

Senate Bill No. 336

(By Senators McCabe, Wells, Unger, Foster, Klempa and Kessler
(Acting President) and Browning)

[Introduced January 28, 2011; referred to the Committee on
Government Organization; and then to the Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §5B-4-1, §5B-4-2,
§5B-4-3, §5B-4-4, §5B-4-5, §5B-4-6 and §5B-4-7, all relating
to the creation of the West Virginia Energy Efficient
Buildings Program; concentrating on energy demand-side
management in private and public buildings; generating energy
savings; promoting more efficient use of the state's natural
resources; authorizing the West Virginia Development Office to
promulgate regulations; creating the West Virginia Energy
Efficient Buildings Public Sector Grant Fund and the West
Virginia Energy Efficient Buildings Private Sector Loan
Revolving Fund; establishing criteria for grants and loans
from the funds; and requiring annual reports to be provided to
the Legislature.

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

2 That the Code of West Virginia, 1931, as amended, be amended
3 by adding thereto a new article, designated §5B-4-1, §5B-4-2, §5B-
4 4-3, §5B-4-4, §5B-4-5, §5B-4-6 and §5B-4-7, all to read as follows:

5 **ARTICLE 4. WEST VIRGINIA ENERGY EFFICIENT BUILDINGS PROGRAM.**

6 **§5B-4-1. Short title.**

7 This article shall be known as the "West Virginia Energy
8 Efficient Buildings Program Act."

9 **§5B-4-2. Creation of West Virginia Energy Efficient Buildings**
10 **Program; purpose.**

11 (a) There is hereby created, within the West Virginia
12 Development Office, the West Virginia Energy Efficient Buildings
13 Program for the purposes of:

14 (1) Concentrating on energy demand-side management in private
15 and public sector buildings;

16 (2) Generating savings to taxpayers and the state;

17 (3) Allowing for continued economic development;

18 (4) More efficiently using the state's natural resources;

19 (5) Establishing the state as a benchmark state for demand-
20 side management efforts; and

21 (6) Creating further demand for "green" jobs and products in
22 the state.

23 (b) The West Virginia Energy Efficient Buildings Program
24 consists of the West Virginia Energy Efficient Buildings Public

1 Sector Grant Fund established in section four of this article and
2 the West Virginia Energy Efficient Buildings Private Sector Loan
3 Revolving Fund to be administered by the West Virginia Economic
4 Development Authority established by section five of this article.

5 **§5B-4-3. Definitions.**

6 Unless the context in which used clearly requires a different
7 meaning, as used in this article:

8 (1) "Demand-side management" means any conservation, load
9 management, or other utility activity intended to influence the
10 level or pattern of customer usage or demand, including home energy
11 assistance programs.

12 (2) "Development Office" means the West Virginia Development
13 Office as defined in section one, article two of this chapter.

14 (3) "Economic Development Authority" means the West Virginia
15 Economic Development Authority as defined in section one, article
16 fifteen, chapter thirty-one of this code.

17 (4) "Energy audit" means examination of a building's energy-
18 using systems, energy consumption and costs, occupancy patterns,
19 and operation and maintenance procedures by the Industries of the
20 Future-West Virginia Assessment Team or other entity identified in
21 section six of this article.

22 (5) "Energy-efficient heating, cooling, ventilation or hot
23 water system" means a heating, cooling, ventilation, or hot water
24 system that meets the requirements for the federal energy-efficient

1 commercial building deduction under 26 U.S.C. §179D, in effect
2 December 31, 2008.

3 (6) "Energy-efficient interior lighting system" means an
4 interior lighting system that meets the maximum reduction in
5 lighting power density requirements for the federal energy
6 efficient commercial building deduction under 26 U.S.C. §179D, in
7 effect December 31, 2008.

8 (7) "Energy-efficient windows and storm doors" means windows
9 and storm doors that are: ENERGY STAR-labeled and certified by the
10 National Fenestration Rating Council as meeting the North-Central
11 United States climate zone performance standards for U-factor
12 (nonsolar heat conductance), solar heat gain coefficient, air
13 leakage, visible-light transmittance, and condensation resistance.

14 (8) "Engineered demand-side management project" means a
15 project undertaken to reduce the amount of energy consumed in an
16 existing structure, including, but not limited to:

17 (A) Energy-efficient heating, cooling, ventilation or hot
18 water systems;

19 (B) Energy-efficient interior lighting systems;

20 (C) Energy-efficient windows and storm doors;

21 (D) Qualified energy property;

22 (E) Upgraded insulation;

23 (F) Solar water-heating systems; and

24 (G) Any other energy efficiency measures that will reduce

1 energy costs, including those that will use solar power, either
2 active or passive.

