

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2025

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SENATE BILL DRS15451-NPf-40

Short Title: Regulatory Reform Act of 2026. (Public)

Sponsors: Senator Jarvis (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FURTHER REGULATORY RELIEF TO THE CITIZENS OF NORTH
3 CAROLINA.

4 The General Assembly of North Carolina enacts:

5
6 **GUARANTEED ENERGY SAVINGS CONTRACTS – REFORM AND**
7 **RECODIFICATION**

8 **SECTION 1.(a)** Article 3B of Chapter 143 of the General Statutes is amended by
9 adding a new Part 3 to be entitled "Guaranteed Energy Savings Contracts."

10 **SECTION 1.(b)** The following provisions are recodified in Part 3 of Article 3B of
11 Chapter 143 of the General Statutes, as created by subsection (a) of this act, as set forth in the
12 table below:

<u>Former Citation</u>	<u>Recodified Citation</u>
G.S. 143-64.17B	G.S. 143-64.18B
G.S. 143-64.17D	G.S. 143-64.18D
G.S. 143-64.17E	G.S. 143-64.18E
G.S. 143-64.17F	G.S. 143-64.18F
G.S. 143-64.17G	G.S. 143-64.18J
G.S. 143-64.17H	G.S. 143-64.18K

20 **SECTION 1.(c)** Part 3 of Article 3B of Chapter 143 of the General Statutes, as
21 created by subsection (a) of this section, as amended by subsection (b) of this section, reads as
22 rewritten:

23 "Part 3. Guaranteed Energy Savings Contracts.

24 "**§ 143-64.18A. Solicitation of guaranteed energy savings contracts.**

25 (a) RFQ Issuance. – Before entering into a guaranteed energy savings contract, a
26 governmental unit shall issue a request for qualifications. Notice of the request shall be published
27 at least 15 days in advance of the closing date for receipt of qualifications on a State-maintained
28 electronic procurement portal accessible to the public and, in the case of a local governmental
29 unit, in at least one newspaper of general circulation in the geographic area for which the local
30 governmental unit is responsible or on the unit's publicly accessible website.

31 (b) Minimum Content of RFQ. – The request for qualifications shall include, at a
32 minimum, each of the following:

- 33 (1) The name and address of the government unit and a contact person.
34 (2) A general description of the facilities and scope of energy conservation
35 measures being considered.



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- 1 (3) The evaluation criteria and relative criteria weighting to be applied in the
2 selection process.
3 (4) The closing date and time for receipt of qualifications.
4 (5) A statement reserving the right of the governmental unit to reject any or all
5 responses.

6 (c) Criteria for Selection of Provider. – The governmental unit shall select the qualified
7 provider that it determines to best meet the needs of the governmental unit by evaluating all of
8 the following and following the procedures set forth in this section:

- 9 (1) Demonstrated competence of the qualified provider.
10 (2) The qualified provider's past performance on energy savings projects.
11 (3) The technical feasibility of the proposal.
12 (4) The life cycle cost analysis conducted in accordance with Part 1 of this Article.
13 (5) Certification by a licensed professional engineer that the proposed
14 measurement and verification protocol, to be used as the basis of the annual
15 reconciliation statement, is capable of measuring actual savings in accordance
16 with the methodologies provided in G.S. 143-64-17B(g).
17 (6) The total project cost, inclusive of all financing options. When multiple
18 financing options are available and under consideration, the evaluation shall
19 include a side-by-side comparison of total financing costs over the contract
20 term.
21 (7) For State governmental units, the inclusion of a provision in a guaranteed
22 energy savings contract that requires the annual measurement and verification
23 review to be conducted by an impartial third-party, whose compensation is
24 included in the total cost of the proposed contract.
25 (8) Any other criteria stated in the request for qualifications.

