



413074

LEGISLATIVE ACTION

Senate

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House

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Appropriations Subcommittee on Agriculture, Environment, and  
General Government (Perry) recommended the following:

**Senate Amendment (with directory and title amendments)**

Between lines 47 and 48

insert:

(7) AUTHORITY OF DEPARTMENT OF MANAGEMENT SERVICES.—

(a) Notwithstanding any other provision of this section,  
the Department of Management Services shall be the agency of  
state government which is solely and exclusively authorized and  
empowered to administer and perform the functions described in  
subsections (3), (4), and (5) respecting all projects for which



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11 the funds necessary to complete same are appropriated to the  
12 Department of Management Services, irrespective of whether such  
13 projects are intended for the use and benefit of the Department  
14 of Management Services or any other agency of government.  
15 However, nothing herein shall be construed to be in derogation  
16 of any authority conferred on the Department of Management  
17 Services by other express provisions of law. Additionally, any  
18 agency of government may, with the approval of the Department of  
19 Management Services, delegate to the Department of Management  
20 Services authority to administer and perform the functions  
21 described in subsections (3), (4), and (5). Under the terms of  
22 the delegation, the agency may reserve its right to accept or  
23 reject a proposed contract.

24 (b) The Department of Management Services is designated as  
25 the entity to administer and perform the procurement functions  
26 for guaranteed energy, water, and wastewater performance savings  
27 contracts in accordance with s. 489.145.

28 Section 3. Subsection (4) of section 489.145, Florida  
29 Statutes, is amended to read:

30 489.145 Guaranteed energy, water, and wastewater  
31 performance savings contracting.—

32 (4) PROCEDURES.—

33 (a) The Department of Management Services is authorized to  
34 procure a list of qualified energy savings contractors for use  
35 by agencies as prequalified contractors for guaranteed energy,  
36 water, and wastewater performance savings contracts. The  
37 department shall prequalify guaranteed energy, water, and  
38 wastewater performance savings contractors for inclusion on the  
39 list, and may also include such contractors on the National



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40 Association of Energy Service Companies list of accredited  
41 energy service companies or a similar accreditation agency's  
42 list. The department shall post on its website the list of  
43 prequalified energy savings contractors and a model agreement  
44 for use by agencies as set forth in subsection (6).  
45 Notwithstanding chapter 287 and the authority of the department,  
46 for the purpose of enhancing energy savings and efficiencies in  
47 this state, the department shall follow good purchasing  
48 practices of state procurement to the extent practicable under  
49 the circumstances. Section 120.57(3) applies to the department's  
50 contracting process, except the filing of a bond is not required  
51 in order to protect the list of prequalified energy savings  
52 contractors; and a formal written protest of any decision,  
53 intended decision, or other action subject to protest must be  
54 filed within 72 hours after receipt of notice of the decision,  
55 intended decision, or other actions. The department shall  
56 maintain the list and re-procure every 3 years.

57       (b) An agency may enter into a guaranteed energy, water,  
58 and wastewater performance savings contract with a guaranteed  
59 energy, water, and wastewater performance savings contractor to  
60 reduce energy or water consumption, wastewater production, or  
61 energy-related operating costs of an agency facility through one  
62 or more energy, water, or wastewater efficiency or conservation  
63 measures.

64       (c) ~~(b)~~ Before design and installation of energy, water, or  
65 wastewater efficiency and conservation measures, the agency must  
66 obtain from a guaranteed energy, water, and wastewater  
67 performance savings contractor a report that summarizes the  
68 costs associated with the energy, water, or wastewater



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69 efficiency and conservation measures or energy-related  
70 operational cost-saving measures and provides an estimate of the  
71 amount of the cost savings. The agency and the guaranteed  
72 energy, water, and wastewater performance savings contractor may  
73 enter into a separate agreement to pay for costs associated with  
74 the preparation and delivery of the report; however, payment to  
75 the contractor shall be contingent upon the report's projection  
76 of energy, water, and wastewater cost savings being equal to or  
77 greater than the total projected costs of the design and  
78 installation of the report's energy conservation measures.

