

By Senator Wise

5-1107-07

See HB 271

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 state

11 agencies, municipalities, or political

12 subdivisions; amending s. 287.064, F.S.,

13 relating to consolidated financing of

14 deferred-payment purchases, to conform;

15 providing an effective date.

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

18

19 Section 1. Section 489.145, Florida Statutes, is

20 amended to read:

21 489.145 Guaranteed ~~energy~~ performance savings

22 contracting.--

23 (1) SHORT TITLE.--This section may be cited as the

24 "Guaranteed ~~Energy~~ Performance Savings Contracting Act."

25 (2) LEGISLATIVE FINDINGS.--The Legislature finds that

26 investment in energy, water, and wastewater efficiency or

27 conservation measures in agency facilities can reduce the

28 amount of energy and water consumed and wastewater to be

29 treated and produce immediate and long-term savings. It is the

30 policy of this state to encourage each agency ~~agencies~~ to

31 invest in energy, water, and wastewater efficiency or

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

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

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

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

24 1. Insulation of the facility structure and systems
25 within the facility.

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

- 1 3. Automatic energy control systems.
- 2 4. Heating, ventilating, or air-conditioning system
- 3 modifications or replacements.
- 4 5. Replacement or modifications of lighting fixtures
- 5 to increase the energy efficiency of the lighting system,
- 6 which, at a minimum, must conform to the applicable state or
- 7 local building code.
- 8 6. Energy recovery systems.
- 9 7. Cogeneration systems that produce steam or forms of
- 10 energy such as heat, as well as electricity, for use primarily
- 11 within a facility or complex of facilities.
- 12 8. Energy conservation measures that provide long-term
- 13 operating cost reductions or significantly reduce Btu
- 14 consumed.
- 15 9. Renewable energy systems, such as solar, biomass,
- 16 or wind systems.
- 17 10. Devices that reduce water consumption or
- 18 wastewater ~~sewer~~ charges.
- 19 11. Equipment upgrades that improve the accuracy of
- 20 billable revenue-generating systems.
- 21 12. Automated electronic or remotely controlled
- 22 systems or measures that reduce direct personnel costs.
- 23 13. Such other energy, water, or wastewater efficiency
- 24 or conservation measures as may provide measurable operating
- 25 cost reductions or billable revenue increases.
- 26 ~~14.11.~~ Energy storage systems, such as fuel cells and
- 27 thermal storage.
- 28 ~~15.12.~~ Energy-generating ~~generating~~ technologies, such
- 29 as microturbines.
- 30 16. Cool roof coating.
- 31

1 ~~17.13-~~ Any other repair, replacement, or upgrade of
2 existing equipment.

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

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

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

19 2. The amount of any actual annual savings that meet
20 or exceed total annual contract payments made by the agency
21 for the contract.

22 3. The finance charges incurred by the agency over the
23 life of the contract.

24 (e) "Guaranteed ~~energy~~ performance savings contractor"
25 means a person or business that is licensed under chapter 471,
26 chapter 481, or this chapter~~7~~, and is experienced in the
27 analysis, design, implementation, or installation of energy,
28 water, or wastewater efficiency or conservation measures
29 through ~~energy~~ performance contracts.

30 (4) PROCEDURES.--
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1 (a) An agency may enter into a guaranteed ~~energy~~
2 performance savings contract with a guaranteed ~~energy~~
3 performance savings contractor to significantly reduce energy,
4 water, or wastewater or operating costs of an agency facility
5 through one or more energy, water, or wastewater efficiency or
6 conservation measures.

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

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

1 contract may provide for installment payments for a period not
2 to exceed 20 years.

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

9 (e) Before entering into a guaranteed ~~energy~~
10 performance savings contract, an agency must provide published
11 notice of the meeting in which it proposes to award the
12 contract, the names of the parties to the proposed contract,
13 and the contract's purpose.

14 (f) A guaranteed ~~energy~~ performance savings contract
15 may provide for financing, including tax-exempt ~~tax-exempt~~
16 financing, by a third party. The contract for third-party
17 ~~third-party~~ financing may be separate from the ~~energy~~
18 performance savings contract. A separate contract for
19 third-party ~~third-party~~ financing must include a provision
20 that the third-party ~~third-party~~ financier must not be granted
21 rights or privileges that exceed the rights and privileges
22 available to the guaranteed ~~energy~~ performance savings
23 contractor.

