

# The Florida Senate

## 2012 Florida Statutes

<u>Title XXXII</u> REGULATION OF PROFESSIONS AND OCCUPATIONS	<u>Chapter 489</u> CONTRACTING  <u>Entire Chapter</u>	<b>SECTION 145</b> <b>Guaranteed energy, water, and wastewater performance savings contracting.</b>
--	--	--

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

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

(2) **LEGISLATIVE FINDINGS.**—The Legislature finds that investment in energy, water, and wastewater efficiency and conservation measures in agency facilities can reduce the amount of energy and water consumed and wastewater produced and produce immediate and long-term savings. It is the policy of this state to encourage each agency to invest in energy, water, and wastewater efficiency and conservation measures to minimize energy and water consumption and wastewater production and maximize energy, water, and wastewater savings. It is further the policy of this state to encourage agencies to reinvest any savings resulting from energy, water, and wastewater efficiency and conservation measures in additional energy, water, and wastewater efficiency and conservation measures.

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

- (a) “Agency” means the state, a municipality, or a political subdivision.
- (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 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:
  1. Insulation of the facility structure and systems within the facility.
  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 conform to the applicable state or local building code.
  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 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.
  9. Renewable energy systems, such as solar, biomass, or wind systems.
  10. Devices that reduce water consumption or sewer charges.
  11. Energy storage systems, such as fuel cells and thermal storage.
  12. Energy-generating technologies, such as microturbines.
  13. Any other repair, replacement, or upgrade of existing equipment.
- (c) “Energy, water, or wastewater cost savings” means a measured reduction in the cost of fuel, energy or water consumption, wastewater production, and stipulated operation and maintenance 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.

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

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 and may include allowable cost avoidance if determined appropriate by the Chief Financial Officer.
3. The finance charges incurred by the agency over the life of the contract.

(e) “Guaranteed energy, water, and wastewater performance savings contractor” 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, water, and wastewater efficiency and conservation measures through energy performance contracts.

(f) “Investment grade energy audit” means a detailed energy, water, and wastewater audit, along with an accompanying analysis of proposed energy, water, and wastewater conservation measures, and their costs, savings, and benefits prior to entry into an energy savings contract.

(4) PROCEDURES.—

(a) An agency may enter into a guaranteed energy, water, and wastewater performance savings contract with a guaranteed energy, water, and wastewater performance savings contractor to reduce energy or water consumption, wastewater production, or energy-related operating costs of an agency facility through one or more energy, water, or wastewater efficiency or conservation measures.

(b) Before design and installation of energy, water, or wastewater efficiency and conservation measures, the agency must obtain from a guaranteed energy, water, and wastewater performance savings contractor a report that summarizes the costs associated with the energy, water, or wastewater efficiency and conservation measures or energy-related operational cost-saving measures and provides an estimate of the amount of the cost savings. The agency and the guaranteed energy, water, and wastewater 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, water, and wastewater 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) 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 will not likely exceed the amount of the cost savings for up to 20 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 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 installment payments for a period not to exceed 20 years.

(d) A guaranteed energy, water, and wastewater performance savings contractor 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, water, and wastewater performance savings contract, 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, water, and wastewater 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, water, and wastewater performance contract. A separate contract for third-party financing under this paragraph 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, water, and wastewater performance savings contractor.

(g) Financing for guaranteed energy, water, and wastewater performance savings contracts may be provided under the authority of s. [287.064](#).

(h) The Office of the Chief Financial Officer shall review proposals from state agencies to ensure that the most effective financing is being used.

(i) Annually, the agency that has entered into the contract shall provide the Department of Management Services and the Chief Financial Officer the measurement and verification report required by the contract to validate that savings have occurred.

(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 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 years from the date of complete installation and acceptance by the agency, and that the annual 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 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 must provide for 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 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.

(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. Prior to entering into a guaranteed energy, water, and wastewater 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 Chief Financial Officer for review and approval. A proposed contract or lease shall include:

- (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.
- (7) FUNDING SUPPORT.—For purposes of consolidated financing of deferred payment commodity contracts under this section by an agency, any such contract must be supported from available funds appropriated to the 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.

**History.**—s. 1, ch. 94-112; s. 1, ch. 2001-81; s. 510, ch. 2003-261; s. 99, ch. 2008-227; s. 59, ch. 2009-21.

Disclaimer: The information on this system is unverified. The journals or printed bills of the respective chambers should be consulted for official purposes.

Copyright © 2000- 2018 State of Florida.