

1 A bill to be entitled
 2 An act relating to contracting for efficiency or
 3 conservation measures by state agencies; amending s.
 4 489.145, F.S.; including water and wastewater efficiency
 5 and conservation in the measures encouraged by the
 6 Legislature; revising definitions; providing for inclusion
 7 of water and wastewater efficiency and conservation
 8 measures in guaranteed performance savings contracts
 9 entered into by state agencies, municipalities, or
 10 political subdivisions; requiring the Department of
 11 Management Services to adopt specified rules relating to
 12 guaranteed performance savings contractors; amending s.
 13 287.064, F.S., relating to consolidated financing of
 14 deferred-payment purchases, to conform; providing an
 15 effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 489.145, Florida Statutes, is amended
 20 to read:

21 489.145 Guaranteed ~~energy~~ performance savings
 22 contracting.--

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

25 (2) LEGISLATIVE FINDINGS.--The Legislature finds that
 26 investment in energy, water, and wastewater efficiency or
 27 conservation measures in agency facilities can reduce the amount
 28 of energy and water consumed and wastewater to be treated and

29 produce immediate and long-term savings. It is the policy of
 30 this state to encourage each agency ~~agencies~~ to invest in
 31 energy, water, and wastewater efficiency or conservation
 32 measures that provide such reductions ~~reduce energy consumption,~~
 33 produce a cost savings for the agency, and, for energy measures,
 34 improve the quality of indoor air in public facilities and to
 35 operate, maintain, and, when economically feasible, build or
 36 renovate existing agency facilities in such a manner as to
 37 minimize energy and water consumption and wastewater production
 38 and maximize energy, water, and wastewater savings. It is
 39 further the policy of this state to encourage each agency
 40 ~~agencies~~ to reinvest any ~~energy~~ savings resulting from energy,
 41 water, and wastewater efficiency or conservation measures in
 42 additional energy, water, and wastewater efficiency or
 43 conservation measures ~~efforts~~.

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

45 (a) "Agency" means the state, a municipality, or a
 46 political subdivision.

47 (b) "Energy, water, or wastewater efficiency or
 48 conservation measure" means a training program, facility
 49 alteration, or equipment purchase to be used in new facilities
 50 or in retrofitting or adding to existing facilities or
 51 infrastructure that ~~construction, including an addition to an~~
 52 ~~existing facility, which~~ reduces energy, water, wastewater, or
 53 operating costs and includes, but is not limited to:

54 1. Insulation of the facility structure and systems within
 55 the facility.

56 2. Storm windows and doors, caulking or weatherstripping,

57 multiglazed windows and doors, heat-absorbing, or heat-
58 reflective, glazed and coated window and door systems,
59 additional glazing, reductions in glass area, and other window
60 and door system modifications that reduce energy consumption.

61 3. Automatic energy control systems.

62 4. Heating, ventilating, or air-conditioning system
63 modifications or replacements.

64 5. Replacement or modifications of lighting fixtures to
65 increase the energy efficiency of the lighting system, which, at
66 a minimum, must conform to the applicable state or local
67 building code.

68 6. Energy recovery systems.

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

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

74 9. Renewable energy systems, such as solar, biomass, or
75 wind systems.

76 10. Devices that reduce water consumption or wastewater
77 ~~sewer~~ charges.

78 11. Energy storage systems, such as fuel cells and thermal
79 storage.

80 12. Energy-generating ~~generating~~ technologies, such as
81 microturbines.

82 13. Cool roof coating.

83 14. Automated electronic or remotely controlled systems or
84 measures that reduce direct personnel costs.

85 15. Equipment upgrades that improve the accuracy of
 86 billable revenue-generating systems.

87 ~~16.13.~~ Any other repair, replacement, or upgrade of
 88 existing equipment.

89 17. Any other conservation measures that provide
 90 measurable operating cost reductions or billable revenue
 91 increases.

92 (c) "Energy, water, or wastewater cost savings" means a
 93 measured reduction in the cost of fuel, energy or water
 94 consumption, or wastewater production and stipulated improvement
 95 in the operation and maintenance created from the implementation
 96 of one or more energy, water, or wastewater efficiency or
 97 conservation measures when compared with an established baseline
 98 for the previous cost of fuel, energy or water consumption, or
 99 wastewater production and stipulated operation and maintenance.

