

COMMITTEE SUBSTITUTE

FOR

H. B. 2709

(BY DELEGATES CANTERBURY, HAMILTON, PERRY, SHAVER,
WALKER AND HARTMAN)

[Originating in the Committee on Education.]
(February 10, 2011)

A BILL to amend and reenact §18-5-9a of the Code of West Virginia, 1931, as amended, relating to lease purchase contracts for energy-saving measures and energy-saving contracts entered into by county boards; and allowing these contracts to have a term of up to fifteen years.

Be it enacted by the Legislature of West Virginia:

That §18-5-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-9a. Energy-savings contracts.

1 (a) For the purposes of this section:

2 (1) “Energy-conservation measures” means goods or
3 services, or both, to reduce energy consumption operating
4 costs of school facilities. ~~They~~ These include, but are not
5 limited to, installation of two or more of the following:

6 (A) Insulation of a building structure and systems within
7 a building;

8 (B) Storm windows or doors, caulking or weather
9 stripping, ~~multiglazed~~ multi-glazed windows or doors,
10 heat-absorbing or heat-reflective glazed and coated window
11 or door systems or other window or door modifications that
12 reduce energy consumption;

13 (C) Automatic energy control systems;

14 (D) Heating, ventilating or air conditioning systems,
15 including modifications or replacements;

16 (E) Replacement or modification of lighting fixtures to
17 increase energy efficiency;

18 (F) Energy recovery systems;

19 (G) ~~Cogeneration~~ Co-generation systems that produce
20 steam or another form of energy for use by the county board
21 of education in a building or complex of buildings owned by
22 the Board of Education; or

23 (H) Energy-conservation maintenance measures that
24 provide long-term operating cost reductions of the building's
25 present cost of operation.

26 (2) "Energy-savings contract" means a contract for the
27 evaluation and recommendation of energy operations
28 conservation measures and for implementation of one or
29 more such measures. The contract shall provide that
30 payments, except obligations upon termination of the contract
31 before its expiration, are to be made over time. A county
32 board of education may supplement these payments with
33 federal, state or local funds to reduce the annual cost or to
34 lower the initial amount to be financed.

35 (3) "Qualified provider" means a person, firm or
36 corporation experienced in the design, implementation and
37 installation of energy-conservation measures.

38 (b) County boards of education are hereby authorized to
39 enter into performance-based contracts with qualified

40 providers of energy-conservation measures for the purpose of
41 reducing energy operating costs of school buildings.

42 (c) A board of education may enter into an
43 energy-savings contract with a qualified provider to ~~reduce~~
44 ~~energy operating costs~~ significantly reduce energy operating
45 costs. Before entering into such a contract or before the
46 installation of equipment, modifications or remodeling to be
47 furnished under such a contract, the qualified provider shall
48 first issue a proposal summarizing the scope of work to be
49 performed. Such a proposal shall contain estimates of all
50 costs of installation, modifications or remodeling including
51 the costs of design, engineering, installation, maintenance,
52 repairs or debt service as well as estimates of the amounts by
53 which energy operating costs will be reduced. If the board
54 finds, after receiving the proposal, that the proposal includes
55 more than one energy-conservation measure designed to save
56 energy operating costs, the board may enter into a contract
57 with the provider pursuant to this section.

58 (d) An energy-savings contract ~~must~~ shall include the
59 following:

60 (1) A guarantee of a specific minimum amount of money
61 that the board will save in energy operating costs each year
62 during the term of the contract; and

63 (2) A statement of all costs of energy-conservation
64 measures including the costs of design, engineering,
65 installation, maintenance, repairs and operations.

66 (e) An energy-savings contract which is
67 performance-based and includes a guarantee of savings and
68 a comprehensive approach of energy-conservation measures
69 for improving comfort is subject to competitive bidding
70 requirements. ~~Provided, That~~ The requirements of article
71 five-a, chapter twenty-one of this code as to prevailing wage
72 rates shall apply to the construction and installation work
73 performed under such a contract.

74 (f) A board may enter into a “lease with an option to
75 purchase” contract for the purchase and installation of
76 energy-conservation measures if the term of the lease does
77 not exceed ~~ten~~ fifteen years and the lease contract includes
78 the provisions hereinafter contained in subsection (g) and
79 meets federal tax requirements for tax-exempt municipal
80 leasing or long-term financing.

81 (g) An energy-savings contract may extend beyond the
82 fiscal year in which it first becomes effective *Provided*,
83 except that such a contract may not exceed a ~~ten~~ fifteen-year
84 term ~~*Provided, however, That such long term contract and*~~
85 shall be void unless such agreement ~~shall provide that the~~
86 board shall have the option thereunder during each fiscal year
87 ~~of the contract to terminate the agreement.~~ provides the board
88 the option to terminate the agreement during each fiscal year
89 of the contract. The board may include in its annual budget
90 for each fiscal year any amounts payable under long-term
91 energy-savings contracts during that fiscal year. *Provided*
92 ~~*further, That*~~

93 (h) Nothing contained ~~herein shall be deemed to require~~
94 ~~or permit~~ in this section requires or permits the replacement
95 of jobs performed by service personnel employed by the local
96 school board pursuant to sections eight and eight-a, article
97 four, chapter eighteen-a of the code, as amended.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.