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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. 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)."

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

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

4 "§ 143-64.17. Definitions.

5 As used in this Part:

6 (1) 'Energy conservation measure' means a facility alteration or training
7 related to the operation of the facility that reduces energy consumption
8 or operating costs and includes:

9 a. Insulation of the building structure and systems within the
10 building;

11 b. Storm windows or doors, caulking, weatherstripping,
12 multiglazed windows or doors, heat-absorbing or heat-reflective
13 glazed or coated window or door systems, additional glazing,
14 reductions in glass area, or other window or door system
15 modifications that reduce energy consumption;

16 c. Automatic energy control systems;

17 d. Heating, ventilating, or air-conditioning system modifications
18 or replacements;

19 e. Replacement or modification of lighting fixtures to increase the
20 energy efficiency of a lighting system without increasing the
21 overall illumination of a facility, unless an increase in
22 illumination is necessary to conform to the applicable State or
23 local building code or is required by the light system after the
24 proposed modifications are made;

25 f. Energy recovery systems;

26 g. Cogeneration systems that produce steam or forms of energy
27 such as heat, as well as electricity, for use primarily within a
28 building or complex of buildings; or

29 h. Other energy conservation measures that provide long-term
30 operating cost reductions or significantly reduce energy
31 consumed.

32 (2) 'Energy savings' means a measured reduction in fuel, energy, or
33 operating costs created from the implementation of one or more energy
34 conservation measures when compared with an established baseline of
35 previous fuel, energy, or operating costs developed by the local
36 governmental unit.

37 (3) 'Guaranteed energy savings contract' means a contract for the
38 evaluation, recommendation, or implementation of energy
39 conservation measures, including the design and installation of
40 equipment or the repair or replacement of existing equipment, in which
41 all payments, except obligations on termination of the contract before
42 its expiration, are to be made over time, and in which energy savings
43 are guaranteed to exceed costs.

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

23 **"§ 143-64.17A. Solicitation of guaranteed energy savings contracts.**

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

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

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

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

2 (2) The criteria stated in the request for proposals.

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

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

11 (1) Prices offered;

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

13 (3) Quality of the products proposed;

14 (4) Amount of energy savings;

15 (5) General reputation and performance capabilities of the qualified
16 providers;

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

19 (7) Time specified in the proposals for the performance of the contract;
20 and

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

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

25 **"§ 143-64.17B. Guaranteed energy savings contracts.**

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

28 (1) The term of the contract does not exceed six years from the date of the
29 installation and acceptance by the local governmental unit of the
30 energy conservation measures provided for under the contract.

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

34 (3) The energy conservation measures to be installed under the contract
35 are for an existing building.

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

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

1 savings resulting from a guaranteed energy savings contract are not as great as projected
2 under the contract, the local governmental unit may terminate the contract without
3 incurring any additional obligation to the qualified provider.

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

8 **"§ 143-64.17C. Installment and lease-purchase contracts.**

9 Units of local government may finance the acquisition, installation, or maintenance
10 of energy conservation measures acquired pursuant to this Part by installment or lease-
11 purchase contracts in accordance with G.S. 160A-20 and G.S. 160A-19.
12 Notwithstanding the provisions of G.S. 160A-20(h), a community college or board of
13 education may enter into an installment contract or a lease-purchase contract for the
14 purpose of financing energy conservation measures acquired pursuant to this Part. A
15 community college or board of education that finances energy conservation measures
16 pursuant to this section, either by an installment contract or a lease-purchase contract, is
17 subject to the conditions and restrictions set out in G.S. 160A-20(a) through (g).

18 **"§ 143-64.17D. Contract continuance.**

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

23 **"§ 143-64.17E. Payments under contract.**

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

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

30 **"§ 143-129.4. Guaranteed energy savings contracts.**

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

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

36 "(28a) To Enter Guaranteed Energy Savings Contracts for Energy
37 Conservation Measures. – Local boards may purchase energy
38 conservation measures by guaranteed energy savings contracts
39 pursuant to Part 2 of Article 3B of Chapter 143 of the General
40 Statutes."

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

42 "(c) The building of all new school buildings and the repairing of all old school
43 buildings shall be under the control and direction of, and by contract with, the board of
44 education for which the building and repairing is done. If a board of education is

1 considering building a new school building to replace an existing school building, the
2 board shall not invest any construction money in the new building unless it submits to
3 the State Superintendent an analysis that compares the costs and feasibility of building
4 the new building and of renovating the existing building and that clearly indicates the
5 desirability of building the new building. Boards of education shall also not invest any
6 money in any new building that is not built in accordance with plans approved by the
7 State Superintendent to structural and functional soundness, safety and sanitation, nor
8 contract for more money than is made available for its erection. However, this
9 subsection shall not be construed so as to prevent boards of education from investing
10 any money in buildings that are being constructed pursuant to a continuing contract of
11 construction as provided for in G.S. 115C-441 (c1). All contracts for buildings shall be
12 in writing and all buildings shall be inspected, received, and approved by the local
13 superintendent and the architect before full payment is made therefor: Provided, that
14 this subsection shall not prohibit boards of education from repairing and altering
15 buildings with the help of janitors and other regular employees of the board.

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

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

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

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

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

44 "**§ 133-4.1. Guaranteed energy savings contracts.**

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

5 Sec. 9. A local governmental unit that enters into a guaranteed energy
6 savings contract must report the contract and the terms of the contract to the Local
7 Government Commission. The Commission shall compile the information and report it
8 biennially to the Joint Legislative Commission on Governmental Operations. In
9 compiling the information, the Local Government Commission shall include
10 information on the energy savings expected to be realized from a contract and, with the
11 assistance of the Office of State Construction, shall evaluate whether expected savings
12 have in fact been realized.

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

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