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HOUSE BILL NO. 1967

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws
on January 29, 2001)

(Patron Prior to Substitute—Delegate Kilgore)

A BILL to amend the Code of Virginia by adding in Title 11 a chapter numbered 6.1, consisting of sections numbered 11-34.1 through 11-34.4, relating to the Energy and Operational Efficiency Performance-Based Contracting Act.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 11 a chapter numbered 6.1, consisting of sections numbered 11-34.1 through 11-34.4 as follows:

CHAPTER 6.1.

ENERGY AND OPERATIONAL EFFICIENCY PERFORMANCE-BASED CONTRACTING ACT.

§ 11-34.1. Legislative intent.

The General Assembly finds that investment in energy conservation measures and facility technology infrastructure upgrades and modernization in facilities owned by state and local government can reduce the amount of energy consumed, reduce long term operational costs and produce immediate and long-term savings. It is the policy of the Commonwealth to encourage public bodies to invest in energy conservation measures and facility technology infrastructure upgrades that reduce energy consumption, produce a cost savings, and improve the quality of indoor air in facilities, and, when economically feasible, operate, maintain, or renovate facilities in such a manner so as to minimize energy consumption and reduce operational costs associated with facility technology infrastructure. Furthermore, state aid and other amounts appropriated for distribution to public bodies shall not be reduced as a result of energy and operational savings realized from a guaranteed savings contract or a lease purchase agreement for the purchase and installation of energy conservation and facility technology infrastructure upgrades and modernization.

§ 11-34.2. Definitions.

As used in this chapter:

"Contracting entity" means any public body as defined in § 11-37.

"Energy conservation measures and facility technology infrastructure" means the methods, techniques, application of knowledge, installation of devices, including an alteration or betterment to an existing facility, that reduce energy consumption or operating costs, and includes, but is not limited to:

1. Insulation of the facility structure and systems within the facility.

2. Storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat-absorbing, or heat-reflective, glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption.

3. Automatic energy control systems including related software. Required network communication wiring, computer devices, wiring, and support services. Additionally, designing and implementing major building technology infrastructure with operational improvements.

4. Heating, ventilating, or air-conditioning system modifications or replacements.

5. Replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system which, at a minimum, shall conform to the applicable provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

6. Energy recovery systems.

7. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a facility or complex of facilities.

8. Energy conservation measures that provide long-term operating cost reductions and significantly reduce the BTU's consumed.

9. Building technology infrastructure measures that provide long-term operating cost reductions and reduce related operational costs.

10. Renewable energy systems, such as solar, biomass, and wind.

11. Devices that reduce water consumption or sewer charges.

"Energy cost savings" means a measured reduction in fuel, energy, or operation and maintenance costs created from the implementation of one or more energy conservation measures when compared with an established baseline for previous fuel, energy, or operation and maintenance costs. When calculating "energy cost savings" attributable to the services performed or equipment installed pursuant to a performance-based efficiency contract, maintenance savings shall be included.

"Energy performance-based contract" means a contract for the evaluation, recommendation, and

implementation of energy conservation measures and facility technology infrastructure upgrades and modernization that includes, at a minimum:

1. The design and installation of equipment to implement one or more of such measures, and, if applicable, operation and maintenance of such measures.

2. The amount of any actual annual savings. This amount must meet or exceed total annual contract payments made by the contracting entity for such contract.

3. Financing charges to be incurred by the contracting entity for such contract.

"Maintenance savings" means the operating expenses eliminated and future capital replacement expenditures avoided as a result of new equipment installed or services performed by the performance contractor.

"Performance guarantee bond" means for each year of the energy program, the energy performance contractor shall provide a performance bond in an amount equal to, but no greater than, the guaranteed measured and verifiable annual savings set forth in the program.

§11-34.3. Energy Performance-Based Contract Procedures; required contract provisions.

A. Any contracting entity may enter into an energy performance-based contract with an energy performance contractor to significantly reduce energy costs to a level established by the public body or operating costs of a facility through one or more energy conservation or operational efficiency measures.

B. The energy performance contractor shall be selected through competitive sealed bidding or competitive negotiation as defined in § 11-37. The evaluation of the request for proposal shall analyze the estimates of all costs of installation, maintenance, repairs, debt service, post installation project monitoring and reporting.

C. Before entering into a contract for energy conservation measures and facility technology infrastructure upgrades and modernization measures, the contracting entity shall require the performance contractor to provide a payment and performance bond relating to the installation of energy conservation measures and facility technology infrastructure upgrades and modernization measures in the amount the contracting entity finds reasonable and necessary to protect its interests.

D. Prior to the design and installation of the energy conservation measure, the contracting entity shall obtain from the energy performance contractor a report disclosing all costs associated with the energy conservation measure and providing an estimate of the amount of the energy cost savings. After reviewing the report, the contracting entity may enter into an energy performance-based contract if it finds (i) the amount the entity would spend on the energy conservation measures and facility and technology infrastructure upgrades and modernization measures recommended in the report will not exceed the amount to be saved in energy and operation costs more than twelve years from the date of installation, based on life-cycle costing calculations, if the recommendations in the report were followed and (ii) the energy performance contractor provides a written guarantee that the energy and operating cost savings will meet or exceed the costs of the system. The contract may provide for payments over a period of time not to exceed twelve years.

E. The term of any energy performance-based contract shall expire at the end of each fiscal year but may be renewed annually up to twelve years, subject to the contracting entity making sufficient annual appropriations based upon continued realized cost savings. Such contracts shall stipulate that the agreement does not constitute a debt, liability, or obligation of the contracting entity, or a pledge of the faith and credit of the contracting entity. Such contract may also provide capital contributions for the purchase and installation of energy conservation and facility and technology infrastructure upgrades and modernization measures that cannot be totally funded by the energy and operational savings.

F. An energy performance-based contract shall include the following provisions:

1. A guarantee by the energy performance contractor that annual energy and operational cost savings will meet or exceed the amortized cost of energy conservation measures. The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the energy or operational cost savings, or both, will meet or exceed within twelve years the costs of the energy and operational savings measures. The qualified provider shall reimburse the contracting entity for any shortfall of guaranteed energy savings projected in the contract.

2. A requirement that the energy performance contractor to whom the contract is awarded provide a 100-percent performance guarantee bond to the contracting entity for the installation and faithful performance of the installed energy savings measures as outlined in the contract document.

3. A requirement that the energy performance contractor provide to the contracting entity an annual reconciliation of the guaranteed energy cost savings. The energy performance contractor shall be liable for any annual savings shortfall that may occur.

§ 11-34.4. Application of chapter.

The provisions of this chapter shall not apply to new construction projects undertaken by public bodies.