

# CODE OF VIRGINIA



## Title 11 Contracts

# Title 11 - CONTRACTS

## Chapter 1 - GENERAL PROVISIONS

### § 11-1. Certain contracts void as to creditors and purchasers unless in writing; law governing validity of contracts creating security interests.

Every contract, not in writing, made in respect to real estate or goods and chattels in consideration of marriage, or made for the conveyance or sale of real estate, or a term therein of more than five years, and, except as otherwise provided in § [8.2-402](#) of the Uniform Commercial Code, every bill of sale or contract for the sale of goods and chattels when the possession is allowed to remain with the seller, shall be void, both at law and in equity, as to purchasers for value and without notice and creditors; provided, however, that if any such contract or bill of sale as is mentioned in this section creates a security interest as defined in the Uniform Commercial Code, its validity and enforceability shall be governed by the provisions of that Code.

Code 1919, § 5192; 1964, c. 314; 1966, c. 397.

### § 11-2. When written evidence required to maintain action.

Unless a promise, contract, agreement, representation, assurance, or ratification, or some memorandum or note thereof, is in writing and signed by the party to be charged or his agent, no action shall be brought in any of the following cases:

1. To charge any person upon or by reason of a representation or assurance concerning the character, conduct, credit, ability, trade, or dealings of another, to the intent or purpose that such other may obtain thereby, credit, money, or goods;
2. To charge any person upon a promise made after attaining the age of majority, to pay a debt contracted during infancy, or upon a ratification after attaining the age of majority, of a promise or simple contract made during infancy;
3. To charge a personal representative upon a promise to answer any debt or damages out of his own estate;
4. To charge any person upon a promise to answer for the debt, default, or misdoings of another;
5. Upon any agreement made upon consideration of marriage;
6. Upon any contract for the sale of real estate, or for the lease thereof for more than a year;
7. Upon any agreement or contract for services to be performed in the sale of real estate by a party defined in § [54.1-2100](#) or § [54.1-2101](#);
8. Upon any agreement that is not to be performed within a year; or
9. Upon any agreement or promise to lend money or extend credit in an aggregate amount of \$25,000 or more.

The consideration need not be set forth or expressed in the writing, and it may be proved (where a consideration is necessary) by other evidence.

Code 1919, § 5561; 1976, c. 157; 1990, c. 570.

**§ 11-2.01. Promise after bankruptcy must be in writing.**

When a debtor is adjudicated a bankrupt or discharged in a bankruptcy proceeding any promise to pay such debt, after such adjudication or discharge, shall be in writing for any action at law or in equity to be maintained thereupon.

Code 1950, § 8-512; 1977, c. 624.

**§ 11-2.1. Goods sent by mail.**

No suit shall be maintained, or judgment rendered, either at law or in equity, in any court of this Commonwealth, to recover any goods, property or thing, or the value thereof, which has been sent to any person by mail, unless such goods, property or thing has been impliedly or expressly ordered by the person to whom the same has been sent and received or unless it be proved that such person has appropriated such goods, property, or thing to his own use.

1952, c. 326.

**§ 11-2.2. Unsolicited goods deemed gift to recipient.**

If any person, firm, partnership, association or corporation, or any agent or employee thereof, shall in any manner or by any means offer for sale goods, wares or merchandise when the offer includes the voluntary and unsolicited sending of any goods, wares or merchandise not actually ordered or requested by the recipient, either orally or in writing, then the sender of any such unsolicited goods, wares or merchandise shall for all purposes be deemed to have made an unconditional gift to the recipient thereof, who may use or dispose of such goods, wares or merchandise in any manner he deems proper without any obligation to return the same to the sender or to pay him therefor.

1970, c. 386.

**§ 11-2.3. Repealed.**

Repealed by Acts 1991, c. 458.

**§ 11-2.4. Notice of possible filing of mechanics' lien required.**

Every contract made on or after July 1, 1992, for the purchase of residential real property shall include the following provision:

**NOTICE**

Virginia law (§ [43-1](#) et seq.) permits persons who have performed labor or furnished materials for the construction, removal, repair or improvement of any building or structure to file a lien against the property. This lien may be filed at any time after the work is commenced or the material is furnished, but not later than the earlier of (i) 90 days from the last day of the month in which the lienor last performed work or furnished materials or (ii) 90 days from the time the construction, removal, repair or improvement is terminated.

AN EFFECTIVE LIEN FOR WORK PERFORMED PRIOR TO THE DATE OF SETTLEMENT MAY BE FILED AFTER SETTLEMENT. LEGAL COUNSEL SHOULD BE CONSULTED.

Failure of a contract for the purchase of residential real property to include the notice required by this section shall not void such contract.

1992, c. 606.

