



413074

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/22/2020	.	
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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.