

Senate Bill 194

By: Senators Chance of the 16th, Rogers of the 21st, Seabaugh of the 28th and Staton of the 18th

**AS PASSED**

A BILL TO BE ENTITLED  
AN ACT

1 To amend Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia  
2 Annotated, relating to state purchasing in general, so as to revise provisions relating to  
3 benefits based funding projects in which payments to vendors depend upon the realization  
4 of specified savings or revenue gains; to change provisions relating to such projects, their  
5 required and permissible terms, and their funding; to provide for an advisory role by the  
6 Georgia Environmental Facilities Authority; to change the membership of an oversight  
7 committee; to amend Title 50 of the Official Code of Georgia Annotated, relating to state  
8 government, so as to enact the "Guaranteed Energy Savings Performance Contracting Act";  
9 to provide for definitions; to authorize state agencies to enter into guaranteed energy savings  
10 performance contracts; to provide for contract provisions; to provide for funding for  
11 contracts; to provide for review of capital improvement projects; to provide for statutory  
12 construction; to provide for related matters; to provide for effective dates, contingencies, and  
13 automatic repeal under certain circumstances; to repeal conflicting laws; and for other  
14 purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 style="text-align:center">**SECTION 1.**

17 Part 1 of Article 3 of Chapter 5 of Title 50 of the Official Code of Georgia Annotated,  
18 relating to state purchasing in general, is amended by revising Code Section 50-5-77, relating  
19 to benefits based funding projects, as follows:

20 "50-5-77.

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

22 (1) 'Agency' means every state department, agency, board, bureau, and commission  
23 including without limitation the Board of Regents of the University System of Georgia.

24 (2) 'Authority' means the Georgia Environmental Facilities Authority.

25 ~~(2)(3)~~ 'Benefits based funding project' means any governmental improvement project in  
26 which payments to vendors depend upon the realization of specified savings or revenue

27 gains attributable solely to the improvements, provided that each benefits based funding  
 28 project is structured as follows:

29 (A) The vendor ~~promises, or accepts the condition,~~ guarantees that the improvements  
 30 will generate actual and quantifiable savings or enhanced revenues;

31 (B) The agency develops a measurement tool for calculating the savings or enhanced  
 32 revenues realized from the project; and

33 (C) The funding for the project shall be attributable solely to its successful  
 34 implementation for the period specified in the contract, or, where applicable, from sums  
 35 remitted by the vendor or surety to remedy a deficit in guaranteed savings or revenue  
 36 gains.

37 ~~(3)~~(4) 'External oversight committee' means a committee composed of the executive  
 38 director of the Georgia Technology Authority, the commissioner of administrative  
 39 services, the director of the Office of Planning and Budget, the state auditor, the state  
 40 accounting officer, the Governor's designee, the chairperson of the House Committee on  
 41 Appropriations, and the chairperson of the Senate ~~Finance~~ Committee on Appropriations.

42 ~~(4)~~(5) 'Measurement tool' means the formula used to measure the actual savings or  
 43 enhanced revenues and includes a means for distinguishing enhanced revenue or savings  
 44 from normal activities, including the possibility of no savings or revenue growth or an  
 45 increased expenditure or decline in revenue. Baseline parameters must be defined based  
 46 on historical costs or revenues for a minimum of one year. The measurement tool shall  
 47 use the baseline parameters to forecast savings or enhanced revenues and to determine  
 48 the overall benefits and fiscal feasibility of the proposed project.

49 ~~(5)~~(6) 'Special dedicated fund' means any fund established pursuant to this Code section  
 50 from which the vendor or vendors are compensated as part of a benefits based funding  
 51 project. The moneys in the special dedicated fund shall be deemed contractually  
 52 obligated and shall not lapse at the end of each fiscal year.

53 (b) An agency shall be authorized to enter into multiyear lease, purchase, or lease purchase  
 54 contracts of all kinds for the acquisition of equipment, goods, materials, ~~real~~ or personal  
 55 property, improvements to real property, services, construction services, renovation  
 56 services, and supplies as benefits based funding projects; provided, however, that a  
 57 condition precedent to the award of the contract is a competitive solicitation in compliance  
 58 with any applicable purchasing laws now or hereafter enacted, including without limitation  
 59 the provisions of this chapter and Chapter 25 of this title; and provided, further, that the  
 60 contract shall contain provisions for the following:

