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Local Government & Regional Affairs Committee Substitute Adopted 6/30/93  
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Short Title: Local Energy Savings Contracts.

(Public)

Sponsors:

Referred to: Finance.

February 9, 1993

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE UNITS OF LOCAL GOVERNMENT, LOCAL SCHOOL  
BOARDS, AND COMMUNITY COLLEGES TO ENTER INTO GUARANTEED  
ENERGY SAVINGS CONTRACTS IN ORDER TO FINANCE ENERGY  
CONSERVATION MEASURES IN LOCAL PUBLIC FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. The title of Article 3B of Chapter 143 of the General Statutes  
reads as rewritten:

~~"Energy Policy for State Agencies Concerning Major Construction or Renovation of  
Buildings. Conservation in Public Facilities."~~

Sec. 2. Existing Article 3B of Chapter 143 of the General Statutes is  
designated as Part 1 of that Article, to be entitled "Energy Policy on Public Buildings  
and Life Cycle Cost Analysis."

Sec. 3. G.S. 143-64.14 reads as rewritten:

**"§ 143-64.14. Application of Article Part.**

The provisions of this ~~Article Part~~ shall not apply to municipalities or counties, nor to  
any agency or department of any municipality or county; provided, however, this ~~Article~~  
~~Part~~ shall apply to any board of a community college. Community college is defined in  
G.S. 115D-2(2)."

Sec. 4. Article 3B of Chapter 143 of the General Statutes is amended by  
adding a new Part to read:

"Part 2. Guaranteed Energy Savings Contracts for Local Governmental Units.

1 **"§ 143-64.17. Definitions.**

2 As used in this Part:

- 3 (1) 'Energy conservation measure' means a facility alteration or training  
4 related to the operation of the facility that reduces energy consumption  
5 or operating costs and includes:  
6 a. Insulation of the building structure and systems within the  
7 building;  
8 b. Storm windows or doors, caulking, weatherstripping,  
9 multiglazed windows or doors, heat-absorbing or heat-reflective  
10 glazed or coated window or door systems, additional glazing,  
11 reductions in glass area, or other window or door system  
12 modifications that reduce energy consumption;  
13 c. Automatic energy control systems;  
14 d. Heating, ventilating, or air-conditioning system modifications  
15 or replacements;  
16 e. Replacement or modification of lighting fixtures to increase the  
17 energy efficiency of a lighting system without increasing the  
18 overall illumination of a facility, unless an increase in  
19 illumination is necessary to conform to the applicable State or  
20 local building code or the light system after the proposed  
21 modifications are made;  
22 f. Energy recovery systems;  
23 g. Cogeneration systems that produce steam or forms of energy  
24 such as heat, as well as electricity, for use primarily within a  
25 building or complex of buildings; or  
26 h. Other energy conservation measures that provide long-term  
27 operating cost reductions or significantly reduce energy  
28 consumed.
- 29 (2) 'Energy savings' means a measured reduction in fuel, energy, or  
30 operating costs created from the implementation of one or more energy  
31 conservation measures when compared with an established baseline of  
32 previous fuel, energy, or operating costs.
- 33 (3) 'Guaranteed energy savings contract' means a contract for the  
34 evaluation, recommendation, or implementation of energy  
35 conservation measures, including the design and installation of  
36 equipment or the repair or replacement of existing equipment, in which  
37 all payments, except obligations on termination of the contract before  
38 its expiration, are to be made over time, and in which energy savings  
39 are guaranteed to exceed costs.
- 40 (4) 'Local governmental unit' means any board or governing body of a  
41 political subdivision of the State, including any board of a community  
42 college, any school board, or an agency, commission, or authority of a  
43 political subdivision of the State.

- 1           (5) 'Qualified provider' means a person or business experienced in the  
2 design, implementation, and installation of energy conservation  
3 measures.
- 4           (6) 'Request for proposals' means a negotiated procurement initiated by a  
5 local governmental unit by way of a published notice that includes the  
6 following:
- 7           a. The name and address of the local governmental unit.  
8           b. The name, address, title, and telephone number of a contact  
9 person in the local governmental unit.
- 10          c. Notice indicating that the local governmental unit is requesting  
11 qualified providers to propose energy conservation measures  
12 through a guaranteed energy savings contract.
- 13          d. The date, time, and place where proposals must be received.  
14          e. The evaluation criteria for assessing the proposals.  
15          f. A statement reserving the right of the local governmental unit to  
16 reject any or all such proposals.
- 17          g. Any other stipulations and clarifications the local governmental  
18 unit may require.

