

Bill No. SB 1164

Barcode 041916

CHAMBER ACTION

Senate

House

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The Committee on Governmental Operations (Posey) recommended
the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (5) is added to section 255.252,
Florida Statutes, to read:

255.252 Findings and intent.--

(5) Each state agency must identify and compile a list
of all state-owned buildings within its inventory which it
determines are suitable to consider for a guaranteed
energy-performance savings contract under s. 489.145. Such
list shall be submitted to the Department of Management
Services by December 31, 2007, and shall include any criteria
used to determine suitability. The list of suitable buildings
shall be developed from the list of state-owned facilities of
more than 5,000 square feet in area for which the agency is
responsible for paying utility and other operating expenses
related to energy use. In consultation with each department

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1 secretary or director, by March 1, 2008, the Department of
 2 Management Services shall evaluate each agency's facilities
 3 found suitable for energy efficiency and conservation
 4 projects, and shall develop a schedule for energy efficiency
 5 and conservation projects based on factors such as project
 6 magnitude, efficiency, and effectiveness of energy efficiency
 7 and conservation measures to be implemented, and other factors
 8 that may be advantageous to pursue. Such schedule shall
 9 provide the deadline for guaranteed energy-performance savings
 10 contract improvements to be made to the state-owned buildings.

11 Section 2. Section 489.145, Florida Statutes, is
 12 amended to read:

13 489.145 Guaranteed ~~energy~~ performance savings
 14 contracting.--

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

17 (2) LEGISLATIVE FINDINGS.--The Legislature finds that
 18 investment in energy, water, and wastewater efficiency or
 19 conservation measures in agency facilities can reduce the
 20 amount of energy and water consumed and wastewater to be
 21 treated and produce immediate and long-term savings. It is the
 22 policy of this state to encourage each agency ~~agencies~~ to
 23 invest in energy, water, and wastewater efficiency or
 24 conservation measures in order ~~that reduce energy consumption,~~
 25 ~~produce a cost savings for the agency, and improve the quality~~
 26 ~~of indoor air in public facilities and to operate, maintain,~~
 27 ~~and, when economically feasible, build or renovate existing~~
 28 ~~agency facilities in such a manner as~~ to minimize energy and
 29 water consumption and wastewater production and to maximize
 30 energy, water, and wastewater savings. It is further the
 31 policy of this state to encourage each agency ~~agencies~~ to

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1 reinvest any ~~energy~~ savings resulting from energy, water, and
 2 wastewater efficiency or conservation measures in additional
 3 energy, water, and wastewater efficiency or conservation
 4 measures ~~efforts~~.

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

6 (a) "Agency" means the state, a municipality, or a
7 political subdivision.

8 (b) "Efficiency or conservation measure" means an
 9 alteration to a facility or infrastructure, or equipment
 10 purchased for use in a new facility or infrastructure or to
 11 retrofit an existing facility or infrastructure, which
 12 alteration or equipment produces cost savings to the facility
 13 or infrastructure by reducing the consumption of energy or
 14 water or the production of wastewater or increasing the
 15 efficiency with which the facility or infrastructure uses
 16 energy or water. The term ~~"Energy conservation measure" means~~
 17 ~~a training program, facility alteration, or equipment purchase~~
 18 ~~to be used in new construction, including an addition to an~~
 19 ~~existing facility, which reduces energy or operating costs and~~
 20 includes, but is not limited to:

21 1. Insulation of the facility structure and systems
22 within the facility.

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

29 3. Automatic energy control systems.

30 4. Heating, ventilating, or air-conditioning system
31 modifications or replacements.

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1 5. Replacement or modifications of lighting fixtures
2 to increase the energy efficiency of the lighting system,
3 which, at a minimum, must conform to the applicable state or
4 local building code.

5 6. Energy recovery systems.

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

9 8. Energy conservation measures that reduce Btu, kW,
10 or kWh consumed or provide long-term energy-related operating
11 cost reductions ~~or significantly reduce Btu consumed.~~

12 9. Renewable energy systems, such as solar, biomass,
13 or wind systems.

14 10. Devices that reduce water consumption or
15 wastewater ~~sewer~~ charges.

16 11. Equipment upgrades that improve the accuracy of
17 billable revenue-generating systems.

18 12. Automated electronic or remotely controlled
19 systems or measures that reduce direct personnel costs.

20 13. Such other efficiency or conservation measures as
21 may provide measurable cost savings.

22 ~~14.11.~~ Energy storage systems, such as fuel cells and
23 thermal storage.

24 ~~15.12.~~ Energy-generating ~~generating~~ technologies, such
25 as microturbines.

26 16. Cool roof coating.

27 ~~17.13.~~ Any other repair, replacement, or upgrade of
28 existing equipment.

29 (c) "Cost savings" means a reduction in the
30 operational costs or an increase in the billable revenues of a
31 facility or infrastructure when compared with a previously

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1 established baseline for such costs or revenues, which
 2 reduction or increase is created by implementing one or more
 3 efficiency or conservation measures. "Energy cost savings"
 4 ~~means a measured reduction in the cost of fuel, energy~~
 5 ~~consumption, and stipulated operation and maintenance created~~
 6 ~~from the implementation of one or more energy conservation~~
 7 ~~measures when compared with an established baseline for the~~
 8 ~~previous cost of fuel, energy consumption, and stipulated~~
 9 ~~operation and maintenance.~~

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

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

17 2. The amount of any actual annual cost savings that
 18 meet or exceed total annual contract payments made by the
 19 agency for the contract and may include allowable cost
 20 avoidance. As used in this section, allowable cost avoidance
 21 includes, but is not limited to, avoided provable budgeted
 22 costs contained in a capital replacement plan less the current
 23 undepreciated value of replaced equipment and the replacement
 24 cost of the new equipment.

25 3. The finance charges incurred by the agency over the
 26 life of the contract.

27 (e) "Guaranteed ~~energy~~ performance savings contractor"
 28 means a person or business that is licensed under chapter 471,
 29 chapter 481, or this chapter, and is experienced in the
 30 analysis, design, implementation, or installation of
 31 efficiency or ~~energy~~ conservation measures through ~~energy~~

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1 performance contracts.

2 (4) PROCEDURES.--

3 (a) An agency may enter into a guaranteed ~~energy~~
4 performance savings contract with a guaranteed ~~energy~~
5 performance savings contractor to increase the cost savings
6 ~~significantly reduce energy or operating costs~~ of an agency
7 facility through one or more efficiency or ~~energy~~ conservation
8 measures.

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

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

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1 qualified provider or providers give a written guarantee that
2 such ~~the energy~~ cost savings will meet or exceed the costs of
3 the system. However, actual computed cost savings must meet or
4 exceed the estimated cost savings provided in program
5 approval. Baseline adjustments used in calculations must be
6 specified in the contract. The contract may provide for
7 installment payments for a period not to exceed 20 years.

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

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

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

29 (g) Financing for guaranteed performance savings
30 contracts may be provided under s. 287.064.

31 (h)(g) In determining the amount the agency will

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1 finance to acquire the efficiency or ~~energy~~ conservation
2 measures, the agency may reduce such amount by the application
3 of any grant moneys, rebates, or capital funding available to
4 the agency for the purpose of buying down the cost of the
5 guaranteed ~~energy~~ performance savings contract. However, in
6 calculating the life cycle cost as required in paragraph (c),
7 the agency shall not apply any grants, rebates, or capital
8 funding. The Office of the Chief Financial Officer shall
9 review proposals to ensure that the most effective financing
10 is being used.

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 or
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 20 years from the date of
23 complete installation and acceptance by the agency, and that
24 the annual savings are guaranteed to the extent necessary to
25 make annual payments to satisfy the guaranteed ~~energy~~
26 performance savings contract.