61 (1) The contract shall terminate absolutely and without further obligation on the part of  
 62 the agency at the close of the fiscal year in which it was executed and at the close of each  
 63 succeeding fiscal year for which it may be renewed;

- 64 ~~(2) The contract shall terminate absolutely and without further obligation on the part of~~  
 65 ~~the agency at such time as the agency determines that actual savings or incremental~~  
 66 ~~revenue gains are not being generated to satisfy the obligations under the contract;~~
- 67 ~~(3)(2) The contract may be renewed only by a positive action taken by the agency;~~
- 68 (3) In addition to any other remedies available to the agency, the contract shall provide  
 69 that at such time as the agency determines that actual savings or incremental revenue  
 70 gains are not being generated to satisfy the obligations under the contract, the vendor  
 71 shall be required to remedy the deficit in actual savings or incremental revenue gains by  
 72 remitting to the state an amount equal to the deficit. The vendor shall also be required  
 73 to provide at contract execution and upon execution of any contract renewals an energy  
 74 savings guarantee bond, a bank letter of credit, escrowed funds, a corporate guarantee  
 75 from a corporation with an investment grade credit rating, or other surety instrument  
 76 acceptable to the agency equal to the value of the project's annual savings or revenue  
 77 gains;
- 78 (4) The contract shall state the total obligation of the agency for repayment for the fiscal  
 79 year of execution and shall state the total obligation for repayment which will be incurred  
 80 in each fiscal year renewal term, if renewed; and
- 81 (5) The term of the contract, including any renewal periods, may not ~~exceed~~ extend past  
 82 the date that is ten years from the date of the completion of the project that is the subject  
 83 of the contract.; ~~and~~
- 84 ~~(6) The agency's financial obligations under the contract are limited to and cannot exceed~~  
 85 ~~the savings or incremental revenue gains, as calculated using the measurement tool,~~  
 86 ~~actually generated by the benefits based funding project, even if no savings or enhanced~~  
 87 ~~revenues are realized from the project.~~
- 88 (c) Any contract developed under this Code section containing the provisions enumerated  
 89 in subsection (b) of this Code section shall be deemed to obligate the agency only for those  
 90 sums payable during the fiscal year of execution or, in the event of a renewal by the  
 91 agency, for those sums payable in the individual fiscal year renewal term and only to the  
 92 extent that savings or enhanced revenues are attributable to the benefits based funding  
 93 project calculated using the measurement tool and, where applicable, sums remitted by the  
 94 vendor or surety to remedy a deficit in guaranteed savings or revenue gains.
- 95 (d) No contract developed and executed pursuant to this Code section shall be deemed to  
 96 create a debt of the state for the payment of any sum beyond the fiscal year of execution  
 97 or, in the event of a renewal, beyond the fiscal year of such renewal.
- 98 (e) Any such contract may provide for the payment by the agency of interest or the  
 99 allocation of a portion of the contract payment to interest, provided that the contract is in  
 100 compliance with this Code section.

101 (f) During the term of the contract, including any renewal periods, the agency shall, using  
102 the measurement tool, periodically calculate the total amount of the savings or enhanced  
103 revenues attributable to the implementation of the benefits based funding project. To the  
104 extent that savings or enhanced revenues are realized, the agency shall transfer from its  
105 budget into the special dedicated fund an amount up to but not to exceed the amount owed  
106 on the contract for the then current fiscal year term's obligation to provide for payments,  
107 or, where applicable, sums remitted by the vendor or surety to remedy a deficit in  
108 guaranteed savings or revenue gains may be transferred to the special dedicated fund by  
109 the agency.

110 (g) During the term of the contract, including any renewal periods, the agency shall, using  
111 the measurement tool, calculate the total amount of the savings or enhanced revenues  
112 attributable to the implementation of the benefits based funding project during the then  
113 current fiscal year at least 30 days prior to the end of the then current fiscal year. If the  
114 agency renews the contract and to the extent that savings or enhanced revenues are realized  
115 in excess of the amount due on the contract in the then current fiscal year term, the agency  
116 shall transfer prior to the end of the then current fiscal year from its budget into the special  
117 dedicated fund an amount up to but not to exceed the next fiscal year's obligation to  
118 provide for future payments.

119 (h) Promptly upon nonrenewal, termination, or expiration of the contract, any moneys  
120 remaining in the special dedicated fund shall be deposited in the general fund of the state.

