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LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: RCS | . | |
| 04/02/2013 | . | |
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The Committee on Communications, Energy, and Public Utilities (Hukill) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

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

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

(a) "Agency" means the state, a municipality, ~~or~~ a



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13 political subdivision, a county or city school district, or an
14 institution of higher education, including all state
15 universities, colleges, and technical colleges.

16 (b) "Energy, water, and wastewater efficiency and
17 conservation measure" means a training program incidental to the
18 contract, facility alteration, or equipment purchase to be used
19 in a building retrofit, addition, or renovation or in new
20 ~~construction, including an addition to existing facilities or~~
21 ~~infrastructure,~~ which reduces energy or water consumption,
22 wastewater production, or energy-related operating costs and
23 includes, but is not limited to, any of the following:

24 1. Installing or modifying any of the following:

25 a. Insulation of the facility structure and systems within
26 the facility.

27 ~~b.2. Window and door systems that reduce energy consumption~~
28 ~~or operating costs, such as storm windows and doors, caulking or~~
29 ~~weatherstripping, multiglazed windows and doors, heat-absorbing,~~
30 ~~or heat-reflective, glazed and coated window and door systems,~~
31 ~~additional glazing, and reductions in glass area, and other~~
32 ~~window and door system modifications that reduce energy~~
33 ~~consumption.~~

34 ~~c.3. Automatic energy control systems.~~

35 ~~4. Heating, ventilating, or air-conditioning system~~
36 ~~modifications or replacements.~~

37 ~~5. Replacement or modifications of lighting fixtures to~~
38 ~~increase the energy efficiency of the lighting system, which, at~~
39 ~~a minimum, must conform to the applicable state or local~~
40 ~~building code.~~

41 ~~d.6. Energy recovery systems.~~



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

45 ~~8.~~ Energy conservation measures that reduce British thermal
46 units (Btu), kilowatts (kW), or kilowatt hours (kWh) consumed or
47 provide long-term operating cost reductions.

48 ~~f.9.~~ Renewable energy systems, such as solar, biomass, or
49 wind systems.

50 ~~g.10.~~ Devices that reduce water consumption or sewer
51 charges.

52 ~~h.11.~~ Energy storage systems, such as fuel cells and
53 thermal storage.

54 ~~i.12.~~ Energy-generating technologies, such as
55 microturbines.

56 j. Automated, electronic, or remotely controlled
57 technologies, systems, or measures that reduce utility or
58 operating costs.

59 k. Software-based systems that reduce facility management
60 or other facility operating costs.

61 1. Energy information and control systems that monitor
62 consumption, redirect systems to optimal energy sources, and
63 manage energy-using equipment.

64 2. Installing, replacing, or modifying any of the
65 following:

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

67 b. Lighting fixtures.

68 3. Implementing a program to reduce energy costs through
69 rate adjustments, load shifting to reduce peak demand, or the
70 use of alternative energy suppliers, including, but not limited



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71 to, demand response programs, changes to more favorable rate
72 schedules, negotiation of lower rates using new suppliers, or
73 auditing utility billing and metering.

74 4. An improvement that reduces solid waste and associated
75 removal costs.

76 5. Meter replacement, installation, or modification;
77 installation of an automated meter reading system; or other
78 construction, modification, installation, or remodeling of
79 water, electric, gas, fuel, communication, or other supplied
80 utility system.

81 6. Any other energy conservation measure that reduces
82 British thermal units (Btu), kilowatts (kW), or kilowatt hours
83 (kWh); that reduces fuel or water consumption in the building or
84 waste water production; or that reduces operating costs or
85 provides long-term cost reductions.

86 ~~7.13.~~ Any other repair, replacement, or upgrade of existing
87 equipment that produces measurable savings, or any other
88 construction, modification, installation, or remodeling that is
89 approved by an agency and that is within the legislative
90 authority granted the agency, such as an energy conservation
91 measure.

92 8. Any other measure not otherwise defined in this chapter
93 which is designed to reduce utility consumption, revenue
94 enhancements, wastewater cost savings, avoided capital costs, or
95 similar efficiency gains to an agency or other governmental
96 unit.

