

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2003-138
HOUSE BILL 864**

**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. 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 12 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.

...
(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide ~~a bond to the governmental unit in the 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 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 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.

...
(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. 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) In the case of a State governmental unit, 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. 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 State governmental unit any shortfall in the guaranteed energy and operational savings after the total year savings have been determined. A surplus in any one year shall not be carried forward or applied to a shortfall in any other year."

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

"§ 143-64.17F. State agencies to use contracts when ~~feasible~~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, through the State Energy Office, shall adopt rules ~~for~~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.

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

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of May, 2003.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:30 p.m. this 4th day of June, 2003