

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2011



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 2709

(By Delegates Canterbury, Hamilton, Perry,
Shaver, Walker and Hartman)



Passed March 1, 2011

In Effect From Passage

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 2709

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

[Passed March 1, 2011; in effect from passage.]

AN ACT 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. These include, but are not limited
5 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, multi-glazed windows or doors, heat-absorbing or
10 heat-reflective glazed and coated window or door systems or
11 other window or door modifications that reduce energy
12 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) Co-generation systems that produce steam or another
20 form of energy for use by the county board of education in a
21 building or complex of buildings owned by the Board of
22 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 energy-
43 savings contract with a qualified provider to significantly
44 reduce energy operating costs. Before entering into such a
45 contract or before the installation of equipment,
46 modifications or remodeling to be furnished under such a
47 contract, the qualified provider shall first issue a proposal
48 summarizing the scope of work to be performed. Such a
49 proposal shall contain estimates of all costs of installation,
50 modifications or remodeling including the costs of design,
51 engineering, installation, maintenance, repairs or debt service
52 as well as estimates of the amounts by which energy
53 operating costs will be reduced. If the board finds, after
54 receiving the proposal, that the proposal includes more than
55 one energy-conservation measure designed to save energy
56 operating costs, the board may enter into a contract with the
57 provider pursuant to this section.

58 (d) An energy-savings contract 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 performance-
67 based and includes a guarantee of savings and a
68 comprehensive approach of energy-conservation measures
69 for improving comfort is subject to competitive bidding
70 requirements. The requirements of article five-a, chapter
71 twenty-one of this code as to prevailing wage rates shall
72 apply to the construction and installation work performed
73 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 fifteen years and the lease contract includes the
78 provisions hereinafter contained in subsection (g) and meets
79 federal tax requirements for tax-exempt municipal leasing or
80 long-term financing.

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

89 (h) Nothing contained in this section requires or permits
90 the replacement of jobs performed by service personnel
91 employed by the local school board pursuant to sections eight
92 and eight-a, article four, chapter eighteen-a of the code, as
93 amended.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2011.

Governor