

Appendix A

Article 7 Guaranteed Energy Cost Savings Contracts

Code of Alabama 1975

Section 41-16-140

Short title.

This article shall be known as the "Guaranteed Energy Cost Savings Act."

(Act 98–663, p. 1450, §1.)

Section 41-16-141

Definitions.

For purposes of this article, the following terms shall have the following meanings:

(1) ENERGY COST SAVINGS MEASURE. A training program or new facility or existing facility alteration designed to reduce energy consumption or operating costs, or water and other natural resources consumption, and may include one or more of the following:

- a. Insulation and reduced air infiltration of the building structure including walls, ceilings, and roofs or systems within the building.
- b. Storm windows or doors, caulking or weather-stripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption.
- c. Automated or computerized energy control systems, including computer software and technical data licenses.
- d. Heating, ventilating, or air conditioning system modifications or replacements.
- e. Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made.
- f. Indoor air quality improvements.
- g. Energy recovery systems.
- h. Electric systems improvements.
- i. Life safety measures that provide long-term operating cost reductions.
- j. Building operation programs that reduce operating costs.

k. Other energy-conservation-related improvements or equipment, including improvements or equipment related to renewable energy.

l. Water and other natural resources conservation.

(2) GOVERNMENTAL UNIT. A state government agency, department, institution, college, university, technical school, legislative body, or other establishment or official of the Executive, Judicial, or Legislative Branches of the state authorized by law to enter into contracts, including all local political subdivisions such as counties, municipalities, or public school districts.

(3) GUARANTEED ENERGY COST SAVINGS CONTRACT. A contract for the implementation of one or more energy cost savings measures.

(4) OPERATIONAL COST SAVINGS. Expenses eliminated and future replacement expenditures avoided as a result of new equipment installed or services performed.

(5) QUALIFIED PROVIDER. A person or business experienced in the design, implementation, and installation of energy cost savings measures.

(6) REQUEST FOR PROPOSALS. A negotiated procurement that is announced through a public notice from a governmental unit which will administer the guaranteed energy cost savings contract requesting innovative solutions and proposals for energy conservation measures. The request for proposal shall include the following:

- a. The name and address of the governmental unit.
- b. The name, address, title, and phone number of a contact person.
- c. The date, time, and place where proposals must be received.
- d. The evaluation criteria for assessing the proposals.
- e. Any other stipulations and clarifications the governmental unit may require.

(Act 98–663, p. 1450, §2.)

Section 41-16-142

Energy cost savings measures authorized.

(a) A governmental unit may enter into a guaranteed energy cost savings contract in order to reduce energy consumption or operating costs of government facilities in accordance with this article.

(b) All energy cost savings measures shall comply with current local, state, and federal construction and environmental codes and regulations. Notwithstanding anything to the

contrary, a guaranteed energy cost savings contract does not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which public water supply system officials do not have sanitary control, to be returned to the potable water supply.

(Act 98-663, p. 1450, §3.)

Section 41-16-143

Request for proposals; meeting; public notice; guarantee required; bond; type, duration, funding, etc., of contract.

(a) Before entering into a guaranteed energy cost savings contract, a governmental unit shall submit a request for proposals. The governmental unit shall evaluate any proposal from a qualified provider and shall select the qualified provider that best meets the needs of the unit. After reviewing the proposals, the governmental unit may enter into a guaranteed energy cost savings contract with a qualified provider if it finds that the amount it would spend on the energy cost savings measures recommended in the proposal would not exceed the amount of energy or operational cost savings, or both, within the lesser of a 20-year period or the average useful life of the energy cost savings measures from the date installation is complete and has been accepted by the governmental unit, if the recommendations in the proposal are followed. The governmental unit shall analyze the following:

(1) The estimates of all costs of installation, modifications, or remodeling, including, without limitation, costs of a pre-installation energy audit or analysis, design, engineering, installation, maintenance, repairs, debt service, and post-installation project monitoring, data collection, and reporting, as well as whether energy consumed or the operating costs, or both, will be reduced.

(2) The qualifications of the provider.

(b) The governmental unit shall provide public notice of the meeting at which it proposes to award a guaranteed energy cost savings contract, of the names of the parties to the proposed contract, and of the purpose of the contract. The public notice shall be made at least 10 days prior to the meeting.

(c) The guaranteed energy cost savings contract shall include a written guarantee of the qualified provider that either the energy or operational cost savings, or both, will meet or exceed the costs of the energy cost savings measures within the lesser of 20 years or the average useful life of the energy cost savings measures. The qualified provider shall reimburse the governmental unit for any shortfall of guaranteed energy cost savings on an annual basis. The guaranteed energy cost savings contract may provide for payments over a period of time, not to exceed the lesser of 20 years or the average useful life of the energy cost savings measures.

(d) Notwithstanding any law to the contrary, before entering into a guaranteed energy cost savings contract, the governmental unit may require the qualified provider to file with the governmental unit a payment and performance bond relating to the installation of energy cost savings measures that is in an amount the governmental unit finds reasonable and necessary to protect its interests and that may also cover the value of the guaranteed savings on the contract and is conditioned on the faithful execution of the terms of the contract.

(e) A governmental unit, or several governmental units together, may enter into an installment payment contract or lease purchase agreement with a qualified provider or a third party financing company designated by the qualified provider, or both, for the purchase and installation of energy cost savings measures with a term not to exceed the lesser of 20 years or the average useful life of the energy cost savings measures from the date the energy cost savings measures have been completed and accepted by the governmental unit.

(f) Guaranteed energy cost savings contracts, including installment payment contracts and lease purchase agreements financing the contracts, may extend beyond the fiscal year in which they become effective. The governmental unit may include in its annual budget and appropriations measures for each subsequent fiscal year any amounts payable under guaranteed energy savings contracts, including installment payment contracts and lease purchase agreements financing the contracts, during that fiscal year.

(g) A governmental unit may use a combination of funds designated for operating, capital expenditures, or other specially designated funds for any guaranteed energy cost savings contract including purchases using installment payment contracts or lease purchase agreements.

(h) State aid and other amounts appropriated for distribution to, or reimbursement to, a governmental unit may not be reduced as a result of energy cost savings realized from a guaranteed energy cost savings contract or a lease purchase agreement for the purchase and installation of energy cost savings measures.

(Act 98-663, p. 1450, §4; Act 2006-93, p. 121, §1.)

Section 41-16-144

Construction of article.

The provisions of this article shall not be construed to alter or circumvent present law which requires education support personnel to work under the direct supervision, employment, and/or control of local boards of education.

(Act 98-663, p. 1450, §5.)