

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 203

BY SENATORS BOSO AND BLAIR

[Introduced February 9, 2017; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §5A-3B-1 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §18-5-9a of said code, all relating to defining “professional services”
 3 with respect to energy saving contracts.

Be it enacted by the Legislature of West Virginia:

1 That §5A-3B-1 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §18-5-9a of said code be amended and reenacted, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3B. ENERGY-SAVINGS CONTRACTS.

§5A-3B-1. Definitions.

1 As used in this article:

2 (a) “Agency” means any state department, division, office, commission, authority, board
 3 or other unit authorized by law to enter into contracts for the provision of goods or services;

4 (b) “Energy-conservation measures” means goods or services, or both, to reduce energy
 5 consumption operating costs of agency facilities. They include, but are not limited to, installation
 6 of one or more of the following:

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

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

11 (3) Automatic energy control systems;

12 (4) Heating, ventilating or air conditioning systems, including modifications or
 13 replacements;

14 (5) Replacement or modification of lighting fixtures to increase energy efficiency;

15 (6) Energy recovery systems;

16 (7) Cogeneration systems that produce steam or another form of energy for use by any

17 agency in a building or complex of buildings owned by the agency; or

18 (8) Energy-conservation maintenance measures that provide long-term operating cost
19 reductions of the building's present cost of operation.

20 (c) "Energy-savings contract" means a performance-based contract for the evaluation and
21 recommendation of energy operations conservation measures and for implementation of one or
22 more measures.

23 (d) "Professional services" mean those services provided by a formally certified or licensed
24 member of a professional body, including, but not limited to, those provided by lawyers, architects,
25 engineers, and accountants.

26 ~~(d)~~ (e) "Qualified provider" means a person, firm or corporation experienced in the design,
27 implementation and installation of energy-conservation measures.

CHAPTER 18. EDUCATION.

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 services, or both, to reduce energy
3 consumption operating costs of school facilities. These include, but are not limited to, installation
4 of two or more of the following:

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

6 (B) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors,
7 heat-absorbing or heat-reflective glazed and coated window or door systems or other window or
8 door modifications that reduce energy consumption;

9 (C) Automatic energy control systems;

10 (D) Heating, ventilating or air conditioning systems, including modifications or
11 replacements;

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

13 (F) Energy recovery systems;

14 (G) Cogeneration systems that produce steam or another form of energy for use by the
15 county board of education in a building or complex of buildings owned by the board of education;

16 or

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

19 (2) "Energy-savings contract" means a contract for the evaluation and recommendation of
20 energy operations conservation measures and for implementation of one or more such measures.

21 The contract shall provide that payments, except obligations upon termination of the contract
22 before its expiration, are to be made over time. A county board of education may supplement
23 these payments with federal, state or local funds to reduce the annual cost or to lower the initial
24 amount to be financed.

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

27 (4) "Professional services" mean those services provided by a formally certified or licensed
28 member of a professional body, including, but not limited to, those provided by lawyers, architects,
29 engineers and accountants.

30 (b) County boards of education are hereby authorized to enter into performance-based
31 contracts with qualified providers of energy-conservation measures for the purpose of reducing
32 energy operating costs of school buildings.

33 (c) A board of education may enter into an energy-savings contract with a qualified
34 provider to significantly reduce energy operating costs. Before entering into such a contract or
35 before the installation of equipment, modifications or remodeling to be furnished under such a
36 contract, the qualified provider shall first issue a proposal summarizing the scope of work to be
37 performed. Such a proposal shall contain estimates of all costs of installation, modifications or

38 remodeling including the costs of design, engineering, installation, maintenance, repairs or debt
39 service as well as estimates of the amounts by which energy operating costs will be reduced. If
40 the board finds, after receiving the proposal, that the proposal includes more than one energy-
41 conservation measure designed to save energy operating costs, the board may enter into a
42 contract with the provider pursuant to this section.

43 (d) An energy-savings contract shall include the following:

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

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

48 (e) An energy-savings contract which is performance-based and includes a guarantee of
49 savings and a comprehensive approach of energy-conservation measures for improving comfort
50 is subject to competitive bidding requirements. The requirements of article five-a, chapter twenty-
51 one of this code as to prevailing wage rates shall apply to the construction and installation work
52 performed under such a contract.

53 (f) A board may enter into a "lease with an option to purchase" contract for the purchase
54 and installation of energy-conservation measures if the term of the lease does not exceed fifteen
55 years and the lease contract includes the provisions hereinafter contained in subsection (g) and
56 meets federal tax requirements for tax-exempt municipal leasing or long-term financing.

57 (g) An energy-savings contract may extend beyond the fiscal year in which it first becomes
58 effective except that such a contract may not exceed a fifteen-year term and shall be void unless
59 such agreement provides the board the option to terminate the agreement during each fiscal year
60 of the contract. The board may include in its annual budget for each fiscal year any amounts
61 payable under long-term energy-savings contracts during that fiscal year.

62 (h) Nothing contained in this section requires or permits the replacement of jobs performed
63 by service personnel employed by the local school board pursuant to sections eight and eight-a,

64 article four, chapter eighteen-a of the code, as amended.

NOTE: The purpose of this bill is to define professional services with respect to energy saving contracts.

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