



COUNTY ADVISORY BULLETIN

CAB

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NEW LAW ON THE PURCHASE, INSTALLATION, AND FINANCING OF ENERGY CONSERVATION IMPROVEMENTS FOR COUNTY BUILDINGS

INTRODUCTION

Legislation effective July 1 establishes new procedures that can be used by counties that desire to comprehensively analyze energy use in existing buildings and make improvements to reduce the long range cost of energy. The law is modeled after procedures previously enacted by the General Assembly for school districts. The basic concept of the bill is that savings in energy costs will more than pay for the cost of installing energy conservation measures in existing buildings.

The new law provides a structured approach by which counties can determine how the installation of energy conservation measures can save money in the long run. Nothing in the new law prohibits a county from contracting for selected energy improvements under regular competitive bidding procedures. In addition, counties may continue to finance such improvements as permanent improvements under the Uniform Bond Law.

These provisions were included in HB 300 sponsored by Representative Darrell Opfer (D-Oak Harbor) a former Ottawa County Commissioner. HB 300 was introduced by Representative Opfer at the request of CCAO and included a series of other changes in purchasing law that were detailed in CAB 94-5, June, 1994.

This CAB will summarize the provisions of HB 300 as they relate to the installation and financing of energy conservation measures. This CAB should be three hole punched and inserted after the CCAO INFORMATION TAB of the COUNTY COMMISSIONERS' HANDBOOK for future reference.

SUMMARY OF MAJOR STATUTORY CHANGES

The following table summarizes the major new statutory provisions of the law relating to the installation and financing of energy conservation measures as enacted in HB 300.

ORC SECTION	SUMMARY
133.07(C)(13)	
307.041(F)	EXEMPTS BONDS AND NOTES ISSUED FOR ENERGY CONSERVATION MEASURES FROM THE STATUTORY OR DIRECT DEBT LIMIT.
133.20(B)(6)(g)	PROVIDES THAT BONDS ISSUED FOR ENERGY CONSERVATION MEASURES CAN BE ISSUED FOR NOT LONGER THAN 10 YEARS.
307.041(A)	DEFINES ENERGY CONSERVATION MEASURES.
307.041(B)	AUTHORIZES COUNTIES TO CONTRACT FOR "ENERGY AUDITS" OF EXISTING BUILDINGS.
307.041(C)	ESTABLISHES TWO ALTERNATE PROCEDURES COUNTIES MAY USE TO PROCURE ENERGY CONSERVATION MEASURES.
307.041(D)	AUTHORIZES COUNTY COMMISSIONERS TO EXECUTE INSTALLMENT PAYMENT CONTRACTS TO PURCHASE AND INSTALL ENERGY CONSERVATION MEASURES.
307.041(E)	AUTHORIZES THE ISSUANCE OF NOTES TO SECURE DEFERRED PAYMENTS UNDER AN INSTALLMENT PAYMENT CONTRACT.

WHAT ARE ENERGY CONSERVATION MEASURES?

Energy conservation measures are defined to be the installation or modification of an installation in, or remodeling of, an existing building to reduce energy consumption including:

1. Insulation of the building and systems within the building.
2. Storm windows and doors.

3. Multi glazed windows and doors.
4. Heat absorbing or heat reflective glazed and coated window and door systems.
5. Additional glazing.
6. Reductions in glass area.
7. Other window and door system modifications.
8. Automatic energy control systems.
9. Heating, ventilating, or air conditioning system modifications and replacements.
10. Caulking and weatherstripping.
11. Replacement or modification of lighting fixtures that increase energy efficiency without increasing illumination, unless the increase in illumination is required by a building code.
12. Energy recovery systems.
13. Co-generation systems that produce steam or forms of energy such as heat, as well as electricity, primarily for use within a building or complex of buildings.
14. Any other modification, installation or remodeling approved by the county commissioners as an energy conservation measure.

CONTRACTS FOR ENERGY REPORTS

County commissioners may contract for the preparation of an energy report on a building. Such a report will analyze the energy needs of the building and will recommend new installations, modifications of existing installations, or building remodeling that will significantly reduce energy consumption. The report must include cost estimates for design, engineering, installation, maintenance and repairs. The report must also project the amounts of energy that could be saved.