121 (i) Each agency is authorized to accept title to property subject to the benefits based  
122 funding contract and is authorized to transfer title back to the vendor in the event the  
123 contract is not fully consummated.

124 (j) Payments to which a vendor is entitled under the contract may not be assigned without  
125 the approval of the agency. In its discretion, the agency may agree that the vendor may  
126 assign the payments to which it is entitled under the benefits based funding contract to a  
127 third party, provided that the agency will be made party to the assignment agreement and  
128 that any such assignment agreement will not alter the obligations of the agency under the  
129 contract, specifically including, but not limited to, the provisions required by subsection (b)  
130 of this Code section; and provided that the vendor, at the time of the request that the agency  
131 agree to an assignment of payments, must provide to the agency an energy savings  
132 guarantee bond, a bank letter of credit, escrowed funds, a corporate guarantee from a  
133 corporation with an investment grade credit rating, or other surety instrument acceptable  
134 to the agency equal to the guaranteed savings for the total project duration including any  
135 anticipated renewal periods and the energy savings guarantee bond, bank letter of credit,  
136 escrowed funds, corporate guarantee from a corporation with an investment grade credit  
137 rating, or other surety instrument acceptable to the agency must remain in force for the

138 entire project duration including any renewal periods. As savings are realized and verified  
 139 by the measurement tool during the term of the contract including renewal periods, the  
 140 value of the energy savings guarantee bond, bank letter of credit, escrowed funds, corporate  
 141 guarantee from a corporation with an investment grade credit rating, or other surety  
 142 instrument acceptable to the agency may decrease proportionately.

143 ~~(j)(k)~~ The external oversight committee shall have the responsibility to ~~review and advise~~  
 144 direct the authority to perform reviews and to recommend approval of all benefits based  
 145 funding projects advising:

146 (1) The overall feasibility of the benefits based funding project;

147 (2) The measurement tool;

148 (3) The projected savings or enhanced revenues; and

149 (4) The dollars to be set aside for vendor payments.

150 (l) At the recommendation of the authority, each ~~(k) Each~~ benefits based funding project  
 151 and the proposed contract shall be approved by the external oversight committee prior to  
 152 execution of the contract and prior to any renewal thereof shall be subject to further review  
 153 by the authority or the external oversight committee at any time.

154 ~~(h)(m)~~ Each agency shall prepare and certify an annual report ~~to be sent to the external~~  
 155 ~~oversight committee, the Governor, and the General Assembly~~ on all contracts entered into  
 156 pursuant to this Code section, describing the benefits based funding ~~project, its~~ projects,  
 157 the progress of the projects, its the consolidated savings or enhanced revenues of such  
 158 projects, and such other information as may be relevant. This annual report shall be sent  
 159 to the authority on behalf of the external oversight committee at a date determined by the  
 160 authority. The authority shall review and consolidate all agency reports and submit a  
 161 consolidated report to the Governor, the General Assembly, and the external oversight  
 162 committee."

163 **SECTION 2.**

164 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended  
 165 by adding a new chapter to read as follows:

166 "CHAPTER 37

167 50-37-1.

168 This chapter shall be known and may be cited as the 'Guaranteed Energy Savings  
 169 Performance Contracting Act.'

170 50-37-2.

171 Unless otherwise provided, as used in this chapter, the term:

172 (1) 'Allowable costs' means equipment and project costs that:

173 (A) The governmental unit reasonably believes will be incurred during the term of the  
 174 guaranteed energy savings performance contract; and

175 (B) Are documented by industry engineering standards.

176 (2) 'Authority' means the Georgia Environmental Facilities Authority.

177 (3) 'Director' means the executive director of the Georgia Environmental Facilities  
 178 Authority.

179 (4) 'Energy conservation measure' means a program, or facility alteration, or technology  
 180 upgrade designed to reduce energy, water, waste-water, or other consumption or  
 181 operating costs. The term may include, without limitation:

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

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

187 (C) Automated or computerized energy control systems;

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

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

193 (F) Energy recovery ventilation systems;

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

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

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

202 (i) Changes to more favorable rate schedules;

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

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

205 (J) The installation of energy information and control systems that monitor  
206 consumption, redirect systems to optimal energy sources, and manage energy using  
207 equipment;

208 (K) Indoor air quality improvements;

209 (L) Daylighting systems;

210 (M) Renewable generation systems owned by the governmental unit, such as solar  
211 photovoltaic, solar thermal, wind, and other technologies as identified in the project,  
212 provided that all metered distribution and deliveries of electric energy are made by an  
213 electric supplier authorized under the 'Georgia Territorial Electric Service Act';

214 (N) Geothermal HVAC systems;

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

217 (P) Equipment upgrades that improve accuracy of billable revenue generating systems;  
218 and

219 (Q) Automated, electronic, or remotely controlled systems or measures that reduce  
220 direct and other operating costs.

