SYNOPSIS

Authorizes State contracting agencies, local contracting units, boards of education, public institutions of higher education, and other public entities to enter into guaranteed energy savings contracts.

CURRENT VERSION OF TEXT

As introduced.
AN ACT concerning guaranteed energy savings contracts and
supplementing various parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State
of New Jersey:

1. The Legislature finds and declares:
   a. The unprecedented economic circumstances presented by the
      confluence of the continuing impact of the recession of 2007, the
      crush of local property taxes, and the need to respond aggressively
      to climate change and to create green jobs to support New Jersey’s
      economy warrant the establishment of temporary changes to the
      contractual procurement of energy efficiency and conservation
      services by governmental entities;
   b. The two percent property tax cap law provides no exemption
      for increasing governmental energy costs, so that an energy savings
      “tool-kit” proposal is needed to provide governmental entities with
      the resources necessary to reduce energy consumption and costs;
   c. The State of New Jersey has already underwritten at a very
      significant taxpayer cost a large number of energy audits of
      municipal, county, school and other governmental agencies, which
      have not been acted upon due to the intractable procurement process
      created, and these audits are losing all economic value as time
      passes;
   d. It is the policy of the State for governmental entities to
      undertake energy conservation and efficiency measures in all
      aspects of their operations whenever practical and feasible;
   e. Because of the initial cost of undertaking projects that
      promote energy efficiency and conservation, many governmental
      entities have foregone needed or desirable facility upgrades that
      would increase energy efficiencies and improve the working
      environment of facilities;
   f. Efforts to invest in improvements to the energy efficiencies
      of governmental entities in many instances have not been pursued
      because of concern that such investment might further raise
      property taxes, and because of competing demands for funds needed
      for other essential activities, programs, and projects undertaken by
      governmental entities;
   g. Guaranteed energy savings contracts provide a mechanism to
      initiate projects to improve energy efficiencies that are needed or
      desirable but not currently funded;
   h. Guaranteed energy savings contracts do not readily lend
      themselves to award pursuant to the sealed bid process, which
      awards a contract to the lowest cost bidder based on upfront
      construction and labor costs, without regard to long term savings or
      reduced life cycle costs that the governmental entity may
      reasonably expect to achieve as a result of the contract work, and
      energy services companies have been universally reluctant to
financially underwrite these performance contracts while maintaining almost no control over the quality of work performed by the low cost bidder;

i. Competitive contracting is an open and fair procurement method that provides governmental entities the opportunity to evaluate, with the assistance of independent qualified energy professionals to guide the process, competing proposals based on all relevant cost and savings factors including long-term savings and reduced life-cycle costs and to enter into guaranteed energy savings contracts while providing taxpayers the highest level of protection;

j. The need to evaluate differing proposals as to the nature of the energy efficiency and conservation measures to be implemented and the savings realized therefrom, and the funding mechanisms to be employed, as well as the guaranteed nature of the savings to be realized by governmental entities that enter into guaranteed energy savings contracts, supports the use of competitive contracting techniques in lieu of sealed bidding techniques; and

k. The use of competitive contracting in the procurement of energy efficiency and conservation services should not call into question the Legislature’s long-standing support of the current procurement laws for other matters that require award to the lowest responsive bidder.

2. a. As used in this section:

"Allowable costs" means the equipment and project costs associated with energy efficiency and energy conservation measures that a State agency reasonably believes will be incurred during the term of a guaranteed energy savings contract and that are documented by industry engineering standards.

"Competitive contracting," with respect to the procurement of specialized goods and services required to implement an energy efficiency or energy conservation measure, means the method of contracting for specialized goods and services in which formal proposals are solicited by a State agency from vendors through a standardized request for proposal process utilizing an “RFP” model template as provided by the Department of Community Affairs in consultation with the Board of Public Utilities, and are evaluated by the State agency utilizing the services of qualified energy professionals and engineers who shall be employed by the State agency to independently verify the energy savings calculations in the proposals as prescribed in paragraph (3) of subsection c. of this section, and who shall assist the State agency in the selection of the qualified provider creating the maximum savings potential, after which the State agency may then award a contract to a vendor or vendors from among the formal competitive proposals received based upon the inclusion of all cost and cost savings considerations.
"Director of Energy Savings" means the person holding the position so designated and established within the Department of the Treasury pursuant to Executive Order No. 11 of 2006.

"Energy efficiency or energy conservation measure" means a program or facility alteration intended to reduce a State agency's energy consumption or operating costs, and includes, but is not limited to:

1. insulation of the building structure or systems within the building;
2. installation of storm windows or doors, caulking or weather stripping, multi-glazed 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;
3. installation of automated or computerized energy control systems;
4. heating, ventilating or air conditioning system modification or replacement;
5. 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;
6. installation of energy recovery systems;
7. installation of systems that produce steam or forms of energy such as heat as well as electricity for use within a building or complex of buildings;
8. implementation of energy efficiency or energy conservation measures that provide operating cost reductions based on life-cycle cost analysis;
9. implementation of a training program or facility alteration that reduces energy consumption or reduces operating costs, including allowable costs, based on future reductions in labor costs or costs for contracted services;
10. a facility alteration that includes expenditures required to properly implement other energy conservation measures;
11. implementation of a program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, load shedding, or use of alternative energy suppliers;
12. installation of energy information and control systems that monitor consumption, redirect systems to optimal energy sources and manage energy-using equipment;
13. indoor air quality improvements;
14. installation of daylighting systems; and
15. use of renewable or on-site distributed power generation systems.

"Energy savings" means a measured reduction in fuel, energy, or operating or maintenance costs resulting from the implementation
of one or more energy efficiency or energy conservation measures, when compared with an established baseline of previous fuel, energy, water, or operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed pursuant to a guaranteed energy savings contract. In the event that a State agency has obtained an audit, the energy savings proposal need not conform to the results of the audit but shall use the audit as a guideline to assist in evaluating and securing energy cost reductions and shall be utilized productively to help guide prospective qualified providers to develop proposals.

"Guaranteed energy savings contract" or "guaranteed contract" means a contract between a State agency and a qualified provider for the installation of energy efficiency or energy conservation measures, or a combination thereof, and for implementation of one or more such measures pursuant to such a contract between a State agency and a qualified provider, entered into in accordance with the provisions of this section.

"Industry engineering standards" means recognized industry standards including, but not limited to, life cycle costing, the R.S. Means-estimated method developed by the R.S. Means Company, historical data, manufacturer's data, and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standards.

"Qualified provider" means a person or business capable of evaluating, recommending, designing, implementing, and installing energy efficiency or energy conservation measures pursuant to a guaranteed energy savings contract approved by a State agency. Qualified providers shall either be certified by the Division of Property Management and Construction in the Department of the Treasury as eligible to participate in the formal competitive proposal process, or qualified under federal guidelines as an energy services company, and shall reasonably demonstrate that it is financially capable of meeting its obligations under the performance guarantees set forth in a guaranteed energy savings contract for the contract period.

"State agency" means any principal department in the Executive Branch of State government, any division, board, bureau, office, commission, or other agency or instrumentality within or created by such principal department, and any independent State authority, commission, instrumentality, or agency.

b. Notwithstanding the provisions of chapter 34 of Title 52 of the Revised Statutes, or any other law, rule, regulation, or order to the contrary, a State agency, as defined in this section, may use competitive contracting for a period not to exceed 36 months following the effective date of P.L. 2022, c. 74 (pending before the Legislature as this bill), to enter into a guaranteed energy savings contract with a qualified provider for a period of up to 15 years.
years, or for a period of up to 20 years from the final installation of
a project in the case of a lease purchase agreement for a combined
heat and power facility or cogeneration facility, as defined in
section 3 of P.L.1999, c.23 (C.48:3-51), in accordance with the
provisions of this section and any guidelines or regulations adopted
by the Director of Energy Savings.

