

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

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SENATE DRS35467-LD-137A (05/20)

Short Title: Water Conservation in Government Facilities. (Public)

Sponsors: Senator Clodfelter.

Referred to:

A BILL TO BE ENTITLED

1
2 AN ACT TO AUTHORIZE GOVERNMENTAL UNITS TO ENTER INTO
3 GUARANTEED WATER SAVINGS CONTRACTS THAT PROVIDE FOR THE
4 INSTALLATION OF WATER CONSERVATION MEASURES IN EXISTING
5 FACILITIES, TO AUTHORIZE THE FUNDING OF THESE CONTRACTS IN
6 THE SAME MANNER AS GUARANTEED ENERGY SAVINGS CONTRACTS,
7 TO RAISE THE CAP FOR FINANCING CONTRACTS FOR ENERGY AND
8 WATER CONSERVATION MEASURES, TO EXPAND THE STATE'S ENERGY
9 POLICY AND LIFE-CYCLE COST ANALYSIS TO INCLUDE WATER
10 CONSERVATION, AND TO MAKE CONFORMING CHANGES.

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** The title of Article 3B of Chapter 143 of the General Statutes
13 reads as rewritten:

14 "Energy Conservation and Water Conservation in Public Facilities."

15 **SECTION 2.** Part 2 of Article 3B of Chapter 143 of the General Statutes
16 reads as rewritten:

17 "Part 2. Guaranteed Energy Savings Contracts and Guaranteed Water Savings Contracts
18 for Governmental Units.

19 "**§ 143-64.17. Definitions.**

20 As used in this Part:

21 (1) "Energy conservation measure" means a facility alteration, training, or
22 services related to the operation of the facility, when the alteration,
23 training, or services provide anticipated energy savings. Energy
24 conservation measure includes any of the following:

25 a. Insulation of the building structure and systems within the
26 building.

- 1 b. Storm windows or doors, caulking, weatherstripping,
2 multiglazed windows or doors, heat-absorbing or heat-reflective
3 glazed or coated window or door systems, additional glazing,
4 reductions in glass area, or other window or door system
5 modifications that reduce energy consumption.
6 c. Automatic energy control systems.
7 d. Heating, ventilating, or air-conditioning system modifications
8 or replacements.
9 e. Replacement or modification of lighting fixtures to increase the
10 energy efficiency of a lighting system without increasing the
11 overall illumination of a facility, unless an increase in
12 illumination is necessary to conform to the applicable State or
13 local building code or is required by the light system after the
14 proposed modifications are made.
15 f. Energy recovery systems.
16 g. Cogeneration systems that produce steam or forms of energy
17 such as heat, as well as electricity, for use primarily within a
18 building or complex of buildings.
19 h. Other energy conservation measures.
20 (2) "Energy savings" means a measured reduction in fuel costs, energy
21 costs, or operating costs created from the implementation of one or
22 more energy conservation measures when compared with an
23 established baseline of previous fuel costs, energy costs, or operating
24 costs developed by the governmental unit.
25 (2a) "Governmental unit" means either a local governmental unit or a State
26 governmental unit.
27 (3) "Guaranteed energy savings contract" means a contract for the
28 evaluation, recommendation, or implementation of energy
29 conservation measures, including the design and installation of
30 equipment or the repair or replacement of existing equipment, in which
31 all payments, except obligations on termination of the contract before
32 its expiration, are to be made over time, and in which energy savings
33 are guaranteed to exceed costs.
34 (3a) "Guaranteed water savings contract" means a contract for the
35 evaluation, recommendation, or implementation of water conservation
36 measures, including the design and installation of equipment or the
37 repair or replacement of existing equipment, in which all payments,
38 except obligations on termination of the contract before its expiration,
39 are to be made over time, and in which water savings are guaranteed to
40 exceed costs.
41 (4) "Local governmental unit" means any board or governing body of a
42 political subdivision of the State, including any board of a community
43 college, any school board, or an agency, commission, or authority of a
44 political subdivision of the State.

- 1 (5) "Qualified provider" means a person or business experienced in the
2 design, implementation, and installation of energy conservation
3 measures.
- 4 (6) "Request for proposals" means a negotiated procurement initiated by a
5 governmental unit by way of a published notice that includes the
6 following:
7 a. The name and address of the governmental unit.
8 b. The name, address, title, and telephone number of a contact
9 person in the governmental unit.
10 c. Notice indicating that the governmental unit is requesting
11 qualified providers to propose energy conservation measures or
12 water conservation measures through a guaranteed energy
13 savings ~~contract~~contract or a guaranteed water savings
14 contract.
15 d. The date, time, and place where proposals must be received.
16 e. The evaluation criteria for assessing the proposals.
17 f. A statement reserving the right of the governmental unit to
18 reject any or all the proposals.
19 g. Any other stipulations and clarifications the governmental unit
20 may require.
- 21 (7) "State governmental unit" means the State or a department, an agency,
22 a board, or a commission of the State, including the Board of
23 Governors of The University of North Carolina and its constituent
24 institutions.
- 25 (8) Water Conservation Measure. – A facility alteration, training, or
26 services related to the operation of the facility, when the alteration,
27 training, or services provide anticipated water savings. Water
28 conservation measure includes faucets with automatic or metered
29 shutoff valves, low-flow toilets, water flow restriction equipment, leak
30 detection equipment, water recycling equipment, waste water recovery
31 systems, cisterns, and other water conservation measures.
- 32 (9) Water Savings. – A measured reduction in water use costs or operating
33 costs created from the implementation of one or more water
34 conservation measures when compared with an established baseline of
35 previous water use costs or operating costs developed by the State
36 Energy Office of the Department of Administration. Water savings
37 includes savings in sewer usage.
- 38 "§ 143-64.17A. Solicitation of guaranteed energy savings ~~contracts~~contracts or
39 guaranteed water savings contracts.
- 40 (a) Before entering into a guaranteed energy savings ~~contract~~contract or a
41 guaranteed water savings contract, a governmental unit shall issue a request for
42 proposals. Notice of the request shall be published at least 15 days in advance of the
43 time specified for opening of the proposals in at least one newspaper of general
44 circulation in the geographic area for which the local governmental unit is responsible

