

FILED

2003 JUL 17 P 2:05

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
2nd Extraordinary Session, 2003



**ENROLLED**

Committee Substitute for

**SENATE BILL NO.** 2012

(By Senators Tomblin, Mr. President, and  
Sprouse, By Request of the Executive)



**PASSED** June 30, 2003

**In Effect** from **Passage**

FILED

2003 JUL 17 P 2:05

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 2012**

(By Senators Tomblin, Mr. President, and Sprouse,  
By Request of the Executive)

[Passed June 30, 2003; in effect from passage.]

AN ACT to amend chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-b, relating to authorizing state agencies to enter into performance-based contracts with qualified providers of energy-conservation measures for the purpose of reducing energy operating costs of agency-owned buildings.

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

That chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-b, to read as follows:

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

**§5A-3B-1. Definitions.**

1 As used in this article:

2 (a) "Agency" means any state department, division,  
3 office, commission, authority, board or other unit autho-  
4 rized by law to enter into contracts for the provision of  
5 goods or services;

6 (b) "Energy-conservation measures" means goods or  
7 services, or both, to reduce energy consumption operating  
8 costs of agency facilities. They include, but are not  
9 limited to, installation of one or more of the following:

10 (1) Insulation of a building structure and systems within  
11 a building;

12 (2) Storm windows or doors, caulking or weather strip-  
13 ping, multiglazed windows or doors, heat-absorbing or  
14 heat-reflective glazed and coated window or door systems,  
15 or other window or door modifications that reduce energy  
16 consumption;

17 (3) Automatic energy control systems;

18 (4) Heating, ventilating or air conditioning systems,  
19 including modifications or replacements;

20 (5) Replacement or modification of lighting fixtures to  
21 increase energy efficiency;

22 (6) Energy recovery systems;

23 (7) Cogeneration systems that produce steam or another  
24 form of energy for use by any agency in a building or  
25 complex of buildings owned by the agency; or

26 (8) Energy-conservation maintenance measures that  
27 provide long-term operating cost reductions of the build-  
28 ing's present cost of operation.

29 (c) "Energy-savings contract" means a performance-  
30 based contract for the evaluation and recommendation of

31 energy operations conservation measures and for imple-  
32 mentation of one or more measures.

33 (d) "Qualified provider" means a person, firm or corpo-  
34 ration experienced in the design, implementation and  
35 installation of energy-conservation measures.

**§5A-3B-2. Contracts for energy-savings contracts.**

1 (a) Agencies are authorized to enter into perfor-  
2 mance-based contracts with qualified providers of en-  
3 ergy-conservation measures for the purpose of signifi-  
4 cantly reducing energy operating costs of agency owned  
5 buildings, subject to the requirements of this section.

6 (b) Before entering into a contract or before the installa-  
7 tion of equipment, modifications or remodeling to be  
8 furnished under a contract, the qualified provider shall  
9 first issue a proposal summarizing the scope of work to be  
10 performed. A proposal must contain estimates of all costs  
11 of installation, modifications or remodeling, including the  
12 costs of design, engineering, installation, maintenance,  
13 repairs or debt service, as well as estimates of the amounts  
14 by which energy operating costs will be reduced. If the  
15 agency finds, after receiving the proposal, that the pro-  
16 posal includes one or more energy-conservation measures,  
17 the installation of which is guaranteed to result in a net  
18 savings of a minimum of five percent of the then current  
19 energy operating costs which savings will, at a minimum,  
20 satisfy any debt service required, the agency may enter  
21 into a contract with the provider pursuant to this section.

22 (c) An energy-savings contract must include the follow-  
23 ing:

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

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

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

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

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

40 (f) An energy-savings contract may extend beyond the  
41 fiscal year in which it first becomes effective: *Provided*,  
42 That such a contract may not exceed a fifteen-year term:  
43 *Provided, however*, That the long term contract will be  
44 void unless the agreement provides that the agency shall  
45 have the option during each fiscal year of the contract to  
46 terminate the agreement.

47 (g) Agencies may enter into a "lease with an option to  
48 purchase" contract for the purchase and installation of  
49 energy-conservation measures if the term of the lease does  
50 not exceed fifteen years and the lease contract includes the  
51 provisions contained in subsection (f) of this section and  
52 meets federal tax requirements for tax-exempt municipal  
53 leasing or long-term financing.

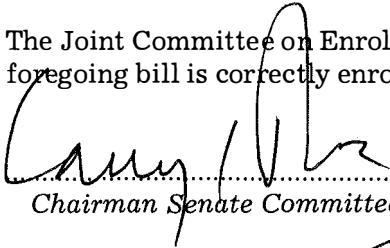
54 (h) The agency may include in its annual budget for  
55 each fiscal year any amounts payable under long-term  
56 energy-savings contracts during that fiscal year.

57 (i) Upon the issuance of a request for proposals or  
58 request for quotations for an energy-savings contract, the  
59 agency shall provide a copy thereof to the joint committee  
60 on government and finance.

61 (j) Before signing an energy-savings contract or extend-  
62 ing an existing energy-savings contract, the agency shall  
63 give thirty days' written notice, which notice shall include  
64 a copy of the proposal containing the information required  
65 by subsection (b) of this section, to the joint committee on  
66 government and finance.

Enr. Com. Sub. For S. B. No. 2012] 6

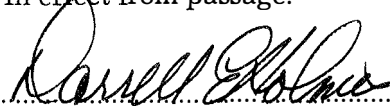
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

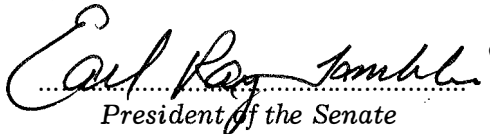
  
.....  
Chairman House Committee


Originated in the Senate.


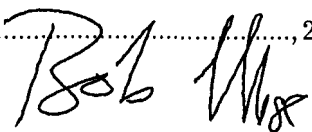
In effect from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within  appeared this the 17<sup>th</sup>  
Day of July  2003.  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 7/3/03

Time 4:40 pm