

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

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Subsection (6) is added to section 471.023,
 25 Florida Statutes, to read:

26 471.023 Certification of business organizations.--

27 (6) This section does not apply to business organizations
 28 registered as energy performance contractors as defined in s.

29 | 1013.23 (2) (d) .

30 | Section 2. Section 489.145, Florida Statutes, is amended
 31 | to read:

32 | 489.145 Guaranteed ~~energy~~ performance savings
 33 | contracting.--

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

36 | (2) LEGISLATIVE FINDINGS.--The Legislature finds that
 37 | investment in energy, water, and wastewater efficiency or
 38 | conservation measures in agency facilities can reduce the amount
 39 | of energy and water consumed and wastewater to be treated and
 40 | produce immediate and long-term savings. It is the policy of
 41 | this state to encourage each agency ~~agencies~~ to invest in
 42 | energy, water, and wastewater efficiency or conservation
 43 | measures that provide such reductions ~~reduce energy consumption,~~
 44 | produce a cost savings for the agency, and, for energy measures,
 45 | improve the quality of indoor air in public facilities and to
 46 | operate, maintain, and, when economically feasible, build or
 47 | renovate existing agency facilities in such a manner as to
 48 | minimize energy and water consumption and wastewater production
 49 | and maximize energy, water, and wastewater savings. It is
 50 | further the policy of this state to encourage each agency
 51 | ~~agencies~~ to reinvest any ~~energy~~ savings resulting from energy,
 52 | water, and wastewater efficiency or conservation measures in
 53 | additional energy, water, and wastewater efficiency or
 54 | conservation measures ~~efforts~~.

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

56 | (a) "Agency" means the state, a municipality, or a

57 political subdivision.

58 (b) "Energy, water, or wastewater efficiency or
 59 conservation measure" means a training program, facility
 60 alteration, or equipment purchase to be used in new facilities
 61 or in retrofitting or adding to existing facilities or
 62 infrastructure that ~~new construction, including an addition to~~
 63 an existing facility, which reduces energy, water, wastewater,
 64 or operating costs and includes, but is not limited to:

65 1. Insulation of the facility structure and systems within
 66 the facility.

67 2. Storm windows and doors, caulking or weatherstripping,
 68 multiglazed windows and doors, heat-absorbing, or heat-
 69 reflective, glazed and coated window and door systems,
 70 additional glazing, reductions in glass area, and other window
 71 and door system modifications that reduce energy consumption.

72 3. Automatic energy control systems.

73 4. Heating, ventilating, or air-conditioning system
 74 modifications or replacements.

75 5. Replacement or modifications of lighting fixtures to
 76 increase the energy efficiency of the lighting system, which, at
 77 a minimum, must conform to the applicable state or local
 78 building code.

79 6. Energy recovery systems.

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

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

85 9. Renewable energy systems, such as solar, biomass, or
86 wind systems.

87 10. Devices that reduce water consumption or wastewater
88 ~~sewer~~ charges.

89 11. Equipment upgrades that improve the accuracy of
90 billable revenue-generating systems.

91 12. Automated electronic or remotely controlled systems or
92 measures that reduce direct personnel costs.

93 13. Such other energy, water, or wastewater efficiency or
94 conservation measures as may provide measurable operating cost
95 reductions or billable revenue increases.

96 ~~14.11.~~ Energy storage systems, such as fuel cells and
97 thermal storage.

98 ~~15.12.~~ Energy-generating ~~generating~~ technologies, such as
99 microturbines.

100 16. Cool roof coating.

101 ~~17.13.~~ Any other repair, replacement, or upgrade of
102 existing equipment.

103 (c) "Energy, water, or wastewater cost savings" means a
104 measured reduction in the cost of fuel, energy or water
105 consumption, or wastewater production and stipulated improvement
106 in the operation and maintenance created from the implementation
107 of one or more energy, water, or wastewater efficiency or
108 conservation measures when compared with an established baseline
109 for the previous cost of fuel, energy or water consumption, or
110 wastewater production and stipulated operation and maintenance.

111 (d) "Guaranteed ~~energy~~ performance savings contract" means
112 a contract for the evaluation, recommendation, and

113 | implementation of energy, water, or wastewater efficiency or
 114 | conservation measures, which, at a minimum, shall include:

115 | 1. The design and installation of equipment to implement
 116 | one or more of such measures and, if applicable, operation and
 117 | maintenance of such measures.