A State agency that uses competitive contracting for the purpose
of entering into a guaranteed energy savings contract, may evaluate
any proposal that meets the requirements of the State agency and
that is submitted in a timely manner by a qualified provider to the
State agency.

c. A State agency shall select the qualified provider that best
meets the needs of that State agency, subject to the following:

(1) After reviewing the reports required to be provided pursuant
to subsection d. of this section, a State agency may enter into a
guaranteed energy savings contract with a qualified provider if: (a)
the State agency finds that the amount it would spend on the energy
efficiency or energy conservation measures recommended in the
proposal would not exceed the amount to be saved in energy
savings within a 15-year period from the date on which
performance, or within a 20-year period from the final installation
of a project in the case of a lease purchase agreement for a
combined heat and power facility or cogeneration facility, as
defined in section 3 of P.L.1999, c.23 (C.48:3-51), if the
recommendations in the proposal were followed; and (b) the
qualified provider provides a written guarantee in its proposal in
favor of the State agency that the amount of energy savings realized
by the State agency as a result of entering into the guaranteed
energy savings contract with the qualified provider shall meet or
exceed the cost to the State agency of the guaranteed energy savings
contract;

(2) The guaranteed energy savings contract includes: (a)
specifications requiring the qualified provider to demonstrate the
qualifications, experience and training of its employees, contractors
and subcontractors, including job training, education, and
experience in successfully completing projects similar in size and
scope; (b) other criteria to assure a reliable source of skilled and
experienced labor to guarantee efficient and cost-effective
completion of the work and safety by standardizing the terms and
conditions of employment of labor on any project undertaken
pursuant to this section; and (c) requirements to ensure labor
stability and the payment of prevailing wages pursuant to P.L.1963,
c.150 (C.34:11-56.25 et seq.), and to ensure that labor contractors
and subcontractors provide and maintain formal training and
apprenticeship programs and approved health care and pension
benefit plans in accordance with P.L.1948, c.446 (C.34:1A-34 et
seq.); and
(3) The State agency shall contract with a third party entity consisting of qualified energy professionals and engineers, which is independent of the qualified providers submitting proposals to the State agency, to verify, in accordance with guidelines adopted by the Director of Energy Savings pursuant to subsection b. of this section, that the projected energy savings to be realized from the proposals submitted to the State agency are sufficient to cover the cost of the installation or implementation of the energy saving measures over the entire duration of the contract term.

d. Before a guaranteed energy savings contract may be awarded by a State agency, the qualified provider shall provide a report as part of its proposal which shall summarize estimates of all costs of installation, maintenance, repairs and debt service and estimates of the amounts by which energy, or operating costs will be reduced. This report shall:

(1) be available for public inspection;
(2) contain a listing of employees, contractors, and subcontractors to be used by the qualified provider as the low bidder selected from the list of qualified contractors provided by the qualified provider with respect to the energy efficiency or energy conservation measures, or both;
(3) comply with the guidelines adopted by the Director of Energy Savings establishing a methodology for computing and comparing energy savings; and
(4) show evidence of financial stability and size that demonstrates the qualified provider’s capability to meet its obligations under the performance guarantee over the entire duration of the performance period.

e. A qualified provider to whom a guaranteed energy savings contract is awarded shall provide a sufficient bond to the State agency for its faithful performance.

f. A State agency may enter into a separate guaranteed energy savings contract with each qualified provider selected in accordance with the provisions of this section.

g. A guaranteed energy savings contract may provide for project financing that requires all payments, except any obligations that are incurred as a result of the termination of the contract prior to its scheduled expiration, to be made over a period of time. Each guaranteed energy savings contract shall provide that the project financing savings in any year are guaranteed to the extent necessary to make payments under the contract during that year.

h. A guaranteed energy savings contract shall include a written guarantee that energy savings shall meet or exceed the cost of the energy efficiency or energy conservation measures, or both, to be evaluated, recommended, designed, implemented, and installed under the project financed by such a contract.

i. Beginning with the second year of a guaranteed energy savings contract, and in each year thereafter, the qualified provider
performing a guaranteed energy savings contract shall submit annual reports to the State agency for each guaranteed energy savings contract between the qualified provider and that State agency, to confirm the actual savings realized for the project, during the preceding 12-month period. This report, and the measurement of the savings, shall comply with the provisions of the United States Department of Energy’s Federal Energy Management Program, which stipulates the means to measure and verify consumption based on metering, calculations, or short-term testing. A copy of this annual report shall also be submitted to the Director of Energy Savings and the State Treasurer. In the event that the actual, annual verified savings are less than the annual amount of savings guaranteed by the qualified provider, the qualified provider shall pay the State agency, or cause the State agency to be paid, the difference between the guaranteed savings amount and the actual, verified amount. Measurement and verification costs may be billed separately outside of the base contract with the qualified provider or incorporated among other costs billed under the base contract, at the option of the State agency. A State agency may choose to waive the guarantee at any time during the duration of the contract at its option.

j. A guaranteed energy savings contract may provide for project financing, including tax exempt financing by a third party over a period of time not to exceed 15 years, or for a period not to exceed 20 years from the final installation of a project in the case of a lease purchase agreement with a developer of a combined heat and power or cogeneration project, or, if otherwise authorized by law, by the issuance of energy savings bonds as a refunding bond to fund all or part of the energy efficiency or energy conservation measures.

k. An improvement that is not directly related to an energy efficiency or energy conservation measure may be included in a guaranteed energy savings contract if:

   (1) the total cost of the energy improvement does not exceed 15 percent of the total cost of the work to be performed under the guaranteed energy savings contract; and,

   (2) the improvement is necessary to conform to a law, rule, regulation, or order adopted pursuant thereto, or an ordinance or resolution, as appropriate, or if an analysis within an approved proposal, or by the State agency at the time of the award of the proposal, demonstrates that there is an economic advantage to the State agency implementing the improvement as part of the guaranteed energy savings contract, and the savings justification for the improvement is documented by industry engineering standards.

l. A facility alteration required to properly implement other energy efficiency or energy conservation measures, or both, may be included as part of a guaranteed energy savings contract, in which case, notwithstanding any other provision of law, rule, regulation,
or order to the contrary, the facility alteration may be undertaken or supervised by the qualified provider performing the guaranteed energy savings contract.

3. a. As used in this section:

"Allowable costs" means the equipment and project costs associated with energy efficiency and energy conservation measures that a contracting unit reasonably believes will be incurred during the term of a guaranteed energy savings contract and that are documented by industry engineering standards.

"Competitive contracting," with respect to the procurement of specialized goods and services required to implement an energy efficiency or energy conservation measure, means the method of contracting for specialized goods and services in which formal proposals are solicited by a contracting unit from vendors through a standardized request for proposal process utilizing an “RFP” model template as provided by the Department of Community Affairs in consultation with the Board of Public Utilities, and are evaluated by the contracting unit utilizing the services of qualified energy professionals and engineers who shall be employed by the contracting unit to independently verify the energy savings calculations in the proposals as prescribed in paragraph (3) of subsection c. of this section, and who shall assist the contracting unit in the selection of the qualified provider creating the maximum savings potential, after which the contracting unit may then award a contract to a vendor or vendors from among the formal competitive proposals received based upon the inclusion of all cost and cost savings considerations.

"Director of Energy Savings" means the person holding the position so designated and established within the Department of the Treasury pursuant to Executive Order No. 11 of 2006.

"Energy efficiency or energy conservation measure" means a program or facility alteration intended to reduce a contracting unit’s energy consumption or operating costs, and includes, but is not limited to:

(1) insulation of the building structure or systems within the building;

(2) installation of storm windows or doors, caulking or weather stripping, multi-glazed 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;

(3) installation of automated or computerized energy control systems;

(4) heating, ventilating or air conditioning system modification or replacement;

(5) 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;
(6) installation of energy recovery systems;
(7) installation of systems that produce steam or forms of energy
such as heat as well as electricity for use within a building or
complex of buildings;
(8) implementation of energy efficiency or energy conservation
measures that provide operating cost reductions based on life-cycle
cost analysis;
(9) implementation of a training program or facility alteration
that reduces energy consumption or reduces operating costs,
including allowable costs, based on future reductions in labor costs
or costs for contracted services;
(10) a facility alteration that includes expenditures required to
properly implement other energy conservation measures;
(11) implementation of a program to reduce energy costs through
rate adjustments, load shifting to reduce peak demand, load
shedding, or use of alternative energy suppliers;
(12) installation of energy information and control systems that
monitor consumption, redirect systems to optimal energy sources
and manage energy-using equipment;
(13) indoor air quality improvements;
(14) installation of daylighting systems; and
(15) use of renewable or on-site distributed power generation
systems.
"Energy savings" means a measured reduction in fuel, energy, or
operating or maintenance costs resulting from the implementation
of one or more energy efficiency or energy conservation measures,
when compared with an established baseline of previous fuel,
energy, water, or operating or maintenance costs, including, but not
limited to, future capital replacement expenditures avoided as a
result of equipment installed or services performed pursuant to a
guaranteed energy savings contract. In the event that a contracting
unit has obtained an audit, the energy savings proposal need not
conform to the results of the audit but shall use the audit as a
guide to assist in evaluating and securing energy cost reductions
and shall be utilized productively to help guide prospective
qualified providers to develop proposals.
"Guaranteed energy savings contract" or "guaranteed contract"
means a contract between a contracting unit and a qualified
provider for the installation of energy efficiency or energy
conservation measures, or a combination thereof, and for
implementation of one or more such measures pursuant to such a
contract between a contracting unit and a qualified provider, entered
into in accordance with the provisions of this section.
"Industry engineering standards" means recognized industry
standards including, but not limited to, life cycle costing, the R.S.
Means-estimated method developed by the R.S. Means Company, historical data, manufacturer's data, and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standards.

