

## CHAPTER 2013-135

### Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 1594

An act relating to the Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act; amending s. 489.145, F.S.; revising the terms “agency,” “energy, water, and wastewater efficiency and conservation measure,” and “energy, water, or wastewater cost savings”; providing that a contract may provide for repayments to a lender of an installation construction loan in installments for a period not to exceed 20 years; requiring a contract to provide that repayments to a lender of an installation construction loan may be made over time, not to exceed 20 years from a certain date; requiring a contract to provide for a certain amount of repayment to the lender of the installation construction loan within 2 years of a specified date; authorizing certain facility alterations to be included in a performance contract and to be supervised by the performance savings contractor; limiting the time allotted to the Office of the Chief Financial Officer to review and approve an agency’s guaranteed energy, water, and wastewater performance savings contract; requiring that a proposed contract include an investment-grade audit certified by the Department of Management Services which states that the cost savings are appropriate and sufficient for the term of the contract; clarifying that, for funding purposes of consolidated financing of deferred payment commodity contracts, an agency means a state agency; conforming language; providing an effective date.

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

Section 1. Paragraphs (a) through (c) of subsection (3), paragraphs (c) and (j) of subsection (4), and subsections (5) through (7) of section 489.145, Florida Statutes, are amended to read:

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

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

(a) “Agency” means the state, a municipality, ~~or~~ a political subdivision, a county school district, or an institution of higher education, including all state universities, colleges, and technical colleges.

(b) “Energy, water, and wastewater efficiency and conservation measure” means 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 and includes, but is not limited to, any of the following:

1. Installing or modifying any of the following:
  - a. Insulation of the facility structure and systems within the facility.
  - ~~b.2. 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, and other window and door system modifications that reduce energy consumption.~~
  - ~~c.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 conform to the applicable state or local building code.~~
  - ~~d.6. Energy recovery systems.~~
  - ~~e.7. 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.~~
  - ~~8. Energy conservation measures that reduce British thermal units (Btu), kilowatts (kW), or kilowatt hours (kWh) consumed or provide long-term operating cost reductions.~~
  - ~~f.9. Renewable energy systems, such as solar, biomass, or wind systems.~~
  - ~~g.10. Devices that reduce water consumption or sewer charges.~~
  - ~~h.11. Energy storage systems, such as fuel cells and thermal storage.~~
  - ~~i.12. Energy-generating technologies, such as microturbines.~~
  - ~~j. Automated, electronic, or remotely controlled technologies, systems, or measures that reduce utility or operating costs.~~
  - ~~k. Software-based systems that reduce facility management or other facility operating costs.~~
  1. Energy information and control systems that monitor consumption, redirect systems to optimal energy sources, and manage energy-using equipment.
2. Installing, replacing, or modifying any of the following:
  - a. Heating, ventilating, or air-conditioning systems.

b. 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.

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); that reduces fuel or water consumption in the building or waste water production; or that reduces operating costs or provides long-term cost reductions.

7.13. 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.

(c) “Energy, water, or wastewater cost savings” means a measured reduction in the cost of fuel, energy or water consumption, ~~or wastewater production;~~ and stipulated operation and maintenance savings; improvements in supplied utility systems, including, without limitation, 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, ~~and stipulated operation and maintenance, meter accuracy or performance,~~ and identified capital costs.

(4) PROCEDURES.—

(c) An The agency may enter into a guaranteed energy, water, and wastewater performance savings contract with a guaranteed energy, water, and wastewater performance savings contractor if the agency finds that the amount the agency would spend on the energy, water, and wastewater efficiency and conservation measures is unlikely to ~~will not likely~~ exceed the amount of the cost savings for up to 20 years after ~~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 cost savings will meet or exceed the costs of the system. However, actual computed cost savings must meet or exceed the estimated cost savings provided in each agency's program approval. Baseline adjustments used in calculations must be specified in the contract. The contract may provide for repayment to the lender of the installation construction loan through installment payments for a period not to exceed 20 years.

(j) In determining the amount the agency will finance to acquire the energy, water, and wastewater efficiency and 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, water, and wastewater 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) CONTRACT PROVISIONS.—

(a) A guaranteed energy, water, and wastewater performance savings contract must include a written 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, water, and wastewater performance savings contractor that annual cost savings will meet or exceed the amortized cost of energy, water, and wastewater efficiency and conservation measures.

(b) The guaranteed energy, water, and wastewater performance savings contract or the loan agreement related thereto must provide that all repayments to the lender of the installation construction loan payments, except obligations on termination of the contract before its expiration, may be made over time, but may not ~~to~~ exceed 20 years from the date of complete installation and acceptance by the agency, and that the annual cost savings are guaranteed to the extent necessary to make annual payments to satisfy the guaranteed energy, water, and wastewater performance savings contract.

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

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

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

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

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

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

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

(6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.—The Department of Management Services, with the assistance of the Office of the Chief Financial Officer, shall, within available resources, provide technical content assistance to state agencies contracting for energy, water, and wastewater efficiency and conservation measures and engage in other activities considered appropriate by the department for promoting and facilitating guaranteed energy, water, and wastewater performance contracting by state agencies. The Department of Management Services shall 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. The Office of the Chief Financial Officer, with the assistance of the Department of Management Services, shall, within available resources, develop model contractual and related documents for use by state agencies. Before ~~Prior to~~ entering into a guaranteed energy, water, and wastewater

performance savings contract, ~~a 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 Chief Financial Officer for review and approval. The Office of the Chief Financial Officer shall complete its review and approval within 10 business days after receiving the proposed contract or lease. A proposed contract or lease with a state agency must shall include the following:

(a) Supporting information required by s. 216.023(4)(a)9. in ss. 287.063(5) and 287.064(11). 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.

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

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

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

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

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

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

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

Approved by the Governor June 7, 2013.

Filed in Office Secretary of State June 7, 2013.