

ASSEMBLY, No. 2978

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED JUNE 21, 2010

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SYNOPSIS

Establishes procedures for guaranteed energy savings contracts by governmental entities.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/14/2010)

1 AN ACT concerning guaranteed energy savings contracts and
2 supplementing Title 52 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. The Legislature finds and declares:

8 a. It is the policy of the State for governmental entities to
9 undertake energy and water conservation measures in all aspects of
10 their operations whenever practical and feasible;

11 b. Because of the upfront cost of undertaking projects that
12 promote energy and water conservation, many governmental
13 entities have foregone needed or desirable facility upgrades that
14 would increase energy and water efficiencies and improve the
15 working environment of facilities;

16 c. Efforts to improve the energy and water efficiencies of
17 governmental entities in many instances have not been pursued
18 because of the high cost of property taxes and competing demands
19 for funds needed for other essential activities, programs, and
20 projects undertaken by governmental entities;

21 d. Guaranteed energy savings contracts provide a mechanism to
22 initiate projects to improve energy and water efficiencies that are
23 needed or desirable but not currently funded;

24 e. Guaranteed energy savings contracts do not readily lend
25 themselves to award pursuant to the sealed bid process, which
26 awards a contract to the lowest cost bidder based on upfront
27 construction and labor costs, and without regard to long term
28 savings or reduced life cycle costs that the governmental entity may
29 reasonably expect to achieve as a result of the contract work;

30 f. Competitive contracting is an open and fair procurement
31 method that provides governmental entities the opportunity to
32 evaluate competing proposals based on all relevant cost factors
33 including long term savings and reduced life cycle costs and to
34 enter into guaranteed energy savings contracts while providing
35 taxpayers the highest level of protection;

36 g. The need to evaluate differing proposals as to the nature of
37 the energy and water conservation measures to be implemented and
38 the savings realized therefrom, and the funding mechanisms to be
39 employed, as well as the guaranteed nature of the savings to be
40 realized by governmental entities that enter into guaranteed energy
41 savings contracts supports the use of competitive contracting
42 techniques in lieu of sealed bidding techniques; and

43 h. Nothing in this act shall be interpreted to indicate any change
44 in the Legislature's support of current procurement laws for other
45 matters that require award to the lowest responsive bidder.

46

47 2. For the purposes of this act:

1 “Allowable costs” means the equipment and project costs
2 associated with an energy conservation measure or a water
3 conservation measure that a governmental entity reasonably
4 believes will be incurred during the term of a guaranteed energy
5 savings contract and are documented by industry engineering
6 standards.

7 “Competitive contracting” means the method of contracting for
8 specialized goods and services in which formal proposals are
9 solicited from vendors; formal proposals are evaluated by the
10 governmental entity; and the governmental entity awards a contract
11 to a vendor or vendors from among the formal proposals received.

12 “Energy conservation measure” means a program or facility
13 alteration intended to reduce a governmental entity’s energy
14 consumption or operating costs, and includes but is not limited to:

15 (1) insulation of the building structure or systems within the
16 building;

17 (2) storm windows or doors, caulking or weather stripping,
18 multi-glazed windows or doors, heat-absorbing or heat-reflective
19 glazed and coated window or door systems, additional glazing,
20 reductions in glass area or other window and door system
21 modifications that reduce energy consumption;

22 (3) automated or computerized energy control systems;

23 (4) heating, ventilating or air conditioning system modifications
24 or replacements;

25 (5) replacement or modification of lighting fixtures to increase
26 the energy efficiency of the lighting system without increasing the
27 overall illumination of a facility, unless an increase in illumination
28 is necessary to conform to applicable State or local building codes
29 for the lighting system after the proposed modifications are made;

30 (6) energy recovery systems;

31 (7) systems that produce steam or forms of energy such as heat
32 as well as electricity for use within a building or complex of
33 buildings;

34 (8) energy conservation measures that provide operating cost
35 reductions based on life cycle cost analysis;

36 (9) a training program or facility alteration that reduces energy
37 consumption or reduces operating costs, including allowable costs,
38 based on future reductions in labor costs or costs for contracted
39 services;

40 (10) a facility alteration that includes expenditures required to
41 properly implement other energy conservation measures;

42 (11) a program to reduce energy costs through rate adjustments,
43 load shifting to reduce peak demand, load shedding, or use of
44 alternative energy suppliers;

45 (12) installation of energy information and control systems that
46 monitor consumption, redirect systems to optimal energy sources
47 and manage energy-using equipment;

48 (13) indoor air quality improvements;

1 (14) daylighting systems; and

2 (15) renewable or on-site distributed power generation systems.