Commissioners may contract with an architect, professional engineer, energy services company, contractor, or other person who has experience in the design and implementation of energy conservation measures to prepare the energy report.

OPTIONS FOR MAKING ENERGY CONSERVATION IMPROVEMENTS

The law provides two new options for a county that desires to implement energy

conservation measures as follows:

1. The county may advertise for bids and comply with regular competitive bidding procedures (ORC 307.86-.92), using the energy report or any part of the report.
2. The county may use a Request for Proposal (RFP) procedure which will be detailed in the next section of this CAB.

It should be stressed that counties may still proceed to make energy related improvements under all provisions of current law. The procedures included in HB 300 are meant to supplement existing law.

IMPLEMENTING ENERGY CONSERVATION MEASURES USING THE RFP METHOD

Whether or not an energy report or audit is prepared, the county may use a request for proposal (RFP) approach instead of regular competitive bidding. Following are the procedures that must be followed if this option is used:

1. The RFP must be sent to at least three vendors.
2. Prior to mailing the RFP to any vendor the county must advertise its intent to issue the RFP for energy conservation measures in a newspaper of general circulation in the county.
3. The notice must be published once a week for two consecutive weeks.
4. The notice must include:
 - a. A statement that the county intends to request proposals for the installation of energy conservation measures.
 - b. Indicate the date the RFP will be mailed to vendors. This date must be at least 10 days after the second publication in the newspaper.
 - d. A statement that any vendor interested in receiving the RFP must submit written notice to the county not later than noon of the day the RFP will be mailed.

Unlike the first option, under the RFP approach the county is not obligated to have an energy audit performed or to use all or any part of the results of an audit when issuing an RFP. In this situation, the RFP could simply invite vendors to submit proposals on how the county could save the most energy for the least cost. The intent of this language was to provide the opportunity for vendors and experienced energy conservation companies to develop a proposal for the county that uses corporate

resources, experience, and creativity to develop a proposal that will result in maximum savings and not be limited by any recommendations contained in a previously prepared energy audit.

After proposals are submitted, the county must analyze the proposals. The county may then select one or more proposals that are most likely to result in the greatest energy savings considering the cost of the project and the ability of the county to pay for improvements with current revenues or by financing the improvements. It should be stressed that the general "lowest and best" bid requirement does not apply, however, counties should be sure they can justify their selection on the basis of the new selection criteria.

In addition, the county must condition the award of the contract upon a finding by the commissioners that the amount to be spent is not likely to exceed the amount of money the county would save in energy and operating costs over a 10 year period or in a lesser period if determined by the commissioners. If the commissioners intend to make their decision on the basis of relative cost savings over a period of less than 10 years, it is recommended that this be clearly stated in the RFP. Likewise, counties may wish to include in the RFP proposed costs both with and without vendor financing. In this way a county can compare vendor financing with alternate financing options. In the case of contracts involving co-generation systems, the savings must be realized in a 5 year period. Finally, the county may reject all proposals.

PROS AND CONS OF ALTERNATE PROCEDURES

As was previously discussed, under the new law the county can either have an energy report prepared or simply issue an RFP. The first question that should be answered is: Which procedure should the county use?

There are pros and cons to both procedures. Counties may decide to have an energy report prepared on ways to achieve energy savings. The law authorizes a variety of professionals, companies, or firms to prepare the energy report. Many architectural and engineering firms and energy services companies not only contract to prepare an energy report, but are also involved in actually doing energy savings project work. Concerns have been expressed that if the county selects an energy services company to prepare the energy report that this company may audit to proprietary standards. This may later give the company an advantage during the competitive bid process. The advantage of using one of these entities is that the company may prepare the energy report at a lesser cost or at no cost. This is attractive to fiscally strapped counties.

The RFP process can be used by counties that do not wish or can not afford to prepare an independent energy report, but still desire to determine what improvements and modifications various vendors would propose to save energy. The county would then evaluate relative savings to the cost of improvements and modifications.

In such situations, the vendor may submit a proposal that will propose the use of systems and equipment that they sell. While the RFP process provides procedural safeguards to give all companies the opportunity to submit a proposal and requires the county to request proposals from at least three vendors, the law allows the county to award the contract if only one proposal is submitted. In addition, under the RFP process the county should make sure that it makes the final determination about the scope of the project.

