

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

House Bill 2667

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HARDY, CLARK, CRISS, CAPITO AND REYNOLDS

[Originating in the Committee on Finance, March 24, 2021]

1 A BILL to amend and reenact §5A-3B-2 and §5B-2F-2 of the Code of West Virginia, 1931, as
2 amended; and to amend said code by adding thereto three new sections, designated §5B-
3 2F-3, §5B-2F-4, and §5B-2F-5; all relating to promoting cost savings for state taxpayers
4 by implementing an energy savings program for assessment and implementation of
5 energy savings goals for state buildings; requiring energy-savings contracts to include
6 provisions relating to energy cost savings guarantees and deficiency payments; providing
7 for the auditing and potential removal of energy metering devices installed at state
8 buildings; establishing an energy savings program and contracting program within Division
9 of Energy for state buildings; and establishing benchmarking and energy efficiency goals
10 for state buildings.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3B. ENERGY-SAVINGS CONTRACTS.

§5A-3B-2. ~~Contracts for e~~Energy-savings contracts.

1 (a) Agencies are authorized to enter into performance-based contracts with qualified
2 providers of energy-conservation measures for the purpose of significantly reducing energy
3 operating costs of agency owned buildings, subject to the requirements of this section.

4 (b) Before entering into a contract or before the installation of equipment, modifications or
5 remodeling to be furnished under a contract, the qualified provider shall first issue a proposal
6 summarizing the scope of work to be performed. A proposal must contain estimates of all costs
7 of installation, modifications or remodeling, including the costs of design, engineering, installation,
8 maintenance, repairs or debt service, as well as estimates of the amounts by which energy
9 operating costs will be reduced. If the agency finds, after receiving the proposal, that the proposal
10 includes one or more energy-conservation measures, the installation of which is guaranteed to
11 result in a net savings of a minimum of five percent of the then current energy operating costs

12 which savings will, at a minimum, satisfy any debt service required, the agency may enter into a
13 contract with the provider pursuant to this section.

14 (c) An energy-savings contract must include the following:

15 (1) A guarantee of a specific minimum net percentage amount of at least five percent of
16 energy operating costs each year over the term of the contract that the agency will save;

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

19 (3) A provision that payments, except obligations upon termination of the contract before
20 its expiration, are to be made over time.

21 (4) A provision relating to guaranteed energy cost savings and payments due the State
22 for any deficiency, in a form substantially similar to the following: In the event the energy and cost
23 savings achieved during a guarantee year are less than the guaranteed energy cost savings for
24 that year, the qualified provider shall pay the agency an amount equal to the deficiency. In no
25 event shall a qualified provider use credit for excess savings to satisfy saving guarantees in future
26 years of the contract. Savings achieved by the installed projects must comply with requirements
27 contained in this section and sufficiently cover all project costs, including, as applicable, debt
28 service and contractor fees, maintenance, monitoring, and other services, for the duration of the
29 contract term. If a project does not generate the guaranteed level of savings in any predefined
30 reconciliation term, the qualified provider is liable to the agency for the amount of the shortfall plus
31 related costs.

32 (d) An agency may supplement its payments with federal, state or local funds to reduce
33 the annual cost or to lower the initial amount to be financed.

34 (e) An energy-savings contract is subject to competitive bidding requirements and other
35 requirements of article three of this chapter.

36 (f) An energy-savings contract may extend beyond the fiscal year in which it first becomes
37 effective: *Provided*, That such a contract may not exceed a fifteen-year term: *Provided, however*,

38 That the long term contract will be void unless the agreement provides that the agency shall have
39 the option during each fiscal year of the contract to terminate the agreement.

40 (g) Agencies may enter into a “lease with an option to purchase” contract for the purchase
41 and installation of energy-conservation measures if the term of the lease does not exceed fifteen
42 years and the lease contract includes the provisions contained in subsection (f) of this section
43 and meets federal tax requirements for tax-exempt municipal leasing or long-term financing.

44 (h) The agency may include in its annual budget for each fiscal year any amounts payable
45 under long-term energy-savings contracts during that fiscal year.

46 (i) Upon the issuance of a request for proposals or request for quotations for an energy-
47 savings contract, the agency shall provide a copy thereof to the Joint Committee on Government
48 and Finance.

49 (j) Before signing an energy-savings contract or extending an existing energy-savings
50 contract, the agency shall give thirty days’ written notice, which notice shall include a copy of the
51 proposal containing the information required by subsection (b) of this section, to the Joint
52 Committee on Government and Finance.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2F. DIVISION OF ENERGY.

