

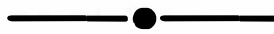
HB 4028

FILED

2008 MAR 13 PM 4: 18

OFFICE OF THE
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4028**

(By Delegates Fleischauer, Marshall, Beach and Shook)



Passed March 5, 2008

In Effect Ninety Days from Passage

ENROLLED

FILED

COMMITTEE SUBSTITUTE

2008 MAR 13 PM 4:18

FOR

OFFICE OF THE CLERK
WEST VIRGINIA
SECRETARY OF STATE

H. B. 4028

(BY DELEGATES FLEISCHAUER, MARSHALL,
BEACH AND SHOOK)

[Passed March 5, 2008; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-1-300; and to amend said code by adding thereto a new section designated §8-12-5e, all relating to authorizing counties and municipalities to enter into energy-savings contracts.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section designated §7-1-300; and that said code be amended by adding thereto a new section, designated §8-12-5e, all to read as follows:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-300. Authority to enter into energy-savings contracts.

1 (a) As used in this section:

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

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

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

18 (F) Energy recovery systems;

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

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

25 (2) "Energy-savings contract" means a
26 performance-based contract for the evaluation and
27 recommendation of energy operations conservation measures
28 and for implementation of one or more energy-conservation
29 measures.

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

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

38 (c) Before entering into a contract or before the
39 installation of equipment, modifications or remodeling to be
40 furnished under a contract, the qualified provider shall first
41 issue a proposal summarizing the scope of work to be
42 performed. A proposal must contain estimates of all costs of
43 installation, modifications or remodeling, including the costs
44 of design, engineering, installation, maintenance, repairs or
45 debt service, as well as estimates of the amounts by which
46 energy operating costs will be reduced. If the county finds,
47 after receiving the proposal, that the proposal includes one or
48 more energy-conservation measures, the installation of which
49 is guaranteed to result in a net savings of a minimum of five
50 percent of the then current energy operating costs which
51 savings will, at a minimum, satisfy any debt service required,
52 the county may enter into a contract with the provider
53 pursuant to this section.

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

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

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

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

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

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

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

84 (h) Counties may enter into a "lease with an option to
85 purchase" contract for the purchase and installation of
86 energy-conservation measures if the term of the lease does
87 not exceed fifteen years and the lease contract includes the
88 provisions contained in subsection (g) of this section and
89 meets federal tax requirements for tax-exempt municipal
90 leasing or long-term financing.

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

CHAPTER 8. MUNICIPAL CORPORATIONS.

**ARTICLE 12. GENERAL AND SPECIFIC POWERS,
DUTIES AND ALLIED RELATIONS
OF MUNICIPALITIES, GOVERNING
BODIES AND MUNICIPAL OFFICERS
AND EMPLOYEES; SUITS AGAINST
MUNICIPALITIES.**

8-12-5e. Authority to enter into energy-savings contracts.

1 (a) As used in this section:

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

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

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

18 (F) Energy recovery systems;

19 (G) Cogeneration systems that produce steam or another
20 form of energy for use by any agency in a building or
21 complex of buildings owned by the municipality; or

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

25 (2) "Energy-savings contract" means a
26 performance-based contract for the evaluation and
27 recommendation of energy operations conservation measures
28 and for implementation of one or more energy-conservation
29 measures.

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

33 (b) Municipalities are authorized to enter into
34 performance-based contracts with qualified providers of
35 energy-conservation measures for the purpose of significantly
36 reducing energy operating costs of municipality buildings,
37 subject to the requirements of this section.

38 (c) Before entering into a contract or before the
39 installation of equipment, modifications or remodeling to be
40 furnished under a contract, the qualified provider shall first
41 issue a proposal summarizing the scope of work to be
42 performed. A proposal must contain estimates of all costs of
43 installation, modifications or remodeling, including the costs
44 of design, engineering, installation, maintenance, repairs or
45 debt service, as well as estimates of the amounts by which
46 energy operating costs will be reduced. If the municipality
47 finds, after receiving the proposal, that the proposal includes
48 one or more energy-conservation measures, the installation
49 of which is guaranteed to result in a net savings of a
50 minimum of five percent of the then current energy operating

51 costs which savings will, at a minimum, satisfy any debt
52 service required, the municipality may enter into a contract
53 with the provider pursuant to this section.

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

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

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

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

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

69 (f) Any energy-savings contract entered into for the
70 purpose of achieving one or more energy-conservation
71 measures, as authorized by this section, shall be subject to a
72 competitive bidding process as provided by municipal
73 ordinance enacted pursuant to section ten-b, article twelve of
74 this chapter.

75 (g) An energy-savings contract may extend beyond the
76 fiscal year in which it first becomes effective: *Provided,*
77 That such a contract may not exceed a fifteen-year term:
78 *Provided, however,* That the long-term contract will be void
79 unless the agreement provides that the municipality shall

80 have the option during each fiscal year of the contract to
81 terminate the agreement.

82 (h) Municipalities may enter into a "lease with an option
83 to purchase" contract for the purchase and installation of
84 energy-conservation measures if the term of the lease does
85 not exceed fifteen years and the lease contract includes the
86 provisions contained in subsection (f) of this section and
87 meets federal tax requirements for tax-exempt municipal
88 leasing or long-term financing.

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

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



Chairman Senate Committee



Chairman House Committee

Originating in the House.

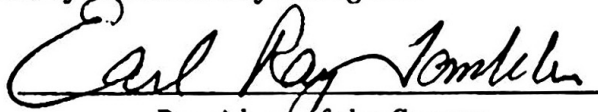
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

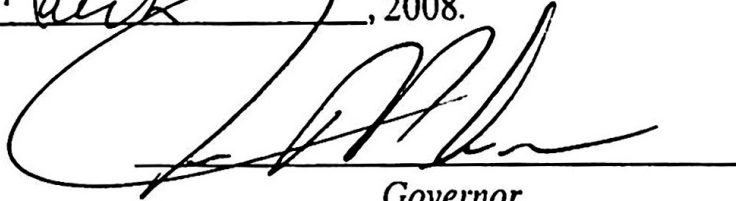


President of the Senate



Speaker of the House of Delegates

The within is approved this the 13th
day of March, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 10 2008

Time 4:30pm