HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 1357	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Regulatory Affairs Committee; Energy & Utilities Subcommittee; Cummings	117 **Y's**	0 **N's**
COMPANION BILLS:	(CS/CS/CS/SB 1594)	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/CS/HB 1357 passed the House on April 30, 2013, as CS/CS/CS SB 1594. The bill provides several amendments to the Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act.

The Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act (Act) encourages agencies to "invest in energy, water, and wastewater efficiency and conservation measures to minimize energy and water consumption and wastewater production and maximize energy, water, and wastewater savings" and to reinvest any savings resulting from those measures in additional energy, water, and wastewater efficiency and conservation measures. The Act provides for contracts that are required to produce immediate and long-term energy cost savings through Energy Savings Contracting (ESCO). A state agency may pursue an ESCO project if it finds that the amount the agency would spend on energy conservation measures would not likely exceed the amount of the cost savings for up to 20 years after the date of installation. ESCO projects are typically financed through a third-party financial institution. The bill clarifies that in a guaranteed energy, water, and wastewater performance savings contract between an ESCO and an agency, the contract may provide for repayment to the lender of the installation construction loan though installment payments.

Currently, state agencies, municipalities, and political subdivisions are authorized to utilize the provisions of the Act. The bill expands the Act to include a county school district or an institution of higher education, including all state universities, colleges, and technical colleges.

ESCO projects are required to produce a net cost savings to the state in every year of the contract. Agencies may use the recurring cost savings to repay the third-party loans, but they are required to gain the spending authority through an annual legislative budget request process. All ESCO projects must be approved by the Department of Financial Services (DFS) and the Department of Management Services (DMS). Proponents of the bill state that the length of time between an audit and approval by DMS and DFS is so long that the audit may become outdated. The bill requires DFS to complete its review and approval of the guaranteed energy, water, and wastewater performance savings contract within 10 business days of receiving it from a state agency. The bill also adds to contract requirements that a contract must include an investment-grade audit, certified by DMS, which states that the cost savings are appropriate and sufficient for the term of the contract.

The bill will likely have a minimal fiscal impact on state government. However, it is anticipated that the provisions of the bill will be handled within existing agency resources.

The bill was approved by the Governor on June 7, 2013, ch. 2013-135, L.O.F., and will become effective on July 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act

The Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act (Act) encourages agencies to "invest in energy, water, and wastewater efficiency and conservation measures to minimize energy and water consumption and wastewater production and maximize energy, water, and wastewater savings" and to reinvest any savings resulting from those measures in additional energy, water, and wastewater efficiency and conservation measures.[1]

The Act provides for contracts that are required to produce immediate and long-term energy cost savings through Energy Savings Contracting (ESCO). A state agency may pursue an ESCO project if it finds that the amount the agency would spend on energy conservation measures would not likely exceed the amount of the cost savings for up to 20 years from the date of installation. ESCO projects are typically financed through a third-party financial institution. Currently, state agencies, municipalities, and political subdivisions are authorized to utilize the provisions of the Act.

ESCO projects are required to produce a net cost savings to the state in every year of the contract. Agencies may use the recurring cost savings to repay the third-party loans, but they are required to gain the spending authority through annual legislative budget request process.

"Energy, water, or wastewater cost savings" means a measured reduction in the cost of fuel, energy or water consumption, wastewater production, and stipulated operation and maintenance created from the implementation of one or more energy, water, or wastewater efficiency or conservation measures when compared with an established baseline for the previous cost of fuel, energy or water consumption, wastewater production, and stipulated operation and maintenance.

A proposed contract or lease must include the following information:

- Supporting information required by statutes pertaining to legislative budget requests, deferred-payment commodity contracts, and consolidated financing of deferred-payment purchases.[2] For contracts approved under this section, the criteria may, at a minimum, include the specification of a benchmark cost of capital and minimum real rate of return on energy, water, or wastewater savings against which proposals shall be evaluated.

- Documentation supporting recurring funds requirements in statutes pertaining to deferred-payment commodity contracts, and consolidated financing of deferred-payment purchases.[3]

- Approval by the head of the agency or his or her designee.

- An agency measurement and verification plan to monitor cost savings.

Section 489.145(6), F.S., requires the Department of Management Services (DMS) to verify that the cost savings of all proposed ESCO projects are sufficient for the term of the contract. DMS is also required to provide technical assistance to the agencies regarding these projects. According to DMS,

[1] Section 489.145(2), F.S.
[2] See ss. 216.023(4)(a)9., 287.063(5), and 287.064(11), F.S.
[3] See ss. 287.063(5) and 287.064(11), F.S.