118 | 2. The amount of any actual annual savings that meet or
 119 | exceed total annual contract payments made by the agency for the
 120 | contract.

121 | 3. The finance charges incurred by the agency over the
 122 | life of the contract.

123 | (e) "Guaranteed ~~energy~~ performance savings contractor"
 124 | means a person or business that is licensed under chapter 471,
 125 | chapter 481, or this chapter, and is experienced in the
 126 | analysis, design, implementation, or installation of energy,
 127 | water, or wastewater efficiency or conservation measures through
 128 | ~~energy~~ performance contracts.

129 | (4) PROCEDURES.--

130 | (a) An agency may enter into a guaranteed ~~energy~~
 131 | performance savings contract with a guaranteed ~~energy~~
 132 | performance savings contractor to significantly reduce energy,
 133 | water, or wastewater or operating costs of an agency facility
 134 | through one or more energy, water, or wastewater efficiency or
 135 | conservation measures.

136 | (b) Before design and installation of energy, water, or
 137 | wastewater efficiency and conservation measures, the agency must
 138 | obtain from a guaranteed ~~energy~~ performance savings contractor a
 139 | report that summarizes the costs associated with the ~~energy~~
 140 | ~~conservation~~ measures and provides an estimate of the amount of

141 the associated energy cost savings or operational improvements.
142 The issuance of such report and the design and installation of
143 energy, water, or wastewater efficiency and conservation
144 measures pursuant to a guaranteed performance savings contract
145 shall not subject the guaranteed performance savings contractor
146 to the provisions of s. 471.023. The agency and the guaranteed
147 energy performance savings contractor may enter into a separate
148 agreement to pay for costs associated with the preparation and
149 delivery of the report; however, payment to the contractor shall
150 be contingent upon the report's projection of energy cost
151 savings being equal to or greater than the total projected costs
152 of the design and installation of the report's energy
153 conservation or efficiency measures.

154 (c) The agency may enter into a guaranteed energy
155 performance savings contract with a guaranteed energy
156 performance savings contractor if the agency finds that the
157 amount the agency would spend on the energy conservation or
158 efficiency measures will not likely exceed the amount of the
159 associated energy cost savings for up to 20 years from the date
160 of installation, based on the life cycle cost calculations
161 provided in s. 255.255, if the recommendations in the report
162 were followed and if the qualified provider or providers give a
163 written guarantee that such ~~the energy~~ cost savings will meet or
164 exceed the costs of the system. The contract may provide for
165 installment payments for a period not to exceed 20 years.

166 (d) A guaranteed energy performance savings contractor
167 must be selected in compliance with s. 287.055; except that if
168 fewer than three firms are qualified to perform the required

169 services, the requirement for agency selection of three firms,
 170 as provided in s. 287.055(4)(b), and the bid requirements of s.
 171 287.057 do not apply.

172 (e) Before entering into a guaranteed ~~energy~~ performance
 173 savings contract, an agency must provide published notice of the
 174 meeting in which it proposes to award the contract, the names of
 175 the parties to the proposed contract, and the contract's
 176 purpose.

177 (f) A guaranteed ~~energy~~ performance savings contract may
 178 provide for financing, including tax-exempt ~~tax-exempt~~
 179 financing, by a third party. The contract for third-party ~~third~~
 180 ~~party~~ financing may be separate from the ~~energy~~ performance
 181 savings contract. A separate contract for third-party ~~third~~
 182 ~~party~~ financing must include a provision that the third-party
 183 ~~third-party~~ financier must not be granted rights or privileges
 184 that exceed the rights and privileges available to the
 185 guaranteed ~~energy~~ performance savings contractor.

186 (g) In determining the amount the agency will finance to
 187 acquire the efficiency or ~~energy~~ conservation measures, the
 188 agency may reduce such amount by the application of any grant
 189 moneys, rebates, or capital funding available to the agency for
 190 the purpose of buying down the cost of the guaranteed ~~energy~~
 191 performance savings contract. However, in calculating the life
 192 cycle cost as required in paragraph (c), the agency shall not
 193 apply any grants, rebates, or capital funding.

194 (5) CONTRACT PROVISIONS.--

195 (a) A guaranteed ~~energy~~ performance savings contract must
 196 include a written guarantee that may include, but is not limited

197 to the form of, a letter of credit, insurance policy, or
198 corporate guarantee by the guaranteed ~~energy~~ performance savings
199 contractor that annual associated ~~energy~~ cost savings will meet
200 or exceed the amortized cost of the efficiency or ~~energy~~
201 conservation measures.

