

Article 3B.

Conservation of Energy, Water, and Other Utilities in Government Facilities.

Part 2. Energy Saving Measures for Governmental Units.

**§ 143-64.17. Definitions.**

As used in this Part:

- (1) "Energy conservation measure" means a facility or meter alteration, training, or services related to the operation of the facility or meter, when the alteration, training, or services provide anticipated energy savings or capture lost revenue. Energy conservation measure includes any of the following:
  - a. Insulation of the building structure and systems within the building.
  - b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption.
  - c. Automatic energy control systems.
  - d. Heating, ventilating, or air-conditioning system modifications or replacements.
  - e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are made.
  - f. Energy recovery systems.
  - g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings.
  - h. Repealed by Session Laws 2006-190, s. 2, effective August 3, 2006, and applicable to contracts entered into or renewed on or after that date.
  - i. Faucets with automatic or metered shut-off valves, leak detection equipment, water meters, water recycling equipment, and wastewater recovery systems.
  - j. Other energy conservation measures that conserve energy, water, or other utilities.
- (2) "Energy savings" means a measured reduction in fuel costs, energy costs, water costs, stormwater fees, other utility costs, or operating costs, including environmental discharge fees, water and sewer maintenance fees, and increased meter accuracy, created from the implementation of one or more energy conservation measures when compared with an established baseline of previous costs, including captured lost revenues, developed by the governmental unit.
- (2a) "Governmental unit" means either a local governmental unit or a State governmental unit.

- (3) "Guaranteed energy savings contract" means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment or meters, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs.
- (4) "Local governmental unit" means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.
- (5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures who has been prequalified by the State Energy Office according to the prequalification criteria established by that Office.
- (5a) "Qualified reviewer" means an architect or engineer who is (i) licensed in this State and (ii) experienced in the design, implementation, and installation of energy efficiency measures.
- (6) "Request for proposals" means a negotiated procurement initiated by a governmental unit by way of a published notice that includes the following:
  - a. The name and address of the governmental unit.
  - b. The name, address, title, and telephone number of a contact person in the governmental unit.
  - c. Notice indicating that the governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.
  - d. The date, time, and place where proposals must be received.
  - e. The evaluation criteria for assessing the proposals.
  - f. A statement reserving the right of the governmental unit to reject any or all the proposals.
  - g. Any other stipulations and clarifications the governmental unit may require.
- (7) "State governmental unit" means the State or a department, an agency, a board, or a commission of the State, including the Board of Governors of The University of North Carolina and its constituent institutions. (1993 (Reg. Sess., 1994), c. 775, s. 3; 1995, c. 295, s. 1; 1999-235, ss. 1, 2; 2002-161, s. 2; 2006-190, s. 2; 2013-396, s. 1.)

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

(a) RFP Issuance. – Before entering into a guaranteed energy savings contract, a governmental unit shall issue a request for proposals. Notice of the request shall be published at least 15 days in advance of the time specified for opening of the proposals in

at least one newspaper of general circulation in the geographic area for which the local governmental unit is responsible or, in the case of a State governmental unit, in which the facility or facilities are located. No guaranteed energy savings contract shall be awarded by any governmental unit unless at least two proposals have been received from qualified providers. Provided that if after the publication of the notice of the request for proposals, fewer than two proposals have been received from qualified providers, or fewer than two qualified providers attend the mandatory prebid meeting, the governmental unit may then open the proposals and select a qualified provider even if only one proposal is received.

(b) Preliminary Proposal Evaluation. – The governmental unit shall evaluate a sealed proposal from any qualified provider. A qualified reviewer shall be required to evaluate the proposals and will provide the governmental unit with a letter report containing both qualitative and quantitative evaluation of the proposals. The report may include a recommendation for selection, but the governmental unit is not obligated to follow it.

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

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

The local governmental unit may require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the local governmental unit for the evaluation of the proposal by a qualified reviewer not employed as a member of the staff of the local governmental unit or the qualified provider.

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

The State governmental unit shall require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the State governmental unit for evaluation of the proposal by a qualified reviewer not employed as a member of the staff of the State governmental unit or the qualified provider. The Department of Administration may charge the State governmental unit a reasonable fee for the evaluation of the proposal if the Department's services are used for the evaluation and the cost paid by the State governmental unit to the Department of Administration shall be calculated in the cost of the proposal under this subsection.

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

- (1), (2) Repealed by Session Laws 2013-396, s. 2, effective August 23, 2013.
- (3) Quality of the products and energy conservation measures proposed.
- (4) Repealed by Session Laws 2013-396, s. 2, effective August 23, 2013.
- (5) General reputation and performance capabilities of the qualified providers.
- (6) Substantial conformity with the specifications and other conditions set forth in the request for proposals.
- (7) Time specified in the proposals for the performance of the contract.
- (8) Any other factors the governmental unit deems necessary, which factors shall be made a matter of record.

