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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: FAV	.	
3/19/2008	.	
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	.	

1 The Committee on Environmental Preservation and Conservation
 2 (Saunders) recommended the following **amendment to amendment**
 3 **(223658)** :

Senate Amendment

Delete line(s) 878-903

and insert:

Section 16. Subsections (10) and (11) of section 287.064,
Florida Statutes, are amended to read:

287.064 Consolidated financing of deferred-payment
purchases.--

(10) (a) A master equipment financing agreement may finance
 the cost of energy, water, or wastewater efficiency and
 conservation measures, as defined in s. 489.145, excluding the
 costs of training, operation, and maintenance, for a term of
 repayment that may exceed five years but not more than twenty
 years.

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18 (b) The guaranteed energy, water, and wastewater savings
19 contractor shall provide for the replacement or the extension of
20 the useful life of the equipment during the term of the contract.
21 ~~Costs incurred pursuant to a guaranteed energy performance~~
22 ~~savings contract, including the cost of energy conservation~~
23 ~~measures, each as defined in s. 489.145, may be financed pursuant~~
24 ~~to a master equipment financing agreement; however, the costs of~~
25 ~~training, operation, and maintenance may not be financed. The~~
26 ~~period of time for repayment of the funds drawn pursuant to the~~
27 ~~master equipment financing agreement under this subsection may~~
28 ~~exceed 5 years but may not exceed 10 years.~~

29 (11) For purposes of consolidated financing of deferred
30 payment commodity contracts under this section by a state agency,
31 the annualized amount of any such contract must be supported from
32 available recurring funds appropriated to the agency in an
33 appropriation category, ~~other than the expense appropriation~~
34 ~~category~~ as defined in chapter 216, which ~~that~~ the Chief
35 Financial Officer has determined is appropriate or which ~~that~~ the
36 Legislature has designated for payment of the obligation incurred
37 under this section.

38 Section 17. Section 489.145, Florida Statutes, is amended
39 to read:

40 489.145 Guaranteed energy performance savings contracting.-

41 -

42 (1) SHORT TITLE.--This section may be cited as the
43 "Guaranteed Energy, Water and Wastewater Performance Savings
44 Contracting Act."

45 (2) LEGISLATIVE FINDINGS.--The Legislature finds that
46 investment in energy, water and wastewater conservation measures
47 in agency facilities can reduce the amount of energy and water

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48 consumed and wastewater treated and produce immediate and long-
49 term savings. It is the policy of this state to encourage each
50 agency agencies to invest in energy, water, and wastewater
51 efficiency and conservation measures ~~that reduce energy~~
52 ~~consumption, produce a cost savings for the agency, and improve~~
53 ~~the quality of indoor air in public facilities and to operate,~~
54 ~~maintain, and, when economically feasible, build or renovate~~
55 ~~existing agency facilities in such a manner as~~ to minimize energy
56 and water consumption and wastewater production and maximize
57 energy, water, and wastewater savings. It is further the policy
58 of this state to encourage agencies to reinvest any energy
59 savings resulting from energy, water, and wastewater efficiency
60 and conservation measures in additional energy, water, and
61 wastewater conservation measures efforts.

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

63 (a) "Agency" means the state, a municipality, or a
64 political subdivision.

65 (b) "Energy conservation measure" means a ~~training program,~~
66 ~~facility alteration,~~ or equipment purchase to be used in new
67 construction, including an addition to ~~an~~ existing facilities or
68 infrastructure ~~facility~~, which reduces energy, water, or
69 wastewater or energy-related operating costs and includes, but is
70 not limited to:

71 1. Insulation of the facility structure and systems within
72 the facility.

73 2. Storm windows and doors, caulking or weatherstripping,
74 multiglazed windows and doors, heat-absorbing, or heat-
75 reflective, glazed and coated window and door systems, additional
76 glazing, reductions in glass area, and other window and door
77 system modifications that reduce energy consumption.

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78 3. Automatic energy control systems.

79 4. Heating, ventilating, or air-conditioning system
80 modifications or replacements.

81 5. Replacement or modifications of lighting fixtures to
82 increase the energy efficiency of the lighting system, which, at
83 a minimum, must conform to the applicable state or local building
84 code.

85 6. Energy recovery systems.

86 7. Cogeneration systems that produce steam or forms of
87 energy such as heat, as well as electricity, for use primarily
88 within a facility or complex of facilities.

89 8. Energy conservation measures that reduce Btu, kW, or kWh
90 consumed or that provide long-term operating cost reductions ~~or~~
91 ~~significantly reduce Btu consumed.~~

92 9. Renewable energy systems, such as solar, biomass, or
93 wind systems.

94 10. Devices that reduce water consumption or sewer charges.

95 11. Energy storage systems, such as fuel cells and thermal
96 storage.

97 12. Energy generating technologies, such as microturbines.

98 13. Any other repair, replacement, or upgrade of existing
99 equipment.

