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	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Bennett moved the following amendment:

Senate Amendment (with title amendment)

On page 2, between lines 9 & 10,

insert:

Section 26. 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 conservation measures in agency facilities can reduce the amount of energy consumed and produce immediate and long-term savings. It is the policy of this state to encourage agencies to invest in energy conservation measures ~~that reduce energy consumption, produce a cost savings for the agency, and improve the quality of indoor air in public facilities and to operate, maintain, and, when economically feasible, build or renovate existing agency~~

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1 ~~facilities in such a manner as~~ to minimize energy consumption
 2 and maximize energy savings. It is further the policy of this
 3 state to encourage agencies to reinvest any energy savings
 4 resulting from energy conservation measures in additional
 5 energy conservation efforts.

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

7 (a) "Agency" means the state, a municipality, or a
8 political subdivision.

9 (b) "Energy conservation measure" means a ~~training~~
 10 ~~program,~~ facility alteration, or an equipment purchase to be
 11 used in new construction, including an addition to an existing
 12 facility, which reduces energy or energy-related operating
 13 costs and includes, but is not limited to:

14 1. Insulation of the facility structure and systems
15 within the facility.

16 2. Storm windows and doors, caulking or
 17 weatherstripping, multiglazed windows and doors,
 18 heat-absorbing, or heat-reflective, glazed and coated window
 19 and door systems, additional glazing, reductions in glass
 20 area, and other window and door system modifications that
 21 reduce energy consumption.

22 3. Automatic energy control systems.

23 4. Heating, ventilating, or air-conditioning system
24 modifications or replacements.

25 5. Replacement or modifications of lighting fixtures
 26 to increase the energy efficiency of the lighting system,
 27 which, at a minimum, must conform to the applicable state or
 28 local building code.

29 6. Energy recovery systems.

30 7. Cogeneration systems that produce steam or forms of
31 energy such as heat, as well as electricity, for use primarily

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1 within a facility or complex of facilities.

2 8. Energy conservation measures that reduce Btu, kW,
3 or kWh consumed or provide long-term operating cost reductions
4 ~~or significantly reduce Btu consumed.~~

5 9. Renewable energy systems, such as solar, biomass,
6 or wind systems.

7 10. Devices that reduce water consumption or sewer
8 charges.

9 11. Storage systems, such as fuel cells and thermal
10 storage.

11 12. Generating technologies, such as microturbines.

12 13. Any other repair, replacement, or upgrade of
13 existing equipment.

14 (c) "Energy cost savings" means a measured reduction
15 in the cost of fuel, energy consumption, and stipulated
16 operation and maintenance created from the implementation of
17 one or more energy conservation measures when compared with an
18 established baseline for the previous cost of fuel, energy
19 consumption, and stipulated operation and maintenance.

20 (d) "Guaranteed energy performance savings contract"
21 means a contract for the evaluation, recommendation, and
22 implementation of energy conservation measures or
23 energy-related operational saving measures, which, at a
24 minimum, shall include:

25 1. The design and installation of equipment to
26 implement one or more of such measures and, if applicable,
27 operation and maintenance of such measures.

28 2. The amount of any actual annual savings that meet
29 or exceed total annual contract payments made by the agency
30 for the contract and may include allowable cost avoidance. As
31 used in this section, allowable cost avoidance calculations

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1 include, but are not limited to, avoided provable budgeted
2 costs contained in a capital replacement plan less the current
3 undepreciated value of replaced equipment and the replacement
4 cost of the new equipment.

5 3. The finance charges incurred by the agency over the
6 life of the contract.

7 (e) "Guaranteed energy performance savings contractor"
8 means a person or business that is licensed under chapter 471,
9 chapter 481, or this chapter, and is experienced in the
10 analysis, design, implementation, or installation of energy
11 conservation measures through energy performance contracts.

