

Bill No. PCS (705990) for SB 996

Barcode 104320

CHAMBER ACTION

Senate

House

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Comm: RCS
03/29/2007 11:40 AM

.
. .
. .
. .
. .
. .

The Committee on Communications and Public Utilities (Bennett)
recommended the following amendment:

Senate Amendment (with title amendment)

On page 58, between lines 3 & 4

insert:

Section 25. Subsection (5) is added to section
255.252, Florida Statutes, to read:

255.252 Findings and intent.--

(5) Each state agency must identify and compile a list
of all state-owned buildings within its inventory which would
be suitable to consider for a guaranteed energy-performance
savings contract pursuant to s. 489.145. Such list shall be
submitted to the Department of Management Services by December
31, 2007, and shall include all facilities over 5,000 square
feet in area for which the agency pays for the expenses of
utilities and other operating expenses as they relate to
energy use. In consultation with each department secretary or
director, by March 1, 2008, the Department of Management
Services shall evaluate each agency's facilities found

Bill No. PCS (705990) for SB 996

Barcode 104320

1 suitable for energy conservation projects, and shall develop
 2 an energy efficiency project schedule based on factors such as
 3 project magnitude, efficiency and effectiveness of energy
 4 conservation measures to be implemented, and other factors
 5 that may be advantageous to pursue. Such schedule shall
 6 provide the deadline for guaranteed energy-performance savings
 7 contract improvements to be made to the state-owned buildings.

8 Section 26. Paragraph (b) of subsection (2) and
 9 subsection (5) of section 287.063, Florida Statutes, are
 10 amended to read:

11 287.063 Deferred-payment commodity contracts; preaudit
 12 review.--

13 (b) The Chief Financial Officer shall establish, by
 14 rule, criteria for approving purchases made under
 15 deferred-payment contracts which require the payment of
 16 interest. Criteria shall include, but not be limited to, the
 17 following provisions:

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

28 2. No deferred-payment purchase for less than \$30,000
 29 shall be approved, unless it can be satisfactorily
 30 demonstrated and documented to the Chief Financial Officer
 31 that failure to make such deferred-payment purchase would

Bill No. PCS (705990) for SB 996

Barcode 104320

1 adversely affect an agency in the performance of its duties.
 2 However, the Chief Financial Officer may approve any
 3 deferred-payment purchase if the Chief Financial Officer
 4 determines that such purchase is economically beneficial to
 5 the state.

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

13 3.4. No contract shall be approved which extends
 14 payment beyond 5 years, unless it can be satisfactorily
 15 demonstrated and documented to the Chief Financial Officer
 16 that failure to make such deferred-payment purchase would
 17 adversely affect an agency in the performance of its duties.
 18 The payment term may not extend beyond the anticipated useful
 19 life of the equipment financed.

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

28 Section 27. Subsections (10) and (11) of section
 29 287.064, Florida Statutes, are amended to read:

30 287.064 Consolidated financing of deferred-payment
 31 purchases.--

Bill No. PCS (705990) for SB 996

Barcode 104320

1 (10) Energy-related or conservation-related equipment,
2 including, but not limited to, that purchased as part of ~~Costs~~
3 incurred pursuant to a guaranteed energy performance savings
4 contract, including the cost of energy conservation ~~measures,~~
5 ~~each~~ as defined in s. 489.145, may be financed pursuant to a
6 master equipment financing agreement; however, the costs of
7 training, operation, and maintenance may not be financed. The
8 period of time for repayment of the funds drawn pursuant to
9 the master equipment financing agreement under this subsection
10 may exceed 5 years but may not exceed 20 ~~10~~ years for energy
11 conservation measures pursuant to s. 489.145. The payment term
12 may not extend beyond the anticipated useful life of the
13 equipment financed.

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

23 Section 28. Section 489.145, Florida Statutes, is
24 amended to read:

25 489.145 Guaranteed energy performance savings
26 contracting.--

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

29 (2) LEGISLATIVE FINDINGS.--The Legislature finds that
30 investment in energy conservation measures in agency
31 facilities can reduce the amount of energy consumed and

Bill No. PCS (705990) for SB 996

Barcode 104320

1 produce immediate and long-term savings. It is the policy of
2 this state to encourage agencies to invest in energy
3 conservation measures that reduce energy consumption, produce
4 a cost savings for the agency, and improve the quality of
5 indoor air in public facilities and to operate, maintain, and,
6 when economically feasible, build or renovate existing agency
7 facilities in such a manner as to minimize energy consumption
8 and maximize energy savings. It is further the policy of this
9 state to encourage agencies to reinvest any energy savings
10 resulting from energy conservation measures in additional
11 energy conservation efforts.