27 (c) The guaranteed ~~energy~~ performance savings contract
28 must require that the guaranteed ~~energy~~ performance savings
29 contractor to whom the contract is awarded provide a
30 100-percent public construction bond to the agency for its
31 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 associated ~~energy~~ cost savings that exceed
 4 the amount of the associated ~~energy~~ cost savings guaranteed in
 5 the contract.

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

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

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

31 (h) The guaranteed ~~energy~~ performance savings contract

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1 must stipulate that it does not constitute a debt, liability,
2 or obligation of the state.

3 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
4 Department of Management Services, with the assistance of the
5 Office of the Chief Financial Officer, may, within available
6 resources, provide technical assistance to state agencies
7 contracting for efficiency or energy conservation measures and
8 engage in other activities considered appropriate by the
9 department for promoting and facilitating guaranteed ~~energy~~
10 performance contracting by state agencies. The Office of the
11 Chief Financial Officer, with the assistance of the Department
12 of Management Services, shall ~~may, within available resources,~~
13 develop model contractual and related documents for use by
14 state agencies. Prior to entering into a guaranteed ~~energy~~
15 performance savings contract, any contract or lease for
16 third-party financing, or any combination of such contracts, a
17 state agency shall submit such proposed contract or lease to
18 the Office of the Chief Financial Officer for review and
19 approval. The submittal must include the following:

20 (a) Supporting information required by s.
21 216.023(4)(a)9.

22 (b) Documentation supporting recurring funds
23 requirements in ss. 287.063(5) and 287.064(11).

24 (c) Approval by agency head or designee.

25 (d) An agency measurement and verification plan to
26 monitor costs savings.

27 (7) FUNDING REPORT.--For purposes of consolidated
28 financing of deferred payment commodity contracts under this
29 section by a state agency, the annualized amount of any such
30 contract must be supported from available recurring funds
31 appropriated to the agency in an appropriation category, as

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1 defined in chapter 216, which the Chief Financial Officer has
 2 determined is appropriate or which the Legislature has
 3 designated for payment of the obligation incurred under this
 4 section.

5
 6 The Office of the Chief Financial Officer may not approve any
 7 contract submitted under this section which does not meet the
 8 requirements of this section.

9 Section 3. Paragraph (b) of subsection (2) and
 10 subsection (5) of section 287.063, Florida Statutes, are
 11 amended to read:

12 287.063 Deferred-payment commodity contracts; preaudit
 13 review.--

14 (2)

15 (b) The Chief Financial Officer shall establish, by
 16 rule, criteria for approving purchases made under
 17 deferred-payment contracts which require the payment of
 18 interest. Criteria shall include, but not be limited to, the
 19 following provisions:

20 1. No contract shall be approved in which interest
 21 exceeds the statutory ceiling contained in this section.
 22 However, the interest component of any master equipment
 23 financing agreement entered into for the purpose of
 24 consolidated financing of a deferred-payment, installment
 25 sale, or lease-purchase shall be deemed to comply with the
 26 interest rate limitation of this section so long as the
 27 interest component of every interagency agreement under such
 28 master equipment financing agreement complies with the
 29 interest rate limitation of this section.

30 2. No deferred-payment purchase for less than \$30,000
 31 shall be approved, unless it can be satisfactorily

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1 demonstrated and documented to the Chief Financial Officer
 2 that failure to make such deferred-payment purchase would
 3 adversely affect an agency in the performance of its duties.
 4 However, the Chief Financial Officer may approve any
 5 deferred-payment purchase if the Chief Financial Officer
 6 determines that such purchase is economically beneficial to
 7 the state.

8 ~~3. No agency shall obligate an annualized amount of~~
 9 ~~payments for deferred-payment purchases in excess of current~~
 10 ~~operating capital outlay appropriations, unless specifically~~
 11 ~~authorized by law or unless it can be satisfactorily~~
 12 ~~demonstrated and documented to the Chief Financial Officer~~
 13 ~~that failure to make such deferred-payment purchase would~~
 14 ~~adversely affect an agency in the performance of its duties.~~

15 3.4. No contract shall be approved which extends
 16 payment beyond 5 years, unless it can be satisfactorily
 17 demonstrated and documented to the Chief Financial Officer
 18 that failure to make such deferred-payment purchase would
 19 adversely affect an agency in the performance of its duties.

