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1  
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.