

House Bill 934 (COMMITTEE SUBSTITUTE)

By: Representatives Parsons of the 42<sup>nd</sup>, Williams of the 4<sup>th</sup>, Horne of the 71<sup>st</sup>, and Baker of the 78<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 36-91-2 of the Official Code of Georgia Annotated, relating to  
2 definitions relative to public works construction projects, so as to define "public works  
3 construction"; to amend Chapter 37 of Title 50 of the Official Code of Georgia Annotated,  
4 relating to guaranteed energy savings performance contracts, so as to clarify that the  
5 authority of counties and municipal corporations to enter into such contracts is in addition  
6 to and does not change or conflict with any otherwise existing authority to enter into such  
7 contracts; to provide for definitions; to change certain provisions relating to government units  
8 entering into guaranteed energy savings performance contracts; to change certain provisions  
9 relating to guaranteed energy savings contracts provisions; to change certain provisions  
10 relating to review of capital improvement projects; to provide an effective date; to repeal  
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

14 Code Section 36-91-2 of the Official Code of Georgia Annotated, relating to definitions  
15 relative to public works construction projects, is amended by revising paragraph (12) as  
16 follows:

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

24

**SECTION 2.**

25 Chapter 37 of Title 50 of the Official Code of Georgia Annotated, relating to guaranteed  
 26 energy savings performance contracts, is amended by revising paragraph (6) of Code Section  
 27 50-37-2, relating to definitions relative to guaranteed energy savings performance contracts,  
 28 as follows:

29 "(6) 'Governmental unit' means any ~~officer, employee,~~ authority, board, bureau,  
 30 commission, department, agency, or institution of a state or local government agency,  
 31 including, but not limited to, any ~~state agency,~~ state-aided institution, or any county, city,  
 32 ~~district,~~ municipal corporation, ~~municipality, municipal authority, political subdivision,~~  
 33 consolidated government, or school district, ~~educational institution, incorporated town,~~  
 34 ~~county institution district, other incorporated district, or other public instrumentality~~  
 35 which has the authority to contract for the construction, reconstruction, alteration, or  
 36 repair of any public building or other public work."

37

**SECTION 3.**

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

40 "50-37-3.

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

47 (b) ~~If in accordance with applicable law the award of a contract by a governmental unit~~  
 48 ~~requires action at a public meeting, a governmental unit may award a guaranteed energy~~  
 49 ~~savings performance contract at a public meeting, if it has provided public notice in the~~  
 50 ~~manner prescribed under applicable law relating to open meetings, and the notice shall~~  
 51 ~~include the names of the parties to the contract and the purpose of the contract. For~~  
 52 ~~governmental units that are not required to take actions on contracts at public meetings, the~~  
 53 ~~governmental unit may award a guaranteed energy savings performance contract in~~  
 54 ~~accordance with the procedures adopted by the governmental unit and the requirements of~~  
 55 ~~all applicable laws~~ Reserved.

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

60 ~~“(1) **Prequalification of qualified energy services providers.** The authority shall be~~  
 61 ~~authorized to assemble a list of prequalified energy services providers. The director shall~~  
 62 ~~attempt to use objective criteria in the selection process. The criteria for evaluation shall~~  
 63 ~~include the following factors to assess the capability of the qualified energy services~~  
 64 ~~provider in the areas of design, engineering, installation, maintenance, and repairs~~  
 65 ~~associated with guaranteed energy savings performance contracts; ~~post-installation~~~~  
 66 ~~postinstallation project monitoring, data collection, and verification of and reporting of~~  
 67 ~~savings; overall project experience and qualifications; management capability; ability to~~  
 68 ~~access long-term sources of project financing; experience with projects of similar size and~~  
 69 ~~scope; and other factors determined by the director to be relevant and appropriate and~~  
 70 ~~relate to the ability to perform the project. The prequalification term of the established~~  
 71 ~~list of qualified energy ~~service~~ services providers shall be three years. The director ~~shall~~~~  
 72 ~~~~again assemble a~~ may add additional qualified energy services providers to the list of~~  
 73 ~~~~prequalified~~ qualified energy ~~service~~ services providers ~~every three years from the~~~~  
 74 ~~~~commencement of each~~ at any time during the prequalification term. A qualified energy~~  
 75 ~~services provider may be removed from the list upon a determination by the director that~~  
 76 ~~said qualified energy services provider fails to meet the criteria for continued inclusion;~~  
 77 ~~and~~

78 (2) ~~**Request for proposals.**~~ Before entering into a guaranteed energy savings  
 79 performance contract under this chapter, a governmental unit may and a state agency  
 80 shall issue a request for proposals from at least three qualified energy services providers  
 81 on the prequalifications list prepared and maintained by the director. A governmental  
 82 unit may thereafter award the guaranteed energy savings performance contract to the  
 83 qualified energy services provider that best meets the needs of the governmental unit,  
 84 which need not be the lowest cost provided. A preliminary technical proposal shall be  
 85 prepared by the qualified energy services provider in response to the request for  
 86 proposals. Factors to be included in selecting the most qualified energy services provider  
 87 for award of the guaranteed energy savings performance contract shall include, but not  
 88 be limited to, the comprehensiveness of the proposal, comprehensiveness of cost-saving  
 89 measures, experience, quality of technical approach, overall benefits to the governmental  
 90 unit, and other factors determined by the governmental unit to be relevant to the  
 91 implementation of the project.

92 (d) The governmental unit shall select the qualified energy services provider that best  
 93 meets the needs of the governmental unit in accordance with criteria established by the  
 94 governmental unit. ~~For governmental units that are not required to take actions on~~  
 95 ~~contracts at public meetings, the governmental unit shall provide public notice of the award~~  
 96 ~~of the guaranteed energy savings performance contract within 30 days. The notice shall~~

97 ~~include the names of the parties to the contract and the purpose of the contract. For~~  
 98 ~~governmental units that are required to take actions on contracts at public meetings, the~~  
 99 ~~public notice shall be made at least ten days prior to the meeting. After reviewing the~~  
 100 ~~proposals pursuant to subsection (e) of this Code section, a governmental unit may enter~~  
 101 ~~into an investment grade energy audit agreement with the selected qualified energy services~~  
 102 ~~provider for the provision of the energy audit report described in subsection (e) of this~~  
 103 ~~Code section.~~

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

111 (f) ~~Notwithstanding any other provision of law governing the letting of public contracts,~~  
 112 ~~a~~ A governmental unit may enter into guaranteed energy savings performance contracts  
 113 with each qualified energy services provider selected in accordance with the provisions of  
 114 this chapter. The governmental unit may elect to implement the energy conservation  
 115 measures in one or more phases with the selected qualified energy services provider."

#### 116 SECTION 4.

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

119 "(g) **Reporting.** Upon execution of a guaranteed energy savings performance contract that  
 120 reduces the governmental unit's annual electric usage by more than 100 megawatt hours,  
 121 the governmental unit shall provide written notice to its utility providers describing the  
 122 energy conservation measures to be installed. Additionally, the authority shall make  
 123 publicly available an annual list of all guaranteed energy savings performance contracts  
 124 that are signed in each calendar year."

#### 125 SECTION 5.

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

128 "50-37-6.

129 Every ~~governmental unit~~ state agency shall periodically review all proposed capital  
 130 improvement projects for potential applicability of this chapter and shall first consider

131 proceeding with a guaranteed energy savings performance contract under this chapter  
132 where appropriate."

133 **SECTION 6.**

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

136 **SECTION 7.**

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