

By the Committees on Community Affairs; Environmental Preservation and Conservation; and 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 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, demand
99 response programs, changes to more favorable rate schedules, or
100 auditing utility billing and metering.

101 4. An improvement that reduces solid waste and associated
102 removal costs.

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

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

113 ~~7.13.~~ Any other repair, replacement, or upgrade of existing
114 equipment that produces measurable savings, or any other
115 construction, modification, installation, or remodeling that is
116 approved by an agency and that is within the legislative

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117 authority granted the agency, such as an energy conservation
118 measure.

119 8. Any other measure not otherwise defined in this chapter
120 which is designed to reduce utility consumption, reduce
121 wastewater costs, enhance revenue, avoid capital costs, or
122 achieve similar efficiency gains at an agency or other
123 governmental unit.

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

137 (4) PROCEDURES.—

138 (c) ~~An~~ The agency may enter into a guaranteed energy,
139 water, and wastewater performance savings contract with a
140 guaranteed energy, water, and wastewater performance savings
141 contractor if the agency finds that the amount the agency would
142 spend on the energy, water, and wastewater efficiency and
143 conservation measures is unlikely to ~~will not likely~~ exceed the
144 amount of the cost savings for up to 20 years after ~~from~~ the
145 date of installation, based on the life cycle cost calculations

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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 the cost savings will meet or exceed the
149 costs of the system. However, actual computed cost savings must
150 meet or exceed the estimated cost savings provided in each
151 agency's program approval. Baseline adjustments used in
152 calculations must be specified in the contract. The contract may
153 provide for repayment to the lender of the installation
154 construction loan through installment payments for a period not
155 to exceed 20 years.

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

165 (5) CONTRACT PROVISIONS.—

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

174 (b) The guaranteed energy, water, and wastewater

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

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

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

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

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204 be allocated under paragraph (d) but may not be used to cover
205 potential energy or associated cost savings shortages in
206 subsequent contract years.

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

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

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

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

232 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.—The

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

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

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262 which proposals shall be evaluated.

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

265 (c) Approval by the head of the agency or his or her
266 designee.

267 (d) An agency measurement and verification plan to monitor
268 cost savings.

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

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

280
281 The Office of the Chief Financial Officer shall not approve any
282 contract submitted under this section from a state agency that
283 does not meet the requirements of this section.

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