

1 A bill to be entitled
 2 An act relating to contracting for efficiency or
 3 conservation measures by state agencies; amending s.
 4 471.003, F.S.; revising criteria for certain exemptions
 5 from qualifications to practice engineering in this state;
 6 providing a definition; amending s. 471.023, F.S.;
 7 exempting certain business organizations from obtaining a
 8 certification of authorization to provide engineering
 9 services to the public; amending s. 489.145, F.S.;
 10 including water and wastewater efficiency and conservation
 11 in the measures encouraged by the Legislature; revising
 12 definitions; providing for inclusion of water and
 13 wastewater efficiency and conservation measures in
 14 guaranteed performance savings contracts entered into by
 15 state agencies, municipalities, or political subdivisions;
 16 exempting guaranteed performance savings contractors from
 17 engineering certification requirements under certain
 18 circumstances; amending s. 1013.23, F.S.; exempting energy
 19 performance contractors from engineering certification
 20 requirements under certain circumstances; amending s.
 21 287.064, F.S., relating to consolidated financing of
 22 deferred-payment purchases, to conform; providing an
 23 effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Subsection (2) of section 471.003, Florida
 28 Statutes, is amended to read:

29 471.003 Qualifications for practice; exemptions.--

30 (2) The following persons are not required to be licensed
 31 under the provisions of this chapter ~~as a licensed engineer:~~

32 (a) Any person practicing engineering for the improvement
 33 of, or otherwise affecting, property legally owned by her or
 34 him, unless such practice involves a public utility or the
 35 public health, safety, or welfare or the safety or health of
 36 employees. This paragraph shall not be construed as authorizing
 37 the practice of engineering through an agent or employee who is
 38 not duly licensed under the provisions of this chapter.

39 (b)1. A person acting as a public officer employed by any
 40 state, county, municipal, or other governmental unit of this
 41 state when working on any project the total estimated cost of
 42 which is \$10,000 or less.

43 2. Persons who are employees of any state, county,
 44 municipal, or other governmental unit of this state and who are
 45 the subordinates of a person in responsible charge licensed
 46 under this chapter, to the extent that the supervision meets
 47 standards adopted by rule of the board.

48 (c) Regular full-time employees of a corporation not
 49 engaged in the practice of engineering as such, whose practice
 50 of engineering for such corporation is limited to the design or
 51 fabrication of manufactured products and servicing of such
 52 products.

53 (d) Regular full-time employees of a public utility or
 54 other entity subject to regulation by the Florida Public Service
 55 Commission, Federal Energy Regulatory Commission, or Federal
 56 Communications Commission.

57 (e) Employees of a firm, corporation, or partnership who
58 are the subordinates of a person in responsible charge, licensed
59 under this chapter.

60 (f) Any person as contractor in the execution of work
61 designed by a professional engineer or in the supervision of the
62 construction of work as a foreman or superintendent.

63 (g) A licensed surveyor and mapper who takes, or contracts
64 for, professional engineering services incidental to her or his
65 practice of surveying and mapping and who delegates such
66 engineering services to a licensed professional engineer
67 qualified within her or his firm or contracts for such
68 professional engineering services to be performed by others who
69 are licensed professional engineers under the provisions of this
70 chapter.

71 (h) Any electrical, plumbing, air-conditioning, or
72 mechanical contractor whose practice includes the design and
73 fabrication of electrical, plumbing, air-conditioning, or
74 mechanical systems, respectively, which she or he installs by
75 virtue of a license issued under chapter 489, under part I of
76 chapter 553, or under any special act or ordinance when working
77 on any construction project which:

78 1. Requires an electrical or plumbing or air-conditioning
79 and refrigeration system with a value of \$50,000 or less; and

80 2.a. Requires an aggregate service capacity of 600 amperes
81 (240 volts) or less on a residential electrical system or 800
82 amperes (240 volts) or less on a commercial or industrial
83 electrical system;

84 b. Requires a plumbing system with fewer than 250 fixture

85 units; or

86 c. Requires a heating, ventilation, and air-conditioning
 87 system not to exceed a 15-ton-per-system capacity, or if the
 88 project is designed to accommodate 100 or fewer persons.

89 (i) Any general contractor, certified, ~~or~~ registered, or
 90 possessing a certificate of authority pursuant to the provisions
 91 of chapter 489, when negotiating or performing services under a
 92 design-build contract as long as the engineering services
 93 offered or rendered in connection with the contract are offered
 94 and rendered by an engineer licensed in accordance with this
 95 chapter. For purposes of this paragraph, a "design-build
 96 contract" is a contract with a single individual or business
 97 organization for the design and construction of a project,
 98 including, but not limited to, construction, rehabilitation, and
 99 renovation activities.

