

GENERAL ASSEMBLY OF NORTH CAROLINA  
1995 SESSION

CHAPTER 295  
SENATE BILL 1042

AN ACT TO MAKE VARIOUS AMENDMENTS REGARDING GUARANTEED ENERGY SAVINGS CONTRACTS IN ORDER TO ENHANCE THE VIABILITY OF GUARANTEED ENERGY SAVINGS CONTRACTS BY LOCAL GOVERNMENTAL UNITS AND TO REPEAL THE SUNSET FOR LOCAL GOVERNMENTAL UNITS TO ENTER INTO THESE CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.17(3) reads as rewritten:

"(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, 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. ~~A guaranteed energy savings contract may not require the local 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 local governmental unit uses its own forces for maintenance or if the local governmental unit can purchase maintenance services at a lower cost from another provider or contractor.~~"

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

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

(a) A local 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 eight years from the date of the installation and acceptance by the local governmental unit of the energy conservation measures provided for under the contract.
- (2) The local 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.

(b) Before entering into a guaranteed energy savings contract, the local governmental unit shall provide published notice 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 meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide a bond to the local governmental unit in the amount equal to one hundred percent (100%) of the total cost 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,~~contract and all required shortfall payments to the local governmental unit have not been made, the local 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. 'Total cost' ~~also includes~~does not include any obligations on termination of the contract before its ~~expiration.~~expiration, provided that those obligations are disclosed when the contract is executed.

(e) A guaranteed energy savings contract may not require the local 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 local 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."

Sec. 3. Section 10 of Chapter 775 of the 1993 Session Laws reads as rewritten:

"Sec. 2. A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, ~~1997.~~1999."

Sec. 4. This act is effective upon ratification and applies to contracts entered into on or after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1995.

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Dennis A. Wicker  
President of the Senate

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Harold J. Brubaker  
Speaker of the House of Representatives