26 (d) Initial Evaluation; Short List. – The governmental unit shall evaluate responses to the
27 request for qualifications and develop a shortlist of the most highly qualified respondents based
28 on the criteria set forth in subsection (c) of this section. If only one response is received from a
29 qualified provider, the governmental unit may proceed with the evaluation and selection of that
30 provider without resolicitation, provided that the governmental unit makes a written
31 determination that resolicitation is unlikely to increase competition. The determination shall state
32 the basis for that conclusion and shall be included in the public award file. For State governmental
33 units, if only one response is received, the State Energy Office shall concur in the determination
34 before the governmental unit may select the qualified provider.

35 (e) Ranking; Selection. – A qualified reviewer shall review the shortlisted respondents'
36 qualifications and provide the governmental unit with a written evaluation addressing, at a
37 minimum, the technical feasibility of the proposed approach, the soundness of the proposed
38 savings methodology, and any material concerns regarding the respondents' ability to perform.
39 The governmental unit shall then rank the shortlisted respondents, select the highest-ranked
40 qualified provider, and negotiate the terms of a guaranteed energy savings contract. If
41 negotiations with the highest-ranked provider are unsuccessful, the governmental unit may
42 proceed to the next-ranked provider.

43 (f) Pre-Award Report. –Prior to entering into a guaranteed energy savings contract under
44 this section, the qualified provider selected by the governmental unit shall submit, prepare, and
45 make available for public inspection a report that summarizes the estimated costs of installation,
46 maintenance, repairs, and debt service, in addition to estimates of the amounts by which energy
47 or operating costs will be reduced. The report shall also include a life-cycle cost analysis
48 conducted in accordance with Part 1 of this Article.

49 (g) Investment Grade Audit. – Prior to entering into a guaranteed energy savings contract
50 under this section, the qualified provider selected by the governmental unit shall conduct an
51 investment grade audit that includes a life cycle cost analysis of each energy conservation

1 measure in the final proposal, provided that a local governmental unit may waive the investment
2 grade audit requirement for a contract with a total cost below two hundred fifty thousand dollars
3 (\$250,000). For a State governmental unit, if the results of the audit are not within ten percent
4 (10%) of both the guaranteed savings contained in the proposal and the total proposal amount,
5 either the State governmental unit or the qualified provider may terminate the project without
6 incurring any additional obligation to the other party. For local government units, a fifteen
7 percent (15%) variance between the guaranteed savings and the total proposal amount shall be
8 the applicable threshold from which either party may terminate the project without incurring any
9 additional obligation. If the governmental unit terminates the project after the audit is conducted
10 and the results are within the applicable variance threshold, the governmental unit shall reimburse
11 the qualified provider the reasonable cost incurred in conducting the audit, and the results of the
12 audit shall become the property of the governmental unit.

13 (h) Qualified Reviewer; Final Evaluation. – Prior to the award of a guaranteed energy
14 savings contract under this section, the qualified reviewer shall review the qualified provider's
15 final proposal and the terms of the negotiated contract, and shall provide the governmental unit
16 with a written evaluation addressing whether the negotiated scope is materially consistent with
17 the qualifications and approach presented in the RFQ response, whether the savings methodology
18 remains technically sound, and whether any changes introduced during the negotiation materially
19 affect the projected savings or risk profile.

20 (i) State Energy Office Review. – The State Energy Office shall review the qualified
21 provider's proposal, cost-benefit analysis, and other relevant documents prior to the governmental
22 unit entering a guaranteed energy savings contract. For State governmental units, the State
23 Energy Office shall complete its review within 10 business days of receiving the proposal. The
24 State Energy Office shall advise the governmental unit on the suitability of the proposed
25 guaranteed energy savings contract. However, if the State Energy Office identifies in the proposal
26 any instances of noncompliance with the requirements of this Article, the State Energy Office
27 shall notify the governmental unit such noncompliance. A governmental unit may not enter into
28 the proposed guaranteed energy savings contract until the State Energy Office has determined
29 the proposal to be in compliance with this Article.

30 (j) Governmental Unit Authority Preserved. – Nothing in this section shall limit the
31 authority of the governmental unit as set forth in Article 3D of this Chapter.

