

Senate Bill 213

By: Senators Harper of the 7th, Payne of the 54th, Mullis of the 53rd, Summers of the 13th and Gooch of the 51st

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 10 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated,  
2 relating to contracts and purchases by public schools, so as to provide for payment on  
3 guaranteed energy saving contracts by local school systems using proceeds from local option  
4 sales taxes collected for educational purposes; to provide for phased implementation of  
5 energy or operational cost savings measures; to revise a definition; to amend Chapter 37 of  
6 Title 50 of the Official Code of Georgia Annotated, relating to guaranteed energy savings  
7 performance contracting, so as to revise definitions; to increase the value percentage  
8 threshold applicable to certain improvements; to provide for related matters; to repeal  
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **PART I**  
12 **SECTION 1-1.**

13 Article 10 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to  
14 contracts and purchases by public schools, is amended by revising Code Section 20-2-506,

S. B. 213

15 relating to definitions and authority to enter into multiyear lease, purchase, or lease purchase  
16 contracts, as follows:

17 "20-2-506.

18 (a) As used in this Code section, the term:

19 (1) 'Energy or operational cost savings measure' means a facility alteration, a training  
20 program incidental to the contract, or an equipment purchase to be used in building a  
21 retrofit, addition, or renovation or in new construction which reduces ~~designed to reduce~~  
22 energy or water consumption, wastewater production, or operating costs and ~~may include~~  
23 includes, but is not limited to, any one or more of the following:

24 (A) Insulating the building structure or structures within the building, including  
25 caulking or weather-stripping;

26 (B) Installing storm windows or doors, multiglazed windows or doors, heat absorbing  
27 or heat reflective glazed and coated window or door systems, or other window or door  
28 systems designed to reduce energy consumption;

29 (C) Installing automated or computerized energy control systems;

30 (D) Modifying or replacing heating, ventilating, or air-conditioning systems;

31 (E) Replacing or modifying lighting fixtures to increase the energy efficiency of the  
32 lighting system;

33 (F) Improving indoor air quality to conform to the applicable state or local building  
34 code requirements;

35 (G) Installing energy recovery systems;

36 (H) Installing cogeneration systems that produce steam or forms of energy such as heat  
37 and electricity for use primarily within a building or complex of buildings; ~~and~~

38 (I) Life safety measures that provide long-term operating cost reductions and are in  
39 compliance with state and local codes, and building operation programs that reduce  
40 operating costs; and

41 (J) Any other measure not otherwise defined in this Code section which is designed to  
42 reduce energy or water consumption, reduce wastewater production, enhance revenue,  
43 avoid capital costs, or achieve similar efficiency gains by the county, independent, or  
44 area school system.

45 (2) 'Guaranteed energy saving contract' means a contract for the implementation of one  
46 or more energy or operational cost savings measures providing that all payments except  
47 obligations on termination of the contract before its expiration are to be made over time  
48 and the energy cost savings are guaranteed to the extent necessary to make payments for  
49 the contract.

50 (b) Except as otherwise provided in this Code section, each county, independent, or area  
51 school system in this state shall be authorized to enter into multiyear lease, purchase, or  
52 lease purchase contracts of all kinds for the acquisition of goods, materials, real and  
53 personal property, services, and supplies, provided that any such contract shall contain  
54 provisions for the following:

55 (1) The contract shall terminate absolutely and without further obligation on the part of  
56 the school system at the close of the calendar year in which it was executed and at the  
57 close of each succeeding calendar year for which it may be renewed as provided in this  
58 Code section;

59 (2) The contract may provide for automatic renewal unless positive action is taken by the  
60 school system to terminate such contract, and the nature of such action shall be  
61 determined by the school system and specified in the contract;

62 (3) The contract shall state the total obligation of the school system for the calendar year  
63 of execution and shall further state the total obligation which will be incurred in each  
64 calendar year renewal term, if renewed;

