

1 A bill to be entitled

2 An act relating to the Guaranteed Energy, Water, and
3 Wastewater Performance Savings Contracting Act;
4 amending s. 489.145, F.S.; revising the terms
5 "agency," "energy, water, and wastewater efficiency
6 and conservation measure," and "energy, water, or
7 wastewater cost savings"; providing that a contract
8 may provide for repayments to a lender of an
9 installation construction loan in installments for a
10 period not to exceed 20 years; requiring a contract to
11 provide that repayments to a lender of an installation
12 construction loan may be made over time, not to exceed
13 20 years from a certain date; requiring a contract to
14 provide for a certain amount of repayment to the
15 lender of the installation construction loan within 2
16 years after a specified date; authorizing certain
17 facility alterations to be included in a performance
18 contract and to be supervised by the performance
19 savings contractor; limiting the time allotted to the
20 Office of the Chief Financial Officer to review and
21 approve an agency's guaranteed energy, water, and
22 wastewater performance savings contract; requiring
23 that a proposed contract or lease include an
24 investment-grade audit certified by the Department of
25 Management Services with specified findings;
26 conforming language; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:

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 30 Section 1. Paragraphs (a) through (c) of subsection (3),
 31 paragraphs (c) and (j) of subsection (4), and subsections (5)
 32 through (7) of section 489.145, Florida Statutes, are amended to
 33 read:

34 489.145 Guaranteed energy, water, and wastewater
 35 performance savings contracting.—

36 (3) DEFINITIONS.—As used in this section, the term:

37 (a) "Agency" means the state, a municipality, ~~or a~~
 38 political subdivision, a county or city school district, or an
 39 institution of higher education, including all state
 40 universities, colleges, and technical colleges.

41 (b) "Energy, water, and wastewater efficiency and
 42 conservation measure" means a training program incidental to the
 43 contract, facility alteration, or equipment purchase to be used
 44 in a building retrofit, addition, or renovation, or in new
 45 construction, including an addition to existing facilities or
 46 infrastructure, which reduces energy or water consumption,
 47 wastewater production, or energy-related operating costs and
 48 includes, but is not limited to:

49 1. Installing or modifying:
 50 a. Insulation of the facility structure and systems within
 51 the facility.

52 b.2. Window and door systems that reduce energy
 53 consumption or operating costs, such as storm windows and doors,
 54 caulking or weatherstripping, multiglazed windows and doors,
 55 heat-absorbing~~7~~ or heat-reflective~~7~~ glazed and coated window and
 56 door systems, additional glazing, and reductions in glass area~~7~~

57 | ~~and other window and door system modifications that reduce~~
 58 | ~~energy consumption.~~

59 | c.3. Automatic energy control systems.

60 | ~~4. Heating, ventilating, or air-conditioning system~~
 61 | ~~modifications or replacements.~~

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

66 | d.6. Energy recovery systems.

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

70 | ~~8. Energy conservation measures that reduce British~~
 71 | ~~thermal units (Btu), kilowatts (kW), or kilowatt hours (kWh)~~
 72 | ~~consumed or provide long term operating cost reductions.~~

73 | f.9. Renewable energy systems, such as solar, biomass, or
 74 | wind systems.

75 | g.10. Devices that reduce water consumption or sewer
 76 | charges.

77 | h.11. Energy storage systems, such as fuel cells and
 78 | thermal storage.

79 | i.12. Energy-generating technologies, such as
 80 | microturbines.

81 | j. Automated, electronic, or remotely controlled
 82 | technologies, systems, or measures that reduce utility or
 83 | operating costs.

84 | k. Software-based systems that reduce facility management

85 or other facility operating costs.

86 1. Energy information and control systems that monitor
87 consumption, redirect systems to optimal energy sources, and
88 manage energy-using equipment.

89 2. Replacing or modifying:

90 a. Heating, ventilating, or air-conditioning systems.

91 b. Lighting fixtures to increase the energy efficiency of
92 the lighting system without increasing the overall illumination
93 of a building, unless the increase in illumination is necessary
94 to conform to the applicable state or local building code.

95 3. Implementing a program to reduce energy costs through
96 rate adjustments, load shifting to reduce peak demand, demand
97 response programs, changes to more favorable rate schedules, or
98 auditing utility billing and metering.

99 4. An improvement that reduces solid waste and associated
100 removal costs.