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

13 (a) "Agency" means the state, a municipality, or a
14 political subdivision.

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

20 1. Insulation of the facility structure and systems
21 within the facility.

22 2. Storm windows and doors, caulking or
23 weatherstripping, multiglazed windows and doors,
24 heat-absorbing, or heat-reflective, glazed and coated window
25 and door systems, additional glazing, reductions in glass
26 area, and other window and door system modifications that
27 reduce energy consumption.

28 3. Automatic energy control systems.

29 4. Heating, ventilating, or air-conditioning system
30 modifications or replacements.

31 5. Replacement or modifications of lighting fixtures

Bill No. PCS (705990) for SB 996

Barcode 104320

1 to increase the energy efficiency of the lighting system,
2 which, at a minimum, must conform to the applicable state or
3 local building code.

4 6. Energy recovery systems.

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

8 8. Energy conservation measures that reduce Btu/KW
9 consumed and provide long-term operating cost reductions ~~or~~
10 ~~significantly reduce Btu consumed.~~

11 9. Renewable energy systems, such as solar, biomass,
12 or wind systems.

13 10. Devices that reduce water consumption or sewer
14 charges.

15 11. Storage systems, such as fuel cells and thermal
16 storage.

17 12. Generating technologies, such as microturbines.

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

20 (c) "Energy cost savings" means a measured reduction
21 in the cost of fuel, energy consumption, and stipulated
22 operation and maintenance created from the implementation of
23 one or more energy conservation measures when compared with an
24 established baseline for the previous cost of fuel, energy
25 consumption, and stipulated operation and maintenance.

26 (d) "Guaranteed energy performance savings contract"
27 means a contract for the evaluation, recommendation, and
28 implementation of energy conservation measures or
29 energy-related operational savings measures, which, at a
30 minimum, shall include:

31 1. The design and installation of equipment to

Bill No. PCS (705990) for SB 996

Barcode 104320

1 implement one or more of such measures and, if applicable,
2 operation and maintenance of such measures.

3 2. The amount of any actual annual savings that meet
4 or exceed total annual contract payments made by the agency
5 for the contract and may include allowable cost avoidance. As
6 used in this section, allowable cost-avoidance calculations
7 include, but are not limited to, provable budgeted costs
8 avoided and contained in a capital replacement plan and the
9 current undepreciated value of replaced equipment subtracted
10 from the replacement cost of the new equipment.

11 3. The finance charges incurred by the agency over the
12 life of the contract.

13 (e) "Guaranteed energy performance savings contractor"
14 means a person or business that is licensed under chapter 471,
15 chapter 481, or this chapter, and is experienced in the
16 analysis, design, implementation, or installation of energy
17 conservation measures through energy performance contracts.

18 (4) PROCEDURES.--

19 (a) An agency may enter into a guaranteed energy
20 performance savings contract with a guaranteed energy
21 performance savings contractor to ~~significantly~~ reduce energy
22 consumption or energy-related operating costs of an agency
23 facility through one or more energy conservation measures.

24 (b) Before design and installation of energy
25 conservation measures, the agency must obtain from a
26 guaranteed energy performance savings contractor a report that
27 summarizes the costs associated with the energy conservation
28 measures or energy-related operational cost savings measures
29 and provides an estimate of the amount of the ~~energy~~ cost
30 savings. The agency and the guaranteed energy performance
31 savings contractor may enter into a separate agreement to pay

Bill No. PCS (705990) for SB 996

Barcode 104320

1 for costs associated with the preparation and delivery of the
 2 report; however, payment to the contractor shall be contingent
 3 upon the report's projection of energy or operational cost
 4 savings being equal to or greater than the total projected
 5 costs of the design and installation of the report's energy
 6 conservation measures.

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

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

29 (e) Before entering into a guaranteed energy
 30 performance savings contract, an agency must provide published
 31 notice of the meeting in which it proposes to award the

Bill No. PCS (705990) for SB 996

Barcode 104320

1 contract, the names of the parties to the proposed contract,
2 and the contract's purpose.

3 (f) A guaranteed energy performance savings contract
4 may provide for financing, including tax exempt financing, by
5 a third party. The contract for third party financing may be
6 separate from the energy performance contract. A separate
7 contract for third party financing pursuant to this paragraph
8 must include a provision that the third party financier must
9 not be granted rights or privileges that exceed the rights and
10 privileges available to the guaranteed energy performance
11 savings contractor.