97 (c) "Energy, water, or wastewater cost savings" means a
98 measured reduction in the cost of fuel, energy or water
99 consumption, or wastewater production; ~~and~~ stipulated operation



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100 and maintenance savings; improvements in supplied utility
101 systems, including, without limitation, revenue enhancements or
102 reduction in net operating costs resulting from increased meter
103 accuracy or performance; and identified avoided capital savings,
104 created from the implementation of one or more energy, water, or
105 wastewater efficiency or conservation measures when compared
106 with an established baseline for the previous cost of fuel,
107 energy or water consumption, wastewater production, ~~and~~
108 stipulated operation and maintenance, meter accuracy or
109 performance, and identified capital costs.

110 (4) PROCEDURES.—

111 (c) An ~~The~~ agency may enter into a guaranteed energy,
112 water, and wastewater performance savings contract with a
113 guaranteed energy, water, and wastewater performance savings
114 contractor if the agency finds that the amount the agency would
115 spend on the energy, water, and wastewater efficiency and
116 conservation measure is unlikely to ~~measures will not likely~~
117 exceed the amount of the cost savings for up to 20 years after
118 ~~from~~ the date of installation, based on the life cycle cost
119 calculations provided in s. 255.255, if the recommendations in
120 the report were followed and if the qualified provider or
121 providers give a written guarantee that the cost savings will
122 meet or exceed the costs of the system. However, actual computed
123 cost savings must meet or exceed the estimated cost savings
124 provided in each agency's program approval. Baseline adjustments
125 used in calculations must be specified in the contract. The
126 contract may provide for repayment to the lender of the
127 installation construction loan through installment payments for
128 a period not to exceed 20 years.



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129 (j) In determining the amount the agency will finance to
130 acquire the energy, water, and wastewater efficiency and
131 conservation measures, the agency may reduce such amount by the
132 application of ~~any~~ grant moneys, rebates, or capital funding
133 available to the agency for the purpose of buying down the cost
134 of the guaranteed energy, water, and wastewater performance
135 savings contract. However, in calculating the life cycle cost as
136 required in paragraph (c), the agency shall not apply any
137 grants, rebates, or capital funding.

138 (5) CONTRACT PROVISIONS.—

139 (a) A guaranteed energy, water, and wastewater performance
140 savings contract must include a written guarantee that may
141 include, but is not limited to the form of, a letter of credit,
142 insurance policy, or corporate guarantee by the guaranteed
143 energy, water, and wastewater performance savings contractor
144 that annual cost savings will meet or exceed the amortized cost
145 of energy, water, and wastewater efficiency and conservation
146 measures.

147 (b) The guaranteed energy, water, and wastewater
148 performance savings contract or the loan agreement related
149 thereto must provide that all repayments to the lender of the
150 installation construction loan payments, except obligations on
151 termination of the contract before its expiration, may be made
152 over time, but may not ~~to~~ exceed 20 years from the date of
153 complete installation and acceptance by the agency, and that the
154 annual cost savings are guaranteed to the extent necessary to
155 make annual payments to satisfy the guaranteed energy, water,
156 and wastewater performance savings contract.

157 (c) The guaranteed energy, water, and wastewater



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158 performance savings contract must require that the guaranteed
159 energy, water, and wastewater performance savings contractor to
160 whom the contract is awarded provide a 100-percent public
161 construction bond to the agency for its faithful performance, as
162 required by s. 255.05.

163 (d) The guaranteed energy, water, and wastewater
164 performance savings contract may contain a provision allocating
165 to the parties to the contract ~~any~~ annual cost savings that
166 exceed the amount of the cost savings guaranteed in the
167 contract.

168 (e) The guaranteed energy, water, and wastewater
169 performance savings contract must ~~shall~~ require the guaranteed
170 energy, water, and wastewater performance savings contractor to
171 provide to the agency an annual reconciliation of the guaranteed
172 energy or associated cost savings. If the reconciliation reveals
173 a shortfall in annual energy or associated cost savings, the
174 guaranteed energy, water, and wastewater performance savings
175 contractor is liable for such shortfall. If the reconciliation
176 reveals an excess in annual cost savings, the excess savings may
177 be allocated under paragraph (d) but may not be used to cover
178 potential energy or associated cost savings shortages in
179 subsequent contract years.

180 (f) The guaranteed energy, water, and wastewater
181 performance savings contract or the loan agreement related
182 thereto must provide for repayment to the lender of the
183 installation construction loan ~~payments~~ of not less than one-
184 twentieth of the price to be paid within 2 years from the date
185 of the complete installation and acceptance by the agency using
186 straight-line amortization for the term of the loan, and the



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187 remaining costs to be paid at least quarterly, not to exceed a
188 20-year term, based on life cycle cost calculations.

