WEST VIRGINIA CODE: §18-5-9A

§18-5-9a. Energy-savings contracts.

(a) For the purposes of this section:

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

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

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

(C) Automatic energy control systems;

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

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

(F) Energy recovery systems;

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

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

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

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

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

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(c) A board of education may enter into an energy-savings contract with a qualified provider to significantly reduce energy operating costs. Before entering into such a contract or before the installation of equipment, modifications or remodeling to be furnished under such a contract, the qualified provider shall first issue a proposal summarizing the scope of work to be performed. Such a proposal shall contain estimates of all costs of installation, modifications or remodeling including the costs of design, engineering, installation, maintenance, repairs or debt service as well as estimates of the amounts by which energy operating costs will be reduced. If the board finds, after receiving the proposal, that the proposal includes more than one energy-conservation measure designed to save energy operating costs, the board may enter into a contract with the provider pursuant to this section.

(d) An energy-savings contract shall include the following:

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

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

(e) An energy-savings contract which is performance-based and includes a guarantee of savings and a comprehensive approach of energy-conservation measures for improving comfort is subject to competitive bidding requirements. The requirements of article five-a, chapter twenty-one of this code as to prevailing wage rates shall apply to the construction and installation work performed under such a contract.

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

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

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

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