79 (d)~~(e)~~ An agency may enter into a guaranteed energy, water,  
80 and wastewater performance savings contract with a guaranteed  
81 energy, water, and wastewater performance savings contractor if  
82 the agency finds that the amount the agency would spend on the  
83 energy, water, and wastewater efficiency and conservation  
84 measures is unlikely to exceed the amount of the cost savings  
85 for up to 20 years after the date of installation, based on the  
86 life cycle cost calculations provided in s. 255.255, if the  
87 recommendations in the report were followed and if the qualified  
88 provider or providers give a written guarantee that the cost  
89 savings will meet or exceed the costs of the system. However,  
90 actual computed cost savings must meet or exceed the estimated  
91 cost savings provided in each agency's program approval.  
92 Baseline adjustments used in calculations must be specified in  
93 the contract. The contract may provide for repayment to the  
94 lender of the installation construction loan through installment  
95 payments for a period not to exceed 20 years.

96 (e)~~(d)~~ After the department has prequalified a list of  
97 guaranteed energy, water, and wastewater performance savings



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98 contractors that is posted to the department's website in  
99 accordance with paragraph (a), an agency may issue a  
100 procurement, in the issuing agency's desired format, for  
101 selection of a guaranteed energy, water, and wastewater  
102 performance savings contractor for a guaranteed energy, water,  
103 and wastewater performance savings contract ~~A guaranteed energy,~~  
104 ~~water, and wastewater performance savings contractor must be~~  
105 ~~selected in compliance with s. 287.055; except that if fewer~~  
106 ~~than three firms are qualified to perform the required services,~~  
107 ~~the requirement for agency selection of three firms, as provided~~  
108 ~~in s. 287.055(4)(b), and the bid requirements of s. 287.057 do~~  
109 ~~not apply.~~

110 (f) ~~(e)~~ Before entering into a guaranteed energy, water, and  
111 wastewater performance savings contract, an agency must provide  
112 published notice of the meeting in which it proposes to award  
113 the contract, the names of the parties to the proposed contract,  
114 and the contract's purpose.

115 (g) ~~(f)~~ A guaranteed energy, water, and wastewater  
116 performance savings contract may provide for financing,  
117 including tax-exempt financing, by a third party. The contract  
118 for third-party financing may be separate from the energy,  
119 water, and wastewater performance contract. A separate contract  
120 for third-party financing under this paragraph must include a  
121 provision that the third-party financier must not be granted  
122 rights or privileges that exceed the rights and privileges  
123 available to the guaranteed energy, water, and wastewater  
124 performance savings contractor.

125 (h) ~~(g)~~ Financing for guaranteed energy, water, and  
126 wastewater performance savings contracts may be provided under



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127 the authority of s. 287.064.

128 (i)~~(h)~~ The Office of the Chief Financial Officer shall  
129 review proposals from state agencies to ensure that the most  
130 effective financing is being used.

131 (j)~~(i)~~ Annually, the agency that has entered into the  
132 contract shall provide the Department of Management Services and  
133 the Chief Financial Officer the measurement and verification  
134 report required by the contract to validate that savings have  
135 occurred.

136 (k)~~(j)~~ In determining the amount the agency will finance to  
137 acquire the energy, water, and wastewater efficiency and  
138 conservation measures, the agency may reduce such amount by the  
139 application of grant moneys, rebates, or capital funding  
140 available to the agency for the purpose of buying down the cost  
141 of the guaranteed energy, water, and wastewater performance  
142 savings contract. However, in calculating the life cycle cost as  
143 required in paragraph (d) ~~(e)~~, the agency may ~~shall~~ not apply  
144 any grants, rebates, or capital funding.

145  
146 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

147 And the directory clause is amended as follows:

148 Delete lines 27 - 28

149 and insert:

150 Section 2. Paragraph (g) of subsection (2) and subsection  
151 (7) of section 287.055, Florida Statutes, are amended to read:

152  
153 ===== T I T L E A M E N D M E N T =====

154 And the title is amended as follows:

155 Delete line 9



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156 and insert:

157 and mapping services; designating the Department of  
158 Management Services as the entity for administering  
159 and performing procurement functions relating to  
160 guaranteed energy, water, and wastewater performance  
161 savings contracts; amending s. 489.145, F.S.;

162 authorizing the department to procure a list of  
163 qualified guaranteed energy, water, and wastewater  
164 performance savings contractors for use by agencies;  
165 specifying requirements of the department in  
166 developing and maintaining the list; modifying  
167 procedures for any protests relating to the list;  
168 modifying the manner of selection of a guaranteed  
169 energy, water, and wastewater performance savings  
170 contractor; providing an effective date.