

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS65244-LM-85* (03/26)

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

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

AN ACT INCREASING THE EFFICIENCY OF GUARANTEED ENERGY SAVINGS CONTRACTS FOR STATE GOVERNMENTAL UNITS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 142-64(b)(2)a. reads as rewritten:

"(b) A financing contract may be entered into pursuant to this Article only after all of the following conditions are met:

...

(2) The Council of State has approved the execution and delivery of the financing contract by resolution that sets forth all of the following:

...

a. The not-to-exceed term or final maturity of the financing contract, which shall be no later than ~~12~~20 years from the date the financing contract is entered."

SECTION 2. G.S. 142-63 reads as rewritten:

"§ 142-63. Authorization of financing contract.

Subject to the terms and conditions set forth in this Article, a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B or the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate principal amount payable by the State under financing contracts entered pursuant to this Article shall not exceed ~~fifty million dollars (\$50,000,000)~~one hundred million dollars (\$100,000,000) at any one time."

SECTION 3. G.S. 142-66 reads as rewritten:

"§ 142-66. Payment ~~provisions~~provisions; savings revert.

1 (a) The payment of amounts payable by the State under a financing contract and
2 any other related documentation during any fiscal biennium or fiscal year shall be
3 limited to funds appropriated for that purpose by the General Assembly in its discretion.
4 No provision of this Article and no financing contract or any other related
5 documentation shall be construed or interpreted as creating a pledge of the faith and
6 credit of the State or any agency, department, or commission of the State within the
7 meaning of any constitutional debt limitation.

8 (b) If energy savings are realized in excess of the guaranteed amount in a
9 guaranteed energy savings contract authorized under G.S. 143-64.17B, fifty percent
10 (50%) of the savings in excess shall revert to the General Fund and fifty percent (50%)
11 shall be retained by the State governmental unit to be used for additional energy savings
12 projects and to cover any expenses of energy savings initiatives."

13 **SECTION 4.** G.S. 143-64.17B reads as rewritten:

14 **"§ 143-64.17B. Guaranteed energy savings contracts.**

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

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

20 (1a) The term of the contract does not exceed 20 years from the date of the
21 installation and acceptance by the State governmental unit of the
22 energy conservation measures provided for under the contract.

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

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

28 . . .

29 (c) A qualified provider entering into a guaranteed energy savings contract under
30 this Part shall provide a bond to the local governmental unit in the amount equal to one
31 hundred percent (100%) of the total cost of the guaranteed energy savings contract to
32 assure the provider's faithful performance. A qualified provider entering into a contract
33 under this Part with a State governmental unit shall provide security in an amount and in
34 the form approved by the Office of the State Treasurer. Any bonds required by this
35 subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General
36 Statutes. If the savings resulting from a guaranteed energy savings contract are not as
37 great as projected under the contract and all required shortfall payments to the
38 governmental unit have not been made, the governmental unit may terminate the
39 contract without incurring any additional obligation to the qualified provider.

40 . . .

41 (f) In the case of a State governmental unit, a qualified provider shall, when
42 feasible, after the acceptance of the proposal of the qualified provider by the State
43 governmental unit, conduct an investment grade audit. If the results of the audit are not
44 within ten percent (10%) of both the guaranteed savings contained in the proposal and

1 the total proposal amount, either the State governmental unit or the qualified provider
2 may terminate the project without incurring any additional obligation to the other party.
3 However, if the State governmental unit terminates the project after the audit is
4 conducted and the results of the audit are within ten percent (10%) of both the
5 guaranteed savings contained in the proposal and the total proposal amount, the State
6 governmental unit shall reimburse the qualified provider the reasonable cost incurred in
7 conducting the audit, and the results of the audit shall become the property of the State
8 governmental unit.

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

20 **SECTION 5.** G.S. 143-64.17F reads as rewritten:

21 "**§ 143-64.17F. State agencies to use contracts when ~~feasible~~feasible; rules;**
22 **recommendations; State Energy Office receive fee.**

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

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

34 (c) The Department of Administration, through the State Energy Office, may
35 provide to the Council of State its recommendations concerning any energy savings
36 contracts being considered.

37 (d) The State Energy Office shall receive a fee of one percent (1%) of the contract
38 cost for measurement and verification, and the fee shall be annualized over the entire
39 term of the contract. The one percent (1%) fee shall be considered an 'other cost' as set
40 forth in G.S. 42-61(2)g."

41 **SECTION 6.** This act is effective when it becomes law.