

Senate Bill 113

By: Senator Carter of the 1st

A BILL TO BE ENTITLED
AN ACT

1 To provide for local government contracting powers and related requirements; to amend Title
2 36 of the Official Code of Georgia Annotated, relating to local government, so as to clarify
3 that the authority of municipal corporations to enter into certain contracts is in addition to
4 and does not change or conflict with any otherwise existing authority to enter into such
5 contracts; to change certain provisions relating to disposition of municipal property
6 generally; to change certain provisions relating to definitions relative to public works
7 bidding; to amend Chapter 37 of Title 50 of the Official Code of Georgia Annotated, relating
8 to guaranteed energy savings performance contracts, so as to clarify that the authority of
9 counties and municipal corporations to enter into such contracts is in addition to and does not
10 change or conflict with any otherwise existing authority to enter into such contracts; to
11 provide for definitions; to change certain provisions relating to government units entering
12 into guaranteed energy savings performance contracts; to change certain provisions relating
13 to guaranteed energy savings contracts provisions; to change certain provisions relating to
14 review of capital improvement projects; to provide an effective date; to repeal conflicting
15 laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 SECTION 1.

18 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended
19 by revising subsection (l) of Code Section 36-37-6, relating to disposition of municipal
20 property generally, as follows:

21 "(l)(1) ~~In addition to any other authorization or power, Where not otherwise authorized~~
22 by its charter or other applicable law, the governing authority of any municipal
23 corporation may lease or enter into a contract for valuable consideration for the use,
24 operation, or management of any real or personal property of the municipal corporation;
25 ~~provided, however, that pursuant to the power granted by this subsection. The authority~~
26 of any municipal corporation granted pursuant to its charter or other applicable law to

27 enter into leases or contracts for the use, operation, or management of any real or
 28 personal property of the municipal corporation shall not be affected by this subsection
 29 and it shall not apply to any contracts or leases entered into pursuant to such authority.
 30 Where a municipal charter or other applicable law provides no authorization for leasing
 31 or contracting for the use, operation, or management of any real or personal property of
 32 the municipal corporation and this subsection is to be used as authorization for that
 33 purpose, the following shall apply:

34 (A) Any lease or contract for the use, operation, or management of any real or personal
 35 property for longer than 30 days shall be by sealed bids or by auction as provided in
 36 subsection (a) of this Code section. Easements and licenses for the use of municipal
 37 property in connection with construction projects of a municipal corporation shall be
 38 exempt from this subparagraph, provided that their term is less than one year;

39 (B) Nothing in this subsection shall have the effect of authorizing alienation of title to
 40 such property in derogation of rights, duties, and obligations imposed by prior deed,
 41 contract, or like document of similar import or shall cause the divesting of title to
 42 property dedicated to public use and not subsequently abandoned; and

43 (C) The lessee or contractee shall not mortgage or pledge the property, lease or
 44 contract the property as security for any debt, or incur any encumbrance that could
 45 result in a lien or claim of lien against the property, lease, or contract.

46 (2) ~~As a condition of any~~ Any lease or contract for the use, operation, or management
 47 of any real or personal property entered into pursuant to this subsection and for longer
 48 than 30 days shall contain the following terms:

49 (A) The lessee or contractee shall provide and maintain in force in effect throughout
 50 the term of such lease or contract sufficient liability insurance, in an amount not less
 51 than \$1 million per claim, no aggregate, naming the municipality as a named insured;

52 (B) The lessee or contractee shall assume sole responsibility for or incur liability for
 53 any injury to person or property caused by any act or omission of any person while on
 54 the property and shall agree to indemnify the municipality and hold it harmless from
 55 any claim, suit, or demand made by any person; and

56 (C) The lessee or contractee shall agree to indemnify the municipality and hold it
 57 harmless from any claim, suit, or demand arising out of any improvements to the
 58 property or any indebtedness or obligations incurred by the lessee or contractee in
 59 making any such improvement to such property.

60 (3)(A) The initial term of a lease or contract for the use of real property entered into
 61 pursuant to this subsection shall be no longer than five years and there may be one
 62 renewal period of no longer than five years, after which the lease or contract shall again
 63 be subject to sealed bids or auction.

64 (B) When the lessee or contractee charges any person to enter or go upon the real
 65 property for recreational purposes, the consideration received by the municipal
 66 corporation for the lease or contract shall not be deemed a charge within the meaning
 67 of Article 2 of Chapter 3 of Title 51.