221 (5) 'Guaranteed energy savings performance contract' means a contract between the  
222 governmental unit and a qualified energy service provider for evaluation,  
223 recommendation, and implementation of one or more energy conservation measures  
224 which shall include, at a minimum, the design and installation of equipment and, if  
225 applicable, operation and maintenance of any of the measures implemented, and  
226 guaranteed annual savings which must meet or exceed the total annual contract payments  
227 made by the governmental unit for such contract, including financing charges to be  
228 incurred by the governmental unit over the life of the contract.

229 (6) 'Governmental unit' means any officer, employee, authority, board, bureau,  
230 commission, department, agency, or institution of a government agency, including, but  
231 not limited to, any state agency, state-aided institution, or any county, city, district,  
232 municipal corporation, municipality, municipal authority, political subdivision, school  
233 district, educational institution, incorporated town, county institution district, other  
234 incorporated district, or other public instrumentality which has the authority to contract  
235 for the construction, reconstruction, alteration, or repair of any public building or other  
236 public work.

237 (7) 'Industry engineering standards' means:

238 (A) Life cycle costing;

239 (B) The R.S. Means-estimated costing method developed by the R.S. Means Company;

240 (C) Historical data;

241 (D) Manufacturer's data;

242 (E) American Society of Heating, Refrigerating, and Air-Conditioning Engineers  
243 (ASHRAE) standards;

244 (F) International Performance Measurement and Verification Protocol; and

245 (G) Other applicable technical performance standards established by nationally  
246 recognized standards authorities.

247 (8) 'Investment grade energy audit' means a study by the qualified energy services  
248 provider selected for a particular guaranteed energy savings performance contract project  
249 which includes detailed descriptions of the improvements recommended for the project,  
250 the estimated costs of the improvements, and the utility and operation and maintenance  
251 cost savings projected to result from the recommended improvements. The investment  
252 grade energy audit shall also include a detailed economic analysis of the project's  
253 performance over the life of the contract term.

254 (9) 'Operational cost savings' means a measurable decrease in operation and maintenance  
255 costs that is a direct result of the implementation of one or more energy conservation  
256 measures. Such savings shall be calculated in comparison with an established baseline  
257 of operation and maintenance costs.

258 (10) 'Qualified energy services provider' means a person or business with a record of  
259 documented guaranteed energy savings performance contract projects that is experienced  
260 in the design, implementation, and installation of energy conservation measures; has the  
261 technical capabilities to verify that such measures generate guaranteed energy and  
262 operational cost savings or enhanced revenues; has the ability to secure or arrange the  
263 financing necessary to support energy savings guarantees; and is approved by the  
264 authority for inclusion on the prequalifications list.

265 (11) 'State agency' means every state agency, authority, board, bureau, commission, and  
266 department, including, without limitation, the Board of Regents of the University System  
267 of Georgia.

268 50-37-3.

269 (a) A governmental unit may enter into a guaranteed energy savings performance contract  
270 with a qualified provider in accordance with the provisions of this chapter or in accordance  
271 with another statutorily authorized procurement process.

272 (b) If in accordance with applicable law the award of a contract by a governmental unit  
273 requires action at a public meeting, a governmental unit may award a guaranteed energy  
274 savings performance contract at a public meeting, if it has provided public notice in the  
275 manner prescribed under applicable law relating to open meetings, and the notice shall  
276 include the names of the parties to the contract and the purpose of the contract. For  
277 governmental units that are not required to take actions on contracts at public meetings, the

278 governmental unit may award a guaranteed energy savings performance contract in  
279 accordance with the procedures adopted by the governmental unit and the requirements of  
280 all applicable laws.

