

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 775
SENATE BILL 94

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 heading to Article 3B of Chapter 143 of the General Statutes reads as rewritten:

"ARTICLE 3B.

~~"Energy Policy For State Government.~~ Conservation in Public Facilities."

Sec. 1.1. G.S. 143-64.10 through 143-64.16 is designated as Part 1 of Article 3B of Chapter 143 of the General Statutes with the heading "Energy Policy 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) 'Energy conservation measure' means a facility alteration or training related to the operation of the facility that reduces energy consumption or operating costs and includes:
 - a. Insulation of the building structure and systems within the building;
 - b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption;
 - c. Automatic energy control systems;

- d. Heating, ventilating, or air-conditioning system modifications or replacements;
 - e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system 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 or is required by the light system after the proposed modifications are made;
 - f. Energy recovery systems;
 - g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings; or
 - h. Other energy conservation measures that provide long-term operating cost reductions or significantly reduce energy consumed.
- (2) 'Energy savings' means a measured reduction in fuel, energy, or operating costs created from the implementation of one or more energy conservation measures when compared with an established baseline of previous fuel, energy, or operating costs developed by the local governmental unit.
- (3) 'Guaranteed energy savings contract' means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs. A guaranteed energy savings contract may not require the local governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the local governmental unit uses its own forces for maintenance or if the local governmental unit can purchase maintenance services at a lower cost from another provider or contractor.
- (4) 'Local governmental unit' means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.
- (5) 'Qualified provider' means a person or business experienced in the design, implementation, and installation of energy conservation measures.
- (6) 'Request for proposals' means a negotiated procurement initiated by a local governmental unit by way of a published notice that includes the following:
- a. The name and address of the local governmental unit.

- b. The name, address, title, and telephone number of a contact person in the local governmental unit.
- c. Notice indicating that the local governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.
- d. The date, time, and place where proposals must be received.
- e. The evaluation criteria for assessing the proposals.
- f. A statement reserving the right of the local governmental unit to reject any or all the proposals.
- g. Any other stipulations and clarifications the local governmental unit may require.

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

(a) Before entering into a guaranteed energy savings contract, a local governmental unit shall issue a request for proposals. Notice of the request shall be published at least 15 days in advance of the time specified for opening of the proposals in at least one newspaper of general circulation in the geographic area for which the local governmental unit is responsible. No guaranteed energy savings contract shall be awarded by any governing body unless at least two proposals have been received from qualified providers. Provided that if after the publication of the notice of the request for proposals, fewer than two proposals have been received from qualified providers, the governing body of the local governmental unit shall again publish notice of the request and if as a result of the second notice, one or more proposals by qualified providers are received, the governing body may then open the proposals and select a qualified provider even if only one proposal is received.

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

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

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

The local governmental unit may require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the local governmental unit for evaluation of the proposal by a licensed architect or professional engineer not employed as a member of the staff of the local governmental unit or the qualified provider.

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

- (1) Prices offered;

- (2) Proposed costs of construction, financing, maintenance, and training;
- (3) Quality of the products proposed;
- (4) Amount of energy savings;
- (5) General reputation and performance capabilities of the qualified providers;
- (6) Substantial conformity with the specifications and other conditions set forth in the request for proposals;
- (7) Time specified in the proposals for the performance of the contract;
and
- (8) Any other factors the local governmental unit deems necessary, which factors shall be made a matter of record.

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

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

(a) A local governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

- (1) The term of the contract does not exceed eight years from the date of the installation and acceptance by the local governmental unit of the energy conservation measures provided for under the contract.
- (2) The local governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.
- (3) The energy conservation measures to be installed under the contract are for an existing building.

(b) Before entering into a guaranteed energy savings contract, the local governmental unit shall provide published notice of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose. The notice must be published at least 15 days before the date of the meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide a bond to the local governmental unit in the amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract, the local governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

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

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

Units of local government may finance the acquisition, installation, or maintenance of energy conservation measures acquired pursuant to this Part by installment or lease-purchase contracts in accordance with G.S. 160A-20 and G.S. 160A-19.

Notwithstanding the provisions of G.S. 160A-20(h), a community college or board of education may enter into an installment contract or a lease-purchase contract for the purpose of financing energy conservation measures acquired pursuant to this Part. A community college or board of education that finances energy conservation measures pursuant to this section, either by an installment contract or a lease-purchase contract, is subject to the conditions and restrictions set out in G.S. 160A-20(a) through (g).

"§ 143-64.17D. Contract continuance.

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

"§ 143-64.17E. Payments under contract.

A local governmental unit may use any funds, whether operating or capital, that are not otherwise restricted by law for the payment of a guaranteed energy savings contract. State appropriations to any local governmental unit shall not be reduced as a result of energy savings occurring as a result of a guaranteed energy savings contract."

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

"§ 143-129.4. Guaranteed energy savings contracts.

The solicitation and evaluation of proposals for guaranteed energy savings contracts, as defined in Part 2 of Article 3B of this Chapter, and the letting of contracts for these proposals are governed solely by the provisions of that Part; except that guaranteed energy savings contracts are subject to the requirements of G.S. 143-128(c)."

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

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

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

"(c) The building of all new school buildings and the repairing of all old school buildings shall be under the control and direction of, and by contract with, the board of education for which the building and repairing is done. If a board of education is considering building a new school building to replace an existing school building, the board shall not invest any construction money in the new building unless it submits to the State Superintendent an analysis that compares the costs and feasibility of building the new building and of renovating the existing building and that clearly indicates the desirability of building the new building. Boards of education shall also not invest any money in any new building that is not built in accordance with plans approved by the State Superintendent to structural and functional soundness, safety and sanitation, nor contract for more money than is made available for its erection. However, this subsection shall not be construed so as to prevent boards of education from investing any money in buildings that are being constructed pursuant to a continuing contract of construction as provided for in G.S. 115C-441 (c1). All contracts for buildings shall be

in writing and all buildings shall be inspected, received, and approved by the local superintendent and the architect before full payment is made therefor: Provided, that this subsection shall not prohibit boards of education from repairing and altering buildings with the help of janitors and other regular employees of the board.

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

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

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

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

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

"§ 133-4.1. Guaranteed energy savings contracts.

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

Sec. 9. A local governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the Local Government Commission. The Commission shall compile the information and report it biennially to the Joint Legislative Commission on Governmental Operations. In compiling the information, the Local Government Commission shall include information on the energy savings expected to be realized from a contract and, with the

assistance of the Office of State Construction, shall evaluate whether expected savings have in fact been realized.

Sec. 10. A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1997.

Sec. 11. This act is a effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of July, 1994.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives