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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED

Com. Sub. For
HOUSE BILL No. 4118

(By Delegates *Rejoso and Ashcraft*)



Passed *March 5,* 1992

In Effect *Ninety Days From* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4118
(By DELEGATES PREZIOSO AND ASHCRAFT)

[Passed March 5, 1992; in effect ninety days from passage.]

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a, relating to county boards of education; defining terms; authorizing such boards to enter into energy-savings contracts; setting forth certain procedures and requirements for the use of such contracts; authorizing the "lease with option to purchase" method of contracting; and providing that the county board may annually renew the energy-savings contract up to ten years.

Be it enacted by the Legislature of West Virginia:

That article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nine-a, 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 operat-

4 ing costs of school facilities. They include, but are not
5 limited to, installation of two or more of the following:

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

8 (B) Storm windows or doors, caulking or weather
9 stripping, multiglazed windows or doors, heat-absorbing
10 or heat-reflective glazed and coated window or door
11 systems, or other window or door modifications that
12 reduce energy 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
17 to increase energy efficiency;

18 (F) Energy recovery systems;

19 (G) Cogeneration systems that produce steam or
20 another form of energy for use by the county board of
21 education in a building or complex of buildings owned
22 by the board of education; or

23 (H) Energy-conservation maintenance measures that
24 provide long-term operating cost reductions of the
25 building's 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
31 contract before its expiration, are to be made over time.
32 A county board of education may supplement these
33 payments with federal, state or local funds to reduce the
34 annual cost or to lower the initial amount to be financed.

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

38 (b) County boards of education are hereby authorized
39 to enter into performance-based contracts with qualified
40 providers of energy-conservation measures for the

41 purpose of reducing energy operating costs of school
42 buildings.

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

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

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

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

68 (e) An energy-savings contract which is performance-
69 based and includes a guarantee of savings and a
70 comprehensive approach of energy-conservation mea-
71 sures for improving comfort is subject to competitive
72 bidding requirements: *Provided*, That the requirements
73 of article five-a, chapter twenty-one of this code as to
74 prevailing wage rates shall apply to the construction
75 and installation work performed under such a contract.

76 (f) A board may enter into a "lease with an option to
77 purchase" contract for the purchase and installation of
78 energy-conservation measures if the term of the lease
79 does not exceed ten years, and the lease contract

80 includes the provisions hereinafter contained in subsec-
81 tion (g), and meets federal tax requirements for tax-
82 exempt municipal leasing or long-term financing.

83 (g) An energy-savings contract may extend beyond the
84 fiscal year in which it first becomes effective: *Provided,*
85 That such a contract may not exceed a ten-year term:
86 *Provided, however,* That such long term contract shall
87 be void unless such agreement shall provide that the
88 board shall have the option thereunder during each
89 fiscal year of the contract to terminate the agreement.
90 The board may include in its annual budget for each
91 fiscal year, any amounts payable under long-term
92 energy-savings contracts during that fiscal year:
93 *Provided further,* That nothing contained herein shall be
94 deemed to require or permit the replacement of jobs
95 performed by service personnel employed by the local
96 school board pursuant to sections eight and eight-a,
97 article four, chapter eighteen-a of the code, as amended.

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

Homer Leck
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Darrell E. Abene
Clerk of the Senate

Donald G. Kopp
Clerk of the House of Delegates

Neil Sundeter
President of the Senate

Boyd
Speaker of the House of Delegates

The within *is approved* this the *17th*
day of *March*, 1992.

Yaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/13/92

Time 4:16 pm