

Committee Substitute for Senate Bill No. 1012

An act relating to guaranteed energy performance savings contracting; amending s. 489.145, F.S.; changing provisions relating to energy efficiency contracting to provisions relating to guaranteed energy performance savings contracting; providing a short title; providing legislative intent; revising definitions, procedures, and contract provisions; providing criteria, requirements, procedures, and limitations for energy performance contracts; providing for program administration and contract review by the Department of Management Services and the Office of the Comptroller; providing an effective date.

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

Section 1. Section 489.145, Florida Statutes, is amended to read:

489.145 Guaranteed energy performance savings efficiency contracting.—

(1) SHORT TITLE.—This section may be cited as the “Guaranteed Energy Performance Savings Contracting Act.”

(2) LEGISLATIVE FINDINGS.—The Legislature finds that investment in energy conservation measures in agency facilities can reduce the amount of energy consumed and produce immediate and long-term savings. It is the policy of this state to encourage agencies to invest in energy conservation measures that reduce energy consumption, produce a cost savings for the agency, and improve the quality of indoor air in public facilities and to operate, maintain, and, when economically feasible, build or renovate existing agency facilities in such a manner as to minimize energy consumption and maximize energy savings. It is further the policy of this state to encourage agencies to reinvest any energy savings resulting from energy conservation measures in additional energy conservation efforts.

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

(a) “Agency” means the state, a municipality, a ~~school district or school board,~~ or a another political subdivision.

(b) “Energy conservation measure” means a training program, ~~or facility alteration, or equipment purchase to be used in new construction, including an addition to an existing facility, which~~ that reduces energy consumption or operating costs and includes, ~~but is not limited to:~~

1. Insulation of the facility building structure and systems within the facility building.

2. 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, reductions in glass area, and

other window and door system modifications that reduce energy consumption.

3. Automatic energy control systems.

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

5. Replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system, which, at a minimum, must without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made.

6. Energy recovery systems.

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

8. Energy conservation measures that provide long-term operating cost reductions or and significantly reduce Btu consumed.

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

10. Devices that reduce water consumption or sewer charges.

11. Storage systems, such as fuel cells and thermal storage.

12. Generating technologies, such as microturbines.

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

(c) “Energy cost savings” means a measured reduction in the cost of fuel, and energy consumption, and stipulated operation and maintenance costs created from the implementation of one or more energy conservation measures when compared with an established baseline for the previous cost of fuel, and energy consumption, and stipulated operation and maintenance costs.

(d) “Guaranteed energy performance savings contract” means a contract for the evaluation, and recommendation, and implementation of energy conservation measures, which, at a minimum, shall include: including

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

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

3. The finance charges incurred by the agency over the life of the contract. The contract may cover repair or replacement of existing equipment in a state-owned building or a state-owned hospital, professional fees, and

financing charges to be paid from the energy savings less agreed-upon inflation factors, and maintenance services if applicable.

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

~~(4)~~(2) PROCEDURES.—

(a) An agency may enter into a guaranteed energy performance savings contract with a guaranteed energy performance savings contractor ~~qualified provider or providers~~ to significantly reduce energy or operating costs of an ~~agency facility~~ agency-owned building or an agency-owned hospital through one or more energy conservation measures.

(b) Before ~~design and installation of energy conservation measures entering into the contract~~, the agency must obtain from a guaranteed energy performance savings contractor ~~qualified provider or providers~~ a report that summarizes the costs associated with ~~of~~ the energy conservation measures and provides an estimate of the amount of the energy cost savings or operating costs will be reduced. The agency and the guaranteed energy performance savings contractor may enter into a separate agreement to pay for costs associated with the preparation and delivery of the report; however, payment to the contractor shall be contingent upon the report's projection of energy cost savings being equal to or greater than the total projected costs of the design and installation of the report's energy conservation measures.

(c) ~~After a review of the report~~, The agency may enter into a guaranteed energy performance savings contract with a guaranteed energy performance savings contractor if the agency ~~it finds that the amount the agency it would spend on the energy conservation measures will~~ is not likely to exceed the amount of the to be saved in energy cost savings and operating costs for up to 20 ~~10~~ years from the date of installation, based on the life cycle cost calculations provided in s. 255.255, if the recommendations in the report were followed and if the qualified provider or providers give a written guarantee that the energy ~~or operating~~ cost savings will meet or exceed the costs of the system. The contract may provide for installment payments for a period not to exceed 20 ~~10~~ years.

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

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

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

(g) In determining the amount the agency will finance to acquire the energy conservation measures, the agency may reduce such amount by the application of any grant moneys, rebates, or capital funding available to the agency for the purpose of buying down the cost of the guaranteed energy performance savings contract. However, in calculating the life cycle cost as required in paragraph (c), the agency shall not apply any grants, rebates, or capital funding.

(5)(3) CONTRACT PROVISIONS.—

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

(b) The guaranteed energy performance savings contract must provide that all payments, except obligations on termination of the contract before its expiration, may be made over time, but not to exceed 20 ~~10~~ years from the date of complete installation and acceptance by the agency state, and that the annual savings are guaranteed to the extent necessary to make annual payments to satisfy the guaranteed energy performance savings contract for the systems.

(c) The guaranteed energy performance savings contract must require that the guaranteed energy performance savings contractor ~~a qualified provider or providers~~ to whom the contract is awarded provide a 100-percent public construction project value bond to the agency state for its faithful performance, as required by s. 255.05 chapter 287.

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

(e) The guaranteed energy performance savings contract shall require the guaranteed energy performance savings contractor to provide to the agency an annual reconciliation of the guaranteed energy cost savings. If the reconciliation reveals a shortfall in annual energy cost savings, the guaranteed energy performance savings contractor is liable for such shortfall. If the reconciliation reveals an excess in annual energy cost savings, the excess savings may be allocated under paragraph (d) but may not be used to cover potential energy cost savings shortages in subsequent contract years.

(f)(d) The guaranteed energy performance savings contract must provide for payments of not less than ~~one-twentieth~~ one-tenth of the price to be paid within 2 years from the date of the complete installation and acceptance by the agency state, and the remaining costs to be paid at least quarterly, not to exceed a 20-year 10-year term, based on life cycle cost calculations.

(g)(e) The guaranteed energy performance savings contract may extend beyond the fiscal year in which it becomes effective; however, the term of any contract expires at the end of each fiscal year and may be automatically renewed annually for up to 20 ~~10~~ years, subject to the agency making sufficient annual appropriations based upon continued realized energy savings.

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

(6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.—The Department of Management Services, with the assistance of the Office of the Comptroller, may, within available resources, provide technical assistance to state agencies contracting for energy conservation measures and engage in other activities considered appropriate by the department for promoting and facilitating guaranteed energy performance contracting by state agencies. The Office of the Comptroller, with the assistance of the Department of Management Services, may, within available resources, develop model contractual and related documents for use by state agencies. Prior to entering into a guaranteed energy performance savings contract, any contract or lease for third-party financing, or any combination of such contracts, a state agency shall submit such proposed contract or lease to the Office of the Comptroller for review and approval.

Section 2. This act shall take effect October 1, 2001.

Approved by the Governor May 30, 2001.

Filed in Office Secretary of State May 30, 2001.