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

104 1. The design and installation of equipment to implement
 105 one or more of such measures and, if applicable, operation and
 106 maintenance of such measures.

107 2. The amount of any actual annual savings that meet or
 108 exceed total annual contract payments made by the agency for the
 109 contract.

110 3. The finance charges incurred by the agency over the
 111 life of the contract.

112 (e) "Guaranteed ~~energy~~ performance savings contractor"

113 means a person or business that is licensed under chapter 471,
114 chapter 481, or this chapter, and is experienced in the
115 analysis, design, implementation, or installation of energy,
116 water, or wastewater efficiency or conservation measures through
117 guaranteed energy performance savings contracts.

118 (4) PROCEDURES.--

119 (a) An agency may enter into a guaranteed ~~energy~~
120 performance savings contract with a guaranteed ~~energy~~
121 performance savings contractor to significantly reduce energy,
122 water, or wastewater or operating costs of an agency facility
123 through one or more energy, water, or wastewater efficiency or
124 conservation measures.

125 (b) Before design and installation of energy, water, or
126 wastewater efficiency and conservation measures, the agency must
127 obtain from a guaranteed ~~energy~~ performance savings contractor a
128 report that summarizes the costs associated with the ~~energy~~
129 ~~conservation~~ measures and provides an estimate of the amount of
130 the associated energy cost savings or operational improvements.
131 The agency and the guaranteed ~~energy~~ performance savings
132 contractor may enter into a separate agreement to pay for costs
133 associated with the preparation and delivery of the report;
134 however, payment to the contractor shall be contingent upon the
135 report's projection of ~~energy~~ cost savings being equal to or
136 greater than the total projected costs of the design and
137 installation of the report's ~~energy~~ conservation or efficiency
138 measures.

139 (c) The agency may enter into a guaranteed ~~energy~~
140 performance savings contract with a guaranteed ~~energy~~

141 performance savings contractor if the agency finds that the
 142 amount the agency would spend on the ~~energy~~ conservation or
 143 efficiency measures will not likely exceed the amount of the
 144 associated ~~energy~~ cost savings for up to 20 years from the date
 145 of installation, based on the life cycle cost calculations
 146 provided in s. 255.255, if the recommendations in the report
 147 were followed and if the qualified provider or providers give a
 148 written guarantee that such ~~the energy~~ cost savings will meet or
 149 exceed the costs of the system. The contract may provide for
 150 installment payments for a period not to exceed 20 years.

151 (d) A guaranteed ~~energy~~ performance savings contractor
 152 must be selected in compliance with s. 287.055, ~~7~~ except that if
 153 fewer than three firms are qualified to perform the required
 154 services, the requirement for agency selection of three firms,
 155 as provided in s. 287.055(4)(b), and the bid requirements of s.
 156 287.057 do not apply.

157 (e) Before entering into a guaranteed ~~energy~~ performance
 158 savings contract, an agency must provide published notice of the
 159 meeting in which it proposes to award the contract, the names of
 160 the parties to the proposed contract, and the contract's
 161 purpose.

162 (f) A guaranteed ~~energy~~ performance savings contract may
 163 provide for financing, including tax-exempt financing, by a
 164 third party. The contract for third-party ~~third party~~ financing
 165 may be separate from the guaranteed energy performance savings
 166 contract. A separate contract for third-party ~~third party~~
 167 financing must include a provision that the third-party ~~third~~
 168 ~~party~~ financier must not be granted rights or privileges that

169 exceed the rights and privileges available to the guaranteed
170 ~~energy~~ performance savings contractor.

171 (g) In determining the amount the agency will finance to
172 acquire the efficiency or ~~energy~~ conservation measures, the
173 agency may reduce such amount by the application of any grant
174 moneys, rebates, or capital funding available to the agency for
175 the purpose of buying down the cost of the guaranteed ~~energy~~
176 performance savings contract. However, in calculating the life
177 cycle cost as required in paragraph (c), the agency shall not
178 apply any grants, rebates, or capital funding.