65 (4) The total combined annual payments for contracts under this Code section and  
66 contracts of such school system under Article IX, Section III, Paragraph I of the  
67 Constitution in any calendar year, excluding guaranteed energy savings contracts, shall

68 not exceed an amount equal to 7.5 percent of the total local revenue collected for  
69 maintenance and operation of the school system in the most recently completed fiscal  
70 year; provided, however, that the foregoing limitation shall not apply to contracts with  
71 other public educational entities, including school systems in this state, for the education  
72 of students; and

73 (5) For each guaranteed energy savings contract, a school system shall document the  
74 historical energy cost of each structure affected for a period of at least one year prior to  
75 the date of the contract and shall document the monthly energy cost and monthly energy  
76 savings of each affected structure for the life of the contract.

77 (c) In addition to the provisions enumerated in subsection (b) of this Code section, any  
78 contract authorized by this Code section may include:

79 (1) A provision which requires that the contract will terminate immediately and  
80 absolutely at such time as appropriated and otherwise unobligated funds are no longer  
81 available to satisfy the obligations of the school system under the contract; or

82 (2) Any other provision reasonably necessary to protect the interests of the school  
83 system.

84 (d) Any contract developed under this Code section containing the provisions enumerated  
85 in subsection (b) of this Code section shall be deemed to obligate the school system only  
86 for those sums payable during the calendar year of execution or, in the event of a renewal  
87 by the school system, for those sums payable in the individual calendar year renewal term.

88 (e) No contract developed and executed pursuant to this Code section shall be deemed to  
89 create a debt of the school system for the payment of any sum beyond the calendar year of  
90 execution or, in the event of a renewal, beyond the calendar year of such renewal.

91 (f) Any such contract may provide for the payment by the school system of interest or the  
92 allocation of a portion of the contract payment to interest, provided that the contract is in  
93 compliance with this Code section.

94 (g) When any local board of education on or after July 1, 1990, submits to the electors of  
95 its local school district the proposed issuance of any bonded debt and such proposal is  
96 defeated by the electors, that school system shall be prohibited for a period of four calendar  
97 years immediately following such election from entering into any multiyear contract for  
98 the lease, purchase, or lease purchase of any goods, materials, real or personal property,  
99 services, or supplies which are the same as or substantially similar to items which were  
100 proposed to be funded through such proposed issuance of bonded debt.

101 (h) Nothing in this Code section shall restrict school systems from executing reasonable  
102 contracts arising out of their proprietary functions.

103 (i) Each school system in this state is authorized to accept the title to property subject to  
104 a contract for lease purchase or installment purchase and is authorized to transfer title back  
105 to the vendor in the name of the school district in the event that the contract is not fully  
106 consummated.

107 (j) Any contract developed under this Code section shall comply with the applicable  
108 provisions of the Official Code of Georgia Annotated, and regulations thereunder, relating  
109 to state allocated capital outlay funds and entitlements.

110 (k) A county, independent, or area school system may use proceeds from local option  
111 sales taxes collected for educational purposes for payment on a contract developed in  
112 accordance with the provisions of this Code section; provided, however, that the scope of  
113 services included in such contract are permissible according to the referendum authorizing  
114 the collection of such taxes.

115 (l) A county, independent, or area school system may enter into guaranteed energy  
116 savings performance contracts with each qualified energy savings provider selected in  
117 accordance with the provisions of this Code section. School systems may elect to  
118 implement the energy or operational cost savings measure in one or more phases with the  
119 selected qualified energy services provider."