100 (c) "Energy, water, and wastewater cost savings" means a
101 measured reduction in the cost of fuel, energy or water
102 consumption or wastewater production, and stipulated operation
103 and maintenance created from the implementation of one or more
104 energy, water, or wastewater efficiency or conservation measures
105 when compared with an established baseline for the previous cost
106 of fuel, energy, or water consumption or wastewater production,
107 and stipulated operation and maintenance.

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108 (d) "Guaranteed energy, water, and wastewater performance
109 savings contract" means a contract for the evaluation,
110 recommendation, and implementation of energy, water, and
111 wastewater efficiency or conservation measures, which, at a
112 minimum, shall include:

113 1. The design and installation of equipment to implement
114 one or more of such measures and, if applicable, operation and
115 maintenance of such measures.

116 2. The amount of any actual annual savings that meet or
117 exceed total annual contract payments made by the agency for the
118 contract.

119 3. The finance charges incurred by the agency over the life
120 of the contract.

121 (e) "Guaranteed energy performance savings contractor"
122 means a person or business that is licensed under chapter 471,
123 chapter 481, or this chapter, and is experienced in the analysis,
124 design, implementation, or installation of energy conservation
125 measures through energy performance contracts.

126 (f) "Investment grade energy audit" means a detailed
127 energy, water, and wastewater audit with an accompanying analysis
128 of proposed energy, water, and wastewater conservation measures,
129 their costs, savings, and benefits prior to entry into an energy
130 savings contract.

131 (4) PROCEDURES.--

132 (a) An agency may enter into a guaranteed ~~energy~~
133 performance savings contract with a guaranteed ~~energy~~ performance
134 savings contractor to ~~significantly~~ reduce energy, water, or
135 wastewater consumption or production of energy-related operating
136 costs of an agency facility through one or more energy, water, or
137 wastewater efficiency or conservation measures.



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138 (b) Before design and installation of energy conservation
139 measures, the agency must obtain from a guaranteed energy
140 performance savings contractor an investment grade audit a report
141 that summarizes the costs associated with the energy conservation
142 measures or energy-related operational cost-saving measures and
143 provides an estimate of the amount of the ~~energy~~ cost savings.
144 The agency and the guaranteed energy performance savings
145 contractor may enter into a separate agreement to pay for costs
146 associated with the preparation and delivery of the report;
147 however, payment to the contractor shall be contingent upon the
148 report's projection of energy or operational cost savings being
149 equal to or greater than the total projected costs of the design
150 and installation of the report's energy conservation measures.

151 (c) The agency may enter into a guaranteed energy
152 performance savings contract with a guaranteed energy performance
153 savings contractor if the agency finds that the amount the agency
154 would spend on the energy conservation or energy-related cost-
155 savings measures will not likely exceed the amount of the energy
156 or energy-related cost savings for up to 20 years from the date
157 of installation, based on the life cycle cost calculations
158 provided in s. 255.255, if the recommendations in the report were
159 followed and if the qualified provider or providers give a
160 written guarantee that the energy or energy-related cost savings
161 will meet or exceed the costs of the system. However, actual
162 computed cost savings must meet or exceed the estimated cost
163 savings provided in program approval. Baseline adjustments used
164 in calculations must be specified in the contract. The contract
165 may provide for installment payments for a period not to exceed
166 20 years.

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167 (d) A guaranteed ~~energy~~ performance savings contractor must
168 be selected in compliance with s. 287.055; except that if fewer
169 than three firms are qualified to perform the required services,
170 the requirement for agency selection of three firms, as provided
171 in s. 287.055(4)(b), and the bid requirements of s. 287.057 do
172 not apply.

173 (e) Before entering into a guaranteed energy performance
174 savings contract, an agency must provide published notice of the
175 meeting in which it proposes to award the contract, the names of
176 the parties to the proposed contract, and the contract's purpose.

177 (f) A guaranteed ~~energy~~ performance savings contract may
178 provide for financing, including tax-exempt financing, by a third
179 party. The contract for third party financing may be separate
180 from the guaranteed ~~energy~~ performance contract. A separate
181 contract for third party financing must include a provision that
182 the third party financier must not be granted rights or
183 privileges that exceed the rights and privileges available to the
184 guaranteed energy performance savings contractor.

185 (g) Financing for guaranteed energy performance savings
186 contracts may be provided under the authority of s. 287.064.

187 (h) The Office of the Chief Financial Officer shall review
188 proposals from state agencies to ensure that the most effective
189 financing is being used.

190 (i) Annually, the agency that has entered into the contract
191 shall provide the Department of Management Services and the Chief
192 Financial Officer the measurement and verification report
193 required by the contact to validate that energy savings have
194 occurred.

195 (j) ~~(g)~~ In determining the amount the agency will finance to
196 acquire the ~~energy~~ conservation measures, the agency may reduce



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197 such amount by the application of any grant moneys, rebates, or
198 capital funding available to the agency for the purpose of buying
199 down the cost of the guaranteed ~~energy~~ performance savings
200 contract. However, in calculating the life cycle cost as required
201 in paragraph (c), the agency shall not apply any grants, rebates,
202 or capital funding.