"Qualified provider" means a person or business capable of evaluating, recommending, designing, implementing, and installing energy efficiency or energy conservation measures pursuant to a guaranteed energy savings contract approved by a contracting unit. Qualified providers shall either be certified by the Division of Property Management and Construction in the Department of the Treasury as eligible to participate in the formal competitive proposal process, or qualified under federal guidelines as an energy services company, and shall reasonably demonstrate that it is financially capable of meeting its obligations under the performance guarantees set forth in a guaranteed energy savings contract for the contract period.

b. Notwithstanding the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), or any other law, rule, regulation, or order to the contrary, a contracting unit, as defined in P.L.1971, c.198, may use competitive contracting for a period not to exceed 36 months following the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), to enter into a guaranteed energy savings contract with a qualified provider for a period of up to 15 years, or for a period of up to 20 years from the final installation of a project in the case of a lease purchase agreement for a combined heat and power facility or cogeneration facility, as defined in section 3 of P.L.1999, c.23 (C.48:3-51), in accordance with the provisions of this section and any guidelines or regulations adopted by the Director of Energy Savings.

A contracting unit that uses competitive contracting for the purpose of entering into a guaranteed energy savings contract, may evaluate any proposal that meets the requirements of the contracting unit and that is submitted in a timely manner by a qualified provider to the contracting unit.

c. A contracting unit shall select the qualified provider that best meets the needs of that contracting unit, subject to the following:

(1) After reviewing the reports required to be provided pursuant to subsection d. of this section, a contracting unit may enter into a guaranteed energy savings contract with a qualified provider if: (a) the contracting unit finds that the amount it would spend on the energy efficiency or energy conservation measures recommended in the proposal would not exceed the amount to be saved in energy savings within a 15-year period from the date on which performance, or within a 20-year period from the final installation of a project in the case of a lease purchase agreement for a combined heat and power facility or cogeneration facility, as
defined in section 3 of P.L. 1999, c.23 (C.48:3-51), if the
recommendations in the proposal were followed; and (b) the
qualified provider provides a written guarantee in its proposal in
favor of the contracting unit that the amount of energy savings
realized by the contracting unit as a result of entering into the
guaranteed energy savings contract with the qualified provider shall
meet or exceed the cost to the contracting unit of the guaranteed
energy savings contract;
(2) The guaranteed energy savings contract includes: (a)
specifications requiring the qualified provider to demonstrate the
qualifications, experience and training of its employees, contractors
and subcontractors, including job training, education, and
experience in successfully completing projects similar in size and
scope; (b) other criteria to assure a reliable source of skilled and
experienced labor to guarantee efficient and cost-effective
completion of the work and safety by standardizing the terms and
conditions of employment of labor on any project undertaken
pursuant to this section; and (c) requirements to ensure labor
stability and the payment of prevailing wages pursuant to P.L. 1963,
c. 150 (C.34:11-56.25 et seq.), and to ensure that labor contractors
and subcontractors provide and maintain formal training and
apprenticeship programs and approved health care and pension
benefit plans in accordance with P.L.1948, c.446 (C.34:1A-34 et
seq.); and
(3) The contracting unit shall contract with a third party entity
consisting of qualified energy professionals and engineers, which is
independent of the qualified providers submitting proposals to the
contracting unit, to verify, in accordance with guidelines adopted by
the Director of Energy Savings pursuant to subsection b. of this
section, that the projected energy savings to be realized from the
proposals submitted to the contracting unit are sufficient to cover
the cost of the installation or implementation of the energy saving
measures over the entire duration of the contract term.
d. Before a guaranteed energy savings contract may be
awarded by a contracting unit, the qualified provider shall provide a
report as part of its proposal which shall summarize estimates of all
costs of installation, maintenance, repairs and debt service and
estimates of the amounts by which energy, or operating costs will
be reduced. This report shall:
(1) be available for public inspection;
(2) contain a listing of employees, contractors, and
subcontractors to be used by the qualified provider as the low
bidder selected from the list of qualified contractors provided by the
qualified provider with respect to the energy efficiency or energy
conservation measures, or both;
(3) comply with the guidelines adopted by the Director of
Energy Savings establishing a methodology for computing and
comparing energy savings; and
(4) show evidence of financial stability and size that demonstrates the qualified provider’s capability to meet its obligations under the performance guarantee over the entire duration of the performance period.

e. A qualified provider to whom a guaranteed energy savings contract is awarded shall provide a sufficient bond to the contracting unit for its faithful performance.

f. A contracting unit may enter into a separate guaranteed energy savings contract with each qualified provider selected in accordance with the provisions of this section.

g. A guaranteed energy savings contract may provide for project financing that requires all payments, except any obligations that are incurred as a result of the termination of the contract prior to its scheduled expiration, to be made over a period of time. Each guaranteed energy savings contract shall provide that the project financing savings in any year are guaranteed to the extent necessary to make payments under the contract during that year.

h. A guaranteed energy savings contract shall include a written guarantee that energy savings shall meet or exceed the cost of the energy efficiency or energy conservation measures, or both, to be evaluated, recommended, designed, implemented, and installed under the project financed by such a contract.

i. Beginning with the second year of a guaranteed energy savings contract, and in each year thereafter, the qualified provider performing a guaranteed energy savings contract shall submit annual reports to the contracting unit for each guaranteed energy savings contract between the qualified provider and that contracting unit, to confirm the actual savings realized for the project, during the preceding 12-month period. This report, and the measurement of the savings, shall comply with the provisions of the United States Department of Energy's Federal Energy Management Program, which stipulates the means to measure and verify consumption based on metering, calculations, or short-term testing. In the event that the actual, annual verified savings are less than the annual amount of savings guaranteed by the qualified provider, the provider shall pay the contracting unit, or cause the contracting unit to be paid, the difference between the guaranteed savings amount and the actual, verified amount. Measurement and verification costs may be billed separately outside of the base contract with the qualified provider or incorporated among other costs billed under the base contract, at the option of the contracting unit. A contracting unit may choose to waive the guarantee at any time during the duration of the contract at its option.

j. A guaranteed energy savings contract may provide for project financing, including tax exempt financing by a third party over a period of time not to exceed 15 years, or for a period not to exceed 20 years from the final installation of a project in the case of a lease purchase agreement with a developer of a combined heat
and power or cogeneration project, or, if otherwise authorized by law, by the issuance of energy savings bonds as a refunding bond to fund all or part of the energy efficiency or energy conservation measures.

k. An improvement that is not directly related to an energy efficiency or energy conservation measure may be included in a guaranteed energy savings contract if:

(1) the total cost of the energy improvement does not exceed 15 percent of the total cost of the work to be performed under the guaranteed energy savings contract; and,

(2) the improvement is necessary to conform to a law, rule, regulation, or order adopted pursuant thereto, or an ordinance or resolution, as appropriate, or if an analysis within an approved proposal, or by the contracting unit at the time of the award of the proposal, demonstrates that there is an economic advantage to the contracting unit implementing the improvement as part of the guaranteed energy savings contract, and the savings justification for the improvement is documented by industry engineering standards.

l. A facility alteration required to properly implement other energy efficiency or energy conservation measures, or both, may be included as part of a guaranteed energy savings contract, in which case, notwithstanding any other provision of law, rule, regulation, or order to the contrary, the facility alteration may be undertaken or supervised by the qualified provider performing the guaranteed energy savings contract.

4. a. As used in this section:

"Allowable costs" means the equipment and project costs associated with energy efficiency and energy conservation measures that a board of education reasonably believes will be incurred during the term of a guaranteed energy savings contract and that are documented by industry engineering standards.