100 (j) Any defense, space, or aerospace company, whether a
 101 sole proprietorship, firm, limited liability company,
 102 partnership, joint venture, joint stock association,
 103 corporation, or other business entity, subsidiary, or affiliate,
 104 or any employee, contract worker, subcontractor, or independent
 105 contractor of the defense, space, or aerospace company who
 106 provides engineering for aircraft, space launch vehicles, launch
 107 services, satellites, satellite services, or other defense,
 108 space, or aerospace-related product or services, or components
 109 thereof.

110 Section 2. Subsection (6) is added to section 471.023,
 111 Florida Statutes, to read:

112 471.023 Certification of business organizations.--

CS/HB 271

2007

113 (6) A business organization meeting the definition of a
114 design-build firm under s. 287.055 is not required to obtain a
115 certification of authorization under this section in order to
116 negotiate, enter into, or perform a public or private design-
117 build contract.

118 Section 3. Section 489.145, Florida Statutes, is amended
119 to read:

120 489.145 Guaranteed ~~energy~~ performance savings
121 contracting.--

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

124 (2) LEGISLATIVE FINDINGS.--The Legislature finds that
125 investment in energy, water, and wastewater efficiency or
126 conservation measures in agency facilities can reduce the amount
127 of energy and water consumed and wastewater to be treated and
128 produce immediate and long-term savings. It is the policy of
129 this state to encourage each agency ~~agencies~~ to invest in
130 energy, water, and wastewater efficiency or conservation
131 measures that provide such reductions ~~reduce energy consumption,~~
132 produce a cost savings for the agency, and, for energy measures,
133 improve the quality of indoor air in public facilities and to
134 operate, maintain, and, when economically feasible, build or
135 renovate existing agency facilities in such a manner as to
136 minimize energy and water consumption and wastewater production
137 and maximize energy, water, and wastewater savings. It is
138 further the policy of this state to encourage each agency
139 ~~agencies~~ to reinvest any ~~energy~~ savings resulting from energy,
140 water, and wastewater efficiency or conservation measures in

141 additional energy, water, and wastewater efficiency or
 142 conservation measures ~~efforts~~.

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

144 (a) "Agency" means the state, a municipality, or a
 145 political subdivision.

146 (b) "Energy, water, or wastewater efficiency or
 147 conservation measure" means a training program, facility
 148 alteration, or equipment purchase to be used in new facilities
 149 or in retrofitting or adding to existing facilities or
 150 infrastructure that new construction, including an addition to
 151 an existing facility, which reduces energy, water, wastewater,
 152 or operating costs and includes, but is not limited to:

153 1. Insulation of the facility structure and systems within
 154 the facility.

155 2. Storm windows and doors, caulking or weatherstripping,
 156 multiglazed windows and doors, heat-absorbing, or heat-
 157 reflective, glazed and coated window and door systems,
 158 additional glazing, reductions in glass area, and other window
 159 and door system modifications that reduce energy consumption.

160 3. Automatic energy control systems.

161 4. Heating, ventilating, or air-conditioning system
 162 modifications or replacements.

163 5. Replacement or modifications of lighting fixtures to
 164 increase the energy efficiency of the lighting system, which, at
 165 a minimum, must conform to the applicable state or local
 166 building code.

167 6. Energy recovery systems.

168 7. Cogeneration systems that produce steam or forms of

CS/HB 271

2007

169 energy such as heat, as well as electricity, for use primarily
170 within a facility or complex of facilities.

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

173 9. Renewable energy systems, such as solar, biomass, or
174 wind systems.

175 10. Devices that reduce water consumption or wastewater
176 ~~sewer~~ charges.

177 11. Equipment upgrades that improve the accuracy of
178 billable revenue-generating systems.

179 12. Automated electronic or remotely controlled systems or
180 measures that reduce direct personnel costs.

181 13. Such other energy, water, or wastewater efficiency or
182 conservation measures as may provide measurable operating cost
183 reductions or billable revenue increases.

184 14.11. Energy storage systems, such as fuel cells and
185 thermal storage.

186 15.12. Energy-generating ~~generating~~ technologies, such as
187 microturbines.

188 16. Cool roof coating.

189 17.13. Any other repair, replacement, or upgrade of
190 existing equipment.

191 (c) "Energy, water, or wastewater cost savings" means a
192 measured reduction in the cost of fuel, energy or water
193 consumption, or wastewater production and stipulated improvement
194 in the operation and maintenance created from the implementation
195 of one or more energy, water, or wastewater efficiency or
196 conservation measures when compared with an established baseline

197 for the previous cost of fuel, energy or water consumption, or
 198 wastewater production and stipulated operation and maintenance.