1 or, in the case of a State governmental unit, in which the facility or facilities are located.
2 No guaranteed energy savings contract and no guaranteed water savings contract shall
3 be awarded by any governmental unit unless at least two proposals have been received
4 from qualified providers. Provided that if after the publication of the notice of the
5 request for proposals, fewer than two proposals have been received from qualified
6 providers, the governmental unit shall again publish notice of the request and if as a
7 result of the second notice, one or more proposals by qualified providers are received,
8 the governmental unit may then open the proposals and select a qualified provider even
9 if only one proposal is received.

10 (b) The governmental unit shall evaluate a sealed proposal from any qualified
11 provider. Proposals shall contain estimates of all costs of installation, modification, or
12 remodeling, including costs of design, engineering, installation, maintenance, repairs,
13 debt service, and estimates of energy ~~savings-savings~~ or water savings, whichever
14 applies to the proposal.

15 (c) In the case of a local governmental unit, proposals received pursuant to this
16 section shall be opened by a member or an employee of the governing body of the local
17 governmental unit at a public opening at which the contents of the proposals shall be
18 announced and recorded in the minutes of the governing body. Proposals shall be
19 evaluated for the local governmental unit by a licensed architect or engineer on the basis
20 of:

21 (1) The information required in subsection (b) of this section; and

22 (2) The criteria stated in the request for proposals.

23 The local governmental unit may require a qualified provider to include in calculating
24 the cost of a proposal for a guaranteed energy savings contract or a guaranteed water
25 savings contract any reasonable fee payable by the local governmental unit for
26 evaluation of the proposal by a licensed architect or professional engineer not employed
27 as a member of the staff of the local governmental unit or the qualified provider.

28 (c1) In the case of a State governmental unit, proposals received pursuant to this
29 section shall be opened by a member or an employee of the State governmental unit at a
30 public opening and the contents of the proposals shall be announced at this opening.
31 Proposals shall be evaluated for the State governmental unit by a licensed architect or
32 engineer who is either privately retained, employed with the Department of
33 Administration, or employed as a member of the staff of the State governmental unit.
34 The proposal shall be evaluated on the basis of the information required in subsection
35 (b) of this section and the criteria stated in the request for proposals.

36 The State governmental unit shall require a qualified provider to include in
37 calculating the cost of a proposal for a guaranteed energy savings contract or a
38 guaranteed water savings contract any reasonable fee payable by the State governmental
39 unit for evaluation of the proposal by a licensed architect or professional engineer not
40 employed as a member of the staff of the State governmental unit or the qualified
41 provider. The Department of Administration may charge the State governmental unit a
42 reasonable fee for the evaluation of the proposal if the Department's services are used
43 for the evaluation and the cost paid by the State governmental unit to the Department of
44 Administration shall be calculated in the cost of the proposal under this subsection.

1 (d) The governmental unit shall select the qualified provider that it determines to
2 best meet the needs of the governmental unit by evaluating all of the following:

- 3 (1) Prices offered.
- 4 (2) Proposed costs of construction, financing, maintenance, and training.
- 5 (3) Quality of the products proposed.
- 6 (4) Amount of energy ~~savings~~savings or water savings, whichever
7 applies.
- 8 (5) General reputation and performance capabilities of the qualified
9 providers.
- 10 (6) Substantial conformity with the specifications and other conditions set
11 forth in the request for proposals.
- 12 (7) Time specified in the proposals for the performance of the contract.
- 13 (8) Any other factors the governmental unit deems necessary, which
14 factors shall be made a matter of record.

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

17 **"§ 143-64.17B. Guaranteed energy savings ~~contracts~~contracts; guaranteed water**
18 **savings contracts.**

19 (a) A governmental unit may enter into a guaranteed energy savings contract or a
20 guaranteed water savings contract with a qualified provider if all of the following
21 ~~apply~~apply to the applicable contract:

- 22 (1) The term of the contract does not exceed 12 years from the date of the
23 installation and acceptance by the governmental unit of the ~~energy~~
24 ~~conservation~~ conservation measures provided for under the contract.
- 25 (2) The governmental unit finds that the energy savings or water savings,
26 whichever applies, resulting from the performance of the contract will
27 equal or exceed the total cost of the contract.
- 28 (3) The energy conservation measures or the water conservation measures
29 to be installed under the contract are for an existing building.