"Competitive contracting," with respect to the procurement of specialized goods and services required to implement an energy efficiency or energy conservation measure, means the method of contracting for specialized goods and services in which formal proposals are solicited by a board of education from vendors through a standardized request for proposal process utilizing an “RFP” model template as provided by the Department of Community Affairs in consultation with the Board of Public Utilities, and are evaluated by the board of education utilizing the services of qualified energy professionals and engineers who shall be employed by the board of education to independently verify the energy savings calculations in the proposals as prescribed in paragraph (3) of subsection c. of this section, and who shall assist the board of education in the selection of the qualified provider creating the maximum savings potential, after which the board of education may then award a contract to a vendor or vendors from
among the formal competitive proposals received based upon the inclusion of all cost and cost savings considerations.

"Director of Energy Savings" means the person holding the position so designated and established within the Department of the Treasury pursuant to Executive Order No. 11 of 2006.

"Energy efficiency or energy conservation measure" means a program or facility alteration intended to reduce a board of education’s energy consumption or operating costs, and includes, but is not limited to:

1. insulation of the building structure or systems within the building;
2. installation of storm windows or doors, caulking or weather stripping, multi-glazed 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;
3. installation of automated or computerized energy control systems;
4. heating, ventilating or air conditioning system modification or replacement;
5. 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;
6. installation of energy recovery systems;
7. installation of systems that produce steam or forms of energy such as heat as well as electricity for use within a building or complex of buildings;
8. implementation of energy efficiency or energy conservation measures that provide operating cost reductions based on life-cycle cost analysis;
9. implementation of a training program or facility alteration that reduces energy consumption or reduces operating costs, including allowable costs, based on future reductions in labor costs or costs for contracted services;
10. a facility alteration that includes expenditures required to properly implement other energy conservation measures;
11. implementation of a program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, load shedding, or use of alternative energy suppliers;
12. installation of energy information and control systems that monitor consumption, redirect systems to optimal energy sources and manage energy-using equipment;
13. indoor air quality improvements;
14. installation of daylighting systems; and
15. use of renewable or on-site distributed power generation systems.
"Energy savings" means a measured reduction in fuel, energy, or operating or maintenance costs resulting from the implementation of one or more energy efficiency or energy conservation measures, when compared with an established baseline of previous fuel, energy, water, or operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed pursuant to a guaranteed energy savings contract. In the event that a board of education has obtained an audit, the energy savings proposal need not conform to the results of the audit but shall use the audit as a guideline to assist in evaluating and securing energy cost reductions and shall be utilized productively to help guide prospective qualified providers to develop proposals.

"Guaranteed energy savings contract" or "guaranteed contract" means a contract between a board of education and a qualified provider for the installation of energy efficiency or energy conservation measures, or a combination thereof, and for implementation of one or more such measures pursuant to such a contract between a board of education and a qualified provider, entered into in accordance with the provisions of this section.

"Industry engineering standards" means recognized industry standards including, but not limited to, life cycle costing, the R.S. Means-estimated method developed by the R.S. Means Company, historical data, manufacturer's data, and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standards.

"Qualified provider" means a person or business capable of evaluating, recommending, designing, implementing, and installing energy efficiency or energy conservation measures pursuant to a guaranteed energy savings contract approved by a board of education. Qualified providers shall either be certified by the Division of Property Management and Construction in the Department of the Treasury as eligible to participate in the formal competitive proposal process, or qualified under federal guidelines as an energy services company, and shall reasonably demonstrate that it is financially capable of meeting its obligations under the performance guarantees set forth in a guaranteed energy savings contract for the contract period.

b. Notwithstanding the provisions of the "Public School Contracts Law," N.J.S.18A:18A-1 et seq., or any other law, rule, regulation, or order to the contrary, a board of education, may use competitive contracting for a period not to exceed 36 months following the effective date of P.L. , c. (pending before the Legislature as this bill), to enter into a guaranteed energy savings contract with a qualified provider for a period of up to 15 years, or for a period of up to 20 years from the final installation of a project in the case of a lease purchase agreement for a combined heat and power facility or cogeneration facility, as defined in
section 3 of P.L.1999, c.23 (C.48:3-51), in accordance with the provisions of this section and any guidelines or regulations adopted by the Director of Energy Savings.

A board of education that uses competitive contracting for the purpose of entering into a guaranteed energy savings contract, may evaluate any proposal that meets the requirements of the board of education and that is submitted in a timely manner by a qualified provider to the board of education.

c. A board of education shall select the qualified provider that best meets the needs of that board of education, subject to the following:

(1) After reviewing the reports required to be provided pursuant to subsection d. of this section, a board of education may enter into a guaranteed energy savings contract with a qualified provider if:
(a) the board of education finds that the amount it would spend on the energy efficiency or energy conservation measures recommended in the proposal would not exceed the amount to be saved in energy savings within a 15-year period from the date on which performance, or within a 20-year period from the final installation of a project in the case of a lease purchase agreement for a combined heat and power facility or cogeneration facility, as defined in section 3 of P.L.1999, c.23 (C.48:3-51), if the recommendations in the proposal were followed; and (b) the qualified provider provides a written guarantee in its proposal in favor of the board of education that the amount of energy savings realized by the board of education as a result of entering into the guaranteed energy savings contract with the qualified provider shall meet or exceed the cost to the board of education of the guaranteed energy savings contract;

(2) The guaranteed energy savings contract includes: (a) specifications requiring the qualified provider to demonstrate the qualifications, experience and training of its employees, contractors and subcontractors, including job training, education, and experience in successfully completing projects similar in size and scope; (b) other criteria to assure a reliable source of skilled and experienced labor to guarantee efficient and cost-effective completion of the work and safety by standardizing the terms and conditions of employment of labor on any project undertaken pursuant to this section; and (c) requirements to ensure labor stability and the payment of prevailing wages pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.), and to ensure that labor contractors and subcontractors provide and maintain formal training and apprenticeship programs and approved health care and pension benefit plans in accordance with P.L.1948, c.446 (C.34:1A-34 et seq.); and

(3) The board of education shall contract with a third party entity consisting of qualified energy professionals and engineers, which is independent of the qualified providers submitting
proposals to the board of education, to verify, in accordance with
guidelines adopted by the Director of Energy Savings pursuant to
subsection b. of this section, that the projected energy savings to be
realized from the proposals submitted to the board of education are
sufficient to cover the cost of the installation or implementation of
the energy saving measures over the entire duration of the contract
term.

d. Before a guaranteed energy savings contract may be
awarded by a board of education, the qualified provider shall
provide a report as part of its proposal which shall summarize
estimates of all costs of installation, maintenance, repairs and debt
service and estimates of the amounts by which energy, or operating
costs will be reduced. This report shall:

(1) be available for public inspection;
(2) contain a listing of employees, contractors, and
subcontractors to be used by the qualified provider as the low
bidder selected from the list of qualified contractors provided by the
qualified provider with respect to the energy efficiency or energy
conservation measures, or both;
(3) comply with the guidelines adopted by the Director of
Energy Savings establishing a methodology for computing and
comparing energy savings; and
(4) show evidence of financial stability and size that
demonstrates the qualified provider’s capability to meet its
obligations under the performance guarantee over the entire
duration of the performance period.
e. A qualified provider to whom a guaranteed energy savings
contract is awarded shall provide a sufficient bond to the board of
education for its faithful performance.
f. A board of education may enter into a separate guaranteed
energy savings contract with each qualified provider selected in
accordance with the provisions of this section.
g. A guaranteed energy savings contract may provide for
project financing that requires all payments, except any obligations
that are incurred as a result of the termination of the contract prior
to its scheduled expiration, to be made over a period of time. Each
guaranteed energy savings contract shall provide that the project
financing savings in any year are guaranteed to the extent necessary
to make payments under the contract during that year.
h. A guaranteed energy savings contract shall include a written
guarantee that energy savings shall meet or exceed the cost of the
energy efficiency or energy conservation measures, or both, to be
evaluated, recommended, designed, implemented, and installed
under the project financed by such a contract.
i. Beginning with the second year of a guaranteed energy
savings contract, and in each year thereafter, the qualified provider
performing a guaranteed energy savings contract shall submit
annual reports to the board of education for each guaranteed energy
savings contract between the qualified provider and that board of
education, to confirm the actual savings realized for the project,
during the preceding 12-month period. This report, and the
measurement of the savings, shall comply with the provisions of the
United States Department of Energy's Federal Energy Management
Program, which stipulates the means to measure and verify
consumption based on metering, calculations, or short-term testing.
In the event that the actual, annual verified savings are less than the
annual amount of savings guaranteed by the qualified provider, the
qualified provider shall pay the board of education, or cause the
board of education to be paid, the difference between the
guaranteed savings amount and the actual, verified amount.
Measurement and verification costs may be billed separately outside
of the base contract with the qualified provider or incorporated
among other costs billed under the base contract, at the option of
the board of education. A board of education may choose to waive
the guarantee at any time during the duration of the contract at its
option.