32 **"§ 143-64.18B. Guaranteed energy savings contracts.**

33 (a) A governmental unit may enter into a guaranteed energy savings contract with a
34 qualified provider if all of the following apply:

- 35 (1) The term of the contract does not exceed 20 years from the date of the
36 installation and acceptance by the governmental unit of the energy
37 conservation measures provided for under the contract.
- 38 (2) The governmental unit finds that the energy savings resulting from the
39 performance of the contract will equal or exceed the total cost of the contract.
- 40 (3) The energy conservation measures to be installed under the contract are for an
41 existing building or utility system, or utility consuming device or equipment
42 when the utility cost is paid by the governmental unit.

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

47 (c) A qualified provider entering into a guaranteed energy savings contract under this
48 Part shall provide security to the governmental unit in the form acceptable to the Office of the
49 State Treasurer and in an amount equal to one hundred percent (100%) of the guaranteed savings
50 for the term of the guaranteed energy savings contract to assure the provider's faithful
51 performance. Any bonds required by this subsection shall be subject to the provisions of Article

1 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy
2 savings contract are not as great as projected under the contract and all required shortfall
3 payments to the governmental unit have not been made, the governmental unit may terminate the
4 contract without incurring any additional obligation to the qualified provider.

5 (c1) No later than 30 days after entering into a guaranteed energy savings contract, a
6 qualified provider shall pay a non-refundable administrative fee of one thousand dollars (\$1,000)
7 to the State Energy Office to be applied to the costs of reviewing contracts and administering the
8 program under this Part. A qualified provider shall not charge or seek reimbursement of the cost
9 of the administrative fee from the governmental unit, nor shall it include this cost within the total
10 cost of the guaranteed energy savings contract.

11 (d) As used in this section, "total cost" shall include, but not be limited to, costs of
12 construction, costs of financing, and costs of maintenance and training during the term of the
13 contract less the application of the utility company, State, or federal incentives, grants, ~~or~~
14 ~~rebates~~, rebates, or capital funding. "Total cost" does not include any obligations on termination
15 of the contract before its expiration, provided that those obligations are disclosed when the
16 contract is executed.

17 (e) A guaranteed energy savings contract may not require the governmental unit to
18 purchase a maintenance contract or other maintenance agreement from the qualified provider
19 who installs energy conservation measures under the contract if the unit of government takes
20 appropriate action to budget for its own forces or another provider to maintain new systems
21 installed and existing systems affected by the guaranteed energy savings contract.

22 ~~(f) In the case of a State governmental unit, a qualified provider shall, when feasible,~~
23 ~~after the acceptance of the proposal of the qualified provider by the State governmental unit,~~
24 ~~conduct an investment grade audit. During this investment grade audit, the qualified provider~~
25 ~~shall perform in accordance with Part 1 of this Article a life cycle cost analysis of each energy~~
26 ~~conservation measure in the final proposal. If the results of the audit are not within ten percent~~
27 ~~(10%) of both the guaranteed savings contained in the proposal and the total proposal amount,~~
28 ~~either the State governmental unit or the qualified provider may terminate the project without~~
29 ~~incurring any additional obligation to the other party. However, if the State governmental unit~~
30 ~~terminates the project after the audit is conducted and the results of the audit are within ten~~
31 ~~percent (10%) of both the guaranteed savings contained in the proposal and the total proposal~~
32 ~~amount, the State governmental unit shall reimburse the qualified provider the reasonable cost~~
33 ~~incurred in conducting the audit, and the results of the audit shall become the property of the~~
34 ~~State governmental unit.~~

35 (g) A qualified provider shall provide an annual reconciliation statement based upon the
36 results of the measurement and verification review. The statement shall disclose any shortfalls or
37 surplus between guaranteed energy and operational savings specified in the guaranteed energy
38 savings contract and actual, not stipulated, energy and operational savings incurred during a
39 given guarantee year. Any guaranteed energy and operational savings shall be determined by
40 using one of the measurement and verification methodologies listed in the United States
41 Department of Energy's Measurement and Verification Guidelines for Energy Savings
42 Performance Contracting, the International Performance Measurement and Verification Protocol
43 (IPMVP) maintained by the Efficiency Valuation Organization, or Guideline 14-2002 of the
44 American Society of Heating, Refrigerating, and Air-Conditioning Engineers. If due to existing
45 data limitations or the nonconformance of specific project characteristics, none of the three
46 methodologies listed in this subsection is sufficient for measuring guaranteed savings, the
47 qualified provider shall develop an alternate method that is compatible with one of the three
48 methodologies and mutually agreeable to the governmental unit. The guarantee year shall consist
49 of a 12-month term commencing from the time that the energy conservation measures become
50 fully operational. A qualified provider shall pay the governmental unit or its assignee any
51 shortfall in the guaranteed energy and operational savings after the total year savings have been