281 (c) Selection of qualified energy services provider. The process of implementing  
282 guaranteed energy savings performance contracts for governmental units shall include:

283 (1) Prequalification of qualified energy services providers. The authority shall be  
284 authorized to assemble a list of prequalified energy services providers. The director shall  
285 attempt to use objective criteria in the selection process. The criteria for evaluation shall  
286 include the following factors to assess the capability of the qualified energy services  
287 provider in the areas of design, engineering, installation, maintenance, and repairs  
288 associated with guaranteed energy savings performance contracts; post-installation  
289 project monitoring, data collection, and verification of and reporting of savings; overall  
290 project experience and qualifications; management capability; ability to access long-term  
291 sources of project financing; experience with projects of similar size and scope; and other  
292 factors determined by the director to be relevant and appropriate and relate to the ability  
293 to perform the project. The prequalification term of the established list of qualified  
294 energy service providers shall be three years. The director shall again assemble a list of  
295 prequalified energy service providers every three years from the commencement of each  
296 prequalification term. A qualified energy services provider may be removed from the list  
297 upon a determination by the director that said provider fails to meet the criteria for  
298 continued inclusion; and

299 (2) Request for proposals. Before entering into a guaranteed energy savings performance  
300 contract under this chapter, a governmental unit may and a state agency shall issue a  
301 request for proposals from at least three qualified energy services providers on the  
302 prequalifications list prepared and maintained by the director. A governmental unit may  
303 thereafter award the guaranteed energy savings performance contract to the qualified  
304 energy services provider that best meets the needs of the governmental unit, which need  
305 not be the lowest cost provided. A preliminary technical proposal shall be prepared by  
306 the qualified energy services provider in response to the request for proposals. Factors  
307 to be included in selecting the most qualified energy services provider for award of the  
308 guaranteed energy savings performance contract shall include, but not be limited to, the  
309 comprehensiveness of the proposal, comprehensiveness of cost-saving measures,  
310 experience, quality of technical approach, overall benefits to the governmental unit, and  
311 other factors determined by the governmental unit to be relevant to the implementation  
312 of the project.

313 (d) The governmental unit shall select the qualified energy services provider that best  
314 meets the needs of the governmental unit in accordance with criteria established by the

315 governmental unit. For governmental units that are not required to take actions on  
316 contracts at public meetings, the governmental unit shall provide public notice of the award  
317 of the guaranteed energy savings performance contract within 30 days. The notice shall  
318 include the names of the parties to the contract and the purpose of the contract. For  
319 governmental units that are required to take actions on contracts at public meetings, the  
320 public notice shall be made at least ten days prior to the meeting. After reviewing the  
321 proposals pursuant to subsection (e) of this Code section, a governmental unit may enter  
322 into an investment grade energy audit agreement with the selected qualified energy services  
323 provider for the provision of the energy audit report described in subsection (e) of this  
324 Code section.

325 (e) Before executing the guaranteed energy savings performance contract, the qualified  
326 energy services provider shall provide the governmental unit with an energy audit report  
327 summarizing recommendations for energy conservation measures based on anticipated  
328 energy, operational water, or waste-water cost savings or revenue increases resulting from  
329 the energy conservation measures. The energy audit report shall include estimates of all  
330 costs of installation, maintenance, repairs, and debt service and estimates of the amounts  
331 by which energy or operating costs will be reduced.

332 (f) Notwithstanding any other provision of law governing the letting of public contracts,  
333 a governmental unit may enter into guaranteed energy savings performance contracts with  
334 each qualified energy services provider selected in accordance with the provisions of this  
335 chapter. The governmental unit may elect to implement the energy conservation measures  
336 in one or more phases with the selected qualified energy services provider.

337 50-37-4.

338 (a) A guaranteed energy savings performance contract may provide that all payments,  
339 except obligations on termination of the contract before its scheduled expiration, shall be  
340 made over a period of time. The contract shall require the energy performance contractor  
341 to provide to the governmental unit an annual reconciliation of the guaranteed energy cost  
342 savings. The energy performance contractor shall be liable for any annual savings shortfall  
343 which may occur. In the event that such reconciliation reveals an excess in annual energy  
344 cost savings, such excess savings shall not be used to cover potential energy cost savings  
345 shortages in subsequent contract years. The guaranteed energy savings performance  
346 contract shall be for a firm fixed price. The governmental unit may require the qualified  
347 energy services provider to provide a payment and performance bond relating to the  
348 installation of energy conservation measures in the amount equal to 100 percent of the  
349 guaranteed energy savings performance contract.