202 (b) The guaranteed ~~energy~~ performance savings contract
203 must provide that all payments, except obligations on
204 termination of the contract before its expiration, may be made
205 over time, but not to exceed 20 years from the date of complete
206 installation and acceptance by the agency, and that the annual
207 savings are guaranteed to the extent necessary to make annual
208 payments to satisfy the guaranteed ~~energy~~ performance savings
209 contract.

210 (c) The guaranteed ~~energy~~ performance savings contract
211 must require that the guaranteed ~~energy~~ performance savings
212 contractor to whom the contract is awarded provide a 100-percent
213 public construction bond to the agency for its faithful
214 performance, as required by s. 255.05.

215 (d) The guaranteed ~~energy~~ performance savings contract may
216 contain a provision allocating to the parties to the contract
217 any annual associated ~~energy~~ cost savings that exceed the amount
218 of the associated ~~energy~~ cost savings guaranteed in the
219 contract.

220 (e) The guaranteed ~~energy~~ performance savings contract
221 shall require the guaranteed ~~energy~~ performance savings
222 contractor to provide to the agency an annual reconciliation of
223 the guaranteed associated ~~energy~~ cost savings. If the
224 reconciliation reveals a shortfall in such annual ~~energy~~ cost

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225 savings, the guaranteed ~~energy~~ performance savings contractor is
226 liable for such shortfall. If the reconciliation reveals an
227 excess in such annual ~~energy~~ cost savings, the excess savings
228 may be allocated under paragraph (d) but may not be used to
229 cover potential ~~energy~~ cost savings shortages in subsequent
230 contract years.

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

237 (g) The guaranteed ~~energy~~ performance savings contract may
238 extend beyond the fiscal year in which it becomes effective;
239 however, the term of any contract expires at the end of each
240 fiscal year and may be automatically renewed annually for up to
241 20 years, subject to the agency making sufficient annual
242 appropriations based upon continued realized energy, water, or
243 wastewater savings.

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

247 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
248 Department of Management Services, with the assistance of the
249 Office of the Chief Financial Officer, may, within available
250 resources, provide technical assistance to state agencies
251 contracting for energy, water, or wastewater efficiency or
252 conservation measures and engage in other activities considered

253 appropriate by the department for promoting and facilitating
 254 guaranteed ~~energy~~ performance contracting by state agencies. The
 255 Office of the Chief Financial Officer, with the assistance of
 256 the Department of Management Services, may, within available
 257 resources, develop model contractual and related documents for
 258 use by state agencies. Prior to entering into a guaranteed
 259 ~~energy~~ performance savings contract, any contract or lease for
 260 third-party financing, or any combination of such contracts, a
 261 state agency shall submit such proposed contract or lease to the
 262 Office of the Chief Financial Officer for review and approval.

263 Section 3. Paragraph (d) of subsection (3) of section
 264 1013.23, Florida Statutes, is amended to read:

265 1013.23 Energy efficiency contracting.--

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

267 (d) Prior to the design and installation of the energy
 268 conservation measure, the district school board, community
 269 college board of trustees, or state university board of trustees
 270 must obtain from the energy performance contractor a report that
 271 discloses all costs associated with the energy conservation
 272 measure and provides an estimate of the amount of the energy
 273 cost savings. The report must be reviewed by either the
 274 Department of Education or the Department of Management Services
 275 or signed and sealed by a registered professional engineer. The
 276 issuance of such report and the design and installation of
 277 energy conservation measures pursuant to an energy performance-
 278 based contract shall not subject the energy performance
 279 contractor to the provisions of s. 471.023.

280 Section 4. Subsection (10) of section 287.064, Florida

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281 Statutes, is amended to read:

282 287.064 Consolidated financing of deferred-payment
283 purchases.--

284 (10) Costs incurred pursuant to a guaranteed ~~energy~~
285 performance savings contract, including the cost of energy,
286 water, or wastewater efficiency and conservation measures, each
287 as defined in s. 489.145, may be financed pursuant to a master
288 equipment financing agreement; however, the costs of training,
289 operation, and maintenance may not be financed. The period of
290 time for repayment of the funds drawn pursuant to the master
291 equipment financing agreement under this subsection may exceed 5
292 years but may not exceed 10 years.

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