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

203 1. The design and installation of equipment to implement
 204 one or more of such measures and, if applicable, operation and
 205 maintenance of such measures.

206 2. The amount of any actual annual savings that meet or
 207 exceed total annual contract payments made by the agency for the
 208 contract.

209 3. The finance charges incurred by the agency over the
 210 life of the contract.

211 (e) "Guaranteed ~~energy~~ performance savings contractor"
 212 means a person or business that is licensed under chapter 471,
 213 chapter 481, or this chapter, and is experienced in the
 214 analysis, design, implementation, or installation of energy,
 215 water, or wastewater efficiency or conservation measures through
 216 ~~energy~~ performance contracts.

217 (4) PROCEDURES.--

218 (a) An agency may enter into a guaranteed ~~energy~~
 219 performance savings contract with a guaranteed ~~energy~~
 220 performance savings contractor to significantly reduce energy,
 221 water, or wastewater or operating costs of an agency facility
 222 through one or more energy, water, or wastewater efficiency or
 223 conservation measures.

224 (b) Before design and installation of energy, water, or

CS/HB 271

2007

225 wastewater efficiency and conservation measures, the agency must
226 obtain from a guaranteed ~~energy~~ performance savings contractor a
227 report that summarizes the costs associated with the ~~energy~~
228 ~~conservation~~ measures and provides an estimate of the amount of
229 the associated energy cost savings or operational improvements.
230 The issuance of such report and the design and installation of
231 energy, water, or wastewater efficiency and conservation
232 measures pursuant to a guaranteed performance savings contract
233 shall not subject the guaranteed performance savings contractor
234 to the provisions of s. 471.023. The agency and the guaranteed
235 ~~energy~~ performance savings contractor may enter into a separate
236 agreement to pay for costs associated with the preparation and
237 delivery of the report; however, payment to the contractor shall
238 be contingent upon the report's projection of ~~energy~~ cost
239 savings being equal to or greater than the total projected costs
240 of the design and installation of the report's ~~energy~~
241 conservation or efficiency measures.

242 (c) The agency may enter into a guaranteed ~~energy~~
243 performance savings contract with a guaranteed ~~energy~~
244 performance savings contractor if the agency finds that the
245 amount the agency would spend on the ~~energy~~ conservation or
246 efficiency measures will not likely exceed the amount of the
247 associated energy cost savings for up to 20 years from the date
248 of installation, based on the life cycle cost calculations
249 provided in s. 255.255, if the recommendations in the report
250 were followed and if the qualified provider or providers give a
251 written guarantee that such ~~the energy~~ cost savings will meet or
252 exceed the costs of the system. The contract may provide for

253 installment payments for a period not to exceed 20 years.

254 (d) A guaranteed ~~energy~~ performance savings contractor
255 must be selected in compliance with s. 287.055; except that if
256 fewer than three firms are qualified to perform the required
257 services, the requirement for agency selection of three firms,
258 as provided in s. 287.055(4)(b), and the bid requirements of s.
259 287.057 do not apply.

260 (e) Before entering into a guaranteed ~~energy~~ performance
261 savings contract, an agency must provide published notice of the
262 meeting in which it proposes to award the contract, the names of
263 the parties to the proposed contract, and the contract's
264 purpose.

265 (f) A guaranteed ~~energy~~ performance savings contract may
266 provide for financing, including tax-exempt ~~tax-exempt~~
267 financing, by a third party. The contract for third-party ~~third~~
268 ~~party~~ financing may be separate from the ~~energy~~ performance
269 savings contract. A separate contract for third-party ~~third~~
270 ~~party~~ financing must include a provision that the third-party
271 ~~third-party~~ financier must not be granted rights or privileges
272 that exceed the rights and privileges available to the
273 guaranteed ~~energy~~ performance savings contractor.

274 (g) In determining the amount the agency will finance to
275 acquire the efficiency or ~~energy~~ conservation measures, the
276 agency may reduce such amount by the application of any grant
277 moneys, rebates, or capital funding available to the agency for
278 the purpose of buying down the cost of the guaranteed ~~energy~~
279 performance savings contract. However, in calculating the life
280 cycle cost as required in paragraph (c), the agency shall not

281 apply any grants, rebates, or capital funding.

282 (5) CONTRACT PROVISIONS.--

283 (a) A guaranteed ~~energy~~ performance savings contract must
 284 include a written guarantee that may include, but is not limited
 285 to the form of, a letter of credit, insurance policy, or
 286 corporate guarantee by the guaranteed ~~energy~~ performance savings
 287 contractor that annual associated ~~energy~~ cost savings will meet
 288 or exceed the amortized cost of the efficiency or ~~energy~~
 289 conservation measures.

