

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"; 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 after 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 or lease include an
24 investment-grade audit certified by the Department of
25 Management Services; conforming language; providing an
26 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 through (7) 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 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, replacing, 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

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 m. Heating, ventilating, or air-conditioning systems.

90 n. Lighting fixtures.

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

95 3. An improvement that reduces solid waste and associated
96 removal costs.

97 4. Meter replacement; installation or modification of an
98 automated meter; installation of an automated meter reading
99 system; or other construction, modification, installation, or
100 remodeling of water, electric, gas, fuel, communication, or
101 other supplied utility system.

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

107 ~~6.13.~~ Any other repair, replacement, or upgrade of
108 existing equipment that produces measurable savings, or any
109 other construction, modification, installation, or remodeling
110 that is approved by an agency and that is within the legislative
111 authority granted the agency, such as an energy conservation
112 measure.

113 7. Any other measure not otherwise defined in this chapter
114 that is designed to reduce utility consumption, reduce
115 wastewater costs, enhance revenue, avoid capital costs, or
116 achieve similar efficiency gains at an agency or other
117 governmental unit.

118 (c) "Energy, water, or wastewater cost savings" means a
119 measured reduction in the cost of fuel, energy or water
120 consumption, or wastewater production;~~and~~ stipulated operation
121 and maintenance savings; improvements in supplied utility
122 systems, including, without limitation, revenue enhancements or
123 reduction in net operating costs resulting from increased meter
124 accuracy or performance; and identified capital savings created
125 from the implementation of one or more energy, water, or
126 wastewater efficiency or conservation measures when compared
127 with an established baseline for the previous cost of fuel,
128 energy or water consumption, wastewater production, ~~and~~
129 stipulated operation and maintenance, meter accuracy or
130 performance, and identified 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 the energy, water, and wastewater efficiency and
137 conservation measures is unlikely to ~~will not likely~~ exceed the
138 amount of the cost savings for up to 20 years after ~~from~~ the
139 date of installation, based on the life cycle cost calculations
140 provided in s. 255.255, if the recommendations in the report

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

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

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 or the loan agreement related
203 thereto must provide for repayment to the lender of the
204 installation construction loan payments of not less than one-
205 twentieth of the price to be paid within 2 years after ~~from~~ the
206 date of the complete installation and acceptance by the agency
207 using straight-line amortization for the term of the loan, and
208 the remaining costs to be paid at least quarterly, not to exceed
209 a 20-year term, based on life cycle cost calculations.

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

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

220 (i) A facility alteration that includes expenditures that
221 are required to properly implement other energy conservation
222 measures may be included as part of a performance contract. In
223 such case, notwithstanding any provision of law, the
224 installation of these additional measures may be supervised by

225 | the performance savings contractor.

226 | (6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.—The
227 | Department of Management Services, with the assistance of the
228 | Office of the Chief Financial Officer, shall, within available
229 | resources, provide technical content assistance to state
230 | agencies contracting for energy, water, and wastewater
231 | efficiency and conservation measures and engage in other
232 | activities considered appropriate by the department for
233 | promoting and facilitating guaranteed energy, water, and
234 | wastewater performance contracting by state agencies. The
235 | Department of Management Services shall review the investment-
236 | grade audit for each proposed project and certify that the cost
237 | savings are appropriate and sufficient for the term of the
238 | contract. The Office of the Chief Financial Officer, with the
239 | assistance of the Department of Management Services, shall,
240 | within available resources, develop model contractual and
241 | related documents for use by state agencies. Before ~~Prior to~~
242 | entering into a guaranteed energy, water, and wastewater
243 | performance savings contract, a ~~any~~ contract or lease for third-
244 | party financing, or any combination of such contracts, a state
245 | agency shall submit such proposed contract or lease to the
246 | Office of the Chief Financial Officer for review and approval.
247 | The Office of the Chief Financial Officer shall complete its
248 | review and approval within 10 business days after receiving the
249 | proposed contract or lease. A proposed contract or lease with a
250 | state agency must ~~shall~~ include:

251 | (a) Supporting information required by s. 216.023(4)(a)9.
252 | in ss. 287.063(5) and 287.064(11). For contracts approved under

253 | this section, the criteria may, at a minimum, include the
 254 | specification of a benchmark cost of capital and minimum real
 255 | rate of return on energy, water, or wastewater savings against
 256 | which proposals shall be evaluated.

257 | (b) Documentation supporting recurring funds requirements
 258 | in ss. 287.063(5) and 287.064(11).

259 | (c) Approval by the head of the agency or his or her
 260 | designee.

261 | (d) An agency measurement and verification plan to monitor
 262 | cost savings.

263 | (e) An investment-grade audit, certified by the Department
 264 | of Management Services, which states that the cost savings are
 265 | appropriate and sufficient for the term of the contract.

266 | (7) FUNDING SUPPORT.—For purposes of consolidated
 267 | financing of deferred payment commodity contracts under this
 268 | section by a state ~~an~~ agency, any such contract must be
 269 | supported from available funds appropriated to the state agency
 270 | in an appropriation category, as defined in chapter 216, that
 271 | the Chief Financial Officer has determined is appropriate or
 272 | that the Legislature has designated for payment of the
 273 | obligation incurred under this section.

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

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