3 “Energy savings” means a measured reduction in fuel, energy,
4 water, or operating or maintenance costs resulting from the
5 implementation of one or more energy conservation measures or
6 water conservation measures when compared with an established
7 baseline of previous fuel, energy, water, or operating or
8 maintenance costs, including, but not limited to, future capital
9 replacement expenditures avoided as a result of equipment installed
10 or services performed pursuant to a guaranteed energy savings
11 contract.

12 “Governmental entity” means the State, its agencies, authorities
13 and instrumentalities, a county or municipality, or any agency,
14 authority or instrumentality thereof, a school district, or any other
15 similar public entity or agency including a public housing authority.

16 “Guaranteed energy savings contract” means a contract for the
17 evaluation and recommendation of energy savings, energy
18 conservation measures, water conservation measures, or a
19 combination thereof, and for implementation of one or more such
20 measures entered into pursuant to this act.

21 “Industry engineering standards” means recognized industry
22 standards including life cycle costing, the R.S. Means-estimated
23 method developed by the R.S. Means Company, historical data,
24 manufacturer's data, and the American Society of Heating,
25 Refrigerating and Air-Conditioning Engineers (ASHRAE)
26 standards.

27 “Qualified provider” means a person or business responsible and
28 capable of evaluating, recommending, designing, implementing,
29 and installing energy conservation measures or water conservation
30 measures, or both, as determined by the governmental entity and
31 approved by the State Treasurer.

32 “Water conservation measure” means a program, equipment, or
33 facility alteration designed to reduce water consumption, ensure
34 maximum water use efficiency, or reduce water loss, including the
35 installation and use of state-of-the-art equipment and techniques.

36

37 3. Notwithstanding the provision of any law, or rule or
38 regulation adopted pursuant thereto, to the contrary, a governmental
39 entity may use competitive contracting to enter into a guaranteed
40 energy savings contract with a qualified provider for a period of 15
41 years in accordance with this act and in accordance with any
42 guidelines or regulations adopted by the Director of Energy Savings
43 established pursuant to Executive Order No.11 of 2006.

44 a. For the purpose of entering into a guaranteed energy savings
45 contract, a governmental entity may use the competitive contracting
46 method of procurement. The governmental entity may evaluate any
47 proposal that meets the requirements of the governmental entity and
48 is timely submitted by a qualified provider. The request for

1 proposals shall be announced through a public notice from the
2 governmental entity that will administer the program. The request
3 for proposals shall provide all interested parties with sufficient
4 information necessary to submit a timely and responsive proposal.

5 b. The governmental entity shall select the qualified provider
6 that best meets the needs of that governmental entity in accordance
7 with criteria established by that governmental entity. A
8 governmental entity:

9 (1) after reviewing the reports required to be provided pursuant
10 to subsection c. of this section, may enter into a guaranteed energy
11 savings contract with a qualified provider if (a) the governmental
12 entity finds that the amount it would spend on the energy
13 conservation measures or water conservation measures, or both,
14 recommended in the proposal would not exceed the amount to be
15 saved in energy savings within a 15-year period from the date of
16 installation if the recommendations in the proposal were followed,
17 and (b) the qualified provider provides in its proposal a written
18 guarantee in favor of the governmental entity that the energy
19 savings will meet or exceed the cost of the guaranteed energy
20 savings contract; and

21 (2) shall include specifications requiring the qualified provider to
22 demonstrate the qualifications, experience and training of the
23 qualified provider's employees, contractors and subcontractors,
24 including job training, education, and experience in successfully
25 completing projects similar in size and scope. These specifications
26 shall also include other criteria to assure a reliable source of skilled
27 and experienced labor to guarantee efficient and cost-effective
28 completion of the work and safety by standardizing the terms and
29 conditions of employment of labor on any project undertaken
30 pursuant to this act. In order to ensure these labor goals are met,
31 specifications shall include requirements to ensure labor stability
32 and the payment of prevailing wages pursuant to P.L.1963, c. 150
33 (C.34:11-56.25 et seq.), and require that labor contractors and
34 subcontractors provide and maintain formal training and
35 apprenticeship programs and approved healthcare and pension
36 benefit plans in accordance with P.L.1948, c.446 (C.34:1A-34 et
37 seq.).