j. A guaranteed energy savings contract may provide for
project financing, including tax exempt financing by a third party
over a period of time not to exceed 15 years, or for a period not to
exceed 20 years from the final installation of a project in the case of
a lease purchase agreement with a developer of a combined heat
and power or cogeneration project, or, if otherwise authorized by
law, by the issuance of energy savings bonds as a refunding bond to
fund all or part of the energy efficiency or energy conservation
measures.

k. An improvement that is not directly related to an energy
efficiency or energy conservation measure may be included in a
guaranteed energy savings contract if:

(1) the total cost of the energy improvement does not exceed 15
percent of the total cost of the work to be performed under the
guaranteed energy savings contract; and,

(2) the improvement is necessary to conform to a law, rule,
regulation, or order adopted pursuant thereto, or an ordinance or
resolution, as appropriate, or if an analysis within an approved
proposal, or by the board of education at the time of the award of
the proposal, demonstrates that there is an economic advantage to
the board of education implementing the improvement as part of the
guaranteed energy savings contract, and the savings justification for
the improvement is documented by industry engineering standards.

l. A facility alteration required to properly implement other
energy efficiency or energy conservation measures, or both, may be
included as part of a guaranteed energy savings contract, in which
case, notwithstanding any other provision of law, rule, regulation,
or order to the contrary, the facility alteration may be undertaken or
supervised by the qualified provider performing the guaranteed
energy savings contract.
5. a. As used in this section:

"Allowable costs" means the equipment and project costs associated with energy efficiency and energy conservation measures that a State college reasonably believes will be incurred during the term of a guaranteed energy savings contract and that are documented by industry engineering standards.

"Competitive contracting," with respect to the procurement of specialized goods and services required to implement an energy efficiency or energy conservation measure, means the method of contracting for specialized goods and services in which formal proposals are solicited by a State college from vendors through a standardized request for proposal process utilizing an “RFP” model template as provided by the Department of Community Affairs in consultation with the Board of Public Utilities, and are evaluated by the State college utilizing the services of qualified energy professionals and engineers who shall be employed by the State college to independently verify the energy savings calculations in the proposals as prescribed in paragraph (3) of subsection c. of this section, and who shall assist the State college in the selection of the qualified provider creating the maximum savings potential, after which the State college may then award a contract to a vendor or vendors from among the formal competitive proposals received based upon the inclusion of all cost and cost savings considerations.

"Director of Energy Savings” means the person holding the position so designated and established within the Department of the Treasury pursuant to Executive Order No. 11 of 2006.

"Energy efficiency or energy conservation measure” means a program or facility alteration intended to reduce a State college's energy consumption or operating costs, and includes, but is not limited to:

(1) insulation of the building structure or systems within the building;

(2) installation of storm windows or doors, caulking or weather stripping, multi-glazed 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;

(3) installation of automated or computerized energy control systems;

(4) heating, ventilating or air conditioning system modification or replacement;

(5) 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;

(6) installation of energy recovery systems;
(7) installation of systems that produce steam or forms of energy such as heat as well as electricity for use within a building or complex of buildings;
(8) implementation of energy efficiency or energy conservation measures that provide operating cost reductions based on life-cycle cost analysis;
(9) implementation of a training program or facility alteration that reduces energy consumption or reduces operating costs, including allowable costs, based on future reductions in labor costs or costs for contracted services;
(10) a facility alteration that includes expenditures required to properly implement other energy conservation measures;
(11) implementation of a program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, load shedding, or use of alternative energy suppliers;
(12) installation of energy information and control systems that monitor consumption, redirect systems to optimal energy sources and manage energy-using equipment;
(13) indoor air quality improvements;
(14) installation of daylighting systems; and
(15) use of renewable or on-site distributed power generation systems.

"Energy savings" means a measured reduction in fuel, energy, or operating or maintenance costs resulting from the implementation of one or more energy efficiency or energy conservation measures, when compared with an established baseline of previous fuel, energy, water, or operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed pursuant to a guaranteed energy savings contract. In the event that a State college has obtained an audit, the energy savings proposal need not conform to the results of the audit but shall use the audit as a guideline to assist in evaluating and securing energy cost reductions and shall be utilized productively to help guide prospective qualified providers to develop proposals.

"Guaranteed energy savings contract" or "guaranteed contract" means a contract between a State college and a qualified provider for the installation of energy efficiency or energy conservation measures, or a combination thereof, and for implementation of one or more such measures pursuant to such a contract between a State college and a qualified provider, entered into in accordance with the provisions of this section.

"Industry engineering standards" means recognized industry standards including, but not limited to, life cycle costing, the R.S. Means-estimated method developed by the R.S. Means Company, historical data, manufacturer's data, and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standards.
"Qualified provider" means a person or business capable of evaluating, recommending, designing, implementing, and installing energy efficiency or energy conservation measures pursuant to a guaranteed energy savings contract approved by a State college. Qualified providers shall either be certified by the Division of Property Management and Construction in the Department of the Treasury as eligible to participate in the formal competitive proposal process, or qualified under federal guidelines as an energy services company, and shall reasonably demonstrate that it is financially capable of meeting its obligations under the performance guarantees set forth in a guaranteed energy savings contract for the contract period.

b. Notwithstanding the provisions of the "State College Contracts Law," P.L.1986, c.43 (C.18A:64-52 et seq.), or any other law, rule, regulation, or order to the contrary, a State college may use competitive contracting for a period not to exceed 36 months following the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), to enter into a guaranteed energy savings contract with a qualified provider for a period of up to 15 years, or for a period of up to 20 years from the final installation of a project in the case of a lease purchase agreement for a combined heat and power facility or cogeneration facility, as defined in section 3 of P.L.1999, c.23 (C.48:3-51), in accordance with the provisions of this section and any guidelines or regulations adopted by the Director of Energy Savings.

A State college that uses competitive contracting for the purpose of entering into a guaranteed energy savings contract, may evaluate any proposal that meets the requirements of the State college and that is submitted in a timely manner by a qualified provider to the State college.

c. A State college shall select the qualified provider that best meets the needs of that State college, subject to the following:

(1) After reviewing the reports required to be provided pursuant to subsection c. of this section, a State college may enter into a guaranteed energy savings contract with a qualified provider if: (a) the State college finds that the amount it would spend on the energy efficiency or energy conservation measures recommended in the proposal would not exceed the amount to be saved in energy savings within a 15-year period from the date on which performance, or within a 20-year period from the final installation of a project in the case of a lease purchase agreement for a combined heat and power facility or cogeneration facility, as defined in section 3 of P.L.1999, c.23 (C.48:3-51), if the recommendations in the proposal were followed; and (b) the qualified provider provides a written guarantee in its proposal in favor of the State college that the amount of energy savings realized by the State college as a result of entering into the guaranteed energy savings contract with the qualified provider shall meet or
exceed the cost to the State college of the guaranteed energy savings contract;

(2) The guaranteed energy savings contract includes: (a) specifications requiring the qualified provider to demonstrate the qualifications, experience and training of its employees, contractors and subcontractors, including job training, education, and experience in successfully completing projects similar in size and scope; (b) other criteria to assure a reliable source of skilled and experienced labor to guarantee efficient and cost-effective completion of the work and safety by standardizing the terms and conditions of employment of labor on any project undertaken pursuant to this section; and (c) requirements to ensure labor stability and the payment of prevailing wages pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.), and to ensure that labor contractors and subcontractors provide and maintain formal training and apprenticeship programs and approved health care and pension benefit plans in accordance with P.L.1948, c.446 (C.34:1A-34 et seq.); and

(3) The State college shall contract with a third party entity consisting of qualified energy professionals and engineers, which is independent of the qualified providers submitting proposals to the State college, to verify, in accordance with guidelines adopted by the Director of Energy Savings pursuant to subsection d. of this section, that the projected energy savings to be realized from the proposals submitted to the State college are sufficient to cover the cost of the installation or implementation of the energy saving measures over the entire duration of the contract term.

d. Before a guaranteed energy savings contract may be awarded by a State college, the qualified provider shall provide a report as part of its proposal which shall summarize estimates of all costs of installation, maintenance, repairs and debt service and estimates of the amounts by which energy, or operating costs will be reduced. This report shall:

(1) be available for public inspection;

(2) contain a listing of employees, contractors, and subcontractors to be used by the qualified provider as the low bidder selected from the list of qualified contractors provided by the qualified provider with respect to the energy efficiency or energy conservation measures, or both;

