

By the Committee on Communications, Energy, and Public Utilities; and Senator Bradley

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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 of 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 include an investment-grade
24 audit certified by the Department of Management
25 Services which states that the cost savings are
26 appropriate and sufficient for the term of the
27 contract; clarifying that, for funding purposes of
28 consolidated financing of deferred payment commodity
29 contracts, an agency means a state agency; conforming

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30 language; providing an effective date.

31
32 Be It Enacted by the Legislature of the State of Florida:

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

38 489.145 Guaranteed energy, water, and wastewater
39 performance savings contracting.—

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

41 (a) "Agency" means the state, a municipality, ~~or a~~
42 political subdivision, a county or city school district, or an
43 institution of higher education, including all state
44 universities, colleges, and technical colleges.

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

53 1. Installing or modifying any of the following:

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

56 b. ~~2.~~ Window and door systems that reduce energy consumption
57 or operating costs, such as storm windows and doors, caulking or
58 weatherstripping, multiglazed windows and doors, heat-absorbing,

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59 or heat-reflective, glazed and coated window and door systems,
60 additional glazing, and reductions in glass area, ~~and other~~
61 ~~window and door system modifications that reduce energy~~
62 ~~consumption.~~

63 c.3. Automatic energy control systems.

64 ~~4. Heating, ventilating, or air-conditioning system~~
65 ~~modifications or replacements.~~

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

70 d.6. Energy recovery systems.

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

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

77 f.9. Renewable energy systems, ~~such as solar, biomass, or~~
78 ~~wind systems.~~

79 g.10. Devices that reduce water consumption or sewer
80 charges.

81 h.11. Energy storage systems, such as fuel cells and
82 thermal storage.

83 i.12. Energy-generating technologies, ~~such as~~
84 ~~microturbines.~~

85 j. Automated, electronic, or remotely controlled
86 technologies, systems, or measures that reduce utility or
87 operating costs.

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88 k. Software-based systems that reduce facility management
89 or other facility operating costs.

90 1. Energy information and control systems that monitor
91 consumption, redirect systems to optimal energy sources, and
92 manage energy-using equipment.

93 2. Installing, replacing, or modifying any of the
94 following:

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

96 b. Lighting fixtures.

97 3. Implementing a program to reduce energy costs through
98 rate adjustments, load shifting to reduce peak demand, or the
99 use of alternative energy suppliers, including, but not limited
100 to, demand response programs, changes to more favorable rate
101 schedules, negotiation of lower rates using new suppliers, or
102 auditing utility billing and metering.

103 4. An improvement that reduces solid waste and associated
104 removal costs.

105 5. Meter replacement, installation, or modification;
106 installation of an automated meter reading system; or other
107 construction, modification, installation, or remodeling of
108 water, electric, gas, fuel, communication, or other supplied
109 utility system.

110 6. Any other energy conservation measure that reduces
111 British thermal units (Btu), kilowatts (kW), or kilowatt hours
112 (kWh); that reduces fuel or water consumption in the building or
113 waste water production; or that reduces operating costs or
114 provides long-term cost reductions.

115 ~~7.13.~~ Any other repair, replacement, or upgrade of existing
116 equipment that produces measurable savings, or any other

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117 construction, modification, installation, or remodeling that is
118 approved by an agency and that is within the legislative
119 authority granted the agency, such as an energy conservation
120 measure.

121 8. Any other measure not otherwise defined in this chapter
122 which is designed to reduce utility consumption, revenue
123 enhancements, wastewater cost savings, avoided capital costs, or
124 similar efficiency gains to an agency or other governmental
125 unit.

126 (c) "Energy, water, or wastewater cost savings" means a
127 measured reduction in the cost of fuel, energy or water
128 consumption, or wastewater production;~~and~~ stipulated operation
129 and maintenance savings; improvements in supplied utility
130 systems, including, without limitation, revenue enhancements or
131 reduction in net operating costs resulting from increased meter
132 accuracy or performance; and identified avoided capital savings,
133 created from the implementation of one or more energy, water, or
134 wastewater efficiency or conservation measures when compared
135 with an established baseline for the previous cost of fuel,
136 energy or water consumption, wastewater production, ~~and~~
137 stipulated operation and maintenance, meter accuracy or
138 performance, and identified capital costs.

139 (4) PROCEDURES.—

140 (c) An ~~The~~ agency may enter into a guaranteed energy,
141 water, and wastewater performance savings contract with a
142 guaranteed energy, water, and wastewater performance savings
143 contractor if the agency finds that the amount the agency would
144 spend on the energy, water, and wastewater efficiency and
145 conservation measure is unlikely to ~~measures will not likely~~

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146 exceed the amount of the cost savings for up to 20 years after
147 ~~from~~ the date of installation, based on the life cycle cost
148 calculations provided in s. 255.255, if the recommendations in
149 the report were followed and if the qualified provider or
150 providers give a written guarantee that the cost savings will
151 meet or exceed the costs of the system. However, actual computed
152 cost savings must meet or exceed the estimated cost savings
153 provided in each agency's program approval. Baseline adjustments
154 used in calculations must be specified in the contract. The
155 contract may provide for repayment to the lender of the
156 installation construction loan through installment payments for
157 a period not to exceed 20 years.

158 (j) In determining the amount the agency will finance to
159 acquire the energy, water, and wastewater efficiency and
160 conservation measures, the agency may reduce such amount by the
161 application of ~~any~~ grant moneys, rebates, or capital funding
162 available to the agency for the purpose of buying down the cost
163 of the guaranteed energy, water, and wastewater performance
164 savings contract. However, in calculating the life cycle cost as
165 required in paragraph (c), the agency shall not apply any
166 grants, rebates, or capital funding.

