

The Senate Finance Committee offered the following substitute to HB 934:

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:

SECTION 1.

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

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SECTION 2.

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

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

SECTION 3.

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

"50-37-3.

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

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

(c) ~~Selection of qualified energy services provider. The~~ When a governmental unit is acting pursuant to the power granted by this chapter and not under any otherwise applicable law, the process of implementing guaranteed energy savings performance contracts for 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 that is~~ a state
 80 agency shall issue a request for proposals from at least three qualified energy services
 81 providers on the prequalifications list prepared and maintained by the director. Before
 82 entering into a guaranteed energy savings performance contract under this chapter, a
 83 governmental unit that is a county, municipality, or other local governmental entity shall
 84 be required to issue a request for proposals from at least two qualified energy services
 85 providers if such providers are available. In addition, a local governmental entity shall
 86 publicly advertise the energy services contract opportunity and post notice of such
 87 opportunity in the local governmental entity's office and, if available, on the
 88 governmental entity's Internet website. A local governmental entity shall not be required
 89 to request proposals from providers on the prequalifications list maintained by the
 90 director or otherwise be required to utilize the authority's list of prequalified energy
 91 services providers.

92 (3) A governmental unit may thereafter award the guaranteed energy savings
 93 performance contract to the qualified energy services provider that best meets the needs
 94 of the governmental unit, which need not be the lowest cost provided. A preliminary
 95 technical proposal shall be prepared by the qualified energy services provider in response
 96 to the request for proposals. Factors to be included in selecting the most qualified energy

97 services provider for award of the guaranteed energy savings performance contract shall
 98 include, but not be limited to, the ~~comprehensiveness of the proposal, comprehensiveness~~
 99 ~~of cost-saving measures,~~ experience of the provider, quality of technical the project
 100 approach, type of technology employed by the provider, overall benefits to the
 101 governmental unit, and other factors determined by the governmental unit to be relevant
 102 to the implementation of the project.

103 (d) The governmental unit shall select the qualified energy services provider that best
 104 meets the needs of the governmental unit in accordance with criteria established by the
 105 governmental unit. ~~For governmental units that are not required to take actions on~~
 106 ~~contracts at public meetings, the governmental unit shall provide public notice of the award~~
 107 ~~of the guaranteed energy savings performance contract within 30 days. The notice shall~~
 108 ~~include the names of the parties to the contract and the purpose of the contract. For~~
 109 ~~governmental units that are required to take actions on contracts at public meetings, the~~
 110 ~~public notice shall be made at least ten days prior to the meeting. After reviewing the~~
 111 ~~proposals pursuant to subsection (e) of this Code section, a governmental unit may enter~~
 112 ~~into an investment grade energy audit agreement with the selected qualified energy services~~
 113 ~~provider for the provision of the energy audit report described in subsection (e) of this~~
 114 ~~Code section.~~

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

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

127 SECTION 4.

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

130 "(g) **Reporting.** Upon execution of a guaranteed energy savings performance contract that
 131 reduces the governmental unit's annual electric usage by more than 100 megawatt hours,
 132 the governmental unit shall provide written notice to its utility providers describing the

133 energy conservation measures to be installed. Additionally, the authority shall make
134 publicly available an annual list of all guaranteed energy savings performance contracts
135 that are signed in each calendar year."

136 **SECTION 5.**

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

139 "50-37-6.

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

144 **SECTION 6.**

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

147 **SECTION 7.**

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