**§ 11-3. Sealed writings; writings not purporting to be sealed.**

Any writing to which a natural person, corporation, limited liability company or partnership, whether general or limited, making it affixes a scroll by way of a seal, shall be of the same force as if it were actually sealed. The impression or stamping of a corporate or an official seal on paper or parchment alone shall be as valid as if made on wax or other adhesive substance. And any writing to which a natural person, corporation, limited liability company or partnership, whether general or limited, making it affixes his signature, or their signatures, and which writing in its body says "this deed," or "this indenture," or other words importing a sealed instrument, or recognizes a seal, shall be of the same force as if it were actually sealed by such person, corporation, limited liability company or partnership, although no seal or scroll be attached; and any writing signed by a natural person, corporation, limited liability company or partnership, whether general or limited, and regularly acknowledged before an officer authorized to take acknowledgments of deeds to be recorded in this Commonwealth, in the body of which writing it clearly appears that the person so signing and acknowledging the same intends to and does grant or convey unto the grantee named therein certain real estate as therein described, and in which the writing is not said to be a deed or an indenture, and does not purport to be sealed, and to which no seal or scroll is attached, such writing shall pass the title to such real estate as effectually as if it were written and executed in strict accordance with the provisions of § [55.1-300](#); and any such writing admitted to record prior to June 19, 1946, shall be of the effect as if made and recorded thereafter, except as to vested rights already attached contrary to such writing.

Code 1919, § 5562; 1934, p. 524; 1946, pp. 59, 426; 1975, c. 500; 1996, c. [265](#).

**§ 11-4. Sizes of type in printed contracts.**

No contract in writing entered into between a citizen of this Commonwealth and any person, firm, company or corporation, domestic or foreign, doing business in this Commonwealth, for the sale and future delivery of any goods or chattels, machinery or mechanical devices, or personal property of any kind or sort whatsoever, shall be binding upon the purchaser, where the form is printed and furnished by the person, firm, company or corporation, unless all of the provisions of such contract are clearly and plainly printed or written; and, where printed, such provisions and covenants and all stipulations as to the rights of the vendor shall be in type of not less than the size known as ten point; and, wherever in such contract, printed upon a form furnished by the vendor, it is stipulated that the vendor is not to be bound by any verbal agreement or modification of the terms of such printed contract, then such stipulation shall be printed as a separate paragraph or paragraphs and in type not smaller than pica. Should any of the contract, including the special stipulation hereinbefore mentioned, be printed in less than the size of type hereby prescribed, and the agent or salesman of such person, firm, company or

corporation enter into any verbal or written or collateral agreement with the vendee, on the part of the person, firm, company or corporation, modifying or changing such printed agreement or the parts of the contract which are printed, then the vendee may, in any action instituted to enforce such contract, or the payment of any sum of money agreed to be paid under such contract, be allowed to introduce such collateral agreement, or contract in modification thereof, or any verbal statement made by the agent or salesman in modification thereof, in evidence in such action, and the same, if proved, shall be considered by the court or jury trying the case as a part of such printed contract.

1920, p. 362; Michie Code 1942, § 5562a.

#### **§ 11-4.1. Certain indemnification provisions in construction contracts declared void.**

Any provision contained in any contract relating to the construction, alteration, repair or maintenance of a building, structure or appurtenance thereto, including moving, demolition and excavation connected therewith, or any provision contained in any contract relating to the construction of projects other than buildings by which the contractor performing such work purports to indemnify or hold harmless another party to the contract against liability for damage arising out of bodily injury to persons or damage to property suffered in the course of performance of the contract, caused by or resulting solely from the negligence of such other party or his agents or employees, is against public policy and is void and unenforceable. This section applies to such contracts between contractors and any public body, as defined in § [2.2-4301](#).

This section shall not affect the validity of any insurance contract, workers' compensation, or any agreement issued by an admitted insurer.

The provisions of this section shall not apply to any provision of any contract entered into prior to July 1, 1973.

1973, c. 273; 1974, c. 430; 1991, c. 363.

#### **§ 11-4.1:1. Waiver of payment bond claims and contract claims; construction contracts.**

A subcontractor as defined in § [43-1](#), lower-tier subcontractor, or material supplier may not waive or diminish his right to assert payment bond claims or his right to assert claims for demonstrated additional costs in a contract in advance of furnishing any labor, services, or materials. A provision that waives or diminishes a subcontractor's, lower-tier subcontractor's, or material supplier's right to assert payment bond claims or his right to assert claims for demonstrated additional costs in a contract executed prior to providing any labor, services, or materials is null and void.

2015, c. [748](#).

#### **§ 11-4.2. Repealed.**

Repealed by Acts 1975, c. 448.