(3) comply with the guidelines adopted by the Director of Energy Savings establishing a methodology for computing and comparing energy savings; and

(4) show evidence of financial stability and size that demonstrates the qualified provider’s capability to meet its obligations under the performance guarantee over the entire duration of the performance period.
e. A qualified provider to whom a guaranteed energy savings contract is awarded shall provide a sufficient bond to the State college for its faithful performance.

f. A State college may enter into a separate guaranteed energy savings contract with each qualified provider selected in accordance with the provisions of this section.

g. A guaranteed energy savings contract may provide for project financing that requires all payments, except any obligations that are incurred as a result of the termination of the contract prior to its scheduled expiration, to be made over a period of time. Each guaranteed energy savings contract shall provide that the project financing savings in any year are guaranteed to the extent necessary to make payments under the contract during that year.

h. A guaranteed energy savings contract shall include a written guarantee that energy savings shall meet or exceed the cost of the energy efficiency or energy conservation measures, or both, to be evaluated, recommended, designed, implemented, and installed under the project financed by such a contract.

i. Beginning with the second year of a guaranteed energy savings contract, and in each year thereafter, the qualified provider performing a guaranteed energy savings contract shall submit annual reports to the State college for each guaranteed energy savings contract between the qualified provider and that State college, to confirm the actual savings realized for the project, during the preceding 12-month period. This report, and the measurement of the savings, shall comply with the provisions of the United States Department of Energy's Federal Energy Management Program, which stipulates the means to measure and verify consumption based on metering, calculations, or short-term testing. In the event that the actual, annual verified savings are less than the annual amount of savings guaranteed by the qualified provider, the qualified provider shall pay the State college, or cause the State college to be paid, the difference between the guaranteed savings amount and the actual, verified amount. Measurement and verification costs may be billed separately outside of the base contract with the qualified provider or incorporated among other costs billed under the base contract, at the option of the State college. A State college may choose to waive the guarantee at any time during the duration of the contract at its option.

j. A guaranteed energy savings contract may provide for project financing, including tax exempt financing by a third party over a period of time not to exceed 15 years, or for a period not to exceed 20 years from the final installation of a project in the case of a lease purchase agreement with a developer of a combined heat and power or cogeneration project, or, if otherwise authorized by law, by the issuance of energy savings bonds as a refunding bond to fund all or part of the energy efficiency or energy conservation measures.
k. An improvement that is not directly related to an energy efficiency or energy conservation measure may be included in a guaranteed energy savings contract if:

(1) the total cost of the energy improvement does not exceed 15 percent of the total cost of the work to be performed under the guaranteed energy savings contract; and,

(2) the improvement is necessary to conform to a law, rule, regulation, or order adopted pursuant thereto, or an ordinance or resolution, as appropriate, or if an analysis within an approved proposal, or by the State college at the time of the award of the proposal, demonstrates that there is an economic advantage to the State college implementing the improvement as part of the guaranteed energy savings contract, and the savings justification for the improvement is documented by industry engineering standards.

1. A facility alteration required to properly implement other energy efficiency or energy conservation measures, or both, may be included as part of a guaranteed energy savings contract, in which case, notwithstanding any other provision of law, rule, regulation, or order to the contrary, the facility alteration may be undertaken or supervised by the qualified provider performing the guaranteed energy savings contract.

6. a. As used in this section:

"Allowable costs" means the equipment and project costs associated with energy efficiency and energy conservation measures that a county college reasonably believes will be incurred during the term of a guaranteed energy savings contract and that are documented by industry engineering standards.

"Competitive contracting," with respect to the procurement of specialized goods and services required to implement an energy efficiency or energy conservation measure, means the method of contracting for specialized goods and services in which formal proposals are solicited by a county college from vendors through a standardized request for proposal process utilizing an “RFP” model template as provided by the Department of Community Affairs in consultation with the Board of Public Utilities, and are evaluated by the county college utilizing the services of qualified energy professionals and engineers who shall be employed by the county college to independently verify the energy savings calculations in the proposals as prescribed in paragraph (3) of subsection c. of this section, and who shall assist the county college in the selection of the qualified provider creating the maximum savings potential, after which the county college may then award a contract to a vendor or vendors from among the formal competitive proposals received based upon the inclusion of all cost and cost savings considerations.

"Director of Energy Savings” means the person holding the position so designated and established within the Department of the Treasury pursuant to Executive Order No. 11 of 2006.
"Energy efficiency or energy conservation measure" means a program or facility alteration intended to reduce a county college's energy consumption or operating costs, and includes, but is not limited to:

1. Insulation of the building structure or systems within the building;
2. Installation of storm windows or doors, caulking or weather stripping, multi-glazed 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;
3. Installation of automated or computerized energy control systems;
4. Heating, ventilating or air conditioning system modification or replacement;
5. 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;
6. Installation of energy recovery systems;
7. Installation of systems that produce steam or forms of energy such as heat as well as electricity for use within a building or complex of buildings;
8. Implementation of energy efficiency or energy conservation measures that provide operating cost reductions based on life-cycle cost analysis;
9. Implementation of a training program or facility alteration that reduces energy consumption or reduces operating costs, including allowable costs, based on future reductions in labor costs or costs for contracted services;
10. A facility alteration that includes expenditures required to properly implement other energy conservation measures;
11. Implementation of a program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, load shedding, or use of alternative energy suppliers;
12. Installation of energy information and control systems that monitor consumption, redirect systems to optimal energy sources and manage energy-using equipment;
13. Indoor air quality improvements;
14. Installation of daylighting systems; and
15. Use of renewable or on-site distributed power generation systems.

"Energy savings" means a measured reduction in fuel, energy, or operating or maintenance costs resulting from the implementation of one or more energy efficiency or energy conservation measures, when compared with an established baseline of previous fuel, energy, water, or operating or maintenance costs, including, but not
limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed pursuant to a guaranteed energy savings contract. In the event that a county college has obtained an audit, the energy savings proposal need not conform to the results of the audit but shall use the audit as a guideline to assist in evaluating and securing energy cost reductions and shall be utilized productively to help guide prospective qualified providers to develop proposals.

"Guaranteed energy savings contract" or "guaranteed contract" means a contract between a county college and a qualified provider for the installation of energy efficiency or energy conservation measures, or a combination thereof, and for implementation of one or more such measures pursuant to such a contract between a county college and a qualified provider, entered into in accordance with the provisions of this section.

"Industry engineering standards" means recognized industry standards including, but not limited to, life cycle costing, the R.S. Means-estimated method developed by the R.S. Means Company, historical data, manufacturer's data, and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standards.

"Qualified provider" means a person or business capable of evaluating, recommending, designing, implementing, and installing energy efficiency or energy conservation measures pursuant to a guaranteed energy savings contract approved by a county college. Qualified providers shall either be certified by the Division of Property Management and Construction in the Department of the Treasury as eligible to participate in the formal competitive proposal process, or qualified under federal guidelines as an energy services company, and shall reasonably demonstrate that it is financially capable of meeting its obligations under the performance guarantees set forth in a guaranteed energy savings contract for the contract period.

b. Notwithstanding the provisions of the "County College Contracts Law," P.L.1982, c.189 (C.18A:64A-25.1 et seq.), or any other law, rule, regulation, or order to the contrary, a county college, may use competitive contracting for a period not to exceed 36 months following the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill), to enter into a guaranteed energy savings contract with a qualified provider for a period of up to 15 years, or for a period of up to 20 years from the final installation of a project in the case of a lease purchase agreement for a combined heat and power facility or cogeneration facility, as defined in section 3 of P.L.1999, c.23 (C.48:3-51), in accordance with the provisions of this section and any guidelines or regulations adopted by the Director of Energy Savings.