12 (4) PROCEDURES.--

13 (a) An agency may enter into a guaranteed energy
14 performance savings contract with a guaranteed energy
15 performance savings contractor to ~~significantly~~ reduce energy
16 consumption or energy-related operating costs of an agency
17 facility through one or more energy conservation measures.

18 (b) Before design and installation of energy
19 conservation measures, the agency must obtain from a
20 guaranteed energy performance savings contractor a report that
21 summarizes the costs associated with the energy conservation
22 measures or energy-related operational cost saving measures
23 and provides an estimate of the amount of the ~~energy~~ cost
24 savings. The agency and the guaranteed energy performance
25 savings contractor may enter into a separate agreement to pay
26 for costs associated with the preparation and delivery of the
27 report; however, payment to the contractor shall be contingent
28 upon the report's projection of energy or operational cost
29 savings being equal to or greater than the total projected
30 costs of the design and installation of the report's energy
31 conservation measures.

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1 (c) The agency may enter into a guaranteed energy
2 performance savings contract with a guaranteed energy
3 performance savings contractor if the agency finds that the
4 amount the agency would spend on the energy conservation or
5 energy-related cost saving measures will not likely exceed the
6 amount of the energy or energy-related cost savings for up to
7 20 years from the date of installation, based on the life
8 cycle cost calculations provided in s. 255.255, if the
9 recommendations in the report were followed and if the
10 qualified provider or providers give a written guarantee that
11 the energy or energy-related cost savings will meet or exceed
12 the costs of the system. However, actual computed cost savings
13 must meet or exceed the estimated cost savings provided in
14 program approval. Baseline adjustments used in calculations
15 must be specified in the contract. The contract may provide
16 for installment payments for a period not to exceed 20 years.

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

23 (e) Before entering into a guaranteed energy
24 performance savings contract, an agency must provide published
25 notice of the meeting in which it proposes to award the
26 contract, the names of the parties to the proposed contract,
27 and the contract's purpose.

28 (f) A guaranteed energy performance savings contract
29 may provide for financing, including tax exempt financing, by
30 a third party. The contract for third party financing may be
31 separate from the energy performance contract. A separate

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1 contract for third party financing pursuant to this paragraph
 2 must include a provision that the third party financier must
 3 not be granted rights or privileges that exceed the rights and
 4 privileges available to the guaranteed energy performance
 5 savings contractor.

6 (g) Financing for guaranteed energy performance
 7 savings contracts may be provided under the authority of s.
 8 287.064.

9 (h) The Office of the Chief Financial Officer shall
 10 review proposals to ensure that the most effective financing
 11 is being used.

12 (i)(g) In determining the amount the agency will
 13 finance to acquire the energy conservation measures, the
 14 agency may reduce such amount by the application of any grant
 15 moneys, rebates, or capital funding available to the agency
 16 for the purpose of buying down the cost of the guaranteed
 17 energy performance savings contract. However, in calculating
 18 the life cycle cost as required in paragraph (c), the agency
 19 shall not apply any grants, rebates, or capital funding.

20 (5) CONTRACT PROVISIONS.--

21 (a) A guaranteed energy performance savings contract
 22 must include a written guarantee that may include, but is not
 23 limited to the form of, a letter of credit, insurance policy,
 24 or corporate guarantee by the guaranteed energy performance
 25 savings contractor that annual energy cost savings will meet
 26 or exceed the amortized cost of energy conservation measures.

27 (b) The guaranteed energy performance savings contract
 28 must provide that all payments, except obligations on
 29 termination of the contract before its expiration, may be made
 30 over time, but not to exceed 20 years from the date of
 31 complete installation and acceptance by the agency, and that

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1 the annual savings are guaranteed to the extent necessary to
2 make annual payments to satisfy the guaranteed energy
3 performance savings contract.

4 (c) The guaranteed energy performance savings contract
5 must require that the guaranteed energy performance savings
6 contractor to whom the contract is awarded provide a
7 100-percent public construction bond to the agency for its
8 faithful performance, as required by s. 255.05.