167 (5) CONTRACT PROVISIONS.—

168 (a) A guaranteed energy, water, and wastewater performance
169 savings contract must include a written guarantee that may
170 include, but is not limited to the form of, a letter of credit,
171 insurance policy, or corporate guarantee by the guaranteed
172 energy, water, and wastewater performance savings contractor
173 that annual cost savings will meet or exceed the amortized cost
174 of energy, water, and wastewater efficiency and conservation

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175 measures.

176 (b) The guaranteed energy, water, and wastewater
177 performance savings contract or the loan agreement related
178 thereto must provide that all repayments to the lender of the
179 installation construction loan payments, except obligations on
180 termination of the contract before its expiration, may be made
181 over time, but may not ~~to~~ exceed 20 years from the date of
182 complete installation and acceptance by the agency, and that the
183 annual cost savings are guaranteed to the extent necessary to
184 make annual payments to satisfy the guaranteed energy, water,
185 and wastewater performance savings contract.

186 (c) The guaranteed energy, water, and wastewater
187 performance savings contract must require that the guaranteed
188 energy, water, and wastewater performance savings contractor to
189 whom the contract is awarded provide a 100-percent public
190 construction bond to the agency for its faithful performance, as
191 required by s. 255.05.

192 (d) The guaranteed energy, water, and wastewater
193 performance savings contract may contain a provision allocating
194 to the parties to the contract ~~any~~ annual cost savings that
195 exceed the amount of the cost savings guaranteed in the
196 contract.

197 (e) The guaranteed energy, water, and wastewater
198 performance savings contract must ~~shall~~ require the guaranteed
199 energy, water, and wastewater performance savings contractor to
200 provide to the agency an annual reconciliation of the guaranteed
201 energy or associated cost savings. If the reconciliation reveals
202 a shortfall in annual energy or associated cost savings, the
203 guaranteed energy, water, and wastewater performance savings

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204 contractor is liable for such shortfall. If the reconciliation
205 reveals an excess in annual cost savings, the excess savings may
206 be allocated under paragraph (d) but may not be used to cover
207 potential energy or associated cost savings shortages in
208 subsequent contract years.

209 (f) The guaranteed energy, water, and wastewater
210 performance savings contract or the loan agreement related
211 thereto must provide for repayment to the lender of the
212 installation construction loan payments of not less than one-
213 twentieth of the price to be paid within 2 years from the date
214 of the complete installation and acceptance by the agency using
215 straight-line amortization for the term of the loan, and the
216 remaining costs to be paid at least quarterly, not to exceed a
217 20-year term, based on life cycle cost calculations.

218 (g) The guaranteed energy, water, and wastewater
219 performance savings contract may extend beyond the fiscal year
220 in which it becomes effective; however, the term of a any
221 contract expires at the end of each fiscal year and may be
222 automatically renewed annually for up to 20 years, subject to
223 the agency making sufficient annual appropriations based upon
224 continued realized energy, water, and wastewater savings.

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

228 (i) A facility alteration that includes expenditures that
229 are required to properly implement other energy conservation
230 measures may be included as part of a performance contract. In
231 such case, notwithstanding any provision of law, the
232 installation of these additional measures may be supervised by

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233 the performance savings contractor.

234 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.—The
235 Department of Management Services, with the assistance of the
236 Office of the Chief Financial Officer, shall, within available
237 resources, provide technical content assistance to state
238 agencies contracting for energy, water, and wastewater
239 efficiency and conservation measures and engage in other
240 activities considered appropriate by the department for
241 promoting and facilitating guaranteed energy, water, and
242 wastewater performance contracting by state agencies. The
243 Department of Management Services shall review the investment-
244 grade audit for each proposed project and certify that the cost
245 savings are appropriate and sufficient for the term of the
246 contract. The Office of the Chief Financial Officer, with the
247 assistance of the Department of Management Services, shall,
248 within available resources, develop model contractual and
249 related documents for use by state agencies. Before ~~Prior to~~
250 entering into a guaranteed energy, water, and wastewater
251 performance savings contract, a ~~any~~ contract or lease for third-
252 party financing, or any combination of such contracts, a state
253 agency shall submit such proposed contract or lease to the
254 Office of the Chief Financial Officer for review and approval.
255 The Office of the Chief Financial Officer shall complete its
256 review and approval within 10 business days after receiving the
257 proposed contract or lease. A proposed contract or lease with a
258 state agency must ~~shall~~ include the following:

259 (a) Supporting information required by s. 216.023(4)(a)9.
260 in ss. 287.063(5) and 287.064(11). For contracts approved under
261 this section, the criteria may, at a minimum, include the

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262 specification of a benchmark cost of capital and minimum real
263 rate of return on energy, water, or wastewater savings against
264 which proposals shall be evaluated.

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

267 (c) Approval by the head of the agency or his or her
268 designee.

269 (d) An agency measurement and verification plan to monitor
270 cost savings.

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

274 (7) FUNDING SUPPORT.—For purposes of consolidated financing
275 of deferred payment commodity contracts under this section by a
276 state ~~an~~ agency, any such contract must be supported from
277 available funds appropriated to the state agency in an
278 appropriation category, as defined in chapter 216, that the
279 Chief Financial Officer has determined is appropriate or that
280 the Legislature has designated for payment of the obligation
281 incurred under this section.

282
283 The Office of the Chief Financial Officer shall not approve any
284 contract submitted under this section from a state agency that
285 does not meet the requirements of this section.

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