3 (9) "Private sector building" means any nonresidential
4 building not considered a public sector building.

5 (10) "Public sector building" means a building owned by the
6 state, agencies, authorities, quasi-public corporations, any public
7 college or university of the state, volunteer fire departments, any
8 public community college of the state, and all political
9 subdivisions, including cities, counties, boards of education,
10 towns, municipal corporations, building commissions, public service
11 districts, regional water or wastewater authorities, or regional
12 solid waste authorities.

13 (11) "Qualified energy property" means the following property
14 that meets the performance, quality, and certification standards of
15 and that would have been eligible for the federal tax credit under
16 26 U.S.C. §25C, as of December 31, 2008 including, but not limited
17 to:

- 18 (A) An electric heat pump water heater;
- 19 (B) An electric heat pump;
- 20 (C) A closed loop geothermal heat pump;
- 21 (D) An open loop geothermal heat pump;
- 22 (E) A direct expansion (DX) geothermal heat pump;
- 23 (F) A central air conditioner;
- 24 (G) A natural gas, propane, or oil furnace, boiler or hot

1 water heater; or

2 (H) An advanced main air circulating fan.

3 (12) "Simple payback period" means the amount of years
4 determined by the Economic Development Authority to pay back the
5 principal and interest on a revolving fund loan.

6 (13) "Solar water-heating system" means a system that:

7 (A) Uses solar-thermal energy to heat water;

8 (B) Is an indirect pressurized glycol system that uses
9 propylene glycol or an indirect drainback system that uses
10 distilled water or propylene glycol;

11 (C) Uses OG-100 solar thermal collectors that are certified by
12 the Solar Rating and Certification Corporation and covered by a
13 manufacturer's warranty of not less than five years;

14 (D) Is installed by a certified installer; and

15 (E) Is warranted by the certified installer for a period of
16 not less than two years.

17 (14) "Upgraded insulation: means insulation with the following
18 R-value ratings:

19 (A) Attic insulation rated R-38 or higher;

20 (B) Exterior wall, crawl space, and basement exterior wall
21 insulation rated R-13 or higher; and

22 (C) Floor insulation rated R-19 or higher.

23 (15) "West Virginia Energy Efficient Buildings Public Sector
24 Grant Fund" or "grant fund" means the fund created in section four

1 of this article.

2 (16) "West Virginia Energy Efficient Buildings Private Sector
3 Loan Revolving Fund" or "revolving fund" means the fund created in
4 section five of this article.

5 **§5B-4-4. West Virginia Energy Efficient Buildings Public Sector**
6 **Grant Fund.**

7 (a) All funds collected for the purpose of administering
8 grants shall be deposited in a special State Treasury fund to be
9 known as "The West Virginia Energy Efficient Buildings Public
10 Sector Grant Fund." The grant fund is a permanent and perpetual
11 fund administered by the Development Office. Expenditures from the
12 fund shall be for the purposes set forth in this section and made
13 in accordance with appropriations from the Legislature and pursuant
14 to the provisions of article three, chapter twelve of this code and
15 after the fulfillment of the provisions of article two, chapter
16 eleven-b of this code: *Provided*, That for the fiscal year ending
17 June 30, 2011, expenditures are authorized from collections and not
18 legislative appropriations.

19 (b) (1) The grant fund shall be administered and accounted for
20 by the directors, officers and managerial staff of the Development
21 Office as a special purpose account separate and distinct from any
22 other moneys, funds or funds owned and managed by the Development
23 Office. The grant fund consists of subaccounts, as deemed
24 necessary by the Development Office, for the deposit of:

1 (A) Any appropriations, grants, gifts, contributions, loan
2 proceeds or other revenues received by the grant fund from any
3 source, public or private;

4 (B) Funds derived from any bond issuance authorized by the
5 Legislature;

6 (C) All income earned on moneys held in the grant fund; and

7 (D) Any funds provided by the federal government to the state
8 for the purposes of this article.

9 (2) Grant fund amounts not expended at the close of the fiscal
10 year shall not lapse but shall be carried forward to the next
11 fiscal year. Any interest earnings of the grant fund shall become
12 part of the grant fund and shall not lapse.

13 (c) (1) Grant fund moneys, except as provided in subsection
14 (b) of this section, shall be used by the Development Office to
15 provide grants to the public sector for engineered demand-side
16 management projects in public sector buildings.