101 5. Meter replacement, installation of an automated meter
102 reading system, or other construction, modification,
103 installation, or remodeling of water, electric, gas, fuel,
104 communication, or other supplied utility system.

105 6. Any other energy conservation measure that reduces
106 British thermal units (Btu), kilowatts (kW), or kilowatt hours
107 (kWh); reduces fuel or water consumption in the building or
108 waste water production; or reduces an operating cost or provides
109 long-term cost reductions.

110 ~~7.13.~~ Any other repair, replacement, or upgrade of
111 existing equipment that produces measurable savings, or any
112 other construction, modification, installation, or remodeling

113 that is approved by an agency and that is within the legislative
114 authority granted the agency, such as an energy conservation
115 measure.

116 8. Any other measure not otherwise defined in this chapter
117 which is designed to reduce utility consumption, revenue
118 enhancements, wastewater cost savings, avoided capital costs, or
119 similar efficiency gains to a governmental unit.

120 (c) "Energy, water, or wastewater cost savings" means a
121 measured reduction in the cost of fuel, energy or water
122 consumption, wastewater production, ~~and~~ stipulated operation and
123 maintenance, and identified avoided capital savings created from
124 the implementation of one or more energy, water, or wastewater
125 efficiency or conservation measures when compared with an
126 established baseline for the previous cost of fuel, energy or
127 water consumption, wastewater production, ~~and~~ stipulated
128 operation and maintenance, and identified avoided capital costs.

129 (4) PROCEDURES.—

130 (c) An ~~The~~ agency may enter into a guaranteed energy,
131 water, and wastewater performance savings contract with a
132 guaranteed energy, water, and wastewater performance savings
133 contractor if the agency finds that the amount the agency would
134 spend on an ~~the~~ energy, water, and wastewater efficiency and
135 conservation measure is unlikely to ~~measures will not likely~~
136 exceed the amount of the cost savings for up to 20 years after
137 ~~from~~ the date of installation, based on the life cycle cost
138 calculations provided in s. 255.255, if the recommendations in
139 the report were followed and if the qualified provider or
140 providers give a written guarantee that the cost savings will

141 meet or exceed the costs of the system. However, actual computed
142 cost savings must meet or exceed the estimated cost savings
143 provided in each agency's program approval. Baseline adjustments
144 used in calculations must be specified in the contract. The
145 contract may provide for repayment to the lender of the
146 installation construction loan through installment payments for
147 a period not to exceed 20 years.

148 (j) In determining the amount the agency will finance to
149 acquire the energy, water, and wastewater efficiency and
150 conservation measures, the agency may reduce such amount by the
151 application of ~~any~~ grant moneys, rebates, or capital funding
152 available to the agency for the purpose of buying down the cost
153 of the guaranteed energy, water, and wastewater performance
154 savings contract. However, in calculating the life cycle cost as
155 required in paragraph (c), the agency shall not apply any
156 grants, rebates, or capital funding.

157 (5) CONTRACT PROVISIONS.—

158 (a) A guaranteed energy, water, and wastewater performance
159 savings contract must include a written guarantee that may
160 include, but is not limited to the form of, a letter of credit,
161 insurance policy, or corporate guarantee by the guaranteed
162 energy, water, and wastewater performance savings contractor
163 that annual cost savings will meet or exceed the amortized cost
164 of energy, water, and wastewater efficiency and conservation
165 measures.

166 (b) The guaranteed energy, water, and wastewater
167 performance savings contract must provide that all repayments
168 ~~payments~~ to the lender of the installation construction loan,

169 | except obligations on termination of the contract before its
170 | expiration, may be made over time, but may not ~~to~~ exceed 20
171 | years from the date of complete installation and acceptance by
172 | the agency, and that the annual savings are guaranteed to the
173 | extent necessary to make annual payments to satisfy the
174 | guaranteed energy, water, and wastewater performance savings
175 | contract.

176 | (c) The guaranteed energy, water, and wastewater
177 | performance savings contract must require that the guaranteed
178 | energy, water, and wastewater performance savings contractor to
179 | whom the contract is awarded provide a 100-percent public
180 | construction bond to the agency for its faithful performance, as
181 | required by s. 255.05.

182 | (d) The guaranteed energy, water, and wastewater
183 | performance savings contract may contain a provision allocating
184 | to the parties to the contract ~~any~~ annual cost savings that
185 | exceed the amount of the cost savings guaranteed in the
186 | contract.