68 (C) Where real property is leased for the erection of telecommunications towers, the
 69 initial term of a lease or contract for the use of such real property shall be no longer
 70 than ten years and there may be one renewal period of no longer than ten years, after
 71 which the lease or contract shall again be subject to sealed bids or auction; provided,
 72 however, that such lease shall also include provisions for the removal of the
 73 telecommunications tower structure.

74 (4) ~~This subsection~~ Where this subsection is applicable, it shall apply to any lease or
 75 contract entered into or renewed on or after July 1, 2010 2011. This subsection shall not
 76 ~~effect~~ affect any provisions of subsection (k) of this Code section."

77 **SECTION 2.**

78 Said title is further amended by revising paragraph (12) of Code Section 36-91-2, relating
 79 to definitions relative to public works construction projects, as follows:

80 "(12) 'Public works construction' means the building, altering, repairing, improving, or
 81 demolishing of any public structure or building or other public improvements of any kind
 82 to any public real property other than those projects covered by Chapter 4 of Title 32 or
 83 by Chapter 37 of Title 50. Such term does not include the routine operation, repair, or
 84 maintenance of existing structures, buildings, or real property, or any energy savings
 85 performance contract or any improvements or installations performed as part of an energy
 86 savings performance contract."

87 **SECTION 3.**

88 Chapter 37 of Title 50 of the Official Code of Georgia Annotated, relating to guaranteed
 89 energy savings performance contracts, is amended by revising paragraph (6) of Code Section
 90 50-37-2, relating to definitions relative to guaranteed energy savings performance contracts,
 91 as follows:

92 "(6) 'Governmental unit' means any ~~officer, employee,~~ authority, board, bureau,
 93 commission, department, agency, or institution of a state or local government ~~agency,~~
 94 including, but not limited to, any ~~state agency,~~ state-aided institution, or any county, ~~city,~~
 95 ~~district,~~ municipal corporation, ~~municipality, municipal authority, political subdivision,~~
 96 or school district, ~~educational institution, incorporated town, county institution district,~~
 97 ~~other incorporated district, or other public instrumentality~~ which has the authority to

98 contract for the construction, reconstruction, alteration, or repair of any public building
99 or other public work."

100 **SECTION 4.**

101 Said chapter is further amended by revising Code Section 50-37-3, relating to governmental
102 units entering into guaranteed energy savings performance contracts, as follows:

103 "50-37-3.

104 (a) ~~A Where not otherwise authorized by another provision of general law or local Act, a~~
105 governmental unit may enter into a guaranteed energy savings performance contract with
106 a qualified provider in accordance with the provisions of this chapter. The provisions of
107 this chapter shall apply only to contracts entered into by a governmental unit pursuant to
108 the authority granted by this chapter ~~or in accordance with another statutorily authorized~~
109 ~~procurement process.~~

110 (b) ~~If in accordance with applicable law the award of a contract by a governmental unit~~
111 ~~requires action at a public meeting, a governmental unit may award a guaranteed energy~~
112 ~~savings performance contract at a public meeting, if it has provided public notice in the~~
113 ~~manner prescribed under applicable law relating to open meetings, and the notice shall~~
114 ~~include the names of the parties to the contract and the purpose of the contract. For~~
115 ~~governmental units that are not required to take actions on contracts at public meetings, the~~
116 ~~governmental unit may award a guaranteed energy savings performance contract in~~
117 ~~accordance with the procedures adopted by the governmental unit and the requirements of~~
118 ~~all applicable laws~~ Reserved.

119 (c) ~~Selection of qualified energy services provider. The~~ When a governmental unit is
120 acting pursuant to the power granted by this chapter and not under any otherwise applicable
121 law, the process of implementing guaranteed energy savings performance contracts for
122 governmental units shall include be subject to the following:

123 (1) ~~Prequalification of qualified energy services providers.~~ The authority shall be
124 authorized to assemble a list of prequalified energy services providers. The director shall
125 attempt to use objective criteria in the selection process. The criteria for evaluation shall
126 include the following factors to assess the capability of the qualified energy services
127 provider in the areas of design, engineering, installation, maintenance, and repairs
128 associated with guaranteed energy savings performance contracts; ~~post-installation~~
129 postinstallation project monitoring, data collection, and verification of and reporting of
130 savings; overall project experience and qualifications; management capability; ability to
131 access long-term sources of project financing; experience with projects of similar size and
132 scope; and other factors determined by the director to be relevant and appropriate and
133 relate to the ability to perform the project. The prequalification term of the established

