

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2003**

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**SENATE BILL 1373**

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

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Sponsors: Senators Clodfelter; and Kinnaird.

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Referred to: Finance.

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May 27, 2004

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.  
27 b. Storm windows or doors, caulking, weatherstripping,  
28 multiglazed windows or doors, heat-absorbing or heat-reflective  
29 glazed or coated window or door systems, additional glazing,

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

- 1 (6) "Request for proposals" means a negotiated procurement initiated by a  
2 governmental unit by way of a published notice that includes the  
3 following:  
4 a. The name and address of the governmental unit.  
5 b. The name, address, title, and telephone number of a contact  
6 person in the governmental unit.  
7 c. Notice indicating that the governmental unit is requesting  
8 qualified providers to propose energy conservation measures or  
9 water conservation measures through a guaranteed energy  
10 savings ~~contract~~contract or a guaranteed water savings  
11 contract.  
12 d. The date, time, and place where proposals must be received.  
13 e. The evaluation criteria for assessing the proposals.  
14 f. A statement reserving the right of the governmental unit to  
15 reject any or all the proposals.  
16 g. Any other stipulations and clarifications the governmental unit  
17 may require.
- 18 (7) "State governmental unit" means the State or a department, an agency,  
19 a board, or a commission of the State, including the Board of  
20 Governors of The University of North Carolina and its constituent  
21 institutions.
- 22 (8) Water Conservation Measure. – A facility alteration, training, or  
23 services related to the operation of the facility, when the alteration,  
24 training, or services provide anticipated water savings. Water  
25 conservation measure includes faucets with automatic or metered  
26 shutoff valves, low-flow toilets, water flow restriction equipment, leak  
27 detection equipment, water recycling equipment, waste water recovery  
28 systems, cisterns, and other water conservation measures.
- 29 (9) Water Savings. – A measured reduction in water use costs or operating  
30 costs created from the implementation of one or more water  
31 conservation measures when compared with an established baseline of  
32 previous water use costs or operating costs developed by the State  
33 Energy Office of the Department of Administration. Water savings  
34 includes savings in sewer usage.
- 35 **"§ 143-64.17A. Solicitation of guaranteed energy savings ~~contracts~~contracts or**  
36 **guaranteed water savings contracts.**
- 37 (a) Before entering into a guaranteed energy savings ~~contract~~contract or a  
38 guaranteed water savings contract, a governmental unit shall issue a request for  
39 proposals. Notice of the request shall be published at least 15 days in advance of the  
40 time specified for opening of the proposals in at least one newspaper of general  
41 circulation in the geographic area for which the local governmental unit is responsible  
42 or, in the case of a State governmental unit, in which the facility or facilities are located.  
43 No guaranteed energy savings contract and no guaranteed water savings contract shall  
44 be awarded by any governmental unit unless at least two proposals have been received

1 from qualified providers. Provided that if after the publication of the notice of the  
2 request for proposals, fewer than two proposals have been received from qualified  
3 providers, the governmental unit shall again publish notice of the request and if as a  
4 result of the second notice, one or more proposals by qualified providers are received,  
5 the governmental unit may then open the proposals and select a qualified provider even  
6 if only one proposal is received.

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

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

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

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

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

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

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

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

44 (1) Prices offered.

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

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

14 **"§ 143-64.17B. Guaranteed energy savings ~~contracts~~; guaranteed water**  
15 **savings contracts.**

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

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

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

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

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

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

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

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

36 **"§ 143-64.17D. Contract continuance.**

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

41 **"§ 143-64.17E. Payments under contract.**

42 A local governmental unit may use any funds, whether operating or capital, that are  
43 not otherwise restricted by law for the payment of a guaranteed energy savings  
44 ~~contract~~ contract or a guaranteed water savings contract. State appropriations to any

1 local governmental unit shall not be reduced as a result of energy savings or water  
2 savings occurring as a result of a guaranteed energy savings ~~contract~~contract or a  
3 guaranteed water savings contract.