9 (d) The guaranteed energy performance savings contract
10 may contain a provision allocating to the parties to the
11 contract any annual energy cost savings that exceed the amount
12 of the energy cost savings guaranteed in the contract.

13 (e) The guaranteed energy performance savings contract
14 shall require the guaranteed energy performance savings
15 contractor to provide to the agency an annual reconciliation
16 of the guaranteed energy or energy-related cost savings. If
17 the reconciliation reveals a shortfall in annual energy or
18 energy-related cost savings, the guaranteed energy performance
19 savings contractor is liable for such shortfall. If the
20 reconciliation reveals an excess in annual ~~energy~~ cost
21 savings, the excess savings may be allocated under paragraph
22 (d) but may not be used to cover potential energy cost savings
23 shortages in subsequent contract years.

24 (f) The guaranteed energy performance savings contract
25 must provide for payments of not less than one-twentieth of
26 the price to be paid within 2 years from the date of the
27 complete installation and acceptance by the agency using
28 straight-line amortization for the term of the loan, and the
29 remaining costs to be paid at least quarterly, not to exceed a
30 20-year term, based on life cycle cost calculations.

31 (g) The guaranteed energy performance savings contract

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1 may extend beyond the fiscal year in which it becomes
 2 effective; however, the term of any contract expires at the
 3 end of each fiscal year and may be automatically renewed
 4 annually for up to 20 years, subject to the agency making
 5 sufficient annual appropriations based upon continued realized
 6 energy savings.

7 (h) The guaranteed energy performance savings contract
 8 must stipulate that it does not constitute a debt, liability,
 9 or obligation of the state.

10 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
 11 Department of Management Services, with the assistance of the
 12 Office of the Chief Financial Officer, shall ~~may~~, within
 13 available resources, provide technical content assistance to
 14 state agencies contracting for energy conservation measures
 15 and engage in other activities considered appropriate by the
 16 department for promoting and facilitating guaranteed energy
 17 performance contracting by state agencies. The Office of the
 18 Chief Financial Officer, with the assistance of the Department
 19 of Management Services, shall ~~may, within available resources,~~
 20 develop model contractual and related documents for use by
 21 state agencies. Prior to entering into a guaranteed energy
 22 performance savings contract, any contract or lease for
 23 third-party financing, or any combination of such contracts, a
 24 state agency shall submit such proposed contract or lease to
 25 the Office of the Chief Financial Officer for review and
 26 approval. A proposed contract or lease shall include:

27 (a) Supporting information required by s.
 28 216.023(4)(a)9.

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

31 (c) Approval by the agency head or his or her

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1 designee.

2 (d) An agency measurement and verification plan to
3 monitor costs savings.

4 (7) FUNDING SUPPORT.--For purposes of consolidated
5 financing of deferred payment commodity contracts under this
6 section by a state agency, any such contract must be supported
7 from available recurring funds appropriated to the agency in
8 an appropriation category, as defined in chapter 216, that the
9 Chief Financial Officer has determined is appropriate or that
10 the Legislature has designated for payment of the obligation
11 incurred under this section.

12
13 The Office of the Chief Financial Officer may not approve any
14 contract submitted under this section that does not meet the
15 requirements of this section.

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18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 On page 1, line 12, after the semicolon,

21
22 insert:

23 amending s. 489.145, F.S.; revising provisions
24 relating to guaranteed energy performance
25 savings contracting to include energy
26 consumption and energy-related operational
27 savings; revising provisions for the financing
28 of guaranteed energy performance savings
29 contracts; revising criteria for proposed
30 contracts; revising program administration and
31 contract review provisions; requiring that

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1 consolidated financing of deferred payment
2 commodity contracts be secured by certain
3 funds; requiring the Chief Financial Officer to
4 review proposed guaranteed energy performance
5 savings contracts;
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