134 list of qualified energy service providers shall be three years. The director shall again
135 assemble a list of prequalified energy service providers every three years from the
136 commencement of each prequalification term. A qualified energy services provider may
137 be removed from the list upon a determination by the director that said provider fails to
138 meet the criteria for continued inclusion; and

139 (2) ~~Request for proposals~~. Before entering into a guaranteed energy savings performance
140 contract under this chapter, a governmental unit may and a state agency shall issue a
141 request for proposals from at least three qualified energy services providers on the
142 prequalifications list prepared and maintained by the director. A governmental unit may
143 thereafter award the guaranteed energy savings performance contract to the qualified
144 energy services provider that best meets the needs of the governmental unit, which need
145 not be the lowest cost provided. A preliminary technical proposal shall be prepared by
146 the qualified energy services provider in response to the request for proposals. Factors
147 to be included in selecting the most qualified energy services provider for award of the
148 guaranteed energy savings performance contract shall include, but not be limited to, the
149 comprehensiveness of the proposal, comprehensiveness of cost-saving measures,
150 experience, quality of technical approach, overall benefits to the governmental unit, and
151 other factors determined by the governmental unit to be relevant to the implementation
152 of the project.

153 (d) The governmental unit shall select the qualified energy services provider that best
154 meets the needs of the governmental unit in accordance with criteria established by the
155 governmental unit. ~~For governmental units that are not required to take actions on~~
156 ~~contracts at public meetings, the governmental unit shall provide public notice of the award~~
157 ~~of the guaranteed energy savings performance contract within 30 days. The notice shall~~
158 ~~include the names of the parties to the contract and the purpose of the contract. For~~
159 ~~governmental units that are required to take actions on contracts at public meetings, the~~
160 ~~public notice shall be made at least ten days prior to the meeting. After reviewing the~~
161 ~~proposals pursuant to subsection (e) of this Code section, a governmental unit may enter~~
162 ~~into an investment grade energy audit agreement with the selected qualified energy services~~
163 ~~provider for the provision of the energy audit report described in subsection (e) of this~~
164 ~~Code section.~~

165 (e) Before executing the guaranteed energy savings performance contract, the qualified
166 energy services provider shall provide the governmental unit with an energy audit report
167 summarizing recommendations for energy conservation measures based on anticipated
168 energy, operational water, or waste-water cost savings or revenue increases resulting from
169 the energy conservation measures. The energy audit report shall include estimates of all

170 costs of installation, maintenance, repairs, and debt service and estimates of the amounts
 171 by which energy or operating costs will be reduced.
 172 (f) ~~Notwithstanding any other provision of law governing the letting of public contracts,~~
 173 ~~a~~ A governmental unit may enter into guaranteed energy savings performance contracts
 174 with each qualified energy services provider selected in accordance with the provisions of
 175 this chapter. The governmental unit may elect to implement the energy conservation
 176 measures in one or more phases with the selected qualified energy services provider."

177 **SECTION 5.**

178 Said chapter is further amended by revising subsection (g) of Code Section 50-37-4, relating
 179 to guaranteed energy savings contracts provisions, as follows:

180 "~~(g) Reporting. Upon execution of a guaranteed energy savings performance contract, the~~
 181 ~~governmental unit shall provide written notice to its utility providers describing the energy~~
 182 ~~conservation measures to be installed. Additionally, the authority shall make publicly~~
 183 ~~available an annual list of all guaranteed energy savings performance contracts that are~~
 184 ~~signed in each calendar year~~ Reserved."

185 **SECTION 6.**

186 Said chapter is further amended by revising Code Section 50-37-6, relating to review of
 187 capital improvement projects, as follows:

188 "50-37-6.

189 Every ~~governmental unit~~ state agency shall periodically review all proposed capital
 190 improvement projects for potential applicability of this chapter and shall first consider
 191 proceeding with a guaranteed energy savings performance contract under this chapter
 192 where appropriate."

193 **SECTION 7.**

194 This Act shall become effective upon its approval by the Governor or upon its becoming law
 195 without such approval.

196 **SECTION 8.**

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