17 (2) All recipients of grant money for public sector buildings
18 shall pay annually, in arrears, the savings it received due to the
19 completion of the engineered demand-side management project to the
20 Development Office for a three-year period. The amount of savings
21 paid to the Development Office shall be equal to the amount of
22 savings determined in the energy audit for that year. If a
23 recipient of grant funds fails to pay the savings within twelve
24 months of when the Development Office determines the savings is

1 due, the recipient is ineligible to receive state funds of any kind
2 until the savings are remitted to the Development Office.

3 (3) Grant fund moneys that result from the energy savings
4 captured by the projects undertaken in public sector buildings and
5 certified through an energy audit may not be used to provide grants
6 to the public sector but shall instead be deposited in the
7 revolving fund on an annual basis to provide low-interest loans to
8 the private sector in accordance with section five of this article.

9 (d) To be eligible for a grant under the provisions of this
10 section, the cost of a proposed engineered demand-side management
11 project shall be at least \$5,000 and may not exceed \$2 million per
12 project.

13 (e) Moneys in the grant fund are hereby appropriated for the
14 purposes set forth in subsection (b) of this section.

15 (f) The Development Office shall not approve an applicant for
16 a grant under this section unless the applicant:

17 (1) Agrees to undergo and pay for an energy audit to establish
18 a baseline of energy consumption;

19 (2) Agrees to undergo and pay for subsequent energy audits to
20 determine the amount of energy savings; and

21 (3) Meets all the requirements established in this section and
22 any regulations promulgated thereunder.

23 **§5B-4-5. West Virginia Energy Efficient Buildings Private Sector**

24 **Loan Revolving Fund.**

1 (a) All funds collected for the purpose of administering loans
2 shall be deposited in a special State Treasury fund to be known as
3 "The West Virginia Energy Efficient Buildings Private Sector Loan
4 Revolving Fund." The revolving fund is a permanent and perpetual
5 fund administered by the Economic Development Authority on behalf
6 of the Development Office. Expenditures from the fund shall be for
7 the purposes set forth in this section and made in accordance with
8 appropriations from the Legislature and pursuant to the provisions
9 of article three, chapter twelve of this code and after the
10 fulfillment of the provisions of article two, chapter eleven-b of
11 this code: *Provided*, That for the fiscal year ending June 30,
12 2011, expenditures are authorized from collections and not
13 legislative appropriations.

14 (b) (1) The revolving fund shall be governed administered and
15 accounted for by the directors, officers and managerial staff of
16 the Economic Development Authority as a special purpose account
17 separate and distinct from any other moneys, funds or funds owned
18 and managed by the Economic Development Authority. The revolving
19 fund shall consist of subaccounts, as deemed necessary by the
20 Economic Development Authority, for the deposit of:

21 (A) Any appropriations, grants, gifts, contributions, loan
22 proceeds or other revenues received by the revolving fund from any
23 source, public or private;

24 (B) Loan repayments made by the private sector;

1 (C) Energy savings captured from public sector buildings as a
2 direct result of engineered demand-side management projects paid
3 for with funds from the grant program established under section
4 four of this article and certified through an energy audit;

5 (D) All income earned on moneys held in the revolving fund;

6 (E) Funds derived from any bond issuance authorized by the
7 Legislature; and

8 (F) Any funds provided from the federal government to the
9 state for the purposes of this article.

10 (2) Revolving fund amounts not expended at the close of the
11 fiscal year do not lapse but shall be carried forward to the next
12 fiscal year. Any interest earnings of the revolving fund becomes
13 part of the revolving fund and does not lapse.

14 (c) Revolving fund moneys shall be used by the Economic
15 Development Authority, on behalf of the Development Office, to
16 provide low-interest loans to the private sector for engineered
17 demand-side management projects in private sector buildings. The
18 Economic Development Authority may not authorize more than one loan
19 outstanding at a time to any private retail, commercial or
20 industrial business.

21 (d) To be eligible for a loan under this section, the cost of
22 a proposed engineered demand-side management project shall be at
23 least \$5,000 and may not exceed \$2 million per project.

24 (e) Beginning July 1, 2011, and ending June 30, 2015, the

1 simple payback period for an approved engineered demand-side
2 management project may be no more than five years: *Provided, That*
3 beginning July 1, 2015, the Economic Development Authority, on
4 behalf of the Development Office, may consider a simple payback
5 period of no more than twelve years.

