

By the Committee on Governmental Operations; and Senator Wise

585-2557-07

1 A bill to be entitled
2 An act relating to contracting for efficiency
3 or conservation measures by state agencies;
4 amending s. 255.252, F.S.; requiring an
5 inventory of state-owned buildings and a
6 schedule of energy efficiency and conservation
7 projects for guaranteed energy-performance
8 savings contract improvements; amending s.
9 489.145, F.S.; including efficiency and
10 conservation in the measures encouraged by the
11 Legislature; revising definitions; providing
12 for inclusion of efficiency and conservation
13 measures in guaranteed performance savings
14 contracts entered into by state agencies,
15 municipalities, or political subdivisions;
16 providing additional requirements for a state
17 agency to enter into a guaranteed performance
18 savings contract; providing for financing of
19 contracts related to guaranteed performance
20 savings; requiring the Department of Financial
21 Services to review proposals to ensure that the
22 most effective financing is used; requiring the
23 Office of the Chief Financial Officer to
24 develop model contractual and related
25 documents; requiring that contracts or leases
26 submitted by a state agency to the Office of
27 Chief Financial Officer meet certain criteria;
28 amending s. 287.063, F.S.; revising criteria
29 governing approval by the Chief Financial
30 Officer of certain purchases under
31 deferred-payment contracts; removing a

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

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Subsection (5) is added to section 255.252,
19 Florida Statutes, to read:

20 255.252 Findings and intent.--

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

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

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.

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

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,
30 analysis, design, implementation, or installation of
31

1 ~~efficiency or energy~~ conservation measures through ~~energy~~
2 performance contracts.

3 (4) PROCEDURES.--

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

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

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

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

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

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

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

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

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

12 (5) CONTRACT PROVISIONS.--

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

20 (b) The guaranteed ~~energy~~ performance savings contract
21 must provide that all payments, except obligations on
22 termination of the contract before its expiration, may be made
23 over time, but not to exceed 20 years from the date of
24 complete installation and acceptance by the agency, and that
25 the annual savings are guaranteed to the extent necessary to
26 make annual payments to satisfy the guaranteed ~~energy~~
27 performance savings 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
31

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 associated ~~energy~~ cost savings that exceed
6 the amount of the associated ~~energy~~ cost savings guaranteed in
7 the contract.

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

19 (f) The guaranteed ~~energy~~ performance savings contract
20 must provide for payments of not less than one-twentieth of
21 the price to be paid within 2 years from the date of the
22 complete installation and acceptance by the agency using
23 straight-line amortization for the term of the loan, and the
24 remaining costs to be paid at least quarterly, not to exceed a
25 20-year term, based on life cycle cost calculations.

26 (g) The guaranteed ~~energy~~ performance savings contract
27 may extend beyond the fiscal year in which it becomes
28 effective; however, the term of any contract expires at the
29 end of each fiscal year and may be automatically renewed
30 annually for up to 20 years, subject to the agency making
31

1 sufficient annual appropriations based upon continued realized
2 cost ~~energy~~ savings.

3 (h) The guaranteed ~~energy~~ performance savings contract
4 must stipulate that it does not constitute a debt, liability,
5 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 efficiency or ~~energy~~ conservation measures and
11 engage in other activities considered appropriate by the
12 department for promoting and facilitating guaranteed ~~energy~~
13 performance contracting by state agencies. The Office of the
14 Chief Financial Officer, with the assistance of the Department
15 of Management Services, shall ~~may, within available resources,~~
16 develop model contractual and related documents for use by
17 state agencies. Prior to entering into a guaranteed ~~energy~~
18 performance savings contract, any contract or lease for
19 third-party financing, or any combination of such contracts, a
20 state agency shall submit such proposed contract or lease to
21 the Office of the Chief Financial Officer for review and
22 approval. The submittal must include the following:

23 (a) Supporting information required by s.
24 216.023(4)(a)9.

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

27 (c) Approval by agency head or designee.

28 (d) An agency measurement and verification plan to
29 monitor costs savings.

30 (7) FUNDING REPORT.--For purposes of consolidated
31 financing of deferred payment commodity contracts under this

1 section by a state agency, the annualized amount of any such
2 contract must be supported from available recurring funds
3 appropriated to the agency in an appropriation category, as
4 defined in chapter 216, which the Chief Financial Officer has
5 determined is appropriate or which the Legislature has
6 designated for payment of the obligation incurred under this
7 section.

8
9 The Office of the Chief Financial Officer may not approve any
10 contract submitted under this section which does not meet the
11 requirements of this section.

12 Section 3. Paragraph (b) of subsection (2) and
13 subsection (5) of section 287.063, Florida Statutes, are
14 amended to read:

15 287.063 Deferred-payment commodity contracts; preaudit
16 review.--

17 (2)

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

23 1. No contract shall be approved in which interest
24 exceeds the statutory ceiling contained in this section.
25 However, the interest component of any master equipment
26 financing agreement entered into for the purpose of
27 consolidated financing of a deferred-payment, installment
28 sale, or lease-purchase shall be deemed to comply with the
29 interest rate limitation of this section so long as the
30 interest component of every interagency agreement under such
31

1 master equipment financing agreement complies with the
2 interest rate limitation of this section.

3 2. No deferred-payment purchase for less than \$30,000
4 shall be approved, unless it can be satisfactorily
5 demonstrated and documented to the Chief Financial Officer
6 that failure to make such deferred-payment purchase would
7 adversely affect an agency in the performance of its duties.
8 However, the Chief Financial Officer may approve any
9 deferred-payment purchase if the Chief Financial Officer
10 determines that such purchase is economically beneficial to
11 the state.

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

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

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

1 Section 4. Subsections (10) and (11) of section
2 287.064, Florida Statutes, are amended to read:

3 287.064 Consolidated financing of deferred-payment
4 purchases.--

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

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

29 Section 5. This act shall take effect July 1, 2007.
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1164
4 Requires each state agency to compile list of buildings
5 suitable for a guaranteed energy-performance savings contract,
6 and requires DMS to develop a schedule for such projects.
7 Requires actual savings for such contracts to meet or exceed
8 estimated cost savings.
9 Requires straight-line amortization of the loans.
10 Requires approval by the CFO, who must be provided with
11 specified information to evaluate the contract.
12 Annualized amount of such contracts must be supported from
13 available recurring funds.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31