

A bill to be entitled

An act relating to contracting for efficiency or conservation measures by state agencies; amending s. 489.145, F.S.; including water and wastewater efficiency and conservation in the measures encouraged by the Legislature; revising definitions; providing for inclusion of water and wastewater efficiency and conservation measures in guaranteed performance savings contracts entered into by state agencies, municipalities, or political subdivisions; amending s. 287.064, F.S., relating to consolidated financing of deferred-payment purchases, to conform; providing an effective date.

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

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

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

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

(2) LEGISLATIVE FINDINGS.--The Legislature finds that investment in energy, water, and wastewater efficiency or conservation measures in agency facilities can reduce the amount of energy and water consumed and wastewater to be treated and produce immediate and long-term savings. It is the policy of this state to encourage each agency ~~agencies~~ to invest in energy, water, and wastewater efficiency or conservation

29 | measures that provide such reductions ~~reduce energy consumption,~~
 30 | produce a cost savings for the agency, and, for energy measures,
 31 | improve the quality of indoor air in public facilities and to
 32 | operate, maintain, and, when economically feasible, build or
 33 | renovate existing agency facilities in such a manner as to
 34 | minimize energy and water consumption and wastewater production
 35 | and maximize energy, water, and wastewater savings. It is
 36 | further the policy of this state to encourage each agency
 37 | ~~agencies~~ to reinvest any ~~energy~~ savings resulting from energy,
 38 | water, and wastewater efficiency or conservation measures in
 39 | additional energy, water, and wastewater efficiency or
 40 | conservation measures ~~efforts~~.

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

42 | (a) "Agency" means the state, a municipality, or a
 43 | political subdivision.

44 | (b) "Energy, water, or wastewater efficiency or
 45 | conservation measure" means a training program, facility
 46 | alteration, or equipment purchase to be used in new facilities
 47 | or in retrofitting or adding to existing facilities or
 48 | infrastructure that ~~new construction, including an addition to~~
 49 | ~~an existing facility, which~~ reduces energy, water, wastewater,
 50 | or operating costs and includes, but is not limited to:

51 | 1. Insulation of the facility structure and systems within
 52 | the facility.

53 | 2. Storm windows and doors, caulking or weatherstripping,
 54 | multiglazed windows and doors, heat-absorbing, or heat-
 55 | reflective, glazed and coated window and door systems,
 56 | additional glazing, reductions in glass area, and other window

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- 57 and door system modifications that reduce energy consumption.
- 58 3. Automatic energy control systems.
- 59 4. Heating, ventilating, or air-conditioning system
60 modifications or replacements.
- 61 5. Replacement or modifications of lighting fixtures to
62 increase the energy efficiency of the lighting system, which, at
63 a minimum, must conform to the applicable state or local
64 building code.
- 65 6. Energy recovery systems.
- 66 7. Cogeneration systems that produce steam or forms of
67 energy such as heat, as well as electricity, for use primarily
68 within a facility or complex of facilities.
- 69 8. Energy conservation measures that provide long-term
70 operating cost reductions or significantly reduce Btu consumed.
- 71 9. Renewable energy systems, such as solar, biomass, or
72 wind systems.
- 73 10. Devices that reduce water consumption or wastewater
74 ~~sewer~~ charges.
- 75 11. Equipment upgrades that improve the accuracy of
76 billable revenue-generating systems.
- 77 12. Automated electronic or remotely controlled systems or
78 measures that reduce direct personnel costs.
- 79 13. Such other energy, water, or wastewater efficiency or
80 conservation measures as may provide measurable operating cost
81 reductions or billable revenue increases.
- 82 14.11. Energy storage systems, such as fuel cells and
83 thermal storage.
- 84 15.12. Energy-generating ~~generating~~ technologies, such as

85 microturbines.

86 16. Cool roof coating.

87 ~~17.13.~~ Any other repair, replacement, or upgrade of
88 existing equipment.

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

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

101 1. The design and installation of equipment to implement
102 one or more of such measures and, if applicable, operation and
103 maintenance of such measures.

104 2. The amount of any actual annual savings that meet or
105 exceed total annual contract payments made by the agency for the
106 contract.

107 3. The finance charges incurred by the agency over the
108 life of the contract.

109 (e) "Guaranteed ~~energy~~ performance savings contractor"
110 means a person or business that is licensed under chapter 471,
111 chapter 481, or this chapter~~,~~ and is experienced in the
112 analysis, design, implementation, or installation of energy,

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113 water, or wastewater efficiency or conservation measures through
114 ~~energy~~ performance contracts.

115 (4) PROCEDURES.--

116 (a) An agency may enter into a guaranteed ~~energy~~
117 performance savings contract with a guaranteed ~~energy~~
118 performance savings contractor to significantly reduce energy,
119 water, or wastewater or operating costs of an agency facility
120 through one or more energy, water, or wastewater efficiency or
121 conservation measures.