**PART II****SECTION 2-1.**

122 Chapter 37 of Title 50 of the Official Code of Georgia Annotated, relating to guaranteed  
123 energy savings performance contracting, is amended in Code Section 50-37-2, relating to  
124 definitions, by revising paragraphs (4), (6), and (9) as follows:

125 "(4) 'Energy conservation measure' means a program or facility alteration or technology  
126 upgrade designed to reduce energy, water, waste-water, or other consumption or  
127 operating costs to allow revenue generation measures. The term may include, without  
128 limitation:

129 (A) Insulation of the building structure or systems within the building;

130 (B) Storm windows or doors, caulking or weather stripping, multiglazed windows or  
131 doors, heat absorbing or heat reflective glazed and coated window or door systems,  
132 additional glazing, reductions in glass area, or other window and door system  
133 modifications that reduce energy consumption;

134 (C) Automated or computerized energy control systems;

135 (D) Heating, ventilating, or air-conditioning system modifications or replacements;

136 (E) Replacement or modification of lighting fixtures to increase the energy efficiency  
137 of the lighting system without increasing the overall illumination of a facility, unless  
138 an increase in illumination is necessary to conform to applicable state or local building  
139 codes for the lighting system after the proposed modifications are made;

140 (F) Energy recovery ventilation systems;

141 (G) A training program or facility alteration that reduces energy consumption or  
142 reduces operating costs, including allowable costs, based on future reductions in costs  
143 for contracted services;

144 (H) A facility alteration which includes expenditures that are required to properly  
145 implement other energy conservation measures;

146 (I) A program to reduce energy costs through rate adjustments, load shifting to reduce  
147 peak demand, or use of alternative suppliers as otherwise provided by law, such as, but  
148 not limited to:

149 (i) Changes to more favorable rate schedules;

150 (ii) Negotiation of lower rates, where applicable; and

151 (iii) Auditing of energy service billing and meters;

152 (J) The installation of energy information and control systems that monitor  
153 consumption, redirect systems to optimal energy sources, and manage energy using  
154 equipment;

155 (K) Indoor air quality improvements;

156 (L) Daylighting systems;

157 (M) Renewable generation systems owned by the governmental unit, such as solar  
158 photovoltaic, solar thermal, wind, and other technologies as identified in the project,  
159 provided that all metered distribution and deliveries of electric energy are made by an  
160 electric supplier authorized under Part 1 of Article 1 of Chapter 3 of Title 46, the  
161 'Georgia Territorial Electric Service Act';

162 (N) Geothermal HVAC systems;

163 (O) Water and sewer conservation measures, including, without limitation, plumbing  
164 fixtures and infrastructure;

165 (P) Equipment upgrades that improve accuracy of billable revenue generating systems;  
166 and

167 (Q) Automated, electronic, or remotely controlled systems or measures that reduce  
168 direct and other operating costs."

169 "(6) 'Governmental unit' means any authority, board, bureau, commission, department,  
170 agency, or institution of state or local government, including, but not limited to, any  
171 state-aided institution, or any county, municipal corporation, or consolidated government;

172 ~~or school district~~ which has the authority to contract for the construction, reconstruction,  
173 alteration, or repair of any public building or other public work."

174 "(9) 'Operational cost savings' means a measurable decrease in operation and  
175 maintenance costs that is a direct result of the implementation of one or more ~~energy~~  
176 conservation measures. Such savings shall be calculated in comparison with an  
177 established baseline of operation and maintenance costs."

178 **SECTION 2-2.**

179 Said chapter is further amended in Code Section 50-37-4, relating to contracts provisions,  
180 by revising subsection (d) as follows:

181 "(d) An improvement that is not causally connected to an energy conservation measure  
182 may be included in a guaranteed energy savings performance contract if:

183 (1) The total value of the improvement does not exceed ~~15~~ 50 percent of the total value  
184 of the guaranteed energy savings performance contract; and

185 (2) Either:

186 (A) The improvement is necessary to conform to a law, a rule, or an ordinance; or

187 (B) An analysis within the guaranteed energy savings performance contract  
188 demonstrates that there is an economic advantage to the governmental unit  
189 implementing an improvement as part of the guaranteed energy savings performance  
190 contract, and the savings justification for the improvement is documented by industry  
191 engineering standards."

192 **PART III**

193 **SECTION 3-1.**

194 All laws and parts of laws in conflict with this Act are repealed.