179 (5) CONTRACT PROVISIONS.--

180 (a) A guaranteed ~~energy~~ performance savings contract must
181 include a written guarantee that may include, but is not limited
182 to the form of, a letter of credit, insurance policy, or
183 corporate guarantee by the guaranteed ~~energy~~ performance savings
184 contractor that annual associated ~~energy~~ cost savings will meet
185 or exceed the amortized cost of the efficiency or ~~energy~~
186 conservation measures.

187 (b) The guaranteed ~~energy~~ performance savings contract
188 must provide that all payments, except obligations on
189 termination of the contract before its expiration, may be made
190 over time, but not to exceed 20 years from the date of complete
191 installation and acceptance by the agency, and that the annual
192 savings are guaranteed to the extent necessary to make annual
193 payments to satisfy the guaranteed ~~energy~~ performance savings
194 contract.

195 (c) The guaranteed ~~energy~~ performance savings contract
196 must require that the guaranteed ~~energy~~ performance savings

197 contractor to whom the contract is awarded provide a 100-percent
198 public construction bond to the agency for its faithful
199 performance, as required by s. 255.05.

200 (d) The guaranteed ~~energy~~ performance savings contract may
201 contain a provision allocating to the parties to the contract
202 any annual associated ~~energy~~ cost savings that exceed the amount
203 of the associated ~~energy~~ cost savings guaranteed in the
204 contract.

205 (e) The guaranteed ~~energy~~ performance savings contract
206 shall require the guaranteed ~~energy~~ performance savings
207 contractor to provide to the agency an annual reconciliation of
208 the guaranteed associated ~~energy~~ cost savings. If the
209 reconciliation reveals a shortfall in such annual ~~energy~~ cost
210 savings, the guaranteed ~~energy~~ performance savings contractor is
211 liable for such shortfall. If the reconciliation reveals an
212 excess in such annual ~~energy~~ cost savings, the excess savings
213 may be allocated under paragraph (d) but may not be used to
214 cover potential ~~energy~~ cost savings shortages in subsequent
215 contract years.

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

222 (g) The guaranteed ~~energy~~ performance savings contract may
223 extend beyond the fiscal year in which it becomes effective;
224 however, the term of any contract expires at the end of each

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225 fiscal year and may be automatically renewed annually for up to
226 20 years, subject to the agency making sufficient annual
227 appropriations based upon continued realized energy, water, or
228 wastewater savings.

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

232 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
233 Department of Management Services, with the assistance of the
234 Office of the Chief Financial Officer, may, within available
235 resources, provide technical assistance to state agencies
236 contracting for energy, water, or wastewater efficiency or
237 conservation measures and engage in other activities considered
238 appropriate by the department for promoting and facilitating
239 guaranteed ~~energy~~ performance savings contracting by state
240 agencies. The Office of the Chief Financial Officer, with the
241 assistance of the Department of Management Services, may, within
242 available resources, develop model contractual and related
243 documents for use by state agencies. Prior to entering into a
244 guaranteed ~~energy~~ performance savings contract, any contract or
245 lease for third-party financing, or any combination of such
246 contracts, a state agency shall submit such proposed contract or
247 lease to the Office of the Chief Financial Officer for review
248 and approval.

249 (7) RULES.--The Department of Management Services shall
250 adopt rules to define the experience qualifications of
251 guaranteed performance savings contractors.

252 Section 2. Subsection (10) of section 287.064, Florida

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253 Statutes, is amended to read:

254 287.064 Consolidated financing of deferred-payment
255 purchases.--

256 (10) Costs incurred pursuant to a guaranteed ~~energy~~
257 performance savings contract, including the cost of energy,
258 water, or wastewater efficiency and conservation measures, each
259 as defined in s. 489.145, may be financed pursuant to a master
260 equipment financing agreement; however, the costs of training,
261 operation, and maintenance may not be financed. The period of
262 time for repayment of the funds drawn pursuant to the master
263 equipment financing agreement under this subsection may exceed 5
264 years but may not exceed 10 years.

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