122 (b) Before design and installation of energy, water, or
123 wastewater efficiency and conservation measures, the agency must
124 obtain from a guaranteed ~~energy~~ performance savings contractor a
125 report that summarizes the costs associated with the ~~energy~~
126 ~~conservation~~ measures and provides an estimate of the amount of
127 the associated ~~energy~~ cost savings or operational improvements.
128 The agency and the guaranteed ~~energy~~ performance savings
129 contractor may enter into a separate agreement to pay for costs
130 associated with the preparation and delivery of the report;
131 however, payment to the contractor shall be contingent upon the
132 report's projection of ~~energy~~ cost savings being equal to or
133 greater than the total projected costs of the design and
134 installation of the report's ~~energy~~ conservation or efficiency
135 measures.

136 (c) The agency may enter into a guaranteed ~~energy~~
137 performance savings contract with a guaranteed ~~energy~~
138 performance savings contractor if the agency finds that the
139 amount the agency would spend on the ~~energy~~ conservation or
140 efficiency measures will not likely exceed the amount of the

141 associated ~~energy~~ cost savings for up to 20 years from the date
 142 of installation, based on the life cycle cost calculations
 143 provided in s. 255.255, if the recommendations in the report
 144 were followed and if the qualified provider or providers give a
 145 written guarantee that such ~~the energy~~ cost savings will meet or
 146 exceed the costs of the system. The contract may provide for
 147 installment payments for a period not to exceed 20 years.

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

154 (e) Before entering into a guaranteed ~~energy~~ performance
 155 savings contract, an agency must provide published notice of the
 156 meeting in which it proposes to award the contract, the names of
 157 the parties to the proposed contract, and the contract's
 158 purpose.

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

168 (g) In determining the amount the agency will finance to

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169 acquire the efficiency or ~~energy~~ conservation measures, the
170 agency may reduce such amount by the application of any grant
171 moneys, rebates, or capital funding available to the agency for
172 the purpose of buying down the cost of the guaranteed ~~energy~~
173 performance savings contract. However, in calculating the life
174 cycle cost as required in paragraph (c), the agency shall not
175 apply any grants, rebates, or capital funding.

176 (5) CONTRACT PROVISIONS.--

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

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

192 (c) The guaranteed ~~energy~~ performance savings contract
193 must require that the guaranteed ~~energy~~ performance savings
194 contractor to whom the contract is awarded provide a 100-percent
195 public construction bond to the agency for its faithful
196 performance, as required by s. 255.05.

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197 (d) The guaranteed ~~energy~~ performance savings contract may
198 contain a provision allocating to the parties to the contract
199 any annual associated ~~energy~~ cost savings that exceed the amount
200 of the associated ~~energy~~ cost savings guaranteed in the
201 contract.

202 (e) The guaranteed ~~energy~~ performance savings contract
203 shall require the guaranteed ~~energy~~ performance savings
204 contractor to provide to the agency an annual reconciliation of
205 the guaranteed associated ~~energy~~ cost savings. If the
206 reconciliation reveals a shortfall in such annual ~~energy~~ cost
207 savings, the guaranteed ~~energy~~ performance savings contractor is
208 liable for such shortfall. If the reconciliation reveals an
209 excess in such annual ~~energy~~ cost savings, the excess savings
210 may be allocated under paragraph (d) but may not be used to
211 cover potential ~~energy~~ cost savings shortages in subsequent
212 contract years.

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

219 (g) The guaranteed ~~energy~~ performance savings contract may
220 extend beyond the fiscal year in which it becomes effective;
221 however, the term of any contract expires at the end of each
222 fiscal year and may be automatically renewed annually for up to
223 20 years, subject to the agency making sufficient annual
224 appropriations based upon continued realized energy, water, or

225 wastewater savings.

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

229 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
 230 Department of Management Services, with the assistance of the
 231 Office of the Chief Financial Officer, may, within available
 232 resources, provide technical assistance to state agencies
 233 contracting for energy, water, or wastewater efficiency or
 234 conservation measures and engage in other activities considered
 235 appropriate by the department for promoting and facilitating
 236 guaranteed ~~energy~~ performance contracting by state agencies. The
 237 Office of the Chief Financial Officer, with the assistance of
 238 the Department of Management Services, may, within available
 239 resources, develop model contractual and related documents for
 240 use by state agencies. Prior to entering into a guaranteed
 241 ~~energy~~ performance savings contract, any contract or lease for
 242 third-party financing, or any combination of such contracts, a
 243 state agency shall submit such proposed contract or lease to the
 244 Office of the Chief Financial Officer for review and approval.

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

247 287.064 Consolidated financing of deferred-payment
 248 purchases.--

249 (10) Costs incurred pursuant to a guaranteed ~~energy~~
 250 performance savings contract, including the cost of energy,
 251 water, or wastewater efficiency and conservation measures, each
 252 as defined in s. 489.145, may be financed pursuant to a master

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253 equipment financing agreement; however, the costs of training,
254 operation, and maintenance may not be financed. The period of
255 time for repayment of the funds drawn pursuant to the master
256 equipment financing agreement under this subsection may exceed 5
257 years but may not exceed 10 years.

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