a) A guaranteed ~~energy~~ performance savings contract must
183 include a written guarantee that may include, but is not limited
184 to the form of, a letter of credit, insurance policy, or
185 corporate guarantee by the guaranteed ~~energy~~ performance savings
186 contractor that annual associated ~~energy~~ cost savings will meet
187 or exceed the amortized cost of the efficiency and ~~energy~~
188 conservation measures.

HB 597

2006
CS

189 (b) The guaranteed ~~energy~~ performance savings contract
190 must provide that all payments, except obligations on
191 termination of the contract before its expiration, may be made
192 over time, but not to exceed 20 years from the date of complete
193 installation and acceptance by the agency, and that the annual
194 savings are guaranteed to the extent necessary to make annual
195 payments to satisfy the guaranteed ~~energy~~ performance savings
196 contract.

197 (c) The guaranteed ~~energy~~ performance savings contract
198 must require that the guaranteed ~~energy~~ performance savings
199 contractor to whom the contract is awarded provide a 100-percent
200 public construction bond to the agency for its faithful
201 performance, as required by s. 255.05.

202 (d) The guaranteed ~~energy~~ performance savings contract may
203 contain a provision allocating to the parties to the contract
204 any annual associated ~~energy~~ cost savings that exceed the amount
205 of the associated ~~energy~~ cost savings guaranteed in the
206 contract.

207 (e) The guaranteed ~~energy~~ performance savings contract
208 shall require the guaranteed ~~energy~~ performance savings
209 contractor to provide to the agency an annual reconciliation of
210 the guaranteed associated ~~energy~~ cost savings. If the
211 reconciliation reveals a shortfall in such annual ~~energy~~ cost
212 savings, the guaranteed ~~energy~~ performance savings contractor is
213 liable for such shortfall. If the reconciliation reveals an
214 excess in such annual ~~energy~~ cost savings, the excess savings
215 may be allocated under paragraph (d) but may not be used to

HB 597

2006
CS

216 cover potential ~~energy~~ cost savings shortages in subsequent
217 contract years.

218 (f) The guaranteed ~~energy~~ performance savings contract
219 must provide for payments of not less than one-twentieth of the
220 price to be paid within 2 years from the date of the complete
221 installation and acceptance by the agency, and the remaining
222 costs to be paid at least quarterly, not to exceed a 20-year
223 term, based on life cycle cost calculations.

224 (g) The guaranteed ~~energy~~ performance savings contract may
225 extend beyond the fiscal year in which it becomes effective;
226 however, the term of any contract expires at the end of each
227 fiscal year and may be automatically renewed annually for up to
228 20 years, subject to the agency making sufficient annual
229 appropriations based upon continued realized energy, water, or
230 wastewater savings.

231 (h) The guaranteed ~~energy~~ performance savings contract
232 must stipulate that it does not constitute a debt, liability, or
233 obligation of the state.

234 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
235 Department of Management Services, with the assistance of the
236 Office of the Chief Financial Officer, may, within available
237 resources, provide technical assistance to state agencies
238 contracting for energy, water, and wastewater efficiency or
239 conservation measures and engage in other activities considered
240 appropriate by the department for promoting and facilitating
241 guaranteed ~~energy~~ performance contracting by state agencies. The
242 Office of the Chief Financial Officer, with the assistance of
243 the Department of Management Services, may, within available

HB 597

2006
CS

244 resources, develop model contractual and related documents for
245 use by state agencies. Prior to entering into a guaranteed
246 ~~energy~~ performance savings contract, any contract or lease for
247 third-party financing, or any combination of such contracts, a
248 state agency shall submit such proposed contract or lease to the
249 Office of the Chief Financial Officer for review and approval.

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

252 287.064 Consolidated financing of deferred-payment
253 purchases.--

254 (10) Costs incurred pursuant to a guaranteed ~~energy~~
255 performance savings contract, including the cost of energy,
256 water, and wastewater efficiency and conservation measures, each
257 as defined in s. 489.145, may be financed pursuant to a master
258 equipment financing agreement; however, the costs of training,
259 operation, and maintenance may not be financed. The period of
260 time for repayment of the funds drawn pursuant to the master
261 equipment financing agreement under this subsection may exceed 5
262 years but may not exceed 10 years.

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