WEST VIRGINIA CODE: §7-1-3OO

§7-1-3oo. Authority to enter into energy-savings contracts.

(a) As used in this section:

(1) "Energy-conservation measures" means goods or services, or both, to reduce energy consumption operating costs of county facilities. They include, but are not limited to, installation of one 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, multiglazed 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) Cogeneration systems that produce steam or another form of energy for use by any agency in a building or complex of buildings owned by the county; 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 performance-based contract for the evaluation and recommendation of energy operations conservation measures and for implementation of one or more energy-conservation measures.

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

(b) Counties are authorized to enter into performance-based contracts with qualified providers of energy-conservation measures for the purpose of significantly reducing energy operating costs of county owned buildings, subject to the requirements of this section.

(c) Before entering into a contract or before the installation of equipment, modifications or remodeling to be furnished under a contract, the qualified provider shall first issue a proposal summarizing the scope of work to be performed. A proposal must contain estimates

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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 county finds, after receiving the proposal, that the proposal includes one or more energy-conservation measures, the installation of which is guaranteed to result in a net savings of a minimum of five percent of the then current energy operating costs which savings will, at a minimum, satisfy any debt service required, the county may enter into a contract with the provider pursuant to this section.

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

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

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

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

(e) A county may supplement its payments with federal, state or local funds to reduce the annual cost or to lower the initial amount to be financed.

(f) Any energy-savings contract entered into for the purpose of achieving one or more energy-conservation measures, as authorized by this section, shall be considered a "public improvement" within the meaning of the provisions of articles one-c and five-a, chapter twenty-one of this code. As such, energy-savings contracts entered into pursuant to this section are subject to competitive bidding requirements and other requirements of section twenty-two, article twenty of this chapter.

(g) An energy-savings contract may extend beyond the fiscal year in which it first becomes effective: Provided, That such a contract may not exceed a fifteen-year term: Provided, however, That the long-term contract will be void unless the agreement provides that the county shall have the option during each fiscal year of the contract to terminate the agreement.

(h) Counties 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 contained in subsection (g) of this section and meets federal tax requirements for tax-exempt municipal leasing or long-term financing.

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

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