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

35 (c) A qualified provider entering into a guaranteed energy savings contract or a
36 guaranteed water savings contract under this Part shall provide security to the
37 governmental unit in the form acceptable to the Office of the State Treasurer and in an
38 amount equal to one hundred percent (100%) of the total cost of the guaranteed energy
39 savings contract or the guaranteed water savings contract, whichever applies, to assure
40 the provider's faithful performance. Any bonds required by this subsection shall be
41 subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the
42 savings resulting from a guaranteed energy savings contract or a guaranteed water
43 savings contract are not as great as projected under the contract and all required shortfall
44 payments to the governmental unit have not been made, the governmental unit may

1 terminate the contract without incurring any additional obligation to the qualified
2 provider.

3 (d) As used in this section, "total cost" shall include, but not be limited to, costs
4 of construction, costs of financing, and costs of maintenance and training during the
5 term of the contract. "Total cost" does not include any obligations on termination of the
6 contract before its expiration, provided that those obligations are disclosed when the
7 contract is executed.

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

15 (f) In the case of a State governmental unit, a qualified provider shall, when
16 feasible, after the acceptance of the proposal of the qualified provider by the State
17 governmental unit, conduct an investment grade audit. If the results of the audit are not
18 within ten percent (10%) of both the guaranteed savings contained in the proposal and
19 the total proposal amount, either the State governmental unit or the qualified provider
20 may terminate the project without incurring any additional obligation to the other party.
21 However, if the State governmental unit terminates the project after the audit is
22 conducted and the results of the audit are within ten percent (10%) of both the
23 guaranteed savings contained in the proposal and the total proposal amount, the State
24 governmental unit shall reimburse the qualified provider the reasonable cost incurred in
25 conducting the audit, and the results of the audit shall become the property of the State
26 governmental unit.

27 (g) In the case of a State governmental unit, a qualified provider shall provide an
28 annual reconciliation statement based upon the results of the measurement and
29 verification review. The statement shall disclose any shortfalls or surplus between
30 guaranteed energy or guaranteed water and operational savings specified in the
31 guaranteed ~~energy~~ savings contract and actual, not stipulated, energy or water and
32 operational savings incurred during a given guarantee year. The guarantee year shall
33 consist of a 12-month term commencing from the time that the ~~energy~~ conservation
34 measures become fully operational. A qualified provider shall pay the State
35 governmental unit any shortfall in the guaranteed energy or guaranteed water and
36 operational savings after the total year savings have been determined. A surplus in any
37 one year shall not be carried forward or applied to a shortfall in any other year.

38 **"§ 143-64.17D. Contract continuance.**

39 A guaranteed energy savings contract or a guaranteed water savings contract may
40 extend beyond the fiscal year in which it becomes effective. Such a contract shall
41 stipulate that it does not constitute a direct or indirect pledge of the taxing power or full
42 faith and credit of any governmental unit.

43 **"§ 143-64.17E. Payments under contract.**

1 A local governmental unit may use any funds, whether operating or capital, that are
2 not otherwise restricted by law for the payment of a guaranteed energy savings
3 ~~contract~~contract or a guaranteed water savings contract. State appropriations to any
4 local governmental unit shall not be reduced as a result of energy savings or water
5 savings occurring as a result of a guaranteed energy savings ~~contract~~contract or a
6 guaranteed water savings contract.

7 "**§ 143-64.17F. State agencies to use contracts when feasible; rules;**
8 **recommendations.**

9 (a) State governmental units shall evaluate the use of guaranteed energy savings
10 contracts or guaranteed water savings contracts in reducing energy or water costs~~costs~~,
11 whichever applies, and may use those contracts when feasible and practical.

12 (b) The Department of Administration, through the State Energy Office, shall
13 adopt rules for: (i) agency evaluation of guaranteed energy savings contracts~~contracts~~
14 and guaranteed water savings contracts; (ii) establishing time periods for consideration
15 of guaranteed energy savings contracts and guaranteed water savings contracts by the
16 Office of State Budget and Management, the Office of the State Treasurer, and the
17 Council of State, and (iii) setting measurements and verification criteria, including
18 review, audit, and precertification. Prior to adopting any rules pursuant to this section,
19 the Department shall consult with and obtain approval of those rules from the State
20 Treasurer.

21 (c) The Department of Administration, through the State Energy Office, may
22 provide to the Council of State its recommendations concerning any guaranteed energy
23 savings contracts or guaranteed water savings contracts being considered.

24 "**§ 143-64.17G. Report on ~~guaranteed energy savings contracts~~contracts entered**
25 **into by local governments.**

26 A local governmental unit that enters into a guaranteed energy savings contract or a
27 guaranteed water savings contract must report the contract and the terms of the contract
28 to the Local Government Commission. The Commission shall compile the information
29 and report it biennially to the Joint Commission on Governmental Operations. In
30 compiling the information, the Local Government Commission shall include
31 information on the energy or water savings expected to be realized from a contract and,
32 with the assistance of the Office of State Construction, shall evaluate whether expected
33 savings have in fact been realized.

