

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

FILED SENATE  
Mar 28, 2013  
S.B. 547  
PRINCIPAL CLERK

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SENATE DRS15203-MH-115 (03/17)

Short Title: Energy Savings Contracting Amendments. (Public)

Sponsors: Senator Hunt (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE STATUTES GOVERNING GUARANTEED ENERGY  
3 SAVINGS CONTRACTS FOR GOVERNMENTAL UNITS.

4 The General Assembly of North Carolina enacts:

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

6 "§ 143-64.17. Definitions.

7 As used in this Part:

8 ...

9 (5) "Qualified provider" means a person or business experienced in the design,  
10 implementation, and installation of energy conservation ~~measures~~ measures  
11 who has been prequalified by the State Energy Office according to the  
12 prequalification criteria established by that Office.

13 (5a) "Qualified reviewer" means an architect or engineer who is (i) licensed in  
14 this State and (ii) experienced in the design, implementation, and installation  
15 of energy efficiency measures.

16 ...."

17 SECTION 2. G.S. 143-64.17A reads as rewritten:

18 "§ 143-64.17A. Solicitation of guaranteed energy savings contracts.

19 (a) RFP Issuance. – Before entering into a guaranteed energy savings contract, a  
20 governmental unit shall issue a request for proposals. In the case of a governmental unit  
21 wishing to enter into additional performance contracts with the same qualified provider within  
22 five years of signing a performance contract with that provider, the governmental unit may  
23 enter directly into a guaranteed energy savings contract as described in G.S. 143-64.17B with  
24 the same qualified provider. The State Energy Office shall review the terms and conditions of  
25 the agreement prior to execution. Notice of the request shall be published at least 15 days in  
26 advance of the time specified for opening of the proposals in at least one newspaper of general  
27 circulation in the geographic area for which the local governmental unit is responsible or, in the  
28 case of a State governmental unit, in which the facility or facilities are located. No guaranteed  
29 energy savings contract shall be awarded by any governmental unit unless at least two  
30 proposals have been received from qualified providers. Provided that if after the publication of  
31 the notice of the request for proposals, fewer than two proposals have been received from  
32 qualified providers or fewer than two qualified providers attend the mandatory pre-bid meeting,  
33 the governmental unit shall again publish notice of the request and if as a result of the second  
34 notice, one or more proposals by qualified providers are received, the governmental unit may  
35 then open the proposals and select a qualified provider even if only one proposal is received.



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1 (b) Preliminary Proposal Evaluation. – The governmental unit shall evaluate a sealed  
2 proposal from any qualified provider. ~~Proposals shall contain estimates of all costs of~~  
3 ~~installation, modification, or remodeling, including costs of design, engineering, installation,~~  
4 ~~maintenance, repairs, debt service, and estimates of energy savings.~~ A qualified reviewer shall  
5 be required to evaluate the proposals and will provide the governmental unit with a letter report  
6 containing both qualitative and quantitative evaluation of the proposals. The report shall not  
7 make a recommendation for selection.

8 (c) Receipt of Proposals for Unit of Local Government. – In the case of a local  
9 governmental unit, proposals received pursuant to this section shall be opened by a member or  
10 an employee of the governing body of the local governmental unit at a public opening at which  
11 the contents of the proposals shall be announced and recorded in the minutes of the governing  
12 body. Proposals shall be evaluated for the local governmental unit by ~~a licensed architect or~~  
13 ~~engineer~~ a qualified reviewer on the basis of:

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

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

21 (c1) Receipt of Proposals for Unit of State Government. – In the case of a State  
22 governmental unit, proposals received pursuant to this section shall be opened by a member or  
23 an employee of the State governmental unit at a public opening and the contents of the  
24 proposals shall be announced at this opening. Proposals shall be evaluated for the State  
25 governmental unit ~~by a licensed architect or engineer~~ by a qualified reviewer who is either  
26 privately retained, employed with the Department of Administration, or employed as a member  
27 of the staff of the State governmental unit. The proposal shall be evaluated on the basis of the  
28 information and report required in subsection (b) of this section and the criteria stated in the  
29 request for proposals.

30 The State governmental unit shall require a qualified provider to include in calculating the  
31 cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the  
32 State governmental unit for evaluation of the proposal ~~by a licensed architect or professional~~  
33 ~~engineer~~ by a qualified reviewer not employed as a member of the staff of the State  
34 governmental unit or the qualified provider. The Department of Administration may charge the  
35 State governmental unit a reasonable fee for the evaluation of the proposal if the Department's  
36 services are used for the evaluation and the cost paid by the State governmental unit to the  
37 Department of Administration shall be calculated in the cost of the proposal under this  
38 subsection.

39 (d) Criteria for Selection of Provider. – The governmental unit shall select the qualified  
40 provider that it determines to best meet the needs of the governmental unit by evaluating all of  
41 the following and following the procedures set forth in subsection (d1) of this section:

- 42 (1) ~~Prices offered.~~
- 43 (2) ~~Proposed costs of construction, financing, maintenance, and training.~~
- 44 (3) Quality of the products and energy conservation measures proposed.
- 45 (4) ~~Amount of energy savings.~~
- 46 (5) General reputation and performance capabilities of the qualified providers.
- 47 (6) Substantial conformity with the specifications and other conditions set forth  
48 in the request for proposals.
- 49 (7) Time specified in the proposals for the performance of the contract.
- 50 (8) Any other factors the governmental unit deems necessary, which factors  
51 shall be made a matter of record.

