

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

AS PASSED

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 cost savings measures; to revise a definition; to amend Chapter 37 of Title 50 of the
6 Official Code of Georgia Annotated, relating to guaranteed energy savings performance
7 contracting, so as to revise definitions; to increase the value percentage threshold applicable
8 to certain improvements; to provide for related matters; to repeal conflicting laws; and for
9 other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 10 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to
13 contracts and purchases by public schools, is amended by revising Code Section 20-2-506,
14 relating to definitions and authority to enter into multiyear lease, purchase, or lease purchase
15 contracts, as follows:

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16 "20-2-506.

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

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

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

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

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

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

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

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

34 (G) Installing energy recovery systems;

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

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

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

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

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

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

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

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

62 (4) The total combined annual payments for contracts under this Code section and
63 contracts of such school system under Article IX, Section III, Paragraph I of the
64 Constitution in any calendar year, excluding guaranteed energy savings contracts, shall
65 not exceed an amount equal to 7.5 percent of the total local revenue collected for
66 maintenance and operation of the school system in the most recently completed fiscal
67 year; provided, however, that the foregoing limitation shall not apply to contracts with
68 other public educational entities, including school systems in this state, for the education
69 of students; and

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

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

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

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

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

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

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

91 (g) When any local board of education on or after July 1, 1990, submits to the electors of
92 its local school district the proposed issuance of any bonded debt and such proposal is
93 defeated by the electors, that school system shall be prohibited for a period of four calendar
94 years immediately following such election from entering into any multiyear contract for
95 the lease, purchase, or lease purchase of any goods, materials, real or personal property,

96 services, or supplies which are the same as or substantially similar to items which were
97 proposed to be funded through such proposed issuance of bonded debt.

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

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

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

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

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

117 **SECTION 2.**

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

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

- 125 (A) Insulation of the building structure or systems within the building;
- 126 (B) Storm windows or doors, caulking or weather stripping, multiglazed windows or
127 doors, heat absorbing or heat reflective glazed and coated window or door systems,
128 additional glazing, reductions in glass area, or other window and door system
129 modifications that reduce energy consumption;
- 130 (C) Automated or computerized energy control systems;
- 131 (D) Heating, ventilating, or air-conditioning system modifications or replacements;
- 132 (E) Replacement or modification of lighting fixtures to increase the energy efficiency
133 of the lighting system without increasing the overall illumination of a facility, unless
134 an increase in illumination is necessary to conform to applicable state or local building
135 codes for the lighting system after the proposed modifications are made;
- 136 (F) Energy recovery ventilation systems;
- 137 (G) A training program or facility alteration that reduces energy consumption or
138 reduces operating costs, including allowable costs, based on future reductions in costs
139 for contracted services;
- 140 (H) A facility alteration which includes expenditures that are required to properly
141 implement other energy conservation measures;
- 142 (I) A program to reduce energy costs through rate adjustments, load shifting to reduce
143 peak demand, or use of alternative suppliers as otherwise provided by law, such as, but
144 not limited to:
 - 145 (i) Changes to more favorable rate schedules;
 - 146 (ii) Negotiation of lower rates, where applicable; and
 - 147 (iii) Auditing of energy service billing and meters;

- 148 (J) The installation of energy information and control systems that monitor
149 consumption, redirect systems to optimal energy sources, and manage energy using
150 equipment;
- 151 (K) Indoor air quality improvements;
- 152 (L) Daylighting systems;
- 153 (M) Renewable generation systems owned by the governmental unit, such as solar
154 photovoltaic, solar thermal, wind, and other technologies as identified in the project,
155 provided that all metered distribution and deliveries of electric energy are made by an
156 electric supplier authorized under Part 1 of Article 1 of Chapter 3 of Title 46, the
157 'Georgia Territorial Electric Service Act';
- 158 (N) Geothermal HVAC systems;
- 159 (O) Water and sewer conservation measures, including, without limitation, plumbing
160 fixtures and infrastructure;
- 161 (P) Equipment upgrades that improve accuracy of billable revenue generating systems;
162 and
- 163 (Q) Automated, electronic, or remotely controlled systems or measures that reduce
164 direct and other operating costs."
- 165 "(6) 'Governmental unit' means any authority, board, bureau, commission, department,
166 agency, or institution of state or local government, including, but not limited to, any
167 state-aided institution, or any county, municipal corporation, or consolidated government;
168 ~~or school district~~ which has the authority to contract for the construction, reconstruction,
169 alteration, or repair of any public building or other public work."

170 **SECTION 3.**

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