34 "**§ 143-64.17H. ~~Guaranteed energy savings contract reporting~~**
35 **requirements.****Report on contracts entered into by State governmental**
36 **units.**

37 A State governmental unit that enters into a guaranteed energy savings contract or a
38 guaranteed water savings contract must report the contract and the terms of the contract
39 to the State Energy Office of the Department of Administration within 30 days of the
40 date the contract is entered into. In addition, within 60 days after each annual
41 anniversary date of a guaranteed energy savings contract~~contract~~ or a guaranteed water
42 savings contract, the State governmental unit must report the status of the contract to the
43 State Energy Office, including any details required by the State Energy Office. The
44 State Energy Office shall compile the information for each fiscal year and report it to

1 the Joint Legislative Commission on Governmental Operations and to the Local
2 Government Commission annually by December 1. In compiling the information, the
3 State Energy Office shall include information on the energy savings or water savings,
4 whichever applies, expected to be realized from a contract and shall evaluate whether
5 expected savings have in fact been realized.

6 **"§ 143-64.17I. Installment and lease purchase contracts.**

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

11 **"§ 143-64.17J. Financing by State governmental units.**

12 State governmental units may finance the acquisition, installation, or maintenance of
13 energy conservation measures or water conservation measures acquired pursuant to this
14 Part in the manner and to the extent set forth in Article 8 of Chapter 142 of the General
15 Statutes or as otherwise authorized by law.

16 **"§ 143-64.17K. Inspection and compliance certification for State governmental
17 units.**

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

24 (1) The provisions of G.S. 133-1.1.

25 (2) Inspection and certification by:

26 a. The applicable local building inspector under Part 4 of Article
27 18 of Chapter 153A of the General Statutes or Part 5 of Article
28 19 of Chapter 160A of the General Statutes; or

29 b. At the election of the State governmental unit, the Department
30 of Administration under G.S. 143-341(3)d.

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

34 **SECTION 3.** The title of Article 8 of Chapter 142 of the General Statutes
35 reads as rewritten:

36 "State Energy and Water Conservation Finance Act."

37 **SECTION 4.** G.S. 142-60 through G.S. 142-65 read as rewritten:

38 **"§ 142-60. Short title.**

39 This Article is the State Energy and Water Conservation Finance Act.

40 **"§ 142-61. Definitions.**

41 The following definitions apply in this Article:

42 (1) Certificates of participation. – Certificates or other instruments
43 delivered by a special corporation as provided in this Article
44 evidencing the assignment of proportionate and undivided interests in

1 the rights to receive payments to be made by the State pursuant to one
2 or more financing contracts.

3 (2) Cost. – The term includes:

4 a. The cost of construction, modification, rehabilitation,
5 renovation, improvement, acquisition, or installation in
6 connection with an energy conservation ~~measure~~measure or a
7 water conservation measure.

8 b. The cost of engineering, architectural, and other consulting
9 services as may be required, including the cost of performing
10 the technical analysis in accordance with G.S. 143-64.17A and
11 inspection and certification in accordance with
12 G.S. 143-64.17K.

13 c. Finance charges, reserves for debt service and other types of
14 reserves required pursuant to a financing contract or any other
15 related documentation, and interest prior to and during
16 construction, and, if deemed advisable by the State Treasurer,
17 for a period not exceeding two years after the estimated date of
18 completion of construction.

19 d. Administrative expenses and charges.

20 e. The cost of bond insurance, investment contracts, credit and
21 liquidity facilities, interest rate swap agreements and other
22 derivative products, financial and legal consultants, and related
23 costs of the incurrence or issuance of the financing contract to
24 the extent and as determined by the State Treasurer.

25 f. The cost of reimbursing the State for payments made for any
26 costs described in this subdivision.

27 g. Any other costs and expenses necessary or incidental to
28 implementing the purposes of this Article.

29 (3) Credit facility. – An agreement that:

30 a. Is entered into by the State with a bank, savings and loan
31 association, or other banking institution, an insurance company,
32 reinsurance company, surety company or other insurance
33 institution, a corporation, investment banking firm or other
34 investment institution, or any financial institution or other
35 similar provider of a credit facility, which provider may be
36 located within or without the United States of America; and

37 b. Provides for prompt payment of all or any part of the principal
38 or purchase price (whether at maturity, presentment or tender
39 for purchase, redemption, or acceleration), redemption
40 premium, if any, and interest with respect to any financing
41 contract payable on demand or tender by the owner in
42 consideration of the State agreeing to repay the provider of the
43 credit facility in accordance with the terms and provisions of
44 the agreement.