19 **"§ 143-64.17A. Solicitation of guaranteed energy savings contracts.**

20       (a) Before entering into a guaranteed energy savings contract, the primary  
21 purpose of which is to save energy through the purchase, repair, or improvement of real  
22 property, a local governmental unit shall issue a request for proposals. Notice of the  
23 request shall be published at least one week in advance of the time specified for opening  
24 of the proposals in at least one newspaper of general circulation in the geographic area  
25 for which the local governmental unit is responsible. It shall be the duty of the local  
26 governmental unit to solicit proposals direct by mail from qualified providers. No  
27 guaranteed energy savings contract shall be awarded by any governing body unless at  
28 least two proposals have been received from qualified providers. Provided that if after  
29 the publication of the notice of the request for proposals, not as many as two proposals  
30 have been received from qualified providers, said governing body of the local  
31 governmental unit shall again publish notice of the request and if as a result of such  
32 second notice, not as many as two proposals by qualified providers are received, such  
33 governing body may then open the proposals and select a qualified provider even  
34 though only one proposal is received.

35       (b) The local governmental unit shall evaluate a sealed proposal from any  
36 qualified provider. Proposals shall contain estimates of all costs of installation,  
37 modification, or remodeling, including costs of design, engineering, installation,  
38 maintenance, repairs, or debt service, and estimates of energy savings.

39       (c) Proposals received pursuant to this section shall be opened by a member or  
40 employee of the governing body of the local governmental unit at a public opening at  
41 which the contents of the proposals shall be announced and recorded in the minutes of  
42 the governing body. Proposals shall be evaluated for the local governmental unit by a  
43 licensed architect or engineer on the basis of:

- 44           (1) The information required in subsection (b) of this section; and

1           (2) The criteria stated in the request for proposals.  
2 The local governmental unit may include as part of the payments under the guaranteed  
3 energy savings contract any reasonable fee for evaluation of the proposal by a licensed  
4 architect or professional engineer not employed as a member of the staff of the local  
5 governmental unit.

6           (d) The local governmental unit shall select the qualified provider that it  
7 determines to best meet the needs of the local governmental unit based upon the  
8 following:

9           (1) Prices offered;

10          (2) Proposed costs of construction, financing, maintenance and training;

11          (3) Quality of the products proposed;

12          (4) Amount of energy savings;

13          (5) General reputation and performance capabilities of the qualified  
14 providers;

15          (6) Substantial conformity with the specifications and other conditions set  
16 forth in the request for proposals;

17          (7) Time specified in the proposals for the performance of the contract;  
18 and

19          (8) Any other factors the local governmental unit deems necessary, which  
20 factors shall be made a matter of record.

21           (e) Nothing in this section shall limit the authority of local governmental units as  
22 set forth in Article 3D of Chapter 143 of the General Statutes.

23 **"§ 143-64.17B. Guaranteed energy savings contracts.**

24           (a) A local governmental unit may enter into a guaranteed energy savings  
25 contract with a qualified provider if:

26           (1) The term of the contract does not exceed 10 years from the date of the  
27 installation and acceptance by the local governmental unit of the  
28 energy conservation measures provided for under the contract; and

29           (2) The local governmental unit finds that the energy savings resulting  
30 from the performance of the contract will equal or exceed the total cost  
31 of the contract.

32           (b) Before entering into a guaranteed energy savings contract, the local  
33 governmental unit shall provide published notice of the meeting at which it proposes to  
34 award the contract, the names of the parties to the proposed contract, and the contract's  
35 purpose.

36           (c) A qualified provider entering into a guaranteed energy savings contract under  
37 this Part shall provide a bond to the local governmental unit in the amount equal to one  
38 hundred percent (100%) of the amount of the guaranteed energy savings contract to  
39 assure the provider's faithful performance. Any bonds required by this subsection shall  
40 be subject to the provisions of Article 3 of Chapter 44A of the General Statutes.

41           (d) As used in this section, 'total cost' shall include, but not be limited to, costs of  
42 construction, costs of financing, and costs of maintenance and training during the term  
43 of the contract. 'Total cost' does not include any obligations on termination of the  
44 contract before its expiration.

1 **"§ 143-64.17C. Installment and lease-purchase contracts.**

2 Units of local government may contract for the installation or purchase of energy  
3 conservation measures pursuant to the provisions of G.S. 160A-20. Notwithstanding  
4 the provisions of G.S. 160A-20(h), any community college or board of education may  
5 enter into an installment or lease-purchase contract for the purpose of financing a  
6 guaranteed energy savings contract.