**§5B-2F-2. Purpose; Office of Energy; office to develop energy policy and development
plan; contents of energy policy and development plan; and office to promote energy
initiatives.**

1 (a) Effective July 1, 2017, the Division of Energy is hereby continued, but shall be
2 designated and known as the Office of Energy and shall be organized within the ~~Development~~
3 ~~Office of the Department of Commerce~~ Economic Development. All references throughout this
4 code to the Division of Energy shall be construed to refer to the Office of Energy. The office may
5 receive federal funds.

6 (b) The office is intended to provide leadership for developing energy policies emphasizing
7 the increased efficiency of energy use, the increased development and production of new and
8 existing domestic energy sources, the increased awareness of energy use on the environment
9 and the economy, dependable, efficient and economical statewide energy systems capable of
10 supporting the needs of the state, increased energy self-sufficiency where the ratio of indigenous
11 to imported energy use is increased, reduce the ratio energy consumption to economic activity
12 and maintain low-cost energy. The energy policies and development plans shall also provide
13 direction for the private sector.

14 (c) The office shall have authority over the energy efficiency program existing under the
15 ~~West Virginia Development Office~~ Department Economic Development.

16 (d) The office shall develop an energy policy and shall report the same back to the
17 Governor and the Joint Committee on Government and Finance before December 1, 2007. The
18 energy policy shall be a five-year plan setting forth the state's energy policies and shall provide a
19 direction for the private sector. Prior to the expiration of the energy policy, the office shall begin
20 review of the policy and submit a revised energy policy to the Governor and the Joint Committee
21 on Government and Finance six months before the expiration of the policy.

22 (e) The office shall prepare and submit an annual energy development plan to the
23 Governor and the Joint Committee on Government and Finance on or before December 1 of each
24 year. The development plan shall relate to the office's implementation of the energy policy and
25 the activities of the office during the previous year. The development plan shall include any
26 recommended legislation. The Public Energy Authority, the Office of Coalfield Community
27 Development, the energy efficiency program, the Department of Environmental Protection and
28 the Public Service Commission, in addition to their other duties prescribed by this code, shall
29 assist the office in the development of an energy policy and related development plans. The
30 energy development plan shall set forth the plans for implementing the state's energy policy and
31 shall provide a direction for the private sector. The energy development plan shall recognize the

32 powers of the Public Energy Authority as to development and financing of projects under its
33 jurisdiction and shall make such recommendations as are reasonable and practicable for the
34 exercise of such powers.

35 (f) The office shall hold public hearings and meetings with notice to receive public input
36 regarding proposed energy policies and development plans. The energy policy and development
37 plans required by subsections (d) and (e) of this section shall address increased efficiency of
38 energy use, traditional and alternative energy, water as a resource and a component of energy
39 production, energy distribution systems, the siting of energy facilities, the increased development
40 and production of new and existing domestic energy sources, increased awareness of energy use
41 on the environment and the economy, energy infrastructure, the development and implementation
42 of renewable, clean, technically innovative and advanced energy projects in this state. Projects
43 may include, without limitation, solar and wind energy, low-impact hydro power, geothermal,
44 biomass, landfill gas, fuel cells, renewable hydrogen fuel technologies, waste coal, coal mine
45 methane, coal gasification to ultraclean fuels, solid waste to fuel grade ethanol and coal
46 liquefaction technologies.

47 (g) The office may propose rules for legislative approval in accordance with the provisions
48 of article three, chapter twenty-nine-a of this code designed to implement an energy policy and
49 development plan in accordance with the provisions of this chapter.

50 (h) The energy policy and development plans required by subsections (d) and (e) of this
51 section shall identify and report on the energy infrastructure in this state and include without
52 limitation energy infrastructure related to protecting the state's essential data, information systems
53 and critical government services in times of emergency, inoperativeness or disaster. In
54 consultation with the Director of the Division of Homeland Security and Emergency Management,
55 the office shall encourage the development of energy infrastructure and strategic resources that
56 will ensure the continuity of governmental operations in situations of emergency, inoperativeness
57 or disaster.

58 (i) In preparing or revising the energy policy and development plan, the office may rely
59 upon internal staff reports or the advice of outside advisors or consultants and may procure such
60 services with the consent of the Secretary of ~~Commerce~~ Economic Development. The office may
61 also involve national, state and local government leadership and energy experts.

62 (j) The office shall prepare an energy use database, including without limitation, end-use
63 applications and infrastructure needs for different classes of energy users including residential,
64 commercial and industrial users, data regarding the interdependencies and sources of electricity,
65 oil, coal, water and gas infrastructure, data regarding energy use of schools and state-owned
66 facilities and collect data on the impact of the energy policy and development plan on the
67 decisions and strategies of energy users of the state.