187 | (e) The guaranteed energy, water, and wastewater
188 | performance savings contract must ~~shall~~ require the guaranteed
189 | energy, water, and wastewater performance savings contractor to
190 | provide to the agency an annual reconciliation of the guaranteed
191 | energy or associated cost savings. If the reconciliation reveals
192 | a shortfall in annual energy or associated cost savings, the
193 | guaranteed energy, water, and wastewater performance savings
194 | contractor is liable for such shortfall. If the reconciliation
195 | reveals an excess in annual cost savings, the excess savings may
196 | be allocated under paragraph (d) but may not be used to cover

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197 potential energy or associated cost savings shortages in
198 subsequent contract years.

199 (f) The guaranteed energy, water, and wastewater
200 performance savings contract must provide for repayment ~~payments~~
201 to the lender of the installation construction loan of not less
202 than one-twentieth of the price to be paid within 2 years after
203 ~~from~~ the date of the complete installation and acceptance by the
204 agency using straight-line amortization for the term of the
205 loan, and the remaining costs to be paid at least quarterly, not
206 to exceed a 20-year term, based on life cycle cost calculations.

207 (g) The guaranteed energy, water, and wastewater
208 performance savings contract may extend beyond the fiscal year
209 in which it becomes effective; however, the term of a any
210 contract expires at the end of each fiscal year and may be
211 automatically renewed annually for up to 20 years, subject to
212 the agency making sufficient annual appropriations based upon
213 continued realized energy, water, and wastewater savings.

214 (h) The guaranteed energy, water, and wastewater
215 performance savings contract must stipulate that it does not
216 constitute a debt, liability, or obligation of the state.

217 (i) A facility alteration that includes expenditures that
218 are required to properly implement other energy conservation
219 measures may be included as part of a performance contract. In
220 such case, notwithstanding any provision of law, the
221 installation of these additional measures may be supervised by
222 the performance savings contractor.

223 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.—The
224 Department of Management Services, with the assistance of the

225 Office of the Chief Financial Officer, shall, within available
226 resources, provide technical content assistance to state
227 agencies contracting for energy, water, and wastewater
228 efficiency and conservation measures and engage in other
229 activities considered appropriate by the department for
230 promoting and facilitating guaranteed energy, water, and
231 wastewater performance contracting by state agencies. The
232 Department of Management Services shall review the investment-
233 grade audit for each proposed project and certify that the cost
234 savings are appropriate and sufficient for the term of the
235 contract. The Office of the Chief Financial Officer, with the
236 assistance of the Department of Management Services, shall,
237 within available resources, develop model contractual and
238 related documents for use by state agencies. Before ~~Prior to~~
239 entering into a guaranteed energy, water, and wastewater
240 performance savings contract, a ~~any~~ contract or lease for third-
241 party financing, or any combination of such contracts, a state
242 agency shall submit such proposed contract or lease to the
243 Office of the Chief Financial Officer for review and approval.
244 The Office of the Chief Financial Officer shall complete its
245 review and approval within 10 business days after receiving the
246 proposed contract or lease. A proposed contract or lease must
247 ~~shall~~ include:

248 (a) Supporting information required by s. 216.023(4)(a)9.
249 in ss. 287.063(5) and 287.064(11). For contracts approved under
250 this section, the criteria may, at a minimum, include the
251 specification of a benchmark cost of capital and minimum real
252 rate of return on energy, water, or wastewater savings against

253 | which proposals shall be evaluated.

254 | (b) Documentation supporting recurring funds requirements
255 | in ss. 287.063(5) and 287.064(11).

256 | (c) Approval by the head of the agency or his or her
257 | designee.

258 | (d) An agency measurement and verification plan to monitor
259 | cost savings.

260 | (e) An investment-grade audit, certified by the Department
261 | of Management Services, which states that the cost savings are
262 | appropriate and sufficient for the term of the contract.

263 | (7) FUNDING SUPPORT.—For purposes of consolidated
264 | financing of deferred payment commodity contracts under this
265 | section by a state ~~an~~ agency, any such contract must be
266 | supported from available funds appropriated to the state agency
267 | in an appropriation category, as defined in chapter 216, that
268 | the Chief Financial Officer has determined is appropriate or
269 | that the Legislature has designated for payment of the
270 | obligation incurred under this section.

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272 | The Office of the Chief Financial Officer shall not approve any
273 | contract submitted under this section from a state agency that
274 | does not meet the requirements of this section.

275 | Section 2. This act shall take effect July 1, 2013.

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