4 "**§ 143-64.17F. State agencies to use contracts when feasible; rules;**  
5 **recommendations.**

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

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

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

21 "**§ 143-64.17G. Report on ~~guaranteed energy savings contracts~~contracts entered**  
22 **into by local governments.**

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

31 "**§ 143-64.17H. ~~Guaranteed energy savings contract reporting~~**  
32 **requirements. Report on contracts entered into by State governmental**  
33 **units.**

34 A State governmental unit that enters into a guaranteed energy savings contract or a  
35 guaranteed water savings contract must report the contract and the terms of the contract  
36 to the State Energy Office of the Department of Administration within 30 days of the  
37 date the contract is entered into. In addition, within 60 days after each annual  
38 anniversary date of a guaranteed energy savings ~~contract~~contract or a guaranteed water  
39 savings contract, the State governmental unit must report the status of the contract to the  
40 State Energy Office, including any details required by the State Energy Office. The  
41 State Energy Office shall compile the information for each fiscal year and report it to  
42 the Joint Legislative Commission on Governmental Operations and to the Local  
43 Government Commission annually by December 1. In compiling the information, the  
44 State Energy Office shall include information on the energy savings or water savings,

1 whichever applies, expected to be realized from a contract and shall evaluate whether  
2 expected savings have in fact been realized.

3 **"§ 143-64.17I. Installment and lease purchase contracts.**

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

8 **"§ 143-64.17J. Financing by State governmental units.**

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

13 **"§ 143-64.17K. Inspection and compliance certification for State governmental  
14 units.**

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

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

22 (2) Inspection and certification by:

23 a. The applicable local building inspector under Part 4 of Article  
24 18 of Chapter 153A of the General Statutes or Part 5 of Article  
25 19 of Chapter 160A of the General Statutes; or

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

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

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

33 "State Energy and Water Conservation Finance Act."

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

35 **"§ 142-60. Short title.**

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

37 **"§ 142-61. Definitions.**

38 The following definitions apply in this Article:

39 (1) Certificates of participation. – Certificates or other instruments  
40 delivered by a special corporation as provided in this Article  
41 evidencing the assignment of proportionate and undivided interests in  
42 the rights to receive payments to be made by the State pursuant to one  
43 or more financing contracts.

44 (2) Cost. – The term includes:



- 1 a. The cost of construction, modification, rehabilitation,  
2 renovation, improvement, acquisition, or installation in  
3 connection with an energy conservation ~~measure~~measure or a  
4 water conservation measure.
- 5 b. The cost of engineering, architectural, and other consulting  
6 services as may be required, including the cost of performing  
7 the technical analysis in accordance with G.S. 143-64.17A and  
8 inspection and certification in accordance with  
9 G.S. 143-64.17K.
- 10 c. Finance charges, reserves for debt service and other types of  
11 reserves required pursuant to a financing contract or any other  
12 related documentation, and interest prior to and during  
13 construction, and, if deemed advisable by the State Treasurer,  
14 for a period not exceeding two years after the estimated date of  
15 completion of construction.
- 16 d. Administrative expenses and charges.
- 17 e. The cost of bond insurance, investment contracts, credit and  
18 liquidity facilities, interest rate swap agreements and other  
19 derivative products, financial and legal consultants, and related  
20 costs of the incurrence or issuance of the financing contract to  
21 the extent and as determined by the State Treasurer.
- 22 f. The cost of reimbursing the State for payments made for any  
23 costs described in this subdivision.
- 24 g. Any other costs and expenses necessary or incidental to  
25 implementing the purposes of this Article.
- 26 (3) Credit facility. – An agreement that:
- 27 a. Is entered into by the State with a bank, savings and loan  
28 association, or other banking institution, an insurance company,  
29 reinsurance company, surety company or other insurance  
30 institution, a corporation, investment banking firm or other  
31 investment institution, or any financial institution or other  
32 similar provider of a credit facility, which provider may be  
33 located within or without the United States of America; and
- 34 b. Provides for prompt payment of all or any part of the principal  
35 or purchase price (whether at maturity, presentment or tender  
36 for purchase, redemption, or acceleration), redemption  
37 premium, if any, and interest with respect to any financing  
38 contract payable on demand or tender by the owner in  
39 consideration of the State agreeing to repay the provider of the  
40 credit facility in accordance with the terms and provisions of  
41 the agreement.
- 42 (4) Energy conservation measure. – Defined in G.S. 143-64.17.

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

22 "§ 142-62: Reserved for future codification purposes.

23 "§ 142-63. **Authorization of financing contract.**

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

33 "§ 142-64. **Procedure for incurrence or issuance of financing contract.**

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

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

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

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

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

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