6 (f) The loans provided under this section are subject to the
7 prime interest rate minus two percent.

8 (g) Moneys in the revolving fund are hereby appropriated for
9 the purpose set forth in subdivision (2) of this section.

10 (h) The Economic Development Authority may not approve an
11 applicant for a loan under this section, unless the applicant:

12 (1) Can demonstrate that the applicant is in good standing
13 with the state;

14 (2) Can demonstrate that the applicant has a positive payment
15 history with the applicant's electricity provider for the preceding
16 three consecutive years;

17 (3) Agrees to undergo and pay for an energy audit to establish
18 a baseline of energy consumption;

19 (4) Agrees to undergo and pay for subsequent energy audits to
20 determine the amount of energy savings;

21 (5) Enters into a loan agreement with the Economic Development
22 Authority, on behalf of the Development Office, that provides for
23 the terms of the loan and a monthly amortization schedule;

24 (6) Agrees to secure the loan by granting the Economic

1 Development Authority, on behalf of the Development Office, a lien
2 on the private sector building: *Provided*, That the lien may be
3 subordinate to then existing liens;

4 (7) Meets all the requirements established in this section and
5 any administrative rules promulgated thereunder.

6 **§5B-4-6. Regulations of West Virginia Energy Efficient Buildings**
7 **Program.**

8 (a) To implement and carry out the intent of this article, the
9 Development Office in consultation with the Economic Development
10 Authority shall propose for legislative approval legislative rules
11 in accordance with article three, chapter twenty-nine-a of this
12 code to:

13 (1) Develop a method to score application for the grant fund
14 and the revolving fund;

15 (2) With the assistance of the Industries of the Future West
16 Virginia Assessment Team develop a list of companies qualified to
17 perform energy audits for the purposes of determining a baseline of
18 energy consumption and any subsequent savings realized by:

19 (A) Public sector recipients of grants awarded from the grant
20 fund; and

21 (B) Private sector recipients of low-interest loans provided
22 from the revolving fund;

23 (3) Establish a process for the collection of grant savings
24 payments to be made to the Development Office from recipients of

1 grants as required in section four of this article; and

2 (4) Establish a process for the collection of loan payments to
3 be made to the Economic Development Authority from the private
4 sector to repay amounts that were made available under the
5 revolving fund.

6 The Development Office in consultation with the Economic
7 Development Authority shall also promulgate any other
8 administrative regulations necessary to administer the provisions
9 of this article.

10 (b) The Development Office and the Economic Development
11 Authority shall report to the Governor and the Legislature on or
12 before November 1, 2013, and on or before November 1 of each year
13 after that, for the grant fund and the revolving fund for the
14 immediately preceding fiscal year:

15 (1) The number of applicants;

16 (2) A description of the engineered demand-side management
17 projects on which loans or grants were provided;

18 (3) The total amount loaned to the private sector and the
19 total amount of grants provided to the public sector;

20 (4) The energy cost savings realized by the public sector;

21 (5) The amount of funds transferred from the grant fund to the
22 revolving fund;

23 (6) The number of applicants and the amount of loan and grants
24 for which funding was not available; and

(7) Based upon the energy audits performed, the amount of increased energy capacity realized.

§5B-4-7. Division of legislative funds and federal funds provided to West Virginia Energy Efficient Buildings Program.

All funds appropriated by the Legislature to the West Virginia Energy Efficient Buildings Program shall be divided equally with fifty percent of the funds deposited in the grant fund and fifty percent of the funds deposited in the revolving fund. Other grants, contributions, gifts, loans or funds provided by the federal government shall also be equally divided with fifty percent of the funds deposited in the grant fund and fifty percent of the funds deposited in the revolving: *Provided*, That funds provided by the federal government, grants, contributions, gifts, or loans that have specific instruction to deposit moneys into a specific fund shall be deposited in the specific fund as instructed.

NOTE: The purpose of this bill is to create the West Virginia Energy Efficient Buildings Program that concentrates on energy demand-side management in private and public buildings, generating energy savings and promotes the more efficient use of the state's natural resources. The bill authorizes the West Virginia Development Office to promulgate regulations. The bill also creates the West Virginia Energy Efficient Buildings Public Sector Grant Fund and the West Virginia Energy Efficient Buildings Private Sector Loan Revolving Fund and establishes the criteria for grants and loans made from those funds. Moreover, the bill requires annual reports to be provided to the Legislature.

This article is new; therefore, strike-throughs and underscoring have been omitted.