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

(e) Nothing in this section shall limit the authority of governmental units as set forth in Article 3D of this Chapter. (1993 (Reg. Sess., 1994), c. 775, s. 3; 2002-161, s. 3; 2013-396, s. 2.)

#### **§ 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, or utility consuming device or equipment when the utility cost is paid by the governmental unit.

(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.

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

(d) As used in this section, "total cost" shall include, but not be limited to, costs of construction, costs of financing, and costs of maintenance and training during the term of the contract less the application of the utility company, State, or federal incentives, grants, or rebates. "Total cost" does not include any obligations on termination of the contract before its expiration, provided that those obligations are disclosed when the contract is executed.

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

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

(g) A qualified provider shall provide an annual reconciliation statement based upon the results of the measurement and verification review. The statement shall disclose any shortfalls or surplus between guaranteed energy and operational savings specified in the

guaranteed energy savings contract and actual, not stipulated, energy and operational savings incurred during a given guarantee year. Any guaranteed energy and operational savings shall be determined by using one of the measurement and verification methodologies listed in the United States Department of Energy's Measurement and Verification Guidelines for Energy Savings Performance Contracting, the International Performance Measurement and Verification Protocol (IPMVP) maintained by the Efficiency Valuation Organization, or Guideline 14-2002 of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers. If due to existing data limitations or the nonconformance of specific project characteristics, none of the three methodologies listed in this subsection is sufficient for measuring guaranteed savings, the qualified provider shall develop an alternate method that is compatible with one of the three methodologies and mutually agreeable to the governmental unit. The guarantee year shall consist of a 12-month term commencing from the time that the energy conservation measures become fully operational. A qualified provider shall pay the governmental unit or its assignee any shortfall in the guaranteed energy and operational savings after the total year savings have been determined. In the case of a governmental unit, a surplus in any one year shall not be carried forward or applied to a shortfall in any other year. (1993 (Reg. Sess., 1994), c. 775, s. 3; 1995, c. 295, s. 2; 1999-235, s. 3; 2002-161, s. 4; 2003-138, s. 1; 2006-190, s. 3; 2009-375, s. 2; 2013-396, s. 3; 2014-115, s. 56.7.)

**§ 143-64.17C:** Repealed by Session Laws 2002, ch. 161, s. 5, effective January 1, 2003, and applicable to contracts entered into on or after that date.

**§ 143-64.17D. Contract continuance.**

A guaranteed energy savings contract may extend beyond the fiscal year in which it becomes effective. Such a contract shall stipulate that it does not constitute a direct or indirect pledge of the taxing power or full faith and credit of any governmental unit. (1993 (Reg. Sess., 1994), c. 775, s. 3; 2002-161, s. 6.)

**§ 143-64.17E. Payments under contract.**

A local governmental unit may use any funds, whether operating or capital, that are not otherwise restricted by law for the payment of a guaranteed energy savings contract. State appropriations to any local governmental unit shall not be reduced as a result of energy savings occurring as a result of a guaranteed energy savings contract. (1993 (Reg. Sess., 1994), c. 775, s. 3.)

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

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

(b) The Department of Administration, in consultation with the Department of Environmental Quality, through the State Energy Office, shall adopt rules for: (i) agency

evaluation of guaranteed energy savings contracts; (ii) establishing time periods for consideration of guaranteed energy savings contracts by the Office of State Budget and Management, the Office of the State Treasurer, and the Council of State, and (iii) setting measurements and verification criteria, including review, audit, and precertification. Prior to adopting any rules pursuant to this section, the Department shall consult with and obtain approval of those rules from the State Treasurer. The rules adopted pursuant to this subsection shall not apply to energy conservation measures implemented pursuant to G.S. 143-64.17L.

(c) The Department of Administration, and the Department of Environmental Quality through the State Energy Office, may provide to the Council of State its recommendations concerning any energy savings contracts being considered. (2002-161, s. 7; 2003-138, s. 2; 2009-446, s. 1(d); 2011-145, s. 9.6D(d); 2013-360, s. 15.22(d); 2015-241, s. 14.30(u).)

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

A local governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the Local Government Commission and the State Energy Office of the Department of Environmental Quality. The Commission shall compile the information and report it biennially to the Joint Commission on Governmental Operations. In compiling the information, the Local Government Commission shall include information on the energy savings expected to be realized from a contract and, with the assistance of the Office of State Construction and the State Energy Office, shall evaluate whether expected savings have in fact been realized. (1993 (Reg. Sess., 1994), c. 775, s. 9; 2006-190, s. 4; 2009-375, s. 3; 2013-360, s. 15.22(e); 2015-241, s. 14.30(u).)