1 determined. In the case of a governmental unit, a surplus in any one year shall not be carried
2 forward or applied to a shortfall in any other year.

3"
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5 **GUARANTEED ENERGY SAVINGS CONTRACTS – CONFORMING CHANGES**

6 **SECTION 2.(a)** The following statutes are amended by deleting the language "Part
7 2 of Article 3B" wherever it appears and substituting "Part 3 of Article 3B": G.S. 115C-47,
8 115D-20, 133-4.1, 143-129.4, and 143-135.37.

9 **SECTION 2.(b)** G.S. 160A-20 is amended by deleting the language "Part 2 of
10 Article 3B" wherever it appears and substituting "Article 3B".

11 **SECTION 2.(c)** G.S. 143-64.12 is amended by deleting the language "Part 2 of this
12 Article" wherever it appears and substituting "Part 3 of this Article".

13 **SECTION 2.(d)** The following statutes are amended by deleting the language
14 "G.S. 143-64.17A" wherever it appears and substituting "G.S. 143-64.18A": G.S. 142-61 and
15 G.S. 142-63.

16 **SECTION 2.(e)** G.S. 159-151 is amended by deleting the language
17 "G.S. 143-64.17A(a1)" wherever it appears and substituting "G.S. 143-64.18A(a1)".

18 **SECTION 2.(f)** G.S. 143-64.17K is amended by deleting the language
19 "G.S. 143-64.17A(c1)" wherever it appears and substituting "G.S. 143-64.18A(c1)".

20 **SECTION 2.(g)** G.S. 142-63 is amended by deleting the language
21 "G.S. 143-64.17B" wherever it appears and substituting "G.S. 143-64.18B".

22 **SECTION 2.(h)** G.S. 143-64.17L is amended by deleting the language
23 "G.S. 143-64.17B(d)" wherever it appears and substituting "G.S. 143-64.18B(d)".

24 **SECTION 3.(a)** G.S. 143-64.17 reads as rewritten:

25 "Part 2. Energy Saving Measures for Governmental Units.

26 **"§ 143-64.17. Definitions.**

27 As used in this ~~Part~~Part and Part 3 of this Article:

28 ...

29 (6) ~~"Request for proposals" means a negotiated procurement initiated by a~~
30 ~~governmental unit by way of a published notice that includes the following:~~

31 a. ~~The name and address of the governmental unit.~~

32 b. ~~The name, address, title, and telephone number of a contact person in~~
33 ~~the governmental unit.~~

34 e. ~~Notice indicating that the governmental unit is requesting qualified~~
35 ~~providers to propose energy conservation measures through a~~
36 ~~guaranteed energy savings contract.~~

37 d. ~~The date, time, and place where proposals must be received.~~

38 e. ~~The evaluation criteria for assessing the proposals.~~

39 f. ~~A statement reserving the right of the governmental unit to reject any~~
40 ~~or all the proposals.~~

41 g. ~~Any other stipulations and clarifications the governmental unit may~~
42 ~~require.~~

43 (7) "State governmental unit" means the State or a department, an agency, a
44 board, or a commission of the State, including the Board of Governors of The
45 University of North Carolina and its constituent institutions."

46 **SECTION 3.(b)** G.S. 143-64.17A is repealed.

47 **SECTION 3.(c)** The following statutes are amended by deleting the word "Part"
48 wherever it appears and substituting the word "Article": G.S. 143-64.17I, 143-64.17J,
49 143-64.17K, and 143-64.17L.