290 (b) The guaranteed ~~energy~~ performance savings contract
 291 must provide that all payments, except obligations on
 292 termination of the contract before its expiration, may be made
 293 over time, but not to exceed 20 years from the date of complete
 294 installation and acceptance by the agency, and that the annual
 295 savings are guaranteed to the extent necessary to make annual
 296 payments to satisfy the guaranteed ~~energy~~ performance savings
 297 contract.

298 (c) The guaranteed ~~energy~~ performance savings contract
 299 must require that the guaranteed ~~energy~~ performance savings
 300 contractor to whom the contract is awarded provide a 100-percent
 301 public construction bond to the agency for its faithful
 302 performance, as required by s. 255.05.

303 (d) The guaranteed ~~energy~~ performance savings contract may
 304 contain a provision allocating to the parties to the contract
 305 any annual associated ~~energy~~ cost savings that exceed the amount
 306 of the associated ~~energy~~ cost savings guaranteed in the
 307 contract.

308 (e) The guaranteed ~~energy~~ performance savings contract

CS/HB 271

2007

309 shall require the guaranteed ~~energy~~ performance savings
310 contractor to provide to the agency an annual reconciliation of
311 the guaranteed associated ~~energy~~ cost savings. If the
312 reconciliation reveals a shortfall in such annual ~~energy~~ cost
313 savings, the guaranteed ~~energy~~ performance savings contractor is
314 liable for such shortfall. If the reconciliation reveals an
315 excess in such annual ~~energy~~ cost savings, the excess savings
316 may be allocated under paragraph (d) but may not be used to
317 cover potential ~~energy~~ cost savings shortages in subsequent
318 contract years.

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

325 (g) The guaranteed ~~energy~~ performance savings contract may
326 extend beyond the fiscal year in which it becomes effective;
327 however, the term of any contract expires at the end of each
328 fiscal year and may be automatically renewed annually for up to
329 20 years, subject to the agency making sufficient annual
330 appropriations based upon continued realized energy, water, or
331 wastewater savings.

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

335 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
336 Department of Management Services, with the assistance of the

337 Office of the Chief Financial Officer, may, within available
 338 resources, provide technical assistance to state agencies
 339 contracting for energy, water, or wastewater efficiency or
 340 conservation measures and engage in other activities considered
 341 appropriate by the department for promoting and facilitating
 342 guaranteed ~~energy~~ performance contracting by state agencies. The
 343 Office of the Chief Financial Officer, with the assistance of
 344 the Department of Management Services, may, within available
 345 resources, develop model contractual and related documents for
 346 use by state agencies. Prior to entering into a guaranteed
 347 ~~energy~~ performance savings contract, any contract or lease for
 348 third-party financing, or any combination of such contracts, a
 349 state agency shall submit such proposed contract or lease to the
 350 Office of the Chief Financial Officer for review and approval.

351 Section 4. Paragraph (d) of subsection (3) of section
 352 1013.23, Florida Statutes, is amended to read:

353 1013.23 Energy efficiency contracting.--

354 (3) ENERGY PERFORMANCE-BASED CONTRACT PROCEDURES.--

355 (d) Prior to the design and installation of the energy
 356 conservation measure, the district school board, community
 357 college board of trustees, or state university board of trustees
 358 must obtain from the energy performance contractor a report that
 359 discloses all costs associated with the energy conservation
 360 measure and provides an estimate of the amount of the energy
 361 cost savings. The report must be reviewed by either the
 362 Department of Education or the Department of Management Services
 363 or signed and sealed by a registered professional engineer. The
 364 issuance of such report and the design and installation of

CS/HB 271

2007

365 energy conservation measures pursuant to an energy performance-
366 based contract shall not subject the energy performance
367 contractor to the provisions of s. 471.023.

368 Section 5. Subsection (10) of section 287.064, Florida
369 Statutes, is amended to read:

370 287.064 Consolidated financing of deferred-payment
371 purchases.--

372 (10) Costs incurred pursuant to a guaranteed ~~energy~~
373 performance savings contract, including the cost of energy,
374 water, or wastewater efficiency and conservation measures, each
375 as defined in s. 489.145, may be financed pursuant to a master
376 equipment financing agreement; however, the costs of training,
377 operation, and maintenance may not be financed. The period of
378 time for repayment of the funds drawn pursuant to the master
379 equipment financing agreement under this subsection may exceed 5
380 years but may not exceed 10 years.

381 Section 6. This act shall take effect July 1, 2007.