- 1 (4) Energy conservation measure. – Defined in G.S. 143-64.17.
2 (5) Energy conservation property. – Buildings, equipment, or other
3 property with respect to which an energy conservation measure is
4 undertaken.
5 (6) Financing contract. – An installment financing contract entered into
6 pursuant to the provisions of this Article to finance the cost of an
7 energy conservation ~~measure~~measure or a water conservation
8 measure.
9 (7) Person. – An individual, a firm, a partnership, an association, a
10 corporation, a limited liability company, or any other organization or
11 group acting as a unit.
12 (8) Special corporation. – A nonprofit corporation created under Chapter
13 55A of the General Statutes for the purpose of facilitating the
14 incurrence of certificates of participation indebtedness by the State
15 under this Article.
16 (9) State governmental unit. – Defined in G.S. 143-64.17.
17 (10) State Treasurer. – The incumbent Treasurer, from time to time, of the
18 State.
19 (11) Water conservation measure. – Defined in G.S. 143-64.17.
20 (12) Water conservation property. – Buildings, equipment, or other
21 property with respect to which a water conservation measure is
22 undertaken.

23 "§ 142-62: Reserved for future codification purposes.

24 "§ 142-63. **Authorization of financing contract.**

25 Subject to the terms and conditions set forth in this Article, a State governmental
26 unit that has solicited a guaranteed energy conservation measure or a guaranteed water
27 conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B or the State
28 Treasurer, as designated by the Council of State, is authorized to execute and deliver,
29 for and on behalf of the State of North Carolina, a financing contract to finance the costs
30 of the energy conservation ~~measure~~measure or the water conservation measure. The
31 aggregate principal amount payable by the State under financing contracts entered
32 pursuant to this Article shall not exceed ~~fifty million dollars (\$50,000,000)~~seventy-five
33 million dollars (\$75,000,000) at any one time.

34 "§ 142-64. **Procedure for incurrence or issuance of financing contract.**

35 (a) When a State governmental unit has solicited a guaranteed energy
36 conservation ~~measure~~measure or a guaranteed water conservation measure, the State
37 governmental unit shall request that the State Treasurer approve the State governmental
38 unit's entering into a financing contract to finance the cost of the ~~energy~~-conservation
39 measure. In connection with the request, the State governmental unit shall provide to the
40 State Treasurer any information the State Treasurer requests in order to evaluate the
41 request. In the event that the State Treasurer determines that financing efficiencies will
42 be realized through the combining of financing contracts, then the State Treasurer is
43 authorized to execute and deliver, for and on behalf of the State of North Carolina,
44 subject to the terms and conditions set forth in this Article, a financing contract for the

1 purpose of financing the cost of the multiple energy conservation ~~measures~~measures or
2 multiple water conservation measures, whichever applies.

3 (b) A financing contract may be entered into pursuant to this Article only after all
4 of the following conditions are met:

5 (1) The Office of State Budget and Management has certified that
6 resources are expected to be available to the State to pay the payments
7 to fall due under the financing contract as they become due and
8 payable.

9 (2) The Council of State has approved the execution and delivery of the
10 financing contract by resolution that sets forth all of the following:

11 a. The not-to-exceed term or final maturity of the financing
12 contract, which shall be no later than 12 years from the date the
13 financing contract is entered.

14 b. The not-to-exceed interest rate or rates (or the equivalent
15 thereof), which may be fixed or vary over a period of time, with
16 respect to the financing contract.

17 c. The appropriate officers of the State to execute and deliver the
18 financing contract and all other documentation relating to it.

19 (3) The State Treasurer has approved the financing contract and all other
20 documentation related to it, including any deed of trust, security
21 agreement, trust agreement or any credit facility.

22 The resolution of the Council of State shall include any other matters the Council of
23 State considers appropriate.

24 (c) In determining whether to approve a financing contract under subdivision
25 (b)(3) of this section, the State Treasurer may consider the factors the State Treasurer
26 considers relevant in order to find and determine all of the following:

27 (1) The principal amount to be advanced to the State under the financing
28 contract is adequate and not excessive for the purpose of paying the
29 cost of the energy conservation ~~measure~~measure or the water
30 conservation measure, whichever applies.

31 (2) The increase, if any, in State revenues necessary to pay the sums to
32 become due under the financing contract are not excessive.

33 (3) The financing contract can be entered into on terms desirable to the
34 State.

35 (4) In the case of delivery of certificates of participation, the sale of
36 certificates of participation will not have an adverse effect upon any
37 scheduled or proposed sale of obligations of the State or any State
38 agency.

39 (d) The Office of State Budget and Management is authorized to certify that
40 funds are expected to be available to the State to make the payments due under a
41 financing contract entered into under the provisions of this section as the payments
42 become due and payable. In so certifying, the Office of State Budget and Management
43 may take into account expected decreases in appropriations to the State governmental
44 unit that will offset payments expected to be made under the financing contract.

1 **"§ 142-65. Security; other requirements.**

2 (a) In order to secure the performance by the State of its obligations under a
3 financing contract or any other related documentation, the State may grant a lien on, or
4 security interest in, all or any part of the energy conservation property or the water
5 conservation property, whichever applies, or the land upon which the energy
6 conservation property or the water conservation property, whichever applies, is or will
7 be located.

