

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

### **Introduced**

## **House Bill 2972**

BY DELEGATES FLEISCHAUER, MILEY, PYLES, WALKER

DISERIO, CAPUTO, ANGELUCCI, S. BROWN,

SWARTZMILLER, LOVEJOY AND BATES

[Introduced February 11, 2019; referred to the  
Committee on Government Organization then

Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §5B-2J-1, §5B-2J-2, §5B-2J-3, §5B-2J-4, §5B-2J-5, §5B-2J-6, and §5B-2J-7,  
 3 all relating to authorizing local units of government to adopt local energy efficiency  
 4 partnership programs and to create districts to promote use of energy efficiency  
 5 improvements by owners of certain real property; providing for financing of programs  
 6 through voluntary property assessments, commercial lending and other means;  
 7 authorizing local unit of government to issue bonds, notes and other evidences of  
 8 indebtedness and to pay the cost of energy efficiency improvements from the proceeds  
 9 thereof; providing for repayment of bonds, notes and other evidences of indebtedness;  
 10 authorizing certain fees; prescribing the powers and duties of certain governmental  
 11 officers and entities; and providing remedies.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 2J. LOCAL ENERGY EFFICIENCY PARTNERSHIP ACT.**

**§5B-2J-1. Short title.**

1 This article shall be known and may be cited as the Local Energy Efficiency Partnership  
 2 Act.

**§5B-2J-2. Definitions.**

1 As used in this article:

2 (1) "District" means a district created under a local energy efficiency partnership program  
 3 by a local unit of government that lies within the local unit of government's jurisdictional  
 4 boundaries. A local unit of government may create more than one district under the program, and  
 5 districts may be separate, overlapping or coterminous.

6 (2) "Energy efficiency improvement" means equipment, devices or materials intended to  
 7 reduce the consumption of energy while maintaining or improving the existing level of  
 8 functionality, including;

9 (A) Insulation in walls, roofs, floors, foundations or heating and cooling distribution

10 systems;

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

14 (C) Automated energy control systems;

15 (D) Heating, ventilating or air conditioning and distribution system modifications or  
16 replacements;

17 (E) Caulking, weather stripping and air sealing;

18 (F) Replacement or modification of lighting fixtures to reduce the energy use of the lighting  
19 system;

20 (G) Energy recovery systems;

21 (H) Daylighting systems;

22 (I) Installation or upgrade of electrical wiring or outlets to charge a motor vehicle that is  
23 fully or partially powered by electricity;

24 (J) Measures to reduce the usage of water or increases the efficiency of water usage;

25 (K) Any other installation or modification of equipment, devices or materials approved as  
26 a utility cost-savings measure by the governing body, excluding any and all energy-generating  
27 equipment.

28 (3) "Energy project" means the installation or modification of an energy efficiency  
29 improvement.

30 (4) "Governing body" means the county commission of a county, or the council or other  
31 similar elected legislative body of a municipality.

32 (5) "Local unit of government" means a county or municipality.

33 (6) "Person" means an individual, firm, partnership, association, corporation,  
34 unincorporated joint venture or trust, organized, permitted or existing under the laws of this state  
35 or any other state, including a federal corporation, or a combination thereof. However, "person"

36 does not include a local unit of government.

37 (7) "Property" means privately-owned commercial or industrial real property located within  
38 the local unit of government.

39 (8) "Local energy efficiency partnership program" or "program" means a program as  
40 described in §5B-2J-3 of this code.

41 (9) "Record owner" means the person or persons possessed of the most recent fee title  
42 or land contract vendee's interest in property as shown by the records of the clerk of the county  
43 commission.

**§5B-2J-3. Establishment of local energy efficiency partnership program.**

1 (a) Pursuant to the procedures set forth in this section, a local unit of government may  
2 establish a local energy efficiency partnership program and may, from time to time, create a  
3 district or districts under the program.

4 (b) Under a program, the local unit of government may enter into a contract with the record  
5 owner of property within a district to finance or refinance one or more energy projects on the  
6 property. The contract may provide for the repayment of the cost of an energy project that is  
7 determined to be cost-effective through assessments upon the property benefitted. The financing  
8 or refinancing may include the cost of materials and labor necessary for installation, permit fees,  
9 inspection fees, application and administrative fees, bank fees and all other fees that may be  
10 incurred by the record owner pursuant to the installation on a specific or pro rata basis, as  
11 determined by the local unit of government.