"In order to verify that ESCO-related cost savings are sufficient for the term of the contract, DMS first evaluates the technical merits of the energy audit. This process includes evaluating the assumptions made for the baseline and the proposed savings models, and the calculation methods used to generate the proposed savings."[4] DMS then attempts to determine if the proposed energy savings are achievable.

Once ESCO projects are approved by the DMS, the Department of Financial Services (DFS) must review the financial terms of the contract. Proponents of the bill state that the length of time between an audit and approval by the DMS and DFS is so long that the audit may become outdated.

Effect of Changes

The term "agency" means the state, a municipality, or a political subdivision. The bill expands this list of entities to include a county school district or an institution of higher education, including all state universities, colleges, and technical colleges.

The bill amends the definition of "energy, water, and wastewater efficiency and conservation measure," to mean a "training program incidental to the contract, facility alteration, or equipment purchase to be used in a building retrofit, addition, or renovation, or in new construction, including an addition to existing facilities or infrastructure, which reduces energy or water consumption, wastewater production, or energy-related operating costs." The definition includes, but is not limited to:

1. Installing or modifying:
   - Insulation of the facility structure and systems within the facility.
   - Window and door systems that reduce energy consumption or operating costs, such as storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, and reductions in glass area.
   - Automatic energy control systems.
   - Energy recovery systems.
   - Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a facility or complex of facilities.
   - Renewable energy systems.
   - Devices that reduce water consumption or sewer charges.
   - Energy storage systems, such as fuel cells and thermal storage.
   - Energy-generating technologies.
   - Automated, electronic, or remotely controlled technologies, systems, or measures that reduce utility or operating costs.
   - Software-based systems that reduce facility management or other facility operating costs.
   - Energy information and control systems that monitor consumption, redirect systems to optimal energy sources, and manage energy-using equipment.

2. Installing, replacing, or modifying:
   - Heating, ventilating, or air-conditioning systems.
   - Lighting fixtures.

3. Implementing a program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, demand response programs, changes to more favorable rate schedules, or auditing utility billing and metering.

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

[4] *The ESCO Program: Challenges & Recommendations*, Department of Management Services' Division of Real Estate Development & Management, October 4, 2011, p. 9.

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

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

7. Any other repair, replacement, or upgrade of existing equipment that produces measurable savings, or any other construction, modification, installation, or remodeling that is approved by an agency and that is within the legislative authority granted the agency, such as an energy conservation measure.

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

The bill amends the definition of "energy, water, or wastewater cost savings" to mean a measured reduction in the cost of fuel, energy or water consumption, or wastewater production; stipulated operation and maintenance savings; improvements in supplied utility systems, including, but not limited to, revenue enhancements or reduction in net operating costs resulting from increased meter accuracy or performance; and identified capital savings created from the implementation of one or more energy, water, or wastewater efficiency or conservation measures when compared with an established baseline for the previous cost of fuel, energy or water consumption, wastewater production, stipulated operation and maintenance, meter accuracy or performance, and identified capital costs.

The bill clarifies that in a guaranteed energy, water, and wastewater performance savings contract between an ESCO and an agency, the contract or the related loan agreement must provide for repayments to the lender of the installation construction loan though installment payments. The period may not exceed 20 years. The bill provides that a facility alteration that includes expenditures that are required to properly implement other energy conservation measures may be included as part of the performance contract. In these instances, the installation of those measures may be supervised by the performance savings contractor.

The bill also adds to contract requirements that a contract must include an investment-grade audit, certified by DMS, which states that the cost savings are appropriate and sufficient for the term of the contract.

The bill requires DFS to complete its review and approval of the guaranteed energy, water, and wastewater performance savings contract within 10 business days of receiving it from a state agency.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See *Fiscal Comments*.

2. Expenditures:

   See *Fiscal Comments*.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive effect on the Energy Savings Contracting industry if more agencies enter into guaranteed energy, water, or wastewater performance savings contracts.

D. FISCAL COMMENTS:

The bill adds to contract requirements that a contract must include an investment-grade audit, certified by DMS, which states that the cost savings are appropriate and sufficient for the term of the contract. Current law directs DMS to review the investment-grade audit for each proposed project and certify that the cost savings are appropriate and sufficient for the term of the contract. There is no fiscal impact for DMS to administer the provisions in this bill.

The bill requires DFS to complete its review and approval of the guaranteed energy, water, and wastewater performance savings contract within 10 business days of receiving it. DFS stated that it can handle the provisions of this bill within existing resources.[5]

[5] Department of Financial Services Bill Analysis, dated March 15, 2013, which is on file with the House Appropriations Committee.