

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 304

Short Title: Energy Savings Contracts' Cap/Program Admin. (Public)

Sponsors: Senators Clodfelter; Atwater, Graham, Kinnaird, Queen, Shaw, and Stein.

Referred to: Commerce.

February 25, 2009

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE CAP ON THE AMOUNT PAYABLE BY THE STATE FOR GUARANTEED ENERGY SAVINGS CONTRACTS, TO REQUIRE QUALIFIED PROVIDERS TO CONTRIBUTE TO THE COSTS OF ADMINISTERING THE GUARANTEED ENERGY SAVINGS CONTRACTS PROGRAM, TO REQUIRE LIFE-CYCLE COST ANALYSES OF ENERGY CONSERVATION MEASURES DURING INVESTMENT GRADE AUDITS CONDUCTED BY QUALIFIED PROVIDERS, AND TO REQUIRE LOCAL GOVERNMENTAL UNITS THAT ENTER INTO GUARANTEED ENERGY SAVINGS CONTRACTS TO REPORT TO THE STATE ENERGY OFFICE.

The General Assembly of North Carolina enacts:

SECTION 1. 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 one hundred million dollars (\$100,000,000) at any one time."~~

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

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

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

- (1) The term of the contract does not exceed 20 years from the date of the installation and acceptance by the governmental unit of the energy conservation measures provided for under the contract.
- (2) The governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.
- (3) The energy conservation measures to be installed under the contract are for an existing building or utility system.

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



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

10 (c1) Within 30 days of entering into a guaranteed energy savings contract under this Part,
11 the qualified provider shall pay to the Department of Administration for the State Energy
12 Office a sum equal to one and one-half percent (1.5%) of the total cost of the guaranteed energy
13 savings contract to be used by the State Energy Office for the costs to the State Energy Office
14 for administering the program under this Part, including the costs of staff and staff support. A
15 qualified provider is not entitled to a refund of the amount payable under this subsection in the
16 event the contract is terminated under either subsection (c) or subsection (f) of this section.

17 (d) As used in this section, "total cost" shall include, but not be limited to, costs of
18 construction, costs of financing, and costs of maintenance and training during the term of the
19 contract. "Total cost" does not include any obligations on termination of the contract before its
20 expiration, provided that those obligations are disclosed when the contract is executed. "Total
21 cost" does not include the percentage portion of the contract that is paid to the Department of
22 Administration under subsection (c1) of this section.

23 (e) A guaranteed energy savings contract may not require the governmental unit to
24 purchase a maintenance contract or other maintenance agreement from the qualified provider
25 who installs energy conservation measures under the contract if the unit of government takes
26 appropriate action to budget for its own forces or another provider to maintain new systems
27 installed and existing systems affected by the guaranteed energy savings contract.

28 (f) In the case of a State governmental unit, a qualified provider shall, when feasible,
29 after the acceptance of the proposal of the qualified provider by the State governmental unit,
30 conduct an investment grade audit. During this investment grade audit, the qualified provider
31 shall perform in accordance with Part 1 of this Article a life-cycle cost analysis of each energy
32 conservation measure in the proposal. If the results of the audit are not within ten percent
33 (10%) of both the guaranteed savings contained in the proposal and the total proposal amount,
34 either the State governmental unit or the qualified provider may terminate the project without
35 incurring any additional obligation to the other party. However, if the State governmental unit
36 terminates the project after the audit is conducted and the results of the audit are within ten
37 percent (10%) of both the guaranteed savings contained in the proposal and the total proposal
38 amount, the State governmental unit shall reimburse the qualified provider the reasonable cost
39 incurred in conducting the audit, and the results of the audit shall become the property of the
40 State governmental unit.

41 (g) In the case of a State governmental unit, a qualified provider shall provide an annual
42 reconciliation statement based upon the results of the measurement and verification review.
43 The statement shall disclose any shortfalls or surplus between guaranteed energy and
44 operational savings specified in the guaranteed energy savings contract and actual, not
45 stipulated, energy and operational savings incurred during a given guarantee year. The
46 guarantee year shall consist of a 12-month term commencing from the time that the energy
47 conservation measures become fully operational. A qualified provider shall pay the State
48 governmental unit any shortfall in the guaranteed energy and operational savings after the total
49 year savings have been determined. A surplus in any one year shall not be carried forward or
50 applied to a shortfall in any other year."

51 **SECTION 3.** G.S. 143-64.17G reads as rewritten:

1 "§ 143-64.17G. Report on guaranteed energy savings contracts entered into by local
2 governmental units.

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

11 **SECTION 4.** This act is effective when it becomes law and applies to guaranteed
12 energy savings contracts, as defined in G.S. 143-64.17, entered into on or after that date.