12 (c) To establish a local energy efficiency partnership program, the governing body of a  
13 local unit of government shall take the following actions in the following order:

14 (1) Adopt a resolution of intent that includes all the following:

15 (A) A finding that the financing of energy projects is a valid public purpose;

16 (B) A statement of intent to provide funds for energy projects that are determined to be  
17 cost-effective, which may be repaid by assessments on the property benefitted, with the

18 agreement of the record owners;

19 (C) A description of the proposed arrangements for financing the program;

20 (D) The types of energy projects that may be financed;

21 (E) Reference to a report on the proposed program as described in §5B-2J-4 of this code,

22 and a location where the report is available pursuant to the section; and

23 (F) The time and place for a public hearing on the proposed program;

24 (2) Hold a public hearing at which the public may comment on the proposed program,  
25 including the report required by §5B-2J-4 of this code;

26 (3) Adopt a resolution establishing the program and setting forth its terms and conditions,  
27 including all the following:

28 (A) Matters required by §5B-2J-4 of this code to be included in the report; for this purpose,  
29 the resolution may incorporate the report or an amended version thereof by reference; and

30 (B) A description of which aspects of the program may be amended without a new public  
31 hearing and which aspects may be amended only after a new public hearing is held.

32 (d) A local energy efficiency partnership program may be amended by resolution of the  
33 governing body. Adoption of the resolution shall be preceded by a public hearing if required  
34 pursuant to §5B-2J-3(c)(3) of this code.

**§5B-2J-4. Report requirements on proposed local energy efficiency partnership program.**

1 (a) The report on the proposed program required under §5B-2J-3 of this code shall include  
2 all the following:

3 (1) A form of contract between the local unit of government and record owner governing  
4 the terms and conditions of financing and assessment under the program;

5 (2) Identification of an official authorized to enter into a program contract on behalf of the  
6 local unit of government;

7 (3) A maximum aggregate annual dollar amount for all financing to be provided by the  
8 local unit of government under the program;

9           (4) An application process and eligibility requirements for financing energy projects under  
10 the program;

11           (5) A method for determining interest rates on assessment installments, repayment  
12 periods and the maximum amount of an assessment;

13           (6) Explanation of how assessments will be made and collected consistent with §5B-2J-5  
14 of this code;

15           (7) A plan for raising capital to finance improvements under the program. The plan may  
16 include any of the following:

17           (A) The sale of bonds or notes, subject to appropriate laws and rules;

18           (B) Amounts to be advanced by the local unit of government through funds available to it  
19 from any other source; or

20           (C) Owner-arranged financing from a commercial lender; under owner-arranged financing,  
21 the local unit of government may impose an assessment pursuant to §5B-2J-5 of this code and  
22 forward payments to the commercial lender or the record owner may pay the commercial lender  
23 directly;

24           (8) Information regarding all of the following, to the extent known, or procedures to  
25 determine the following in the future:

26           (A) Any reserve fund or funds to be used as security for bonds or notes described in §5B-  
27 2J-4(a)(7)of this code;

28           (B) Any application, administration or other program fees to be charged to record owners  
29 participating in the program that will be used to finance costs incurred by the local unit of  
30 government as a result of the program;

31           (9) A requirement that the term of an assessment not exceed the useful life of the energy  
32 project paid for by the assessment;

33           (10) A requirement for an appropriate ratio of the amount of the assessment to the  
34 assessed value of the property;

35 (11) A requirement that the record owner of property subject to a mortgage or deed of trust  
36 obtain written consent from the mortgage or deed of trust holder before participating in the  
37 program;

38 (12) Provisions for marketing and participant education;

39 (13) Provisions for adequate debt service reserve fund;

40 (14) Quality assurance and antifraud measures;

41 (15) A requirement that a baseline energy audit or analysis be conducted before an energy  
42 project is undertaken, to establish future energy savings and cost-effectiveness of the project.  
43 After the energy project is completed, the local unit of government shall obtain verification that  
44 the energy efficiency improvement was properly installed and is operating as intended;

45 (16) For an energy project financed with more than \$250,000 in assessments, both of the  
46 following:

47 (A) A requirement for ongoing measurements that establish the savings realized by the  
48 record owner from the energy project; and

49 (B) A requirement that, in the contract for installation of the energy project, the contractor  
50 guarantee to the record owner that the energy project will achieve a savings-to-investment ratio  
51 greater than one and agree to pay the record owner, on an annual basis, any shortfall in savings  
52 below this level.

53 (b) The local unit of government shall make the report available for review on the local unit  
54 of government's website or at the office of the clerk or the official authorized to enter contracts on  
55 behalf of the local unit of government under the local energy efficiency partnership program.

56 (c) If an energy efficiency project is implemented under this act, it must contact the local  
57 electric distribution utility and take advantage of any utility-sponsored initiatives, programs,  
58 incentives or rebates that may be available for the project, and any energy savings realized by  
59 the project are to be counted toward any energy efficiency commitments the utility may have.

60 (d) The local unit of government shall submit a quarterly report to the appropriate electric

61 distribution utility that includes, but is not limited to, both of the following:

62 (1) The total number and a description of each new and ongoing energy project located  
63 within the district that produces energy savings;

64 (2) Any additional information available to the municipality that the electric distribution  
65 utility needs in order to evaluate, measure and verify energy savings from such projects.

**§5B-2J-5. Assessment imposed under a local energy efficiency partnership program.**

1 (a) A local unit of government may impose an assessment under a local energy efficiency  
2 partnership program only pursuant to a written contract with the record owner of the property to  
3 be assessed.