7 **"§ 143-64.17D. Contract continuance.**

8 A guaranteed energy savings contract may extend beyond the fiscal year in which it  
9 becomes effective. Such a contract shall stipulate that it does not constitute a debt,  
10 liability, or obligation of any local governmental unit or a pledge of the faith and credit  
11 of any unit of local government.

12 **"§ 143-64.17E. Payments under contract.**

13 A local governmental unit may use funds designated for operating or capital  
14 expenditures for any guaranteed energy savings contract, including purchases using  
15 installment payment contracts. State aid or appropriations to any local governmental  
16 unit shall not be reduced as a result of energy savings occurring as a result of a  
17 guaranteed energy savings contract."

18 Sec. 5. Article 8 of Chapter 143 of the General Statutes is amended by  
19 adding a new section to read:

20 **"§ 143-129.4. Guaranteed energy savings contracts.**

21 The solicitation and evaluation of proposals and the letting of guaranteed energy  
22 savings contracts as defined in Part 2 of Article 3B of this Chapter shall be governed  
23 solely by the provisions of that Part; except that such contracts shall be subject to the  
24 requirements of subsection (c) of G.S. 143-128."

25 Sec. 6. G.S. 115C-47 is amended by adding a new subdivision to read:

26 "(28a) To Enter Guaranteed Energy Savings Contracts for Energy  
27 Conservation Measures. – Local boards may purchase energy  
28 conservation measures by guaranteed energy savings contracts  
29 pursuant to Part 2 of Article 3B of Chapter 143 of the General  
30 Statutes."

31 Sec. 7. G.S. 115C-521(c) reads as rewritten:

32 "(c) The building of all new schoolhouses and the repairing of all old  
33 schoolhouses shall be under the control and direction of, and by contract with, the board  
34 of education in which such building and repairing is done. Boards of education shall  
35 not invest any money in any new building that is not built in accordance with plans  
36 approved by the State Superintendent to structural and functional soundness, safety and  
37 sanitation, nor contract for more money than is made available for its erection.  
38 However, this subsection shall not be construed so as to prevent boards of education  
39 from investing any money in buildings that are being constructed pursuant to a  
40 continuing contract of construction as provided for in G.S. 115C-441(c1). All contracts  
41 for buildings shall be in writing and all buildings shall be inspected, received, and  
42 approved by the local superintendent and the architect before full payment is made  
43 therefor: Provided, that this subsection shall not prohibit boards of education from

1 repairing and altering buildings with the help of janitors and other regular employees of  
2 said board.

3 In the design and construction of new school facilities and in the repair and  
4 renovation of existing school facilities, the local board of education shall consider the  
5 placement of windows to use the climate of North Carolina for both light and ventilation  
6 in case of power shortages. A local board shall also consider the installation of solar  
7 energy systems in the school facilities whenever practicable. Local school boards may  
8 enter into guaranteed energy savings contracts for the evaluation, recommendation, or  
9 implementation of energy conservation measures in existing school facilities pursuant to  
10 Part 2 of Article 3B of Chapter 143 of the General Statutes.

11 In the case of any school buildings erected, repaired, or equipped with any money  
12 loaned or granted by the State to any local school administrative unit, the State Board of  
13 Education, under such rules as it may deem advisable, may retain any amount not to  
14 exceed fifteen percent (15%) of said loan or grant, until such completed buildings,  
15 erected or repaired, in whole or in part, from such loan or grant funds, shall have been  
16 approved by a designated agent of the State Board of Education.

17 Upon such approval by the State Board of Education, the State Treasurer is  
18 authorized to pay the balance of the loan or grant to the treasurer of the local school  
19 administrative unit for which said loan or grant was made."

20 Sec. 8. G.S. 115D-20 is amended by adding a new subdivision to read:

21 "(10) To enter into guaranteed energy savings contracts pursuant to Part 2 of  
22 Article 3B of Chapter 143 of the General Statutes."

23 Sec. 9. Chapter 133 of the General Statutes is amended by adding a new  
24 section to read:

25 "**§ 133-4.1. Guaranteed Energy Savings Contracts.**

26 Except for G.S. 133-1.1, the provisions of this Article shall not apply to energy  
27 conservation improvements undertaken as part of a guaranteed energy savings contract  
28 entered into pursuant to the provisions of Part 2 of Article 3B of Chapter 143 of the  
29 General Statutes."

30 Sec. 10. This act is effective upon ratification.