8 (b) No deficiency judgment may be rendered against the State or any State
9 governmental unit in any action for breach of any obligation contained in a financing
10 contract or any other related documentation, and the taxing power of the State is not and
11 may not be pledged directly or indirectly to secure any moneys due under a financing
12 contract or any other related documentation. In the event that the General Assembly
13 does not appropriate funds sufficient to make payments required under a financing
14 contract or any other related documentation, the net proceeds received from the sale,
15 lease, or other disposition of the property subject to the lien or security interest created
16 pursuant to subsection (a) of this section shall be applied to satisfy these payment
17 obligations in accordance with the deed of trust, security agreement, or other
18 documentation creating the lien or security interest. These net proceeds are hereby
19 appropriated for the purpose of making these payments. Any net proceeds in excess of
20 the amount required to satisfy the obligations of the State under the financing contract
21 or any other related documentation shall be paid to the State Treasurer for deposit to the
22 General Fund of the State.

23 (c) Neither a financing contract nor any other related documentation shall contain
24 a nonsubstitution clause that restricts the right of the State to (i) continue to provide a
25 service or conduct an activity or (ii) replace or provide a substitute for any State
26 property that is the subject of ~~an energy~~ conservation measure.

27 (d) A financing contract may include provisions requesting the Governor to
28 submit in the Governor's budget proposal, or any amendments or supplements to it,
29 appropriations necessary to make the payments required under the financing contract.

30 (e) A financing contract may contain any provisions for protecting and enforcing
31 the rights and remedies of the person advancing moneys or providing funds under the
32 financing contract that are reasonable and not in violation of law, including covenants
33 setting forth the duties of the State in respect of the purposes to which the funds
34 advanced under a financing contract may be applied, and the duties of the State with
35 respect to the property subject to the lien or security interest created pursuant to
36 subsection (a) of this section, including, without limitation, provisions relating to
37 insuring and maintaining any property and the custody, safeguarding, investment, and
38 application of moneys.

39 (f) The interest component of the installment payments to be made under a
40 financing contract may be calculated based upon a fixed or variable interest rate or rates
41 as determined by the State Treasurer.

42 (g) If the State Treasurer determines that it is in the best interest of the State, the
43 State may enter into, or arrange for the delivery of, a credit facility to secure payment of

1 the payments due under a financing contract or to secure payment of the purchase price
2 of any certificates of participation delivered as provided in this Article."

3 **SECTION 5.** Part 1 of Article 3B of Chapter 143 of the General Statutes
4 reads as rewritten:

5 "Part 1. ~~Energy Policy~~ Policy, Water Policy, and Life-Cycle Cost Analysis.

6 **"§ 143-64.10. Findings; policy.**

7 (a) The General Assembly hereby finds:

- 8 (1) That the State shall take a leadership role in aggressively undertaking
9 energy conservation and water conservation in North Carolina;
- 10 (2) That State facilities have a significant impact on the State's
11 consumption of ~~energy;~~energy and water;
- 12 (3) That energy and water conservation practices adopted for the design,
13 construction, operation, maintenance, and renovation of these facilities
14 and for the purchase, operation, and maintenance of equipment for
15 these facilities will have a beneficial effect on the State's overall
16 supply of ~~energy;~~energy and water;
- 17 (4) That the cost of the energy and water consumed by these facilities and
18 the equipment for these facilities over the life of the facilities shall be
19 considered, in addition to the initial cost;
- 20 (5) That the cost of energy and water is significant and facility designs
21 shall take into consideration the total life-cycle cost, including the
22 initial construction cost, and the cost, over the economic life of the
23 facility, of the energy and water consumed, and of operation and
24 maintenance of the facility as it affects energy and water consumption;
25 and
- 26 (6) That State government shall undertake a program to reduce energy use
27 and reduce water use in State facilities and equipment in those
28 facilities in order to provide its citizens with an example of energy-use
29 and water-use efficiency.

30 (b) It is the policy of the State of North Carolina to ensure that energy
31 conservation practices and water conservation practices are employed in the design,
32 construction, operation, maintenance, and renovation of State facilities and in the
33 purchase, operation, and maintenance of equipment for State facilities.

34 **"§ 143-64.11. Definitions.**

35 For purposes of this Article:

- 36 (1) "Economic life" means the projected or anticipated useful life of a
37 facility.
- 38 (2) "Energy-consumption analysis" means the evaluation of all
39 energy-consuming systems and components by demand and type of
40 energy, including the internal energy load imposed on a facility by its
41 occupants, equipment and components, and the external energy load
42 imposed on the facility by climatic conditions.
- 43 (2a) "Energy Office" means the State Energy Office of the Department of
44 Administration.