350 (b) A guaranteed energy savings performance contract shall include a written guarantee  
351 that energy, water, waste-water, or operating cost savings or revenue increases will meet  
352 or exceed the cost of the energy conservation measures to be evaluated, recommended,  
353 designed, implemented, or installed under the contract within a 20 year period from the  
354 date of final acceptance of installation or implementation. Calculation of the energy, water,  
355 waste-water, or operating cost savings or revenue increases may take into account rebates,  
356 grants, incentives, or similar payments available under published programs which are  
357 reasonably anticipated to be received by the governmental unit as a direct result of the work  
358 performed by the qualified energy services provider even though such payments are not  
359 included in the qualified energy services provider's contractual guarantee. Escalations and  
360 other financial considerations assumed in savings calculations shall be defined in the  
361 contract if they are included in the savings calculations and are required to meet the  
362 payback criteria and life cycle analysis. Performance guarantees with stipulated savings  
363 that have been measured in accordance with the International Performance Measurement  
364 and Verification Protocol or other recognized and documented industry engineering  
365 standard are allowable and shall be explicitly stated in the contract.

366 (c) A governmental unit may enter into a third-party installment payment or lease purchase  
367 agreement to finance the costs associated with the guaranteed energy savings performance  
368 contract and any related hazardous materials abatement. The installment payment or lease  
369 purchase agreement may provide for payments over a period of time not to exceed 20  
370 years.

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

373 (1) The total value of the improvement does not exceed 15 percent of the total value of  
374 the guaranteed energy savings performance contract; and

375 (2) Either:

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

377 (B) An analysis within the guaranteed energy savings performance contract  
378 demonstrates that there is an economic advantage to the governmental unit  
379 implementing an improvement as part of the guaranteed energy savings performance  
380 contract, and the savings justification for the improvement is documented by industry  
381 engineering standards.

382 (e) A facility alteration which includes expenditures that are required to properly  
383 implement other energy conservation measures may be included as part of a guaranteed  
384 energy savings performance contract without being included in the savings guarantee. In  
385 such case, notwithstanding any other provision of law, the installation of these additional

386 measures may be supervised by the contractor performing the guaranteed energy savings  
 387 performance contract.

388 (f) The guaranteed energy savings performance contract shall include an agreement for the  
 389 provision of measurement and verification services to be paid for from the energy and  
 390 operational cost savings generated by the project for the term of the contract. It may  
 391 include maintenance services for the measures installed under the contract. The  
 392 measurement and verification services shall be performed in accordance with industry  
 393 standard methods for measuring and verifying savings and equipment performance.  
 394 Savings which are stipulated shall be specifically noted as such in the guaranteed energy  
 395 savings performance contract.

396 (g) Reporting. Upon execution of a guaranteed energy savings performance contract, the  
 397 governmental unit shall provide written notice to its utility providers describing the energy  
 398 conservation measures to be installed. Additionally, the authority shall make publicly  
 399 available an annual list of all guaranteed energy savings performance contracts that are  
 400 signed in each calendar year.

401 50-37-5.

402 (a) A governmental unit may use funds designated for operating, utilities, or capital  
 403 expenditures for any guaranteed energy savings performance contract, including, without  
 404 limitation, for purchases on an installment payment or lease purchase basis.

405 (b) During the life of the contract, grants, subsidies, or other payments from the state to  
 406 a governmental unit shall not be reduced as a result of energy savings obtained as a result  
 407 of a guaranteed energy savings performance contract.

408 50-37-6.

409 Every governmental unit shall periodically review all proposed capital improvement  
 410 projects for potential applicability of this chapter and shall first consider proceeding with  
 411 a guaranteed energy savings performance contract under this chapter where appropriate.

412 50-37-7.

413 Requirements for state agencies:

414 (1) The director shall be authorized to promulgate any rules, regulations, stipulations,  
 415 and policies necessary to carry out the terms and provisions of this Code section  
 416 regarding contracting and procurement procedures for state agencies. Any rules,  
 417 regulations, and policies as prescribed by the director shall be published, and state  
 418 agencies shall be furnished with copies of the same. The director may fix, charge, and

419 collect reasonable fees for any administrative support and technical assistance or other  
420 services provided by the director under this paragraph;

421 (2) The authority shall provide technical assistance to state agencies contracting for  
422 energy conservation measures and engage in other activities considered appropriate by  
423 the department for promoting and facilitating guaranteed energy savings performance  
424 contracts by state agencies. The director shall develop model contractual and related  
425 documents for use by state agencies. Prior to entering into a guaranteed energy savings  
426 performance contract, any contract or lease for third-party financing, or any combination  
427 of such contracts, a state agency shall submit such proposed contract or lease to the  
428 director for review and approval;

