Senate Bill 213

By: Senators Harper of the 7th, Payne of the 54th, Mullis of the 53rd, Summers of the 13th and Gooch of the 51st

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 10 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to contracts and purchases by public schools, so as to provide for payment on guaranteed energy saving contracts by local school systems using proceeds from local option sales taxes collected for educational purposes; to provide for phased implementation of energy cost savings measures; to revise a definition; to amend Chapter 37 of Title 50 of the Official Code of Georgia Annotated, relating to guaranteed energy savings performance contracting, so as to revise definitions; to increase the value percentage threshold applicable to certain improvements; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 10 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to contracts and purchases by public schools, is amended by revising Code Section 20-2-506, relating to definitions and authority to enter into multiyear lease, purchase, or lease purchase contracts, as follows:
"20-2-506.

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

(1) 'Energy cost savings measure' means a facility alteration, a training program incidental to the contract, or an equipment purchase to be used in building a retrofit, addition, or renovation or in new construction which reduces designed to reduce energy or water consumption, wastewater production, or operating costs and may include includes, but is not limited to, any one or more of the following:

(A) Insulating the building structure or structures within the building, including caulking or weather-stripping;

(B) Installing storm windows or doors, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door systems designed to reduce energy consumption;

(C) Installing automated or computerized energy control systems;

(D) Modifying or replacing heating, ventilating, or air-conditioning systems;

(E) Replacing or modifying lighting fixtures to increase the energy efficiency of the lighting system;

(F) Improving indoor air quality to conform to the applicable state or local building code requirements;

(G) Installing energy recovery systems;

(H) Installing cogeneration systems that produce steam or forms of energy such as heat and electricity for use primarily within a building or complex of buildings; and

(I) Life safety measures that provide long-term operating cost reductions and are in compliance with state and local codes, and building operation programs that reduce operating costs; and

(J) Any other measure not otherwise defined in this Code section which is designed to reduce energy or water consumption, reduce wastewater production, avoid capital costs, or achieve similar efficiency gains by the county, independent, or area school system.
(2) 'Guaranteed energy saving contract' means a contract for the implementation of one or more energy cost savings measures providing that all payments except obligations on termination of the contract before its expiration are to be made over time and the energy cost savings are guaranteed to the extent necessary to make payments for the contract.

(b) Except as otherwise provided in this Code section, each county, independent, or area school system in this state shall be authorized to enter into multiyear lease, purchase, or lease purchase contracts of all kinds for the acquisition of goods, materials, real and personal property, services, and supplies, provided that any such contract shall contain provisions for the following:

(1) The contract shall terminate absolutely and without further obligation on the part of the school system at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed as provided in this Code section;

(2) The contract may provide for automatic renewal unless positive action is taken by the school system to terminate such contract, and the nature of such action shall be determined by the school system and specified in the contract;

(3) The contract shall state the total obligation of the school system for the calendar year of execution and shall further state the total obligation which will be incurred in each calendar year renewal term, if renewed;

(4) The total combined annual payments for contracts under this Code section and contracts of such school system under Article IX, Section III, Paragraph I of the Constitution in any calendar year, excluding guaranteed energy savings contracts, shall not exceed an amount equal to 7.5 percent of the total local revenue collected for maintenance and operation of the school system in the most recently completed fiscal year; provided, however, that the foregoing limitation shall not apply to contracts with other public educational entities, including school systems in this state, for the education of students; and
(5) For each guaranteed energy savings contract, a school system shall document the historical energy cost of each structure affected for a period of at least one year prior to the date of the contract and shall document the monthly energy cost and monthly energy savings of each affected structure for the life of the contract.

(c) In addition to the provisions enumerated in subsection (b) of this Code section, any contract authorized by this Code section may include:

(1) A provision which requires that the contract will terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the school system under the contract; or

(2) Any other provision reasonably necessary to protect the interests of the school system.

(d) Any contract developed under this Code section containing the provisions enumerated in subsection (b) of this Code section shall be deemed to obligate the school system only for those sums payable during the calendar year of execution or, in the event of a renewal by the school system, for those sums payable in the individual calendar year renewal term.

(e) No contract developed and executed pursuant to this Code section shall be deemed to create a debt of the school system for the payment of any sum beyond the calendar year of execution or, in the event of a renewal, beyond the calendar year of such renewal.

(f) Any such contract may provide for the payment by the school system of interest or the allocation of a portion of the contract payment to interest, provided that the contract is in compliance with this Code section.

(g) When any local board of education on or after July 1, 1990, submits to the electors of its local school district the proposed issuance of any bonded debt and such proposal is defeated by the electors, that school system shall be prohibited for a period of four calendar years immediately following such election from entering into any multiyear contract for the lease, purchase, or lease purchase of any goods, materials, real or personal property,
services, or supplies which are the same as or substantially similar to items which were
proposed to be funded through such proposed issuance of bonded debt.

(h) Nothing in this Code section shall restrict school systems from executing reasonable
contracts arising out of their proprietary functions.

(i) Each school system in this state is authorized to accept the title to property subject to
a contract for lease purchase or installment purchase and is authorized to transfer title back
to the vendor in the name of the school district in the event that the contract is not fully
consummated.

(j) Any contract developed under this Code section shall comply with the applicable
provisions of the Official Code of Georgia Annotated, and regulations thereunder, relating
to state allocated capital outlay funds and entitlements.

(k) A county, independent, or area school system may use proceeds from local option
sales taxes collected for educational purposes for payment on a contract developed in
accordance with the provisions of this Code section; provided, however, that the scope of
services included in such contract are permissible according to the referendum authorizing
the collection of such taxes.

(l) A county, independent, or area school system may enter into guaranteed energy
savings performance contracts with each qualified energy savings provider selected in
accordance with the provisions of this Code section. School systems may elect to
implement the energy cost savings measure in one or more phases with the selected
qualified energy services provider."

SECTION 2.
Chapter 37 of Title 50 of the Official Code of Georgia Annotated, relating to guaranteed
energy savings performance contracting, is amended in Code Section 50-37-2, relating to
definitions, by revising paragraphs (4) and (6) as follows:
"(4) 'Energy conservation measure' means a program or facility alteration or technology upgrade designed to reduce energy, water, waste-water, or other consumption or operating costs to allow revenue generation measures. The term may include, without limitation:

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

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

(C) Automated or computerized energy control systems;

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

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

(F) Energy recovery ventilation systems;

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

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

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

   (i) Changes to more favorable rate schedules;

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

   (iii) Auditing of energy service billing and meters;
(J) The installation of energy information and control systems that monitor consumption, redirect systems to optimal energy sources, and manage energy using equipment;

(K) Indoor air quality improvements;

(L) Daylighting systems;

(M) Renewable generation systems owned by the governmental unit, such as solar photovoltaic, solar thermal, wind, and other technologies as identified in the project, provided that all metered distribution and deliveries of electric energy are made by an electric supplier authorized under Part 1 of Article 1 of Chapter 3 of Title 46, the 'Georgia Territorial Electric Service Act';

(N) Geothermal HVAC systems;

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

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

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

"(6) 'Governmental unit' means any authority, board, bureau, commission, department, agency, or institution of state or local government, including, but not limited to, any state-aided institution, or any county, municipal corporation, or consolidated government; or school district which has the authority to contract for the construction, reconstruction, alteration, or repair of any public building or other public work."

SECTION 3.

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