- 1 (2b) "Energy-consuming system" includes but is not limited to the
2 following equipment or measures:
3 a. Equipment used to heat, cool, or ventilate the facility;
4 b. Equipment used to heat water in the facility;
5 c. Lighting systems;
6 d. On-site equipment used to generate electricity for the facility;
7 e. On-site equipment that uses the sun, wind, oil, natural gas,
8 liquid propane gas, coal, or electricity as a power source; and
9 f. Energy conservation measures in the facility design and
10 construction that decrease the energy requirements of the
11 facility.
- 12 (3) "Facility" means a building or a group of buildings served by a central
13 energy distribution system or components of a central energy
14 distribution system. Facility also means a building or a group of
15 buildings served by a central plumbing or water distribution system or
16 components of a central water distribution system.
- 17 (4) "Initial cost" means the required cost necessary to construct or
18 renovate a facility.
- 19 (5) "Life-cycle cost analysis" means an analytical technique that considers
20 certain costs of owning, using, and operating a facility over its
21 economic life, including but not limited to:
22 a. Initial costs;
23 b. System repair and replacement costs;
24 c. Maintenance costs;
25 d. Operating costs, including energy and water costs; and
26 e. Salvage value.
- 27 (6) Repealed by Session Laws 1993, c. 334, s. 3.
- 28 (7) "State agency" means the State of North Carolina or any board,
29 bureau, commission, department, institution, or agency of the State.
- 30 (8) "State-assisted facility" means a facility constructed or renovated in
31 whole or in part with State funds or with funds guaranteed or insured
32 by a State agency.
- 33 (9) "State facility" means a facility constructed or renovated, by a State
34 agency.
- 35 (10) "Water-consumption analysis" means the evaluation of all
36 water-consuming systems and components that involve water use,
37 including the internal water use of a facility by its occupants,
38 equipment, and components; sewer usage; and the water use outside of
39 a facility, including water use for landscaping and fountains and the
40 capture or diversion of stormwater.

41 **"§ 143-64.12. Authority and duties of State agencies.**

42 (a) The General Assembly authorizes and directs that State agencies shall carry
43 out the construction and renovation of State facilities, under their jurisdiction in such a
44 manner as to further the policy declared herein, ensuring the use of life-cycle cost

1 ~~analyses and analyses,~~ energy-conservation ~~practices.~~practices, and water conservation
2 practices.

3 (b) The Department of Administration shall develop and implement policies,
4 procedures, and standards to ensure that State purchasing practices improve energy and
5 water efficiency and take the cost of the product over the economic life of the product
6 into consideration. The Department of Administration shall adopt and implement
7 ~~Building Energy Design Guidelines.~~Guidelines and Building Water Design Guidelines.
8 These guidelines shall include energy-use and water-use goals and standards, economic
9 assumptions for life-cycle cost analysis, and other criteria on building systems and
10 technologies. The Department of Administration shall modify the design criteria for
11 construction and renovation of facilities to require that a life-cycle cost analysis be
12 conducted pursuant to G.S. 143-64.15. The Department of Administration, as part of the
13 Facilities Condition and Assessment Program, shall identify and recommend energy and
14 water conservation maintenance and operating procedures that are designed to reduce
15 energy and water consumption within the facility and that require no significant
16 expenditure of funds. State departments, institutions, or agencies shall implement these
17 recommendations. Where energy management equipment or water management
18 equipment is proposed for State facilities, the maximum interchangeability and
19 compatibility of equipment components shall be required.

20 The Department of Administration shall develop a comprehensive energy and water
21 management program for State government. Each State agency shall develop and
22 implement an energy management plan and a water management plan that is consistent
23 with the State's comprehensive energy and water management program.

24 (c) through (g) Repealed by Session Laws 1993, c. 334, s. 4.

25 **"§ 143-64.15. Life-cycle cost analysis.**

26 (a) A life-cycle cost analysis shall include, but not be limited to, all of the
27 ~~following elements:~~elements:

- 28 (1) The coordination, orientation, and positioning of the facility on its
29 ~~physical site;~~site.
- 30 (2) The amount and type of fenestration employed in the ~~facility;~~facility.
- 31 (3) Thermal characteristics of materials and the amount of insulation
32 incorporated into the facility ~~design;~~design.
- 33 (4) The variable occupancy and operating conditions of the facility,
34 including illumination ~~levels;~~ and levels.
- 35 (5) Architectural features ~~which that~~ affect energy consumption.
- 36 (6) The amount and type of plumbing employed in the facility.
- 37 (7) Architectural features that affect water consumption.

38 (b) The life-cycle cost analysis performed for any State facility shall, in addition
39 to the requirements set forth in subsection (a) of this section, include, but not be limited
40 to, all of the following:

- 41 (1) An energy-consumption analysis of the facility's energy-consuming
42 systems in accordance with the provisions of subsection (g) of this
43 ~~section;~~section.

- 1 (2) The initial estimated cost of each energy-consuming system being
2 compared and ~~evaluated~~; evaluated.
- 3 (3) The estimated annual operating cost of all utility
4 ~~requirements~~; requirements.
- 5 (4) The estimated annual cost of maintaining each energy-consuming
6 ~~system~~; and system.
- 7 (5) The average estimated replacement cost for each system expressed in
8 annual terms for the economic life of the facility.
- 9 (6) A water-consumption analysis of the facility's water-consuming
10 systems in accordance with the provisions of subsection (h) of this
11 section.
- 12 (7) The initial estimated cost of each water-consuming system being
13 compared and evaluated.
- 14 (8) The estimated annual cost of maintaining each water-consuming
15 system.

16 (c) The General Assembly requires each entity to conduct a life-cycle cost
17 analysis pursuant to this section for the construction or the renovation of any State
18 facility or State-assisted facility of 20,000 or more gross square feet.

19 (d) The life-cycle cost analysis shall be certified by a registered professional
20 engineer or bear the seal of a North Carolina registered architect, or both. The engineer
21 or architect shall be particularly qualified by training and experience for the type of
22 work involved, but shall not be employed directly or indirectly by a fuel provider, utility
23 company, or group supported by fuel providers or utility funds. Plans and specifications
24 for facilities involving public funds shall be designed in conformance with the
25 provisions of G.S. 133-1.1.