A county college that uses competitive contracting for the purpose of entering into a guaranteed energy savings contract, may
evaluate any proposal that meets the requirements of the county
college and that is submitted in a timely manner by a qualified
provider to the county college.
c. A county college shall select the qualified provider that best
meets the needs of that county college, subject to the following:
   (1) After reviewing the reports required to be provided pursuant
to subsection d. of this section, a county college may enter into a
guaranteed energy savings contract with a qualified provider if: (a)
the county college finds that the amount it would spend on the
energy efficiency or energy conservation measures recommended in
the proposal would not exceed the amount to be saved in energy
savings within a 15-year period from the date on which
performance, or within a 20-year period from the final installation
of a project in the case of a lease purchase agreement for a
combined heat and power facility or cogeneration facility, as
defined in section 3 of P.L.1999, c.23 (C.48:3-51), if the
recommendations in the proposal were followed; and (b) the
qualified provider provides a written guarantee in its proposal in
favor of the county college that the amount of energy savings
realized by the county college as a result of entering into the
guaranteed energy savings contract with the qualified provider shall
meet or exceed the cost to the county college of the guaranteed
energy savings contract;
   (2) The guaranteed energy savings contract includes: (a)
specifications requiring the qualified provider to demonstrate the
qualifications, experience and training of its employees, contractors
and subcontractors, including job training, education, and
experience in successfully completing projects similar in size and
scope; (b) other criteria to assure a reliable source of skilled and
experienced labor to guarantee efficient and cost-effective
completion of the work and safety by standardizing the terms and
conditions of employment of labor on any project undertaken
pursuant to this section; and (c) requirements to ensure labor
stability and the payment of prevailing wages pursuant to P.L.1963,
c.150 (C.34:11-56.25 et seq.), and to ensure that labor contractors
and subcontractors provide and maintain formal training and
apprenticeship programs and approved health care and pension
benefit plans in accordance with P.L.1948, c.446 (C.34:1A-34 et
seq.); and
   (3) The county college shall contract with a third party entity
consisting of qualified energy professionals and engineers, which is
independent of the qualified providers submitting proposals to the
county college, to verify, in accordance with guidelines adopted by
the Director of Energy Savings pursuant to subsection b. of this
section, that the projected energy savings to be realized from the
proposals submitted to the county college are sufficient to cover the
cost of the installation or implementation of the energy saving
measures over the entire duration of the contract term.
d. Before a guaranteed energy savings contract may be awarded by a county college, the qualified provider shall provide a report as part of its proposal which shall summarize estimates of all costs of installation, maintenance, repairs and debt service and estimates of the amounts by which energy, or operating costs will be reduced. This report shall:

1. be available for public inspection;
2. contain a listing of employees, contractors, and subcontractors to be used by the qualified provider as the low bidder selected from the list of qualified contractors provided by the qualified provider with respect to the energy efficiency or energy conservation measures, or both;
3. comply with the guidelines adopted by the Director of Energy Savings establishing a methodology for computing and comparing energy savings; and
4. show evidence of financial stability and size that demonstrates the qualified provider’s capability to meet its obligations under the performance guarantee over the entire duration of the performance period.

e. A qualified provider to whom a guaranteed energy savings contract is awarded shall provide a sufficient bond to the county college for its faithful performance.

f. A county college may enter into a separate guaranteed energy savings contract with each qualified provider selected in accordance with the provisions of this section.

g. A guaranteed energy savings contract may provide for project financing that requires all payments, except any obligations that are incurred as a result of the termination of the contract prior to its scheduled expiration, to be made over a period of time. Each guaranteed energy savings contract shall provide that the project financing savings in any year are guaranteed to the extent necessary to make payments under the contract during that year.

h. A guaranteed energy savings contract shall include a written guarantee that energy savings shall meet or exceed the cost of the energy efficiency or energy conservation measures, or both, to be evaluated, recommended, designed, implemented, and installed under the project financed by such a contract.

i. Beginning with the second year of a guaranteed energy savings contract, and in each year thereafter, the qualified provider performing a guaranteed energy savings contract shall submit annual reports to the county college for each guaranteed energy savings contract between the qualified provider and that county college, to confirm the actual savings realized for the project, during the preceding 12-month period. This report, and the measurement of the savings, shall comply with the provisions of the United States Department of Energy's Federal Energy Management Program, which stipulates the means to measure and verify consumption based on metering, calculations, or short-term testing.
In the event that the actual, annual verified savings are less than the annual amount of savings guaranteed by the qualified provider, the qualified provider shall pay the county college, or cause the county college to be paid, the difference between the guaranteed savings amount and the actual, verified amount. Measurement and verification costs may be billed separately outside of the base contract with the qualified provider or incorporated among other costs billed under the base contract, at the option of the county college. A county college may choose to waive the guarantee at any time during the duration of the contract at its option.

j. A guaranteed energy savings contract may provide for project financing, including tax exempt financing by a third party over a period of time not to exceed 15 years, or for a period not to exceed 20 years from the final installation of a project in the case of a lease purchase agreement with a developer of a combined heat and power or cogeneration project, or, if otherwise authorized by law, by the issuance of energy savings bonds as a refunding bond to fund all or part of the energy efficiency or energy conservation measures.

k. An improvement that is not directly related to an energy efficiency or energy conservation measure may be included in a guaranteed energy savings contract if:

1) the total cost of the energy improvement does not exceed 15 percent of the total cost of the work to be performed under the guaranteed energy savings contract; and,

2) the improvement is necessary to conform to a law, rule, regulation, or order adopted pursuant thereto, or an ordinance or resolution, as appropriate, or if an analysis within an approved proposal, or by the county college at the time of the award of the proposal, demonstrates that there is an economic advantage to the county college implementing the improvement as part of the guaranteed energy savings contract, and the savings justification for the improvement is documented by industry engineering standards.

l. A facility alteration required to properly implement other energy efficiency or energy conservation measures, or both, may be included as part of a guaranteed energy savings contract, in which case, notwithstanding any other provision of law, rule, regulation, or order to the contrary, the facility alteration may be undertaken or supervised by the qualified provider performing the guaranteed energy savings contract.

7. a. As used in this section:

"Allowable costs" means the equipment and project costs associated with energy efficiency and energy conservation measures that a public entity reasonably believes will be incurred during the term of a guaranteed energy savings contract and that are documented by industry engineering standards.
"Competitive contracting," with respect to the procurement of specialized goods and services required to implement an energy efficiency or energy conservation measure, means the method of contracting for specialized goods and services in which formal proposals are solicited by a public entity from vendors through a standardized request for proposal process utilizing an “RFP” model template as provided by the Department of Community Affairs in consultation with the Board of Public Utilities, and are evaluated by the public entity utilizing the services of qualified energy professionals and engineers who shall be employed by the public entity to independently verify the energy savings calculations in the proposals as prescribed in paragraph (3) of subsection c. of this section, and who shall assist the public entity in the selection of the qualified provider creating the maximum savings potential, after which the public entity may then award a contract to a vendor or vendors from among the formal competitive proposals received based upon the inclusion of all cost and cost savings considerations.

"Director of Energy Savings" means the person holding the position so designated and established within the Department of the Treasury pursuant to Executive Order No. 11 of 2006.

"Energy efficiency or energy conservation measure" means a program or facility alteration intended to reduce a public entity's energy consumption or operating costs, and includes, but is not limited to:

1. insulation of the building structure or systems within the building;
2. installation of storm windows or doors, caulking or weather stripping, multi-glazed 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;
3. installation of automated or computerized energy control systems;
4. heating, ventilating or air conditioning system modification or replacement;
5. 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;
6. installation of energy recovery systems;
7. installation of systems that produce steam or forms of energy such as heat as well as electricity for use within a building or complex of buildings;
8. implementation of energy efficiency or energy conservation measures that provide operating cost reductions based on life-cycle cost analysis;
(9) implementation of a training program or facility alteration that reduces energy consumption or reduces operating costs, including allowable costs, based on future reductions in labor costs or costs for contracted services;

(10) a facility alteration that includes expenditures required to properly implement other energy conservation measures;

(11) implementation of a program to reduce energy costs through rate adjustments, load shifting to reduce peak demand, load shedding, or use of alternative energy suppliers;

(12) installation of energy information and control systems that monitor consumption, redirect systems to optimal energy sources and manage energy-using equipment;

(13) indoor air quality improvements;

(14) installation of daylighting systems; and

(15) use of renewable or on-site distributed power generation systems.

"Energy savings" means a measured reduction in fuel, energy, or operating or maintenance costs resulting from the implementation of one or more energy efficiency or energy conservation measures, when compared with an established baseline of previous fuel, energy, water, or operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed pursuant to a guaranteed energy savings contract. In the event that a public entity has obtained an audit, the energy savings proposal need not conform to the results of the audit but shall use the audit as a guideline to assist in evaluating and securing energy cost reductions and shall be utilized productively to help guide prospective qualified providers to develop proposals.

"Guaranteed energy savings contract" or "guaranteed contract" means a contract between a public entity and a qualified provider for the installation of energy efficiency or energy conservation measures, or a combination thereof, and for implementation of one or more such measures pursuant to such a contract between a public entity and a qualified provider, entered into in accordance with the provisions of this section.