20 (5) For purposes of this section, the annualized
 21 amount of any such deferred payment commodity contract must be
 22 supported from available recurring funds appropriated to the
 23 agency in an appropriation category, other than the expense
 24 appropriation category as defined in chapter 216, that the
 25 Chief Financial Officer has determined is appropriate or that
 26 the Legislature has designated for payment of the obligation
 27 incurred under this section.

28 Section 4. Subsections (10) and (11) of section
 29 287.064, Florida Statutes, are amended to read:

30 287.064 Consolidated financing of deferred-payment
 31 purchases.--

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1 (10) Costs incurred pursuant to a guaranteed ~~energy~~
2 performance savings contract, including the cost of efficiency
3 or ~~energy~~ conservation measures, each as defined in s.
4 489.145, may be financed pursuant to a master equipment
5 financing agreement; however, the costs of training,
6 operation, and maintenance may not be financed. The period of
7 time for repayment of the funds drawn pursuant to the master
8 equipment financing agreement under this subsection may exceed
9 5 years but may not exceed 20 ~~10~~ years for energy-related
10 efficiency or conservation measures, excluding the costs of
11 training, operation, and maintenance. The guaranteed
12 performance savings contractor for the energy-related
13 efficiency or conservation measures shall provide for the
14 replacement of the extension of the useful life of the
15 equipment during the term of the contract.

16 (11) For purposes of consolidated financing of
17 deferred payment commodity contracts under this section by a
18 state agency, the annualized amount of any such contract must
19 be supported from available recurring funds appropriated to
20 the agency in an appropriation category, other than the
21 expense appropriation category as defined in chapter 216, that
22 the Chief Financial Officer has determined is appropriate or
23 that the Legislature has designated for payment of the
24 obligation incurred under this section.

Section 5. This act shall take effect July 1, 2007.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause

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1 and insert:

2 A bill to be entitled

3 An act relating to contracting for efficiency

4 or conservation measures by state agencies;

5 amending s. 255.252, F.S.; requiring an

6 inventory of state-owned buildings and a

7 schedule of energy efficiency and conservation

8 projects for guaranteed energy-performance

9 savings contract improvements; amending s.

10 489.145, F.S.; including efficiency and

11 conservation in the measures encouraged by the

12 Legislature; revising definitions; providing

13 for inclusion of efficiency and conservation

14 measures in guaranteed performance savings

15 contracts entered into by state agencies,

16 municipalities, or political subdivisions;

17 providing additional requirements for a state

18 agency to enter into a guaranteed performance

19 savings contract; providing for financing of

20 contracts related to guaranteed performance

21 savings; requiring the Department of Financial

22 Services to review proposals to ensure that the

23 most effective financing is used; requiring the

24 Office of the Chief Financial Officer to

25 develop model contractual and related

26 documents; requiring that contracts or leases

27 submitted by a state agency to the Office of

28 Chief Financial Officer meet certain criteria;

29 amending s. 287.063, F.S.; revising criteria

30 governing approval by the Chief Financial

31 Officer of certain purchases under

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1 deferred-payment contracts; removing a
2 provision restricting obligation of amounts in
3 excess of certain appropriations; amending s.
4 287.064, F.S.; revising provisions governing
5 consolidated financing of certain deferred
6 payment purchases by the state or its agencies;
7 providing for financing concerning the costs
8 incurred under a guaranteed performance savings
9 contract for efficiency and conservation
10 measures; providing for an increased repayment
11 period for specified energy-related measures;
12 requiring that the contractor provide for the
13 replacement or extension of certain equipment;
14 clarifying provisions concerning funding for
15 certain contracts; providing an effective date.

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