

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 94*

Local Government & Regional Affairs Committee Substitute Adopted 6/30/93

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.

"§ 143-64.18. Definitions.

1 As used in this Part:

- 2 (1) 'Energy conservation measure' means a facility alteration or training
3 related to the operation of the facility that reduces energy consumption
4 or operating costs and includes:
5 a. Insulation of the building structure and systems within the
6 building;
7 b. Storm windows or doors, caulking, weatherstripping,
8 multiglazed windows or doors, heat-absorbing or heat-reflective
9 glazed or coated window or door systems, additional glazing,
10 reductions in glass area, or other window or door system
11 modifications that reduce energy consumption;
12 c. Automatic energy control systems;
13 d. Heating, ventilating, or air-conditioning system modifications
14 or replacements;
15 e. Replacement or modification of lighting fixtures to increase the
16 energy efficiency of a lighting system without increasing the
17 overall illumination of a facility, unless an increase in
18 illumination is necessary to conform to the applicable State or
19 local building code or the light system after the proposed
20 modifications are made;
21 f. Energy recovery systems;
22 g. Cogeneration systems that produce steam or forms of energy
23 such as heat, as well as electricity, for use primarily within a
24 building or complex of buildings; or
25 h. Other energy conservation measures that provide long-term
26 operating cost reductions or significantly reduce energy
27 consumed.
- 28 (2) 'Energy savings' means a measured reduction in fuel, energy, or
29 operating costs created from the implementation of one or more energy
30 conservation measures when compared with an established baseline of
31 previous fuel, energy, or operating costs.
- 32 (3) 'Guaranteed energy savings contract' means a contract for the
33 evaluation, recommendation, or implementation of energy
34 conservation measures, including the design and installation of
35 equipment or the repair or replacement of existing equipment, in which
36 all payments, except obligations on termination of the contract before
37 its expiration, are to be made over time, and in which energy savings
38 are guaranteed to exceed costs.
- 39 (4) 'Local governmental unit' means any board or governing body of a
40 political subdivision of the State, including any board of a community
41 college, any school board, or an agency, commission, or authority of a
42 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 contract
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 **"§ 143-64.19. 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 governmental
27 providers.

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

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

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

39 The local governmental unit may include as part of the payments under the guaranteed
40 energy savings contract any reasonable fee for evaluation of the proposal by a licensed
41 architect or professional engineer not employed as a member of the staff of the local
42 governmental unit.

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

4 (1) Prices offered;

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

6 (3) Quality of the products proposed;

7 (4) Amount of energy savings;

8 (5) General reputation and performance capabilities of the qualified
9 providers;

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

12 (7) Time specified in the proposals for the performance of the contract;
13 and

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

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

18 **"§ 143-64.20. Guaranteed energy savings contracts.**

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

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

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

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

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

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

40 **"§ 143-64.21. Installment and lease-purchase contracts.**

41 Units of local government may contract for the installation or purchase of energy
42 conservation measures pursuant to the provisions of G.S. 160A-20. Notwithstanding
43 the provisions of G.S. 160A-20(h), any community college or board of education may

1 enter into an installment or lease-purchase contract for the purpose of financing a
2 guaranteed energy savings contract.

3 **"§ 143-64.22. Contract continuance.**

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

8 **"§ 143-64.23. Payments under contract.**

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

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

16 **"§ 143-129.4. Guaranteed energy savings contracts.**

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

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

22 "(28a) To Enter Guaranteed Energy Savings Contracts for Energy
23 Conservation Measures. – Local boards may purchase energy
24 conservation measures by guaranteed energy savings contracts
25 pursuant to Part 2 of Article 3B of Chapter 143 of the General
26 Statutes."

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

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

42 In the design and construction of new school facilities and in the repair and
43 renovation of existing school facilities, the local board of education shall consider the
44 placement of windows to use the climate of North Carolina for both light and ventilation

1 in case of power shortages. A local board shall also consider the installation of solar
2 energy systems in the school facilities whenever practicable. Local school boards may
3 enter into guaranteed energy savings contracts for the evaluation, recommendation, or
4 implementation of energy conservation measures in existing school facilities pursuant to
5 Part 2 of Article 3B of Chapter 143 of the General Statutes.

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

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

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

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

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

20 "**§ 133-5. Guaranteed Energy Savings Contracts.**

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

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