1        (d1) Process for Selection of Provider. – The governmental unit shall select a short list of  
2 finalists on the basis of its rankings of the written proposals under the criteria set forth in  
3 subsection (d) of this section as well as references from past clients. The governmental unit  
4 shall have the highest ranked qualified provider prepare a cost-savings analysis for the  
5 proposed contract showing at a minimum a comparison of the total estimated project savings to  
6 the total estimated project costs for the proposed term. If the governmental unit and the  
7 qualified provider cannot negotiate acceptable terms, pricing, and savings estimates, the  
8 governmental unit may terminate the process and begin negotiations with the second highest  
9 ranked qualified provider. The State Energy Office shall review the selected qualified  
10 provider's proposal, cost-benefit analysis, and other relevant documents prior to the  
11 governmental unit announcing the award.

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

14        **SECTION 3.** G.S. 143-64.17B reads as rewritten:  
15 **"§ 143-64.17B. Guaranteed energy savings contracts.**

16        ...  
17        (c) A qualified provider entering into a guaranteed energy savings contract under this  
18 Part shall provide security to the governmental unit in the form acceptable to the Office of the  
19 State Treasurer and in an amount equal to one hundred percent (100%) of the ~~total cost~~ annual  
20 guaranteed savings for the term of the guaranteed energy savings contract to assure the  
21 provider's faithful performance. Any bonds required by this subsection shall be subject to the  
22 provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a  
23 guaranteed energy savings contract are not as great as projected under the contract and all  
24 required shortfall payments to the governmental unit have not been made, the governmental  
25 unit may terminate the contract without incurring any additional obligation to the qualified  
26 provider.

27        ...  
28        (g) ~~In the case of a State governmental unit, a~~ A qualified provider shall provide an  
29 annual reconciliation statement based upon the results of the measurement and verification  
30 review. The statement shall disclose any shortfalls or surplus between guaranteed energy and  
31 operational savings specified in the guaranteed energy savings contract and actual, not  
32 stipulated, energy and operational savings incurred during a given guarantee year. Any  
33 guaranteed energy and operational savings shall be determined by using one of the  
34 measurement and verification methodologies listed in the United States Department of Energy's  
35 Measurement and Verification Guidelines for Energy Savings Performance Contracting, the  
36 International Performance Measurement and Verification Protocol (IPMVP) maintained by the  
37 Efficiency Valuation Organization, or Guideline 14-2002 of the American Society of Heating,  
38 Refrigerating, and Air-Conditioning Engineers. If due to existing data limitations or the  
39 nonconformance of specific project characteristics, none of the three methodologies listed in  
40 this subsection is sufficient for measuring guaranteed savings, the qualified provider shall  
41 develop an alternate method that is compatible with one of the three methodologies and  
42 mutually agreeable to the governmental unit. The guarantee year shall consist of a 12-month  
43 term commencing from the time that the energy conservation measures become fully  
44 operational. A qualified provider shall pay the State governmental unit any shortfall in the  
45 guaranteed energy and operational savings after the total year savings have been determined. A  
46 In the case of a State governmental unit, a surplus in any one year shall not be carried forward  
47 or applied to a shortfall in any other year."

48        **SECTION 4.** G.S. 143-64.17L reads as rewritten:

49 **"§ 143-64.17L. Board of Governors may authorize energy conservation measures at**  
50 **constituent institutions.**

1 (a) Authority. – Notwithstanding the provisions of this Part to the contrary, the Board  
2 of Governors of The University of North Carolina may authorize any constituent institution  
3 listed in subsection (e) of this section to implement an energy conservation measure without  
4 entering into a guaranteed energy savings contract if both of the following conditions are met:

5 (1) The Board of Governors finds that the energy savings resulting from the  
6 implementation of the energy conservation measure shall, according to the  
7 energy savings analysis received pursuant to G.S. 143-64.17M(a), equal or  
8 exceed the total cost of implementing the measure. If the proposed  
9 implementation will be financed with debt, then the energy savings analysis  
10 must project sufficient energy savings to pay the debt service on any bonds  
11 to be issued. As used in this subdivision, the term "total cost" shall have the  
12 same meaning as it does in G.S. 143-64.17B(d).

13 (2) The energy conservation measure is for an existing building or utility  
14 system.

15 (b) Scope of Authority. – In implementing an energy conservation measure pursuant to  
16 subsection (a) of this section, the Board of Governors may undertake or authorize any  
17 constituent institution listed in subsection (e) of this section to undertake any action that (i)  
18 could be required of a qualified provider under a guaranteed energy savings contract or (ii) is  
19 otherwise permissible under this Part.

20 (c) Projects Consisting of Multiple Energy Conservation Measures. – The Board of  
21 Governors may authorize the implementation of multiple energy conservation measures  
22 simultaneously as part of a single project. When doing so, the findings required by subsection  
23 (a) of this section may be made with respect to the project as a whole and need not be made  
24 with respect to individual energy conservation measures. Similarly, the analyses required by  
25 G.S. 143-64.17M may be conducted for the project as a whole instead of for individual energy  
26 conservation measures.

27 (d) Continuing Applicability of Part to Contracts. – If the Board of Governors or a  
28 constituent institution implements an energy conservation measure through a guaranteed energy  
29 savings contract, that contract shall accord in all respects with the requirements of this Part.

30 (e) ~~The~~ Prior to July 1, 2013, the Board of Governors may authorize North Carolina  
31 State University to implement an energy conservation measure without entering into a  
32 guaranteed energy savings contract pursuant to this section. On or after July 1, 2013, no  
33 constituent institution may implement an energy conservation measure without entering into a  
34 guaranteed energy savings contract pursuant to this section. However, North Carolina State  
35 University may continue to fulfill the terms of any financing agreement related to an energy  
36 conservation measure implemented on or before June 30, 2013."

37 **SECTION 5.** This act is effective when it becomes law.