

1 **H. B. 2709**

2
3 (By Delegates Canterbury, Hamilton, Perry, Shaver,
4 Walker and Hartman)

5 [Introduced January 21, 2011; referred to the
6 Committee on Education then the Judiciary.]
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10 A BILL to amend and reenact §5A-3B-1 of the Code of West Virginia,
11 1931, as amended, and to amend and reenact §18-5-9a, all
12 relating to allowing county school boards to enter into
13 energy-saving contracts and allowing these contracts to have
14 a term of fifteen years.

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

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

19 **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

20 **ARTICLE 3B. ENERGY-SAVINGS CONTRACTS.**

21 **§5A-3B-1. Definitions.**

22 As used in this article:

23 (a) "Agency" means any state department, division, office,
24 commission, authority, board, county school board or other unit
25 authorized by law to enter into contracts for the provision of

1 goods or services;

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

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

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

12 (3) Automatic energy control systems;

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

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

17 (6) Energy recovery systems;

18 (7) ~~Cogeneration~~ Co-generation systems that produce steam or
19 another form of energy for use by ~~any~~ an agency in a building or
20 complex of buildings owned by the agency; or

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

24 (c) "Energy-savings contract" means a performance-based
25 contract for the evaluation and recommendation of energy operations

1 conservation measures and for implementation of one or more
2 measures.

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

6 **CHAPTER 18. EDUCATION.**

7 **ARTICLE 5. COUNTY BOARD OF EDUCATION.**

8 **§18-5-9a. Energy-savings contracts.**

9 (a) For the purposes of this section:

10 (1) "Energy-conservation measures" means goods or services, or
11 both, to reduce energy consumption operating costs of school
12 facilities. ~~They~~ These include, but are not limited to,
13 installation of two or more of the following:

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

16 (B) Storm windows or doors, caulking or weather stripping,
17 ~~multiglazed~~ multi-glazed windows or doors, heat-absorbing or
18 heat-reflective glazed and coated window or door systems or other
19 window or door modifications that reduce energy consumption;

20 (C) Automatic energy control systems;

21 (D) Heating, ventilating or air conditioning systems,
22 including modifications or replacements;

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

25 (F) Energy recovery systems;

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

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

8 (2) "Energy-savings contract" means a contract for the
9 evaluation and recommendation of energy operations conservation
10 measures and for implementation of one or more such measures. The
11 contract shall provide that payments, except obligations upon
12 termination of the contract before its expiration, are to be made
13 over time. A county board of education may supplement these
14 payments with federal, state or local funds to reduce the annual
15 cost or to lower the initial amount to be financed.

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

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

23 (c) A board of education may enter into an energy-savings
24 contract with a qualified provider to ~~reduce energy operating costs~~
25 significantly reduce energy operating costs. Before entering into

1 such a contract or before the installation of equipment,
2 modifications or remodeling to be furnished under such a contract,
3 the qualified provider shall first issue a proposal summarizing the
4 scope of work to be performed. Such a proposal shall contain
5 estimates of all costs of installation, modifications or remodeling
6 including the costs of design, engineering, installation,
7 maintenance, repairs or debt service as well as estimates of the
8 amounts by which energy operating costs will be reduced. If the
9 board finds, after receiving the proposal, that the proposal
10 includes more than one energy-conservation measure designed to save
11 energy operating costs, the board may enter into a contract with
12 the provider pursuant to this section.

13 (d) An energy-savings contract ~~must~~ shall include the
14 following:

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

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

21 (e) An energy-savings contract which is performance-based and
22 includes a guarantee of savings and a comprehensive approach of
23 energy-conservation measures for improving comfort is subject to
24 competitive bidding requirements. ~~Provided, That~~ The requirements
25 of article five-a, chapter twenty-one of this code as to prevailing

1 wage rates shall apply to the construction and installation work
2 performed under such a contract.

3 (f) A board may enter into a "lease with an option to
4 purchase" contract for the purchase and installation of
5 energy-conservation measures if the term of the lease does not
6 exceed ~~ten~~ fifteen years and the lease contract includes the
7 provisions hereinafter contained in subsection (g) and meets
8 federal tax requirements for tax-exempt municipal leasing or
9 long-term financing.

10 (g) An energy-savings contract may extend beyond the fiscal
11 year in which it first becomes effective ~~Provided, except~~ that
12 such a contract may not exceed a ~~ten~~ fifteen-year term ~~Provided,~~
13 ~~however, That such long term contract~~ and shall be void unless such
14 agreement ~~shall provide that the board shall have the option~~
15 ~~thereunder during each fiscal year of the contract to terminate the~~
16 ~~agreement.~~ provides the board the option to terminate the agreement
17 during each fiscal year of the contract. The board may include in
18 its annual budget for each fiscal year any amounts payable under
19 long-term energy-savings contracts during that fiscal year.
20 ~~Provided further, That~~

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

NOTE: The purpose of this bill is to allow county school boards to enter into energy-saving contracts and allow these contracts to extend fifteen years.

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