38 c. Before a guaranteed energy savings contract may be awarded
39 by a governmental entity, the qualified provider shall provide a
40 report as part of its proposal which report shall summarize estimates
41 of all costs of installation, maintenance, repairs and debt service
42 and estimates of the amounts by which energy, water, or operating
43 costs will be reduced. This report shall:

44 (1) be available for public inspection;

45 (2) contain a listing of contractors and subcontractors to be used
46 by the qualified provider with respect to the energy conservation
47 measures or water conservation measures, or both; and

1 (3) comply with the guidelines adopted by the Director of Energy
2 Savings establishing a methodology for computing and comparing
3 energy savings.

4 d. A qualified provider to whom a guaranteed energy savings
5 contract is awarded shall provide a sufficient bond to the
6 governmental entity for its faithful performance.

7 e. Notwithstanding any other provision of law, or rule or
8 regulation adopted pursuant thereto, governing the letting of public
9 contracts to the contrary, a governmental entity may enter into a
10 separate guaranteed energy savings contract with each qualified
11 provider selected in accordance with this act.

12

13 4. a. A guaranteed energy savings contract may provide that all
14 payments, except obligations on termination of the contract before
15 its scheduled expiration, shall be made over a period of time. Each
16 guaranteed energy savings contract shall provide that the savings in
17 any year are guaranteed to the extent necessary to make payments
18 under the contract during that year.

19 b. A guaranteed energy savings contract shall include a written
20 guarantee that energy savings will meet or exceed the cost of the
21 energy conservation measures or water conservation measures, or
22 both, to be evaluated, recommended, designed, implemented, and
23 installed under the contract.

24 c. The qualified provider performing a guaranteed energy
25 savings contract shall submit annual reports to the governmental
26 entity, for each guaranteed energy savings contract, to confirm the
27 actual savings realized for the project, over the prior 12-month
28 period. This report, and the measurement of the savings, shall
29 comply with the United State Department of Energy's Federal
30 Energy Management Program, which stipulates the means to
31 measure and verify consumption based on metering, calculations, or
32 short term testing. For contracts involving State agencies, a copy of
33 this annual report shall also be submitted to the Director of Energy
34 Savings established pursuant to Executive Order No.11 of 2006 and
35 the State Treasurer. In the event that the actual, annual verified
36 savings are less than the annual amount of savings guaranteed by
37 the qualified provider, the qualified provider shall pay the
38 governmental entity, or cause the governmental entity to be paid,
39 the difference between the guaranteed savings amount and the
40 actual, verified amount.

41 d. A guaranteed energy savings contract may provide for
42 financing, including tax exempt financing, by a third party over a
43 period of time not to exceed 15 years from final installation or,
44 when applicable, by the issuance of energy savings bonds as a
45 refunding bond, to fund all or part of the energy conservation
46 measures or water conservation measures, or both. The contract for
47 third party financing may be separate from the guaranteed energy
48 savings contract.

- 1 e. An improvement that is not causally connected to an energy
2 conservation measure or water conservation measure may be
3 included in a guaranteed energy savings contract if:
- 4 (1) the total value of the improvement does not exceed 15% of
5 the total value of the work to be performed under the guaranteed
6 energy savings contract; and
- 7 (2) (a) the improvement is necessary to conform to a law, or a
8 rule or regulation adopted pursuant thereto, or an ordinance or
9 resolution, as appropriate; or
- 10 (b) an analysis within the successful proposal or by the
11 governmental entity at the time of the award demonstrates that there
12 is an economic advantage to the governmental entity implementing
13 the improvement as part of the guaranteed energy savings contract,
14 and the savings justification for the improvement is documented by
15 industry engineering standards.
- 16 f. A facility alteration required to properly implement other
17 energy conservation measures or water conservation measures, or
18 both, may be included as part of a guaranteed energy savings
19 contract. In that case, notwithstanding any other provision of law,
20 or rule or regulation adopted pursuant thereto, to the contrary, the
21 facility alteration may be undertaken or supervised by the qualified
22 provider performing the guaranteed energy savings contract.

23

24 5. This act shall take effect immediately.

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26

27

STATEMENT

28

29 This bill establishes procedures to allow the use of competitive
30 contracting procedures by governmental entities to enter into
31 guaranteed energy savings contracts. A “guaranteed energy savings
32 contract” means a contract, entered into pursuant to the provisions
33 of this bill upon enactment into law, for the evaluation and
34 recommendation of energy savings, energy conservation measures,
35 water conservation measures, or a combination thereof, and for
36 implementation of one or more such measures.