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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"; deleting a reference to life  
8 cycle cost calculations; providing that a contract may  
9 provide for repayments to a lender of an installation  
10 construction loan in installments for a period not to  
11 exceed 20 years; requiring a contract to provide that  
12 repayments to a lender of an installation construction  
13 loan may be made over time, not to exceed 20 years  
14 from a certain date; requiring a contract to provide  
15 for a certain amount of repayment to the lender of the  
16 installation construction loan within 2 years of a  
17 specified date; providing that certain improvements  
18 may be included in a performance contract if certain  
19 conditions are satisfied; authorizing certain facility  
20 alterations to be included in a performance contract  
21 and to be supervised by the performance savings  
22 contractor; limiting the time allotted to the Office  
23 of the Chief Financial Officer to review and approve  
24 an agency's guaranteed energy, water, and wastewater  
25 performance savings contract; conforming language;  
26 providing an effective date.

27  
28 Be It Enacted by the Legislature of the State of Florida:

29  
 30 Section 1. Paragraphs (a) through (c) of subsection (3),  
 31 paragraphs (c) and (j) of subsection (4), and subsections (5)  
 32 and (6) of section 489.145, Florida Statutes, are amended to  
 33 read:

34 489.145 Guaranteed energy, water, and wastewater  
 35 performance savings contracting.—

36 (3) DEFINITIONS.—As used in this section, the term:

37 (a) "Agency" means the state, a municipality, ~~or a~~  
 38 political subdivision, a county or city school district, or an  
 39 institution of higher education, including all state  
 40 universities, colleges, and technical colleges.

41 (b) "Energy, water, and wastewater efficiency and  
 42 conservation measure" means a training program incidental to the  
 43 contract, facility alteration, or equipment purchase to be used  
 44 in a building retrofit, addition, or renovation, or in new  
 45 construction, including an addition to existing facilities or  
 46 infrastructure, which reduces energy or water consumption,  
 47 wastewater production, or energy-related operating costs and  
 48 includes, but is not limited to:

49 1. Installing or modifying:

50 a. Insulation of the facility structure and systems within  
 51 the facility.

52 b.2. Window and door systems that reduce energy  
 53 consumption or operating costs, such as storm windows and doors,  
 54 caulking or weatherstripping, multiglazed windows and doors,  
 55 heat-absorbing~~7~~ or heat-reflective~~7~~ glazed and coated window and  
 56 door systems, additional glazing, and reductions in glass area~~7~~

57 | ~~and other window and door system modifications that reduce~~  
 58 | ~~energy consumption.~~

59 | ~~c.3.~~ Automatic energy control systems.

60 | ~~4. Heating, ventilating, or air-conditioning system~~  
 61 | ~~modifications or replacements.~~

62 | ~~5. Replacement or modifications of lighting fixtures to~~  
 63 | ~~increase the energy efficiency of the lighting system, which, at~~  
 64 | ~~a minimum, must conform to the applicable state or local~~  
 65 | ~~building code.~~

66 | ~~d.6.~~ Energy recovery systems.

67 | ~~e.7.~~ Cogeneration systems that produce steam or forms of  
 68 | energy such as heat, as well as electricity, for use primarily  
 69 | within a facility or complex of facilities.

70 | ~~8. Energy conservation measures that reduce British~~  
 71 | ~~thermal units (Btu), kilowatts (kW), or kilowatt hours (kWh)~~  
 72 | ~~consumed or provide long term operating cost reductions.~~

73 | ~~f.9.~~ Renewable energy systems, such as solar, biomass, or  
 74 | ~~wind systems.~~

75 | ~~g.10.~~ Devices that reduce water consumption or sewer  
 76 | charges.

77 | ~~h.11.~~ Energy storage systems, such as fuel cells and  
 78 | thermal storage.

79 | ~~i.12.~~ Energy-generating technologies, such as  
 80 | microturbines.

81 | j. Automated, electronic, or remotely controlled  
 82 | technologies, systems, or measures that reduce utility or  
 83 | operating costs.

84 | k. Software-based systems that reduce facility management

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85 | or other facility operating costs.