68 (k) The office shall promote collaboration between the state's universities and colleges,
69 private industry and nonprofit organizations to encourage energy research and leverage available
70 federal energy research and development resources.

71 (l) The office shall promote initiatives to enhance the nation's energy security through
72 research and development directed at transforming the state's energy resources into the
73 resources that fuel the nation.

74 (m) The office shall work with the President of the United States and his or her
75 administration to develop a plan that would allow West Virginia to become the leader in
76 transitioning the United States to a new energy future.

77 (n) The office is to determine the best way for West Virginia to utilize its resources and
78 any federal funding to develop the technologies that are necessary for such a transition.

79 (o) The office is to clearly articulate West Virginia's position on an energy solution for the
80 United States that encompasses clean coal, natural gas, transtech energy technologies and
81 renewable energy technologies.

82 (p) The office shall develop and distribute an informational program and policies that
83 emphasize the importance of West Virginia energy resources and their positive impact on the
84 eastern seaboard and the nation.

85 (q) The office shall monitor legal challenges to the energy industries in the state and submit
86 a report quarterly to the Joint Committee on Government and Finance. The report shall contain
87 information relating to any litigation that challenges any statute that could affect the production,
88 distribution and utilization of natural resources of the state.

89 (r) The office shall develop and administer a program for auditing the energy metering
90 devices for both electricity and natural gas currently installed at state buildings for purposes of
91 determining whether such devices are active or inactive. Such program shall be designed to audit
92 no fewer than 20 percent (20%) of the energy metering devices each year to enable completion
93 of the audit of all such devices no later than January 1, 2027. In the event the office determines
94 during such audit that an energy metering device is no longer active, it shall notify the energy
95 service provider to request (1) removal of such device and (2) adjustment of utility bills
96 prospectively to remove any charge associated with such meter.

§5B-2F-3. Energy Savings Contracting Program.

1 The secretary shall, working with such other agencies of the state as the secretary deems
2 appropriate, establish an energy savings contracting program to support the design and
3 installation of energy-savings contracts that may be entered into by agencies of the state under
4 §5A-3B-1 et seq. of the code. Such program shall include the development and provision of
5 model, template, or standardized contracts, guidelines, procedures, manuals, and other related
6 documents regarding the use of energy-savings contracts.

§5B-2F-4. Energy savings program.

1 (a) No later than October 1, 2021, the secretary shall establish an energy savings program
2 designed to reduce energy usage for electricity, natural gas, fuel oil, and steam in all state
3 buildings under the care, custody, and control of the state by 25% below 2018 levels by 2030.

4 The secretary shall report annually to the Legislature regarding the energy-conservation
5 measures, as defined by §5A-3B-1(b) of this code, installed under the energy savings program,
6 achieved reductions in energy usage, and additional energy-conservation measures, if any,
7 necessary to achieve the required reductions by 2030. The secretary is authorized to enter into
8 energy-savings contracts as defined in §5A-3B-1 et seq. of this code, as necessary, to implement
9 the energy savings program. Energy-savings contracts entered into as part of the energy savings
10 program shall require an annual energy audit performed by a third party and at the cost of the
11 qualified provider. Energy audits shall include (1) A comparative analysis of anticipated to actual
12 energy savings; and (2) the terms and conditions of agency payment and performance
13 guarantees. Any such performance guarantees shall provide that the contractor is responsible for
14 maintenance and repair services for any energy related equipment, including computer software.

15 (b) The department will collaborate with the Department of Administration to develop
16 energy saving strategies and improve energy efficiency in state buildings under the control and
17 care of the Department of Administration.

§5B-2F-5. Disclosure of energy usage.

1 No later than July 1, 2021, the secretary shall establish a program for measuring and
2 benchmarking the energy, including electricity, natural gas, fuel oil, and steam, efficiency of all
3 state buildings under custody and control of the state. Such program shall use the benchmarking
4 tool Energy Star Portfolio Manager® operated by the United States Environmental Protection
5 Agency. No later than October 1, 2021 and each year thereafter, the secretary shall compile and
6 submit energy usage data for all state buildings to such benchmarking tool. The secretary shall
7 report annually to the Legislature regarding the building energy performance compared to similar
8 buildings in similar climates, as determined by the Energy Star Portfolio Manager®.

NOTE: The purpose of this bill is to promote cost savings for state taxpayers by implementing an energy savings program for assessment and implementation of energy savings goals for state buildings; auditing energy metering devices installed at state buildings; and establishing benchmarking and energy efficiency goals for state buildings.

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