50 **SECTION 4.** The Department of Administration shall adopt temporary rules to
51 implement Sections 1-3 of this act, and shall adopt permanent rules to replace the temporary

1 rules. Temporary rules adopted in accordance with this section shall remain in effect until
2 permanent rules that replace the temporary rules become effective.

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4 **GUARANTEED ENERGY SAVINGS CONTRACTS – FINANCING ESTIMATES AND**
5 **DISCLOSURES**

6 **SECTION 5.(a)** Definitions. – For purposes of this section and its implementation,
7 "Financing Disclosure Rule" means 01 NCAC 41B .0302 (Solicitation Documents).

8 **SECTION 5.(b)** Financing Disclosure Rule. – Until the effective date of the revised
9 permanent rule that the Department of Administration (Department) is required to adopt pursuant
10 to subsection (d) of this section, the Department shall implement the Financing Disclosure Rule
11 as provided in subsection (c) of this section.

12 **SECTION 5.(c)** Implementation. – For State governmental units, solicitation
13 documents shall include the estimated cost of financing obtained from the Director of Debt
14 Management, Office of the State Treasurer. Local governmental units may obtain information on
15 the estimated cost of financing from the Office of the State Treasurer or from a qualified provider.

16 **SECTION 5.(d)** Additional Rulemaking Authority. – The Department shall adopt a
17 rule to amend the Financing Disclosure Rule consistent with subsection (c) of this section.
18 Notwithstanding G.S. 150B-19(4), the rule adopted by the Department pursuant to this section
19 shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted
20 pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General
21 Statutes. Rules adopted pursuant to this section shall become effective as provided in
22 G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in
23 G.S. 150B-21.3(b2).

24 **SECTION 5.(e)** Sunset. – This section expires when permanent rules adopted as
25 required by subsection (d) of this section become effective.

26
27 **GUARANTEED ENERGY SAVINGS CONTRACTS – AUTHORIZATION TO USE**
28 **FEDERAL FUNDS**

29 **SECTION 6.(a)** Definitions. – For purposes of this section and its implementation,
30 "Federal Funds Certification Rule" means 01 NCAC 41B .0305 (Prohibition on Federal Funds).

31 **SECTION 6.(b)** Federal Funds Certification Rule. – Until the effective date of the
32 revised permanent rule that the Department of Administration (Department) is required to adopt
33 pursuant to subsection (d) of this section, the Department shall implement the Federal Funds
34 Certification Rule as provided in subsection (c) of this section.

35 **SECTION 6.(c)** Implementation. – When a guaranteed energy savings contract will
36 be paid in whole or in part with federal funds, the agency shall certify prior to contract execution
37 that the use of federal funds for such purpose complies with all applicable federal requirements.
38 The certification and supporting confirmation shall be included in the contract documents
39 submitted to the Office of State Budget and Management. The certification shall be supported by
40 written confirmation from at least one of the following: (i) the agency's legal counsel, (ii) the
41 agency's grants management officer, (iii) the Office of the State Controller, or (iv) the relevant
42 federal authority that awarded the funds. The form of confirmation shall be appropriate to the
43 funding source and shall address whether the proposed contract structure, procurement method,
44 and use of funds are permissible under the applicable federal award terms.

45 **SECTION 6.(d)** Additional Rulemaking Authority. – The Department shall adopt a
46 rule to amend the Federal Funds Certification Rule consistent with subsection (c) of this section.
47 Notwithstanding G.S. 150B-19(4), the rule adopted by the Department pursuant to this section
48 shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted
49 pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General
50 Statutes. Rules adopted pursuant to this section shall become effective as provided in

1 G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in
2 G.S. 150B-21.3(b2).

3 **SECTION 6.(e)** Sunset. – This section expires when permanent rules adopted as
4 required by subsection (d) of this section become effective.

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6 **EFFECTIVE DATE**

7 **SECTION 7.** Except as otherwise provided, this act becomes effective July 1, 2026,
8 and applies to requests for qualifications issued on or after that date.