86 |       1. Energy information and control systems that monitor  
87 | consumption, redirect systems to optimal energy sources, and  
88 | manage energy-using equipment.

89 |       2. Replacing or modifying:

90 |       a. Heating, ventilating, or air-conditioning systems.

91 |       b. Lighting fixtures to increase the energy efficiency of  
92 | the lighting system without increasing the overall illumination  
93 | of a building, unless the increase in illumination is necessary  
94 | to conform to the applicable state or local building code.

95 |       3. Implementing a program to reduce energy costs through  
96 | rate adjustments, load shifting to reduce peak demand, or the  
97 | use of alternative energy suppliers, including, but not limited  
98 | to, demand response programs, changes to more favorable rate  
99 | schedules, negotiation of lower rates using new suppliers, 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 of an automated meter  
104 | reading system, or other construction, modification,  
105 | installation, or remodeling of water, electric, gas, fuel,  
106 | communication, or other supplied utility system.

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

112 |       ~~7.13.~~ Any other repair, replacement, or upgrade of

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113 existing equipment that produces measurable savings, or any  
114 other construction, modification, installation, or remodeling  
115 that is approved by an agency and that is within the legislative  
116 authority granted the agency, such as an energy conservation  
117 measure.

118 8. Any other measure not otherwise defined in this chapter  
119 which is designed to reduce utility consumption, revenue  
120 enhancements, wastewater cost savings, avoided capital costs, or  
121 similar efficiency gains to a governmental unit.

122 (c) "Energy, water, or wastewater cost savings" means a  
123 measured reduction in the cost of fuel, energy or water  
124 consumption, wastewater production, ~~and~~ stipulated operation and  
125 maintenance, and identified avoided capital savings created from  
126 the implementation of one or more energy, water, or wastewater  
127 efficiency or conservation measures when compared with an  
128 established baseline for the previous cost of fuel, energy or  
129 water consumption, wastewater production, ~~and~~ stipulated  
130 operation and maintenance, and identified avoided capital costs.

131 (4) PROCEDURES.—

132 (c) An ~~The~~ agency may enter into a guaranteed energy,  
133 water, and wastewater performance savings contract with a  
134 guaranteed energy, water, and wastewater performance savings  
135 contractor if the agency finds that the amount the agency would  
136 spend on an ~~the~~ energy, water, and wastewater efficiency and  
137 conservation measure is unlikely to ~~measures will not likely~~  
138 exceed the amount of the cost savings for up to 20 years after  
139 ~~from~~ the date of installation, ~~based on the life cycle cost~~  
140 ~~calculations provided in s. 255.255,~~ if the recommendations in

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141 the report were followed and if the qualified provider or  
142 providers give a written guarantee that the cost savings will  
143 meet or exceed the costs of the system. However, actual computed  
144 cost savings must meet or exceed the estimated cost savings  
145 provided in each agency's program approval. Baseline adjustments  
146 used in calculations must be specified in the contract. The  
147 contract may provide for repayment to the lender of the  
148 installation construction loan through installment payments for  
149 a period not to exceed 20 years.

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

159 (5) CONTRACT PROVISIONS.—

160 (a) A guaranteed energy, water, and wastewater performance  
161 savings contract must include a written guarantee that may  
162 include, but is not limited to the form of, a letter of credit,  
163 insurance policy, or corporate guarantee by the guaranteed  
164 energy, water, and wastewater performance savings contractor  
165 that annual cost savings will meet or exceed the amortized cost  
166 of energy, water, and wastewater efficiency and conservation  
167 measures.

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

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169 performance savings contract must provide that all repayments  
170 ~~payments~~ to the lender of the installation construction loan,  
171 except obligations on termination of the contract before its  
172 expiration, may be made over time, but may not ~~to~~ exceed 20  
173 years from the date of complete installation and acceptance by  
174 the agency, and that the annual savings are guaranteed to the  
175 extent necessary to make annual payments to satisfy the  
176 guaranteed energy, water, and wastewater performance savings  
177 contract.