189 (g) The guaranteed energy, water, and wastewater
190 performance savings contract may extend beyond the fiscal year
191 in which it becomes effective; however, the term of a any
192 contract expires at the end of each fiscal year and may be
193 automatically renewed annually for up to 20 years, subject to
194 the agency making sufficient annual appropriations based upon
195 continued realized energy, water, and wastewater savings.

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

199 (i) A facility alteration that includes expenditures that
200 are required to properly implement other energy conservation
201 measures may be included as part of a performance contract. In
202 such case, notwithstanding any provision of law, the
203 installation of these additional measures may be supervised by
204 the performance savings contractor.

205 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.—The
206 Department of Management Services, with the assistance of the
207 Office of the Chief Financial Officer, shall, within available
208 resources, provide technical content assistance to state
209 agencies contracting for energy, water, and wastewater
210 efficiency and conservation measures and engage in other
211 activities considered appropriate by the department for
212 promoting and facilitating guaranteed energy, water, and
213 wastewater performance contracting by state agencies. The
214 Department of Management Services shall review the investment-
215 grade audit for each proposed project and certify that the cost



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216 savings are appropriate and sufficient for the term of the
217 contract. The Office of the Chief Financial Officer, with the
218 assistance of the Department of Management Services, shall,
219 within available resources, develop model contractual and
220 related documents for use by state agencies. Before ~~Prior to~~
221 entering into a guaranteed energy, water, and wastewater
222 performance savings contract, a any contract or lease for third-
223 party financing, or any combination of such contracts, a state
224 agency shall submit such proposed contract or lease to the
225 Office of the Chief Financial Officer for review and approval.
226 The Office of the Chief Financial Officer shall complete its
227 review and approval within 10 business days after receiving the
228 proposed contract or lease. A proposed contract or lease with a
229 state agency must ~~shall~~ include the following:

230 (a) Supporting information required by s. 216.023(4)(a)9.
231 in ss. 287.063(5) and 287.064(11). For contracts approved under
232 this section, the criteria may, at a minimum, include the
233 specification of a benchmark cost of capital and minimum real
234 rate of return on energy, water, or wastewater savings against
235 which proposals shall be evaluated.

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

238 (c) Approval by the head of the agency or his or her
239 designee.

240 (d) An agency measurement and verification plan to monitor
241 cost savings.

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



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245 (7) FUNDING SUPPORT.—For purposes of consolidated financing
246 of deferred payment commodity contracts under this section by a
247 state ~~an~~ agency, any such contract must be supported from
248 available funds appropriated to the state agency in an
249 appropriation category, as defined in chapter 216, that the
250 Chief Financial Officer has determined is appropriate or that
251 the Legislature has designated for payment of the obligation
252 incurred under this section.

253
254 The Office of the Chief Financial Officer shall not approve any
255 contract submitted under this section from a state agency that
256 does not meet the requirements of this section.

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

258
259 ===== T I T L E A M E N D M E N T =====

260 And the title is amended as follows:

261 Delete everything before the enacting clause
262 and insert:

263 A bill to be entitled
264 An act relating to the Guaranteed Energy, Water, and
265 Wastewater Performance Savings Contracting Act;
266 amending s. 489.145, F.S.; revising the terms
267 "agency," "energy, water, and wastewater efficiency
268 and conservation measure," and "energy, water, or
269 wastewater cost savings"; providing that a contract
270 may provide for repayments to a lender of an
271 installation construction loan in installments for a
272 period not to exceed 20 years; requiring a contract to
273 provide that repayments to a lender of an installation



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274 construction loan may be made over time, not to exceed
275 20 years from a certain date; requiring a contract to
276 provide for a certain amount of repayment to the
277 lender of the installation construction loan within 2
278 years of a specified date; authorizing certain
279 facility alterations to be included in a performance
280 contract and to be supervised by the performance
281 savings contractor; limiting the time allotted to the
282 Office of the Chief Financial Officer to review and
283 approve an agency's guaranteed energy, water, and
284 wastewater performance savings contract; requiring
285 that a proposed contract include an investment-grade
286 audit certified by the Department of Management
287 Services which states that the cost savings are
288 appropriate and sufficient for the term of the
289 contract; clarifying that, for funding purposes of
290 consolidated financing of deferred payment commodity
291 contracts, an agency means a state agency; conforming
292 language; providing an effective date.