12 (g) Financing for guaranteed energy performance
13 savings contracts may be provided under the authority of s.
14 287.064.

15 (h)(g) In determining the amount the agency will
16 finance to acquire the energy conservation measures, the
17 agency may reduce such amount by the application of any grant
18 moneys, rebates, or capital funding available to the agency
19 for the purpose of buying down the cost of the guaranteed
20 energy performance savings contract. However, in calculating
21 the life cycle cost as required in paragraph (c), the agency
22 shall not apply any grants, rebates, or capital funding. The
23 Office of the Chief Financial Officer shall review proposals
24 to ensure that the most effective financing is being used.

25 (5) CONTRACT PROVISIONS.--

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

Bill No. PCS (705990) for SB 996

Barcode 104320

1 (b) The guaranteed energy performance savings contract
2 must provide that all payments, except obligations on
3 termination of the contract before its expiration, may be made
4 over time, but not to exceed 20 years from the date of
5 complete installation and acceptance by the agency, and that
6 the annual savings are guaranteed to the extent necessary to
7 make annual payments to satisfy the guaranteed energy
8 performance savings contract.

9 (c) The guaranteed energy performance savings contract
10 must require that the guaranteed energy performance savings
11 contractor to whom the contract is awarded provide a
12 100-percent public construction bond to the agency for its
13 faithful performance, as required by s. 255.05.

14 (d) The guaranteed energy performance savings contract
15 may contain a provision allocating to the parties to the
16 contract any annual energy cost savings that exceed the amount
17 of the energy cost savings guaranteed in the contract.

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

29 (f) The guaranteed energy performance savings contract
30 must provide for payments of not less than one-twentieth of
31 the price to be paid within 2 years from the date of the

Bill No. PCS (705990) for SB 996

Barcode 104320

1 complete installation and acceptance by the agency using
2 straight-line amortization for the term of the loan, and the
3 remaining costs to be paid at least quarterly, not to exceed a
4 20-year term, based on life cycle cost calculations.

5 (g) The guaranteed energy performance savings contract
6 may extend beyond the fiscal year in which it becomes
7 effective; however, the term of any contract expires at the
8 end of each fiscal year and may be automatically renewed
9 annually for up to 20 years, subject to the agency making
10 sufficient annual appropriations based upon continued realized
11 energy savings.

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

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

Bill No. PCS (705990) for SB 996

Barcode 104320

1 (a) Supporting information required by s.

2 216.023(4)(a)9.

3 (b) Documentation supporting recurring funds

4 requirements in ss. 287.063(5) and 287.064(11).

5 (c) Approval by agency head or designee.

6 (d) An agency measurement and verification plan to

7 monitor costs savings.

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 or which he or she finds not

12 fiscally prudent for the state.

13

14 (Redesignate subsequent sections.)

15

16

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

18 And the title is amended as follows:

19 On page 4, line 10, after the semicolon

20

21 insert:

22 amending s. 255.252, F.S.; requiring an

23 inventory of state-owned buildings and an

24 energy efficiency project schedule for

25 guaranteed energy-performance savings contract

26 improvements; amending s. 287.063, F.S.;

27 requiring that the term of payment for

28 consolidated equipment finance contracts may

29 not extend beyond the anticipated useful life

30 of the equipment financed; deleting the

31 requirement that the Chief Financial Officer

Bill No. PCS (705990) for SB 996

Barcode 104320

1 establish criteria that prohibits a state
2 agency from obligating an annualized amount of
3 payments for certain deferred payment
4 purchases; amending s. 287.064, F.S.; extending
5 the period of time allowed for repayment of
6 funds under the guaranteed energy-performance
7 savings contract; amending s. 489.145, F.S.;
8 clarifying certain definitions; providing
9 additional requirements for a state agency to
10 enter into a guaranteed energy-performance
11 savings contract; providing for financing of
12 contracts related to guaranteed
13 energy-performance savings; requiring the
14 Department of Financial Services to review
15 proposals to ensure that the most effective
16 financing is used; requiring the Office of the
17 Chief Financial Officer to develop model
18 contractual and related documents; requiring
19 that contracts or leases submitted by a state
20 agency to the Office of Chief Financial Officer
21 meet certain criteria; providing an effective
22 date.

23
24
25
26
27
28
29
30
31