WEST VIRGINIA LEGISLATURE
2nd Extraordinary Session, 2003

ENROLLED
Committee Substitute for
SENATE BILL NO. 2012

(By Senators Jamblin, 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, office, commission, authority, board or other unit authorized by law to enter into contracts for the provision of goods or services;

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

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

5 (2) 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;

6 (3) Automatic energy control systems;

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

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

9 (6) Energy recovery systems;

10 (7) 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 agency; or

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

12 (c) "Energy-savings contract" means a performance-based contract for the evaluation and recommendation of
energy operations conservation measures and for imple-
mentation of one or more measures.

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

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

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

(b) Before entering into a contract or before the installa-
tion 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 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
agency finds, after receiving the proposal, that the pro-
posal 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 agency may enter
into a contract with the provider pursuant to this section.

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

(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 agency
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.

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

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

(f) 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 agency shall have the option during each fiscal year of the contract to terminate the agreement.

(g) Agencies 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 (f) of this section and meets federal tax requirements for tax-exempt municipal leasing or long-term financing.

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

(i) Upon the issuance of a request for proposals or request for quotations for an energy-savings contract, the agency shall provide a copy thereof to the joint committee on government and finance.
(j) Before signing an energy-savings contract or extending an existing energy-savings contract, the agency shall give thirty days' written notice, which notice shall include a copy of the proposal containing the information required by subsection (b) of this section, to the joint committee on government and finance.
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 ............ approved .................... this the 17th Day of ............ 2003.

Governor