INSTALLMENT PAYMENT CONTRACTS

Counties are authorized to enter into installment payment contracts with vendors for the purchase and installation of energy conservation measures. The terms of such a contract must include the following terms:

1. At least 10% of the cost of the contract must be paid within two years of purchase.
2. The remaining balance must be paid within 10 years from the date of purchase, or within 5 years in the case of co-generation systems.

When entering into an installment payment contract the county must comply with regular competitive bidding (ORC 306.86) relating to the installation, modification, or remodeling of energy conservation measures unless a resolution is adopted that exempts the county from competitive bidding. In this case the RAP process previously described must then be used. Provisions of an installment payment contract relating to interest charges and financing terms are exempt from competitive bidding.

PROVISIONS RELATING TO BONDS AND NOTES

HB 300 includes the following provisions relating to bonds and notes:

1. EXEMPTION FROM STATUTORY OR DIRECT DEBT LIMIT - The bill specifically exempts securities issued for energy conservation measures under ORC 307.041 from the calculation of the net indebtedness of the county. If a county, however, issues general obligation debt to install a boiler, for example, under regular competitive bidding, and not pursuant to the new energy report RAP procedures as specified in ORC 307.041, then that debt would not be exempt. In a typical county, however, direct debt capacity is not a problem.
2. MATURITY OF BONDS - The bill provides that the maximum maturity for bonds issued for energy conservation measures pursuant to ORC 307.041 is 10 years.
3. ISSUANCE OF NOTES TO SECURE PAYMENTS UNDER AN INSTALLMENT PAYMENT CONTRACT - The bill authorizes counties to issue notes that specify the terms of the purchase pursuant to an installment payment contract and that secure the

deferred payments in such a contract. The resolution authorizing the issuance of notes may provide when they are payable, and may not bear an interest rate exceeding that set by ORC 9.95. These notes may contain an option for prepayment and are exempt from ORC Chapter 133. County revenues derived from local taxes or otherwise for the purpose of conserving energy or for defraying current operating expenses can be used to pay principal and interest on such notes. These notes may be sold at private sale or given to the vendor pursuant to an installment payment contract. The notes are also exempt from the county statutory or direct debt limit.

4. EXISTING AUTHORITY TO ISSUE DEBT - Section 133.15 of the Ohio Revised Code continues to permit issuance of general obligation securities to pay all or a portion of the cost of any permanent improvement the county is authorized to acquire, improve or construct. Thus, as an alternative to an installment payment contract, notes or bonds may be issued pursuant to Section 133.15.

THE INDIRECT DEBT LIMITATION

The indirect debt limitations (the so-called "Ten-Mill Limitation") is based on Article XII Sections 2 and 11 of the Ohio Constitution and Section 5705.02 of the Ohio Revised Code. Pursuant to Article XII, Section 11 of the Constitution, no "bonded indebtedness" shall be incurred or renewed unless provision is made, in the legislation authorizing the indebtedness, for the levy and collection of annual taxes sufficient to pay the interest on the debt and to create a sinking fund for its final redemption at maturity.

However, the amount of taxes that may be levied on any parcel of real property without a vote of the electors is limited to one percent (1%), or ten mills, of its taxable value under Article XII, Section 2 of the Ohio Constitution and Section 5705.02 of the Ohio Revised Code. Under these provisions, the outstanding debt of all political subdivisions or taxing districts overlapping a county (combination of county, municipality, school district and township debt) is considered in determining the indirect debt limitation.

Therefore, in ascertaining whether unnoted bonds or notes (including installment payments notes) can be issued within this indirect debt limitation, it is necessary to determine the full ten mills permitted by the Constitution, diminished by the amount required for the debt service on all outstanding unnoted general obligations issued by a county and its overlapping subdivisions. This figure is determined by ascertaining the highest amount required in any one year for the payment of such debt service on all such obligations.

CONCLUSION

HB 300 provides new options for counties who wish to make energy conservation improvements to existing county buildings. Counties desiring to make such improvements are urged to work with the county prosecutor and bond counsel in

determining the best way to proceed under the new options that are now provided for under Ohio law.

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