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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:

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. 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. 2. G.S. 143-64.16 reads as rewritten:

"§ 143-64.16. 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. 3. 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.

"§ 143-64.17. Definitions.

As used in this Part:

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

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

16 **"§ 143-64.17A. Solicitation of guaranteed energy savings contracts.**

17 (a) Before entering into a guaranteed energy savings contract, the primary
18 purpose of which is to save energy through the purchase, repair, or improvement of real
19 property, a local governmental unit shall issue a request for proposals. Notice of the
20 request shall be published at least one week in advance of the time specified for opening
21 of the proposals in at least one newspaper of general circulation in the geographic area
22 for which the local governmental unit is responsible. It shall be the duty of the local
23 government unit to solicit proposals direct by mail from qualified providers. No
24 guaranteed energy savings contract shall be awarded by any governing body unless at
25 least two proposals have been received from qualified providers. Provided that if after
26 the publication of the notice of the request for proposals, less than two proposals have
27 been received from qualified providers, the governing body of the local governmental
28 unit shall again publish notice of the request and if as a result of the second notice, less
29 than two proposals by qualified providers are received, the governing body may then
30 open the proposals and select a qualified provider even though only one proposal is
31 received.

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

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

- 41 (1) The information required in subsection (b) of this section; and
42 (2) The criteria stated in the request for proposals.

43 The local governmental unit may include as part of the payments under the guaranteed
44 energy savings contract any reasonable fee for evaluation of the proposal by a licensed

1 architect or professional engineer not employed as a member of the staff of the
2 governmental unit.

3 (d) The local governmental unit shall select the qualified provider that it
4 determines to best meet the needs of the local governmental unit by evaluating the
5 following:

6 (1) Prices offered;

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

8 (3) Quality of the products proposed;

9 (4) Amount of energy savings;

10 (5) General reputation and performance capabilities of the qualified
11 providers;

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

14 (7) Time specified in the proposals for the performance of the contract;
15 and

16 (8) Any other factors the local government unit deems necessary, which
17 factors shall be made a matter of record.

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

20 **"§ 143-64.17B. Guaranteed energy savings contracts.**

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

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

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

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

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

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

42 **"§ 143-64.17C. Installment and lease-purchase contracts.**

43 Units of local government may contract for the installation or purchase of energy
44 conservation measures pursuant to the provisions of G.S. 160A-20. Notwithstanding

1 the provisions of G.S. 160A-20(h), any community college or board of education may
2 enter into an installment or lease-purchase contract for the purpose of financing a
3 guaranteed energy savings contract.

4 **"§ 143-64.17D. Contract continuance.**

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

9 **"§ 143-64.17E. Payments under contract.**

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

15 Sec. 4. Article 8 of Chapter 143 of the General Statutes is amended by
16 adding a new section to read:

17 **"§ 143-129.4. Guaranteed energy savings contracts.**

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

22 Sec. 5. G.S. 115C-47 is amended by adding a new subdivision to read:

23 "(28a) To Enter Guaranteed Energy Savings Contracts for Energy
24 Conservation Measures. – Local boards may purchase energy
25 conservation measures by guaranteed energy savings contracts
26 pursuant to Part 2 of Article 3B of Chapter 143 of the General
27 Statutes."

28 Sec. 6. G.S. 115C-521(c) reads as rewritten:

29 "(c) The building of all new school buildings and the repairing of all old school
30 buildings shall be under the control and direction of, and by contract with, the board of
31 education for which the building and repairing is done. If a board of education is
32 considering building a new school building to replace an existing school building, the
33 board shall not invest any construction money in the new building unless it submits to
34 the State Superintendent an analysis that compares the costs and feasibility of building
35 the new building and of renovating the existing building and that clearly indicates the
36 desirability of building the new building. Boards of education shall also not invest any
37 money in any new building that is not built in accordance with plans approved by the
38 State Superintendent to structural and functional soundness, safety and sanitation, nor
39 contract for more money than is made available for its erection. However, this
40 subsection shall not be construed so as to prevent boards of education from investing
41 any money in buildings that are being constructed pursuant to a continuing contract of
42 construction as provided for in G.S. 115C-441 (C1). All contracts for buildings shall be
43 in writing and all buildings shall be inspected, received, and approved by the local
44 superintendent and the architect before full payment is made therefor: Provided, that

1 this subsection shall not prohibit boards of education from repairing and altering
2 buildings with the help of janitors and other regular employees of the board.

3 In the design and construction of new school buildings and in the renovation of
4 existing school buildings that are required to be designed by an architect or engineer
5 under G.S. 133-1.1, the local board of education shall participate in the planning and
6 review process of the Energy Guidelines for School Design and Construction that are
7 developed and maintained by the Department of Public Instruction and shall adopt local
8 energy-use goals for building design and operation that take into account local
9 conditions in an effort to reduce the impact of operation costs on local and State
10 budgets. In the design and construction of new school facilities and in the repair and
11 renovation of existing school facilities, the local board of education shall consider the
12 placement and design of windows to use the climate of North Carolina for both light
13 and ventilation in case of power shortages. A local board shall also consider the
14 installation of solar energy systems in the school facilities whenever practicable. Local
15 school boards may enter into guaranteed energy savings contracts for the evaluation,
16 recommendation, or implementation of energy conservation measures in existing school
17 facilities pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

18 In the case of any school buildings erected, repaired, or equipped with any money
19 loaned or granted by the State to any local school administrative unit, the State Board of
20 Education, under any rules as it may deem advisable, may retain any amount not to
21 exceed fifteen percent (15%) of the loan or grant, until the completed buildings, erected
22 or repaired, in whole or in part, from the loan or grant funds, shall have been approved
23 by a designated agent of the State Board of Education. Upon approval by the State
24 Board of Education, the State Treasurer may pay the balance of the loan or grant to the
25 treasurer of the local school administrative unit for which the loan or grant was made."

26 Sec. 7. G.S. 115D-20 is amended by adding a new subdivision to read:

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

29 Sec. 8. Chapter 133 of the General Statutes is amended by adding a new
30 section to read:

31 "**§ 133-4.1. Guaranteed energy savings contracts.**

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

36 Sec. 9. This act is effective upon ratification.