178 (c) The guaranteed energy, water, and wastewater  
179 performance savings contract must require that the guaranteed  
180 energy, water, and wastewater performance savings contractor to  
181 whom the contract is awarded provide a 100-percent public  
182 construction bond to the agency for its faithful performance, as  
183 required by s. 255.05.

184 (d) The guaranteed energy, water, and wastewater  
185 performance savings contract may contain a provision allocating  
186 to the parties to the contract ~~any~~ annual cost savings that  
187 exceed the amount of the cost savings guaranteed in the  
188 contract.

189 (e) The guaranteed energy, water, and wastewater  
190 performance savings contract must ~~shall~~ require the guaranteed  
191 energy, water, and wastewater performance savings contractor to  
192 provide to the agency an annual reconciliation of the guaranteed  
193 energy or associated cost savings. If the reconciliation reveals  
194 a shortfall in annual energy or associated cost savings, the  
195 guaranteed energy, water, and wastewater performance savings  
196 contractor is liable for such shortfall. If the reconciliation

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197 reveals an excess in annual cost savings, the excess savings may  
198 be allocated under paragraph (d) but may not be used to cover  
199 potential energy or associated cost savings shortages in  
200 subsequent contract years.

201 (f) The guaranteed energy, water, and wastewater  
202 performance savings contract must provide for repayment ~~payments~~  
203 to the lender of the installation construction loan of not less  
204 than one-twentieth of the price to be paid within 2 years from  
205 the date of the complete installation and acceptance by the  
206 agency using straight-line amortization for the term of the  
207 loan, and the remaining costs to be paid at least quarterly, not  
208 to exceed a 20-year term, based on life cycle cost calculations.

209 (g) The guaranteed energy, water, and wastewater  
210 performance savings contract may extend beyond the fiscal year  
211 in which it becomes effective; however, the term of a ~~any~~  
212 contract expires at the end of each fiscal year and may be  
213 automatically renewed annually for up to 20 years, subject to  
214 the agency making sufficient annual appropriations based upon  
215 continued realized energy, water, and wastewater savings.

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

219 (i) An improvement that is not causally connected to an  
220 energy conservation measure may be included in a performance  
221 contract if:

222 1. The total value of the improvement does not exceed 15  
223 percent of the total value of the performance contract; and

224 2. The improvement is necessary to conform to a law, a

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225 rule, or an ordinance, or an analysis within the performance  
226 contract demonstrates that there is an economic advantage to the  
227 governmental unit implementing an improvement as part of the  
228 performance contract.

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

235 (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.—The  
236 Department of Management Services, with the assistance of the  
237 Office of the Chief Financial Officer, shall, within available  
238 resources, provide technical content assistance to state  
239 agencies contracting for energy, water, and wastewater  
240 efficiency and conservation measures and engage in other  
241 activities considered appropriate by the department for  
242 promoting and facilitating guaranteed energy, water, and  
243 wastewater performance contracting by state agencies. The  
244 Department of Management Services shall review the investment-  
245 grade audit for each proposed project and certify that the cost  
246 savings are appropriate and sufficient for the term of the  
247 contract. The Office of the Chief Financial Officer, with the  
248 assistance of the Department of Management Services, shall,  
249 within available resources, develop model contractual and  
250 related documents for use by state agencies. Before ~~Prior to~~  
251 entering into a guaranteed energy, water, and wastewater  
252 performance savings contract, a ~~any~~ contract or lease for third-

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253 party financing, or any combination of such contracts, a state  
254 agency shall submit such proposed contract or lease to the  
255 Office of the Chief Financial Officer for review and approval.  
256 The Office of the Chief Financial Officer shall complete its  
257 review and approval within 10 business days after receiving the  
258 proposed contract or lease. A proposed contract or lease must  
259 shall include:

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

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

268 (c) Approval by the head of the agency or his or her  
269 designee.

270 (d) An agency measurement and verification plan to monitor  
271 cost savings.

272

273 The Office of the Chief Financial Officer shall not approve any  
274 contract submitted under this section from a state agency that  
275 does not meet the requirements of this section.

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