**§ 143-64.17H. Report on guaranteed energy savings contracts entered into by State governmental units.**

A State governmental unit that enters into a guaranteed energy savings contract or implements an energy conservation measure pursuant to G.S. 143-64.17L must report either (i) the contract and the terms of the contract or (ii) the implementation of the measure to the State Energy Office of the Department of Environmental Quality within 30 days of the date the contract is entered into or the measure is implemented. In addition, within 60 days after each annual anniversary date of a guaranteed energy savings contract, the State governmental unit must report the status of the contract to the State Energy Office, including any details required by the State Energy Office. The State Energy Office shall compile the information for each fiscal year and report it to the Joint Legislative Commission on Governmental Operations and to the Local Government Commission annually by December 1. In compiling the information, the State Energy Office shall include information on the energy savings expected to be realized from a contract or

implementation and shall evaluate whether expected savings have in fact been realized. (2002-161, s. 8; 2006-190, s. 5; 2009-446, s. 1(c); 2011-145, s. 9.6D(e); 2013-360, s. 15.22(f); 2015-241, s. 14.30(u).)

**§ 143-64.17I. Installment and lease purchase contracts.**

A local governmental unit may provide for the acquisition, installation, or maintenance of energy conservation measures acquired pursuant to this Part by installment or lease purchase contracts in accordance with and subject to the provisions of G.S. 160A-20 and G.S. 160A-19, as applicable. (2002-161, s. 8.)

**§ 143-64.17J. Financing by State governmental units.**

State governmental units may finance the acquisition, installation, or maintenance of energy conservation measures acquired pursuant to this Part in the manner and to the extent set forth in Article 8 of Chapter 142 of the General Statutes or as otherwise authorized by law. (2002-161, s. 8.)

**§ 143-64.17K. Inspection and compliance certification for State governmental units.**

The provisions of G.S. 143-341(3) shall not apply to any energy conservation measure for State governmental units provided pursuant to this Part, except as specifically set forth in this section. Except as otherwise exempt under G.S. 116-31.11, the following shall apply to all energy conservation measures provided to State governmental units pursuant to this Part:

- (1) The provisions of G.S. 133-1.1.
- (2) Inspection and certification by:
  - a. The applicable local building inspector under Part 4 of Article 18 of Chapter 153A of the General Statutes or Part 5 of Article 19 of Chapter 160A of the General Statutes; or
  - b. At the election of the State governmental unit, the Department of Administration under G.S. 143-341(3)d.

The cost of compliance with this section may be included in the cost of the project in accordance with G.S. 143-64.17A(c1) and may be included in the cost financed under Article 8 of Chapter 142 of the General Statutes. (2002-161, s. 8.)

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

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

- (1) The Board of Governors finds that the energy savings resulting from the implementation of the energy conservation measure shall, according to the energy savings analysis received pursuant to G.S. 143-64.17M(a),



equal or exceed the total cost of implementing the measure. If the proposed implementation will be financed with debt, then the energy savings analysis must project sufficient energy savings to pay the debt service on any bonds to be issued. As used in this subdivision, the term "total cost" shall have the same meaning as it does in G.S. 143-64.17B(d).

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

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

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

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

(e) The Board of Governors may authorize North Carolina State University and the University of North Carolina at Charlotte to implement an energy conservation measure without entering into a guaranteed energy savings contract pursuant to this section. (2011-145, s. 9.6D(a); 2013-396, s. 4(a).)

**§ 143-64.17M. Energy savings analysis required prior to implementation; post-implementation analyses required.**

(a) Energy Savings Analysis Required Prior to Implementation. – Prior to implementing an energy conservation measure pursuant to G.S. 143-64.17L, an energy savings analysis shall be performed to validate the economic assumptions that purportedly support the implementation of the measure. This analysis shall be performed by a third party selected by the constituent institution and shall include an energy consumption analysis to develop a baseline of previous costs of all utilities' energy consumption for the institution on the assumption that the energy conservation measure was not undertaken. The completed analysis shall be submitted to The University of North Carolina General Administration and to the State Energy Office.

(b) Post-Implementation Analyses Required. – A constituent institution that implements an energy conservation measure pursuant to G.S. 143-64.17L shall retain a third party to perform an annual measurement and verification of energy savings resulting

from the energy conservation measure as compared to the baseline of previous costs set forth in the energy savings analysis required by subsection (a) of this section. The third party shall annually provide a reconciliation statement based upon the results of a preagreed upon measurement, monitoring, and verification protocol which shall disclose any shortfall or surplus between the estimated energy usage and operational savings set forth in the energy savings analysis required by subsection (a) of this section and actual, not stipulated, energy usage and operational savings incurred during a given year.

If a reconciliation statement reveals a shortfall in energy savings for a particular year, the constituent institution shall be responsible for and shall pay the shortfall. However, the institution shall not be held responsible for losses due to natural disasters or other emergencies. Any surplus shall be retained by the institution and may be used in the same manner as any other energy savings. (2011-145, s. 9.6D(b).)

**§§ 143-64.17L through 143-64.19. Reserved for future codification purposes.**