429 (3) With regard to the authority's procedures for awarding multiyear guaranteed energy  
430 savings performance contracts, the Georgia State Financing and Investment Commission  
431 may establish a total multiyear contract value based upon the Governor's revenue estimate  
432 for subsequent fiscal years and other information as the Georgia State Financing and  
433 Investment Commission may require. In setting the multiyear guaranteed energy savings  
434 performance contract authority, the Georgia State Financing and Investment Commission  
435 shall take into consideration the known and anticipated obligations of the state agencies  
436 proposing to enter into multiyear guaranteed energy savings performance contracts,  
437 including, but not limited to, any multiyear guaranteed energy savings performance  
438 contracts the state agencies have entered into previously. The Georgia State Financing  
439 and Investment Commission may set a total multiyear contract value authority for the  
440 authority each fiscal year and may, during the fiscal year, revise such contract value  
441 authority as necessary as determined by the Georgia State Financing and Investment  
442 Commission. Any multiyear guaranteed energy savings performance contract entered  
443 into by state agencies that is not in compliance with the multiyear contract value authority  
444 set by the Georgia State Financing and Investment Commission shall be void and of no  
445 effect;

446 (4) At the beginning of each fiscal year, a governmental unit's appropriations shall be  
447 encumbered for the estimated payments for multiyear guaranteed energy savings  
448 performance contract work to be performed in the appropriation fiscal year. Payment for  
449 multiyear guaranteed energy savings performance contract work performed pursuant to  
450 contract in any fiscal year other than the current fiscal year shall be subject to  
451 appropriations by the General Assembly. Multiyear guaranteed energy savings  
452 performance contracts shall contain a schedule of estimated completion progress, and any  
453 acceleration of this progress shall be subject to the approval of the authority, provided  
454 funds are available. State agencies shall have the right to terminate without further  
455 obligation any multiyear guaranteed energy savings performance contract, provided that

456 the cancellation is subject to the termination provisions of the multiyear guaranteed  
 457 energy savings performance contract, if the state agency determines that adequate funds  
 458 will not be available for all of the payment obligations of the state agency. The state  
 459 agency's determination regarding the availability of funds for its obligations shall be  
 460 conclusive and binding on all parties to the contract. In the event of termination of any  
 461 contract, the contractor shall be given a written notice of termination at least 60 days  
 462 before completion of scheduled work for which funds are available. In the event of  
 463 termination, the contractor shall be paid for the work already performed in accordance  
 464 with the contract specifications;

465 (5) The provisions of paragraph (6) of this Code section shall be incorporated verbatim  
 466 in all multiyear guaranteed energy savings performance contracts;

467 (6) The provisions of this Code section shall not apply to energy efficiency contracts  
 468 awarded by the authority prior to July 1, 2010. No multiyear guaranteed energy savings  
 469 performance contracts shall be entered into under the provisions of this Code section until  
 470 the Georgia State Financing and Investment Commission has established the total  
 471 multiyear contract value authority for the current and future fiscal years and adopted such  
 472 fiscal policies regarding multiyear guaranteed energy savings performance contracts  
 473 authorized under this Code section; and

474 (7) The authority shall approve any guaranteed energy savings performance contract  
 475 containing the provisions of subsection (d) of Code Section 50-37-4, regarding  
 476 improvements not casually connected to an energy conservation measures, or subsection  
 477 (e) of Code Section 50-37-4, regarding facility alterations required to properly implement  
 478 other energy conservation measures.

479 50-37-8.

480 This chapter, being for the welfare of this state and its inhabitants, shall be liberally  
 481 construed to effect the purposes specified in this chapter."

### 482 **SECTION 3.**

483 Section 1 of this Act shall become effective on July 1, 2010. Section 2 of this Act shall  
 484 become effective on January 1, 2011; provided, however, that Section 2 of this Act shall only  
 485 become effective on January 1, 2011, upon the ratification of a resolution at the November,  
 486 2010, state-wide general election, which resolution amends the Constitution so as to  
 487 authorize obligations of the state for governmental energy efficiency or conservation  
 488 improvement projects in which vendors guarantee realization of specified savings or revenue  
 489 gains attributable solely to the improvements. If such resolution is not so ratified, Section 2

490 of this Act shall not become effective and shall stand repealed in its entirety on January 1,  
491 2011.

492 **SECTION 4.**

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