

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 ~~construction, including an addition to an~~  
 49 | ~~existing facility, which~~ reduces energy, water, wastewater, or  
 50 | 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. Energy storage systems, such as fuel cells and thermal  
76 storage.
- 77 12. Energy-generating ~~generating~~ technologies, such as  
78 microturbines.
- 79 13. Cool roof coating.
- 80 14. Automated electronic or remotely controlled systems or  
81 measures that reduce direct personnel costs.
- 82 15. Equipment upgrades that improve the accuracy of  
83 billable revenue-generating systems.
- 84 16.~~13.~~ Any other repair, replacement, or upgrade of

85 existing equipment.

86 17. Any other conservation measures that provide  
 87 measurable operating cost reductions or billable revenue  
 88 increases.

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, ~~7~~ 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 guaranteed energy  
 163 performance savings contract. A separate contract for third-  
 164 party ~~third party~~ financing must include a provision that the  
 165 third-party ~~third party~~ financier must not be granted rights or  
 166 privileges that exceed the rights and privileges available to  
 167 the 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.

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 savings contracting by state  
 237 agencies. The Office of the Chief Financial Officer, with the  
 238 assistance of the Department of Management Services, may, within  
 239 available resources, develop model contractual and related  
 240 documents for use by state agencies. Prior to entering into a  
 241 guaranteed ~~energy~~ performance savings contract, any contract or  
 242 lease for third-party financing, or any combination of such  
 243 contracts, a state agency shall submit such proposed contract or  
 244 lease to the Office of the Chief Financial Officer for review  
 245 and approval.

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

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

250 (10) Costs incurred pursuant to a guaranteed ~~energy~~  
 251 performance savings contract, including the cost of energy,  
 252 water, or wastewater efficiency and conservation measures, ~~each~~

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253 as defined in s. 489.145, may be financed pursuant to a master  
254 equipment financing agreement; however, the costs of training,  
255 operation, and maintenance may not be financed. The period of  
256 time for repayment of the funds drawn pursuant to the master  
257 equipment financing agreement under this subsection may exceed 5  
258 years but may not exceed 10 years.

259 Section 3. This act shall take effect July 1, 2008.