24 (g) In determining the amount the agency will finance
25 to acquire the efficiency or ~~energy~~ conservation measures, the
26 agency may reduce such amount by the application of any grant
27 moneys, rebates, or capital funding available to the agency
28 for the purpose of buying down the cost of the guaranteed
29 ~~energy~~ performance savings contract. However, in calculating
30 the life cycle cost as required in paragraph (c), the agency
31 shall not apply any grants, rebates, or capital funding.

1 (5) CONTRACT PROVISIONS.--

2 (a) A guaranteed ~~energy~~ performance savings contract
3 must include a written guarantee that may include, but is not
4 limited to the form of, a letter of credit, insurance policy,
5 or corporate guarantee by the guaranteed ~~energy~~ performance
6 savings contractor that annual associated ~~energy~~ cost savings
7 will meet or exceed the amortized cost of the efficiency or
8 ~~energy~~ conservation measures.

9 (b) The guaranteed ~~energy~~ performance savings contract
10 must provide that all payments, except obligations on
11 termination of the contract before its expiration, may be made
12 over time, but not to exceed 20 years from the date of
13 complete installation and acceptance by the agency, and that
14 the annual savings are guaranteed to the extent necessary to
15 make annual payments to satisfy the guaranteed ~~energy~~
16 performance savings contract.

17 (c) The guaranteed ~~energy~~ performance savings contract
18 must require that the guaranteed ~~energy~~ performance savings
19 contractor to whom the contract is awarded provide a
20 100-percent public construction bond to the agency for its
21 faithful performance, as required by s. 255.05.

22 (d) The guaranteed ~~energy~~ performance savings contract
23 may contain a provision allocating to the parties to the
24 contract any annual associated ~~energy~~ cost savings that exceed
25 the amount of the associated ~~energy~~ cost savings guaranteed in
26 the contract.

27 (e) The guaranteed ~~energy~~ performance savings contract
28 shall require the guaranteed ~~energy~~ performance savings
29 contractor to provide to the agency an annual reconciliation
30 of the guaranteed associated ~~energy~~ cost savings. If the
31 reconciliation reveals a shortfall in such annual ~~energy~~ cost

1 savings, the guaranteed ~~energy~~ performance savings contractor
2 is liable for such shortfall. If the reconciliation reveals an
3 excess in such annual ~~energy~~ cost savings, the excess savings
4 may be allocated under paragraph (d) but may not be used to
5 cover potential ~~energy~~ cost savings shortages in subsequent
6 contract years.

7 (f) The guaranteed ~~energy~~ performance savings contract
8 must provide for payments of not less than one-twentieth of
9 the price to be paid within 2 years from the date of the
10 complete installation and acceptance by the agency, and the
11 remaining costs to be paid at least quarterly, not to exceed a
12 20-year term, based on life cycle cost calculations.

13 (g) The guaranteed ~~energy~~ performance savings contract
14 may extend beyond the fiscal year in which it becomes
15 effective; however, the term of any contract expires at the
16 end of each fiscal year and may be automatically renewed
17 annually for up to 20 years, subject to the agency making
18 sufficient annual appropriations based upon continued realized
19 energy, water, or wastewater savings.

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

23 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
24 Department of Management Services, with the assistance of the
25 Office of the Chief Financial Officer, may, within available
26 resources, provide technical assistance to state agencies
27 contracting for energy, water, or wastewater efficiency or
28 conservation measures and engage in other activities
29 considered appropriate by the department for promoting and
30 facilitating guaranteed ~~energy~~ performance contracting by
31 state agencies. The Office of the Chief Financial Officer,

1 | with the assistance of the Department of Management Services,
2 | may, within available resources, develop model contractual and
3 | related documents for use by state agencies. Prior to entering
4 | into a guaranteed ~~energy~~ performance savings contract, any
5 | contract or lease for third-party financing, or any
6 | combination of such contracts, a state agency shall submit
7 | such proposed contract or lease to the Office of the Chief
8 | Financial Officer for review and approval.

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

11 | 287.064 Consolidated financing of deferred-payment
12 | purchases.--

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

22 | Section 3. This act shall take effect July 1, 2007.

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