

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 864*
Committee Substitute Favorable 4/23/03

Short Title: Guaranteed Energy Savings Contract Efficiency. (Public)

Sponsors:

Referred to:

April 7, 2003

1 A BILL TO BE ENTITLED
2 AN ACT INCREASING THE EFFICIENCY OF GUARANTEED ENERGY
3 SAVINGS CONTRACTS FOR STATE GOVERNMENTAL UNITS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 143-64.17B reads as rewritten:

6 **"§ 143-64.17B. Guaranteed energy savings contracts.**

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

9 (1) The term of the contract does not exceed 12 years from the date of the
10 installation and acceptance by the governmental unit of the energy
11 conservation measures provided for under the contract.

12 (2) The governmental unit finds that the energy savings resulting from the
13 performance of the contract will equal or exceed the total cost of the
14 contract.

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

17 ...

18 (c) A qualified provider entering into a guaranteed energy savings contract under
19 this Part shall provide ~~a bond to the governmental unit in the security to the~~
20 governmental unit in the form acceptable to the Office of the State Treasurer and in an
21 amount equal to one hundred percent (100%) of the total cost of the guaranteed energy
22 savings contract to assure the provider's faithful performance. Any bonds required by
23 this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the
24 General Statutes. If the savings resulting from a guaranteed energy savings contract are
25 not as great as projected under the contract and all required shortfall payments to the
26 governmental unit have not been made, the governmental unit may terminate the
27 contract without incurring any additional obligation to the qualified provider.

28 ...

1 (f) In the case of a State governmental unit, a qualified provider shall, when
2 feasible, after the acceptance of the proposal of the qualified provider by the State
3 governmental unit, conduct an investment grade audit. If the results of the audit are not
4 within ten percent (10%) of both the guaranteed savings contained in the proposal and
5 the total proposal amount, either the State governmental unit or the qualified provider
6 may terminate the project without incurring any additional obligation to the other party.
7 However, if the State governmental unit terminates the project after the audit is
8 conducted and the results of the audit are within ten percent (10%) of both the
9 guaranteed savings contained in the proposal and the total proposal amount, the State
10 governmental unit shall reimburse the qualified provider the reasonable cost incurred in
11 conducting the audit, and the results of the audit shall become the property of the State
12 governmental unit.

13 (g) In the case of a State governmental unit, a qualified provider shall provide an
14 annual reconciliation statement based upon the results of the measurement and
15 verification review. The statement shall disclose any shortfalls or surplus between
16 guaranteed energy and operational savings specified in the guaranteed energy savings
17 contract and actual, not stipulated, energy and operational savings incurred during a
18 given guarantee year. The guarantee year shall consist of a 12-month term commencing
19 from the time that the energy conservation measures become fully operational. A
20 qualified provider shall pay the State governmental unit any shortfall in the guaranteed
21 energy and operational savings after the total year savings have been determined. A
22 surplus in any one year shall not be carried forward or applied to a shortfall in any other
23 year."

24 **SECTION 2.** G.S. 143-64.17F reads as rewritten:

25 "**§ 143-64.17F. State agencies to use contracts when ~~feasible~~feasible; rules;**
26 **recommendations.**

27 (a) State governmental units shall evaluate the use of guaranteed energy savings
28 contracts in reducing energy costs and may use those contracts when feasible and
29 practical.

30 (b) The Department of Administration, through the State Energy Office, shall
31 adopt rules ~~for~~for: (i) agency evaluation of guaranteed energy savings
32 contracts; (ii) establishing time periods for consideration of guaranteed energy
33 savings contracts by the Office of State Budget and Management, the Office of the State
34 Treasurer, and the Council of State, and (iii) setting measurements and verification
35 criteria, including review, audit, and precertification. Prior to adopting any rules
36 pursuant to this section, the Department shall consult with and obtain approval of those
37 rules from the State Treasurer.

38 (c) The Department of Administration, through the State Energy Office, may
39 provide to the Council of State its recommendations concerning any energy savings
40 contracts being considered."

41 **SECTION 3.** This act is effective when it becomes law.