26 (e) In order to protect the integrity of historic buildings, no provision of this
27 Article shall be interpreted to require the implementation of ~~energy cost~~ energy-use or
28 water-use measures that conflict with respect to any property eligible for, nominated to,
29 or entered on the National Register of Historic Places, pursuant to the National Historic
30 Preservation Act of 1966, P.L. 89-665; any historic building located within an historic
31 district as provided in Chapters 160A or 153A of the General Statutes; any historic
32 building listed, owned, or under the jurisdiction of an historic properties commission as
33 provided in Chapter 160A or 153A; nor any historic property owned by the State or
34 assisted by the State.

35 (f) Each State agency shall use the life-cycle cost analysis over the economic life
36 of the facility in selecting the optimum system or combination of systems to be
37 incorporated into the design of the facility.

38 (g) The energy-consumption analysis of the operation of energy-consuming
39 systems in a facility shall ~~include, but not be limited to~~ include at least all of the
40 following:

- 41 (1) The comparison of two or more system ~~alternatives~~; alternatives.
- 42 (2) The simulation or engineering evaluation of each system over the
43 entire range of operation of the facility for a year's operating ~~period~~;
44 and period.

1 (3) The engineering evaluation of the energy consumption of component
2 equipment in each system considering the operation of such
3 components at other than full or rated outputs.

4 (h) The water-consumption analysis of the operation of water-consuming systems
5 in a facility shall include at least all of the following:

6 (1) The comparison of two or more system alternatives.

7 (2) The simulation or engineering evaluation of each system over the
8 entire range of operation of the facility for a year's operating period.

9 (3) The engineering evaluation of the water consumption of component
10 equipment in each system considering the operation of such
11 components at other than full or rated outputs.

12 **"§ 143-64.15A. Certification of life-cycle cost analysis.**

13 All State agencies under the jurisdiction of the Department of Administration
14 performing a life-cycle cost analysis for the purpose of constructing or renovating any
15 State facility shall, prior to selecting a design option or advertising for bids for
16 construction, submit the life-cycle cost analysis to the Department for certification. The
17 Department shall review the material submitted by the State agency, reserve the right to
18 require agencies to complete additional analysis to comply with certification, perform
19 any additional analysis, as necessary, to comply with G.S. 143-341(11), and require that
20 all construction or renovation conducted by the State agency comply with the
21 certification issued by the Department.

22 **"§ 143-64.16. Application of Part.**

23 The provisions of this Part shall not apply to municipalities or counties, nor to any
24 agency or department of any municipality or county; provided, however, this Part shall
25 apply to any board of a community college. Community college is defined in
26 G.S. 115D-2(2)."

27 **SECTION 6.** G.S. 115C-47 is amended by adding a new subdivision to read:

28 "(28b) To Enter Guaranteed Water Savings Contracts for Water Conservation
29 Measures. – Local boards may purchase water conservation measures
30 by guaranteed water savings contracts pursuant to Part 2 of Article 3B
31 of Chapter 143 of the General Statutes."

32 **SECTION 7.** G.S. 133-4.1 reads as rewritten:

33 **"§ 133-4.1. Guaranteed energy savings ~~contracts~~contracts; guaranteed water**
34 **savings contracts.**

35 Except for G.S. 133-1 and [G.S.] 133-1.1, the provisions of this Article shall not
36 apply to energy conservation measures undertaken as part of a guaranteed energy
37 savings contract or to water conservation measures undertaken as part of a guaranteed
38 water savings contract, entered into pursuant to the provisions of Part 2 of Article 3B of
39 Chapter 143 of the General Statutes."

40 **SECTION 8.** G.S. 143-120(e) is amended by adding a new subdivision to
41 read:

42 "(12) Guaranteed water savings contracts, which are governed by Article 3B
43 of Chapter 143 of the General Statutes."

44 **SECTION 9.** G.S. 143-129.4 reads as rewritten:

1 "§ 143-129.4. ~~Guaranteed energy savings eontraets; guaranteed water~~
2 savings contracts.

3 The solicitation and evaluation of proposals for guaranteed energy savings ~~eontraets,~~
4 contracts and guaranteed water savings contracts, as defined in Part 2 of Article 3B of
5 this Chapter, and the letting of contracts for these proposals are not governed by this
6 Article but instead are governed by the provisions of that Part; except that guaranteed
7 energy savings contracts and guaranteed water savings contracts are subject to the
8 requirements of G.S. 143-128.2 and G.S. 143-135.3."

9 **SECTION 10.** G.S. 160A-20(h) is amended by adding two new subdivisions
10 as follows:

11 "(6c) Any other local school administrative unit, but only for the purpose of
12 financing water conservation measures acquired pursuant to Part 2 of
13 Article 3B of Chapter 143 of the General Statutes.

14 (6d) A community college, but only for the purpose of financing water
15 conservation measures acquired pursuant to Part 2 of Article 3B of
16 Chapter 143 of the General Statutes."

17 **SECTION 11.** This act becomes effective July 1, 2004, and applies to
18 contracts entered into on or after that date.