4 (b) Before entering into a contract with a record owner under a program, the local unit of  
5 government shall verify all of the following:

6 (1) That there are no delinquent taxes, special assessments or water or sewer charges on  
7 the property;

8 (2) That there are no delinquent assessments on the property under a local energy  
9 efficiency partnership program;

10 (3) That there are no delinquent payments on loans secured by a mortgage or deed of  
11 trust lien on the property;

12 (4) That the property owner is not insolvent or in bankruptcy proceedings; and

13 (5) That the title of the benefitted property is not in dispute.

14 (c) An assessment imposed under a local energy efficiency partnership program, including  
15 any interest on the assessment and any penalty, is a lien against the property on which the  
16 assessment is imposed until the assessment, including any interest or penalty, is paid in full. The  
17 lien runs with the property and has the same priority and status as other property tax and  
18 assessment liens. The local unit of government has all rights in the case of delinquency in the  
19 payment of an assessment as it does with respect to delinquent property taxes. When the  
20 assessment, including any interest and penalty, is paid, the lien shall be removed from the



21 property.

22 (d) Notwithstanding §5B-2J-5(c) of this code, the assessment has priority over any  
23 previously recorded mortgage or deed of trust lien only if a written subordination agreement, in a  
24 form and substance acceptable to each prior lienholder in its sole and exclusive discretion, is  
25 executed by the holder of each mortgage or deed of trust lien on the property and recorded with  
26 the assessment in the land records where the property is located.

27 (e) Installments of assessments due under a program shall be included in each property  
28 tax bill and shall be collected at the same time and in the same manner as property taxes collected  
29 according to §11A-1-1 et seq. of this code. Alternatively, installments may be billed and collected  
30 as provided in a special assessment ordinance of general applicability adopted by the local unit  
31 of government pursuant to state law or local charter.

**§5B-2J-6. Issuance of bonds.**

1 (a) A local unit of government may issue bonds or notes to finance energy projects under  
2 a local energy efficiency partnership program.

3 (b) Bonds or notes issued under §5B-2J-6(a) of this code may not be general obligations  
4 of the local unit of government, but shall be secured by one or more of the following as provided  
5 by the governing body in the resolution or ordinance approving the bonds or notes:

6 (1) Payments of assessments on benefitted property within the district or districts  
7 specified;

8 (2) Reserves established by the local unit of government from grants, bond or note  
9 proceeds, or other lawfully available funds;

10 (3) Municipal bond insurance, lines or letters of credit, public or private guaranties, standby  
11 bond purchase agreements, collateral assignments, mortgages and any other available means of  
12 providing credit support or liquidity;

13 (4) Tax increment revenues that may be lawfully available for such purposes; or

14 (5) Any other amounts lawfully available for such purposes.

15           (c) A pledge of assessments, funds or contractual rights made by a governing body in  
16 connection with the issuance of bonds or notes by a local unit of government under this article  
17 constitutes a statutory lien on the assessments, funds or contractual rights so pledged in favor of  
18 the person or persons to whom the pledge is given, without further action by the governing body.  
19 The statutory lien is valid and binding against all other persons, with or without notice.

20           (d) Bonds or notes of one series issued under this article may be secured on a party with  
21 bonds or notes of another series issued by the local unit of government pursuant to the terms of  
22 a master indenture or master resolution entered into or adopted by the governing body of the local  
23 unit of government.

24           (e) Bonds or notes issued under this article, and interest payable on such bonds and notes,  
25 are exempt from all taxation by this state and its political subdivisions.

26           (f) Bonds or notes issued under this article further essential public and governmental  
27 purposes, including, but not limited to, reduced energy costs, reduced greenhouse gas emissions,  
28 economic stimulation and development, improved property valuation, and increased employment.

**§5B-2J-7. Joint implementation of programs.**

1           (a) A local unit of government may join with any other local unit of government, or with any  
2 person, or with any number or combination thereof, by contract or otherwise as may be permitted  
3 by law, for the implementation of a local energy efficiency partnership program, in whole or in  
4 part.

5           (b) If a local energy efficiency partnership program is implemented jointly by two or more  
6 local units of government pursuant §5B-2J-7(a) of this code, a single public hearing held jointly  
7 by the cooperating local units of government is sufficient to satisfy the requirements §5B-2J-  
8 3(c)(2) of this code.

NOTE: The purpose of this bill is to authorize local units of government to adopt local energy efficiency partnership programs and to create districts to promote the use of energy efficiency improvements by owners of certain real property; to provide for the financing of

such programs through voluntary property assessments, commercial lending, and other means; to authorize a local unit of government to issue bonds, notes, and other evidences of indebtedness and to pay the cost of energy efficiency improvements from the proceeds thereof; to provide for the repayment of bonds, notes, and other evidences of indebtedness; to authorize certain fees; to prescribe the powers and duties of certain governmental officers and entities; and to provide remedies.

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