"Industry engineering standards" means recognized industry standards including, but not limited to, life cycle costing, the R.S. Means-estimated method developed by the R.S. Means Company, historical data, manufacturer's data, and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standards.

"Public entity" means a governmental entity in this State that is not a “State agency” as defined in section 2 of P.L. 1971, c.198 (C.40A:11-2), a “contracting unit” as defined in section 2 of P.L.1971, c.198 (C.40A:11-2), a “board of education” as defined in chapter 18A of Title 18A of the New Jersey Statutes (N.J.S.18A:18A-1 et seq.), a “State college” as

"Qualified provider" means a person or business capable of evaluating, recommending, designing, implementing, and installing energy efficiency or energy conservation measures pursuant to a guaranteed energy savings contract approved by a public entity. Qualified providers shall either be certified by the Division of Property Management and Construction in the Department of the Treasury as eligible to participate in the formal competitive proposal process, or qualified under federal guidelines as an energy services company, and shall reasonably demonstrate that it is financially capable of meeting its obligations under the performance guarantees set forth in a guaranteed energy savings contract for the contract period.

b. Notwithstanding the provisions of any other law or any rule, regulation, or order to the contrary, a public entity, may use competitive contracting for a period not to exceed 36 months following the effective date of P.L.  , c.  (pending before the Legislature as this bill), to enter into a guaranteed energy savings contract with a qualified provider for a period of up to 15 years, or for a period of up to 20 years from the final installation of a project in the case of a lease purchase agreement for a combined heat and power facility or cogeneration facility, as defined in section 3 of P.L.1999, c.23 (C.48:3-51), in accordance with the provisions of this section and any guidelines or regulations adopted by the Director of Energy Savings.

A public entity that uses competitive contracting for the purpose of entering into a guaranteed energy savings contract, may evaluate any proposal that meets the requirements of the public entity and that is submitted in a timely manner by a qualified provider to the public entity.

c. A public entity shall select the qualified provider that best meets the needs of that public entity, subject to the following:

(1) After reviewing the reports required to be provided pursuant to subsection d. of this section, a public entity may enter into a guaranteed energy savings contract with a qualified provider if: (a) the public entity finds that the amount it would spend on the energy efficiency or energy conservation measures recommended in the proposal would not exceed the amount to be saved in energy savings within a 15-year period from the date on which performance, or within a 20-year period from the final installation of a project in the case of a lease purchase agreement for a combined heat and power facility or cogeneration facility, as defined in section 3 of P.L.1999, c.23 (C.48:3-51), if the recommendations in the proposal were followed; and (b) the qualified provider provides a written guarantee in its proposal in favor of the public entity that the amount of energy savings realized
by the public entity as a result of entering into the guaranteed energy savings contract with the qualified provider shall meet or exceed the cost to the public entity of the guaranteed energy savings contract;

(2) The guaranteed energy savings contract includes: (a) specifications requiring the qualified provider to demonstrate the qualifications, experience and training of its employees, contractors and subcontractors, including job training, education, and experience in successfully completing projects similar in size and scope; (b) other criteria to assure a reliable source of skilled and experienced labor to guarantee efficient and cost-effective completion of the work and safety by standardizing the terms and conditions of employment of labor on any project undertaken pursuant to this section; and (c) requirements to ensure labor stability and the payment of prevailing wages pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.), and to ensure that labor contractors and subcontractors provide and maintain formal training and apprenticeship programs and approved health care and pension benefit plans in accordance with P.L.1948, c.446 (C.34:1A-34 et seq.); and

(3) The public entity shall contract with a third party entity consisting of qualified energy professionals and engineers, which is independent of the qualified providers submitting proposals to the public entity, to verify, in accordance with guidelines adopted by the Director of Energy Savings pursuant to subsection b. of this section, that the projected energy savings to be realized from the proposals submitted to the public entity are sufficient to cover the cost of the installation or implementation of the energy saving measures over the entire duration of the contract term.

d. Before a guaranteed energy savings contract may be awarded by a public entity, the qualified provider shall provide a report as part of its proposal which shall summarize estimates of all costs of installation, maintenance, repairs and debt service and estimates of the amounts by which energy, or operating costs will be reduced. This report shall:

(1) be available for public inspection;
(2) contain a listing of employees, contractors, and subcontractors to be used by the qualified provider as the low bidder selected from the list of qualified contractors provided by the qualified provider with respect to the energy efficiency or energy conservation measures, or both;
(3) comply with the guidelines adopted by the Director of Energy Savings establishing a methodology for computing and comparing energy savings; and
(4) show evidence of financial stability and size that demonstrates the qualified provider’s capability to meet its obligations under the performance guarantee over the entire duration of the performance period.
e. A qualified provider to whom a guaranteed energy savings contract is awarded shall provide a sufficient bond to the public entity for its faithful performance.

f. A public entity may enter into a separate guaranteed energy savings contract with each qualified provider selected in accordance with the provisions of this section.

g. A guaranteed energy savings contract may provide for project financing that requires all payments, except any obligations that are incurred as a result of the termination of the contract prior to its scheduled expiration, to be made over a period of time. Each guaranteed energy savings contract shall provide that the project financing savings in any year are guaranteed to the extent necessary to make payments under the contract during that year.

h. A guaranteed energy savings contract shall include a written guarantee that energy savings shall meet or exceed the cost of the energy efficiency or energy conservation measures, or both, to be evaluated, recommended, designed, implemented, and installed under the project financed by such a contract.

i. Beginning with the second year of a guaranteed energy savings contract, and in each year thereafter, the qualified provider performing a guaranteed energy savings contract shall submit annual reports to the public entity for each guaranteed energy savings contract between the qualified provider and that public entity, to confirm the actual savings realized for the project, during the preceding 12-month period. This report, and the measurement of the savings, shall comply with the provisions of the United States Department of Energy's Federal Energy Management Program, which stipulates the means to measure and verify consumption based on metering, calculations, or short-term testing. In the event that the actual, annual verified savings are less than the annual amount of savings guaranteed by the qualified provider, the qualified provider shall pay the public entity, or cause the public entity to be paid, the difference between the guaranteed savings amount and the actual, verified amount. Measurement and verification costs may be billed separately outside of the base contract with the qualified provider or incorporated among other costs billed under the base contract, at the option of the public entity. A public entity may choose to waive the guarantee at any time during the duration of the contract at its option.

j. A guaranteed energy savings contract may provide for project financing, including tax exempt financing by a third party over a period of time not to exceed 15 years, or for a period not to exceed 20 years from the final installation of a project in the case of a lease purchase agreement with a developer of a combined heat and power or cogeneration project, or, if otherwise authorized by law, by the issuance of energy savings bonds as a refunding bond to fund all or part of the energy efficiency or energy conservation measures.
k. An improvement that is not directly related to an energy efficiency or energy conservation measure may be included in a guaranteed energy savings contract if:

1. the total cost of the energy improvement does not exceed 15 percent of the total cost of the work to be performed under the guaranteed energy savings contract; and,
2. the improvement is necessary to conform to a law, rule, regulation, or order adopted pursuant thereto, or an ordinance or resolution, as appropriate, or if an analysis within an approved proposal, or by the public entity at the time of the award of the proposal, demonstrates that there is an economic advantage to the public entity implementing the improvement as part of the guaranteed energy savings contract, and the savings justification for the improvement is documented by industry engineering standards.

l. A facility alteration required to properly implement other energy efficiency or energy conservation measures, or both, may be included as part of a guaranteed energy savings contract, in which case, notwithstanding any other provision of law, rule, regulation, or order to the contrary, the facility alteration may be undertaken or supervised by the qualified provider performing the guaranteed energy savings contract.

8. This act shall take effect immediately.

STATEMENT

This bill establishes a 36-month temporary period during which time State contracting agencies, local contracting units, boards of education, public institutions of higher education, and other public entities shall be allowed to enter into guaranteed energy savings contracts through competitive contracting, notwithstanding the provisions of the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), or any other law, rule, regulation or order to the contrary.

A "guaranteed energy savings contract" is defined to mean a contract, entered into after the effective date of the bill, between a public entity and a qualified provider for the installation and implementation of energy efficiency or energy conservation measures, or a combination thereof.

The bill provides that a public entity may only enter into a guaranteed energy savings contract with a qualified provider, if an independent group of energy professionals and engineers verifies that the cost of the energy efficiency or energy conservation measures will not exceed the amount to be saved over the life of the contract. The bill requires a qualified provider to submit annual reports confirming the actual savings realized by a project and to pay the public entity the difference between the guaranteed savings
amount and the actual, verified savings if the actual savings are less
the guaranteed savings amount.