203 (5) CONTRACT PROVISIONS.--

204 (a) A guaranteed ~~energy~~ performance savings contract must
205 include a written guarantee that may include, but is not limited
206 to the form of, a letter of credit, insurance policy, or
207 corporate guarantee by the guaranteed ~~energy~~ performance savings
208 contractor that annual associated ~~energy~~ cost savings will meet
209 or exceed the amortized cost of energy conservation measures.

210 (b) The guaranteed ~~energy~~ performance savings contract must
211 provide that all payments, except obligations on termination of
212 the contract before its expiration, may be made over time, but
213 not to exceed 20 years from the date of complete installation and
214 acceptance by the agency, and that the annual savings are
215 guaranteed to the extent necessary to make annual payments to
216 satisfy the guaranteed ~~energy~~ performance savings contract.

217 (c) The guaranteed ~~energy~~ performance savings contract must
218 require that the guaranteed energy performance savings contractor
219 to whom the contract is awarded provide a 100-percent public
220 construction bond to the agency for its faithful performance, as
221 required by s. 255.05.

222 (d) The guaranteed ~~energy~~ performance savings contract may
223 contain a provision allocating to the parties to the contract any
224 annual energy cost savings that exceed the amount of the energy
225 cost savings guaranteed in the contract.



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226 (e) The guaranteed energy performance savings contract
227 shall require the guaranteed ~~energy~~ performance savings
228 contractor to provide to the agency an annual reconciliation of
229 the guaranteed energy or energy-related cost savings. If the
230 reconciliation reveals a shortfall in annual energy or energy-
231 related cost savings, the guaranteed ~~energy~~ performance savings
232 contractor is liable for such shortfall. If the reconciliation
233 reveals an excess in annual ~~energy~~ cost savings, the excess
234 savings may be allocated under paragraph (d) but may not be used
235 to cover potential ~~energy~~ cost savings shortages in subsequent
236 contract years.

237 (f) The guaranteed ~~energy~~ performance savings contract must
238 provide for payments of not less than one-twentieth of the price
239 to be paid within 2 years from the date of the complete
240 installation and acceptance by the agency using straight-line
241 amortization for the term of the loan, and the remaining costs to
242 be paid at least quarterly, not to exceed a 20-year term, based
243 on life cycle cost calculations.

244 (g) The guaranteed ~~energy~~ performance savings contract may
245 extend beyond the fiscal year in which it becomes effective;
246 however, the term of any contract expires at the end of each
247 fiscal year and may be automatically renewed annually for up to
248 20 years, subject to the agency making available sufficient
249 annual funds ~~appropriations~~ based upon continued realized energy
250 savings.

251 (h) The guaranteed ~~energy~~ performance savings contract must
252 stipulate that it does not constitute a debt, liability, or
253 obligation of the state.

254 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The
255 Department of Management Services, with the assistance of the



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256 Office of the Chief Financial Officer, shall ~~may, within~~
257 ~~available resources,~~ provide technical content assistance to
258 state agencies contracting for energy conservation measures and
259 engage in other activities considered appropriate by the
260 department for promoting and facilitating guaranteed energy
261 performance contracting by state agencies. The Department of
262 Management Services shall review the investment-grade audit for
263 each proposed project and certify that the cost savings are
264 appropriate and sufficient for the term of the contract. The
265 Office of the Chief Financial Officer, with the assistance of the
266 Department of Management Services, shall develop model
267 contractual and other related documents and shall, by rule ~~may,~~
268 ~~within available resources,~~ develop the contract requirements
269 ~~model contractual and related documents~~ for use by state and
270 other agencies. Prior to entering into a guaranteed energy
271 performance savings contract, any contract or lease for third-
272 party financing, or any combination of such contracts, a state
273 agency shall submit such proposed contract or lease to the Office
274 of the Chief Financial Officer for review and approval. A
275 proposed contract or lease shall include:

276 (a) Supporting information required by s. 216.023(a)9. in
277 ss. 287.063(5) and 287.064(11). For contracts approved under s.
278 489.145, the criteria may, at a minimum, include the
279 specification of a benchmark cost of capital and minimum real
280 rate of return on energy, water, or wastewater savings against
281 which proposals shall be evaluated.

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

284 (c) Approval by the agency head or his or her designee.

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285 (d) An agency measurement and verification plan to monitor
286 cost savings.

287 (7) FUNDING SUPPORT.--For purposes of consolidated
288 financing of deferred payment commodity contracts under this
289 section by a state agency, any such contract must be supported
290 from available recurring funds appropriated to the agency in an
291 appropriation category, as defined in chapter 216, which the
292 Legislature has designated for payment of the obligation incurred
293 under this section, or which the Chief Financial Officer has
294 determined is appropriate.

295
296 The Office of the Chief Financial Officer may not approve any
297 contract from any state agency submitted under this section which
298 does not meet the requirements of this section.