#### **§ 11-4.3. When acceleration of payment or repossession of consumer goods not allowed.**

Notwithstanding any provisions in a contract, other evidence of indebtedness or security agreement arising from a sale or financing of consumer goods as defined in § [8.9A-102](#) of this Code, no

acceleration of payment or repossession on account of late payment or nonpayment of an installment shall be permitted if payment, together with any late payment penalty permitted under § [6.2-400](#), is made within ten days of the date on which the installment was due.

1974, c. 572.

**§ 11-4.4. Certain indemnification and duty to defend provisions in contracts with design professionals declared void.**

Any provision contained in any contract relating to the planning or design of a building, structure or appurtenance thereto, including moving, demolition or excavation connected therewith, or any provision contained in any contract relating to the planning or design of construction projects other than buildings by which the architect or professional engineer performing such work purports to indemnify or hold harmless another party to the contract against liability for damage arising out of bodily injury to persons or damage to property suffered in the course of the performance of the contract, caused by or resulting solely from the negligence of such other party, his agents or employees, is against public policy and is void and unenforceable.

This section shall apply to such contracts between an architect or professional engineer and any public body as defined in § [2.2-4301](#). Every provision contained in a contract between an architect or professional engineer and a public body relating to the planning or design of a building, structure or appurtenance thereto, including moving, demolition or excavation connected therewith, or relating to the planning or design of construction projects other than buildings by which the architect or professional engineer performing such work purports to indemnify or hold harmless the public body against liability is against public policy and is void and unenforceable. This section shall not be construed to alter or affect any provision in such a contract that purports to indemnify or hold harmless the public body against liability for damage arising out of the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the architect or professional engineer in performance of the contract.

Any provision contained in any contract relating to the planning or design of a building, structure, or appurtenance thereto, including moving, demolition, or excavation connected therewith, or any provision contained in any contract relating to the planning or design of construction projects by which any party purports to impose a duty to defend on any other party to the contract, is against public policy and is void and unenforceable.

This section shall not affect the validity of any insurance contract, workers' compensation, or any agreement issued by an admitted insurer.

1995, c. [341](#); 2001, c. [670](#); 2020, c. [1015](#).

**§ 11-4.5. Certain indemnification provisions in motor carrier transportation contracts declared void.**

A. As used in this section:

"Motor carrier transportation contract" means a contract, agreement, or understanding covering:

1. The transportation of property for compensation or hire by the motor carrier;



2. The entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or for hire; or
3. A service incidental to activity described in subdivision 1 or 2 including, but not limited to, storage of property.

For the purposes of this section, the term "motor carrier transportation contract" shall not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America, as that agreement may be amended by the Intermodal Interchange Executive Committee, or other agreements providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment.

B. A provision, clause, covenant, or agreement contained in, collateral to, or affecting a motor carrier transportation contract that purports to indemnify, or hold harmless, or has the effect of indemnifying, or holding harmless, either party from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of other party, or any agents, employees, servants, or independent contractors who are directly responsible to the other party, is against the public policy and is void and unenforceable.

C. Nothing contained in this section affects a provision, clause, covenant, or agreement where the motor carrier indemnifies or holds harmless the other party against liability for damages to the extent that the damages were caused by and resulting from the negligence of the motor carrier, its agents, employees, servants, or independent contractors who, in whole or in part are directly responsible to the motor carrier.

2006, cc. [237](#), [423](#).

#### **§ 11-4.6. Liability of contractor for wages of subcontractor's employees.**

A. As used in this section, unless the context requires a different meaning:

"Construction contract" means a contract between a general contractor and a subcontractor relating to the construction, alteration, repair, or maintenance of a building, structure, or appurtenance thereto, including moving, demolition, and excavation connected therewith, or any provision contained in any contract relating to the construction of projects other than buildings.

"General contractor" and "subcontractor" have the meanings ascribed thereto in § [43-1](#).

B. Any construction contract entered into on or after July 1, 2020, shall be deemed to include a provision under which the general contractor and the subcontractor at any tier are jointly and severally liable to pay any subcontractor's employees at any tier the greater of (i) all wages due to a subcontractor's employees at such rate and upon such terms as shall be provided in the employment agreement between the subcontractor and its employees or (ii) the amount of wages that the subcontractor is required to pay to its employees under the provisions of applicable law, including the provisions of the Virginia Minimum Wage Act (§ [40.1-28.8](#) et seq.) and the Fair Labor Standards Act (29 U.S.C. § 201 et seq.).

C. A general contractor shall be deemed to be the employer of a subcontractor's employees at any tier for purposes of § [40.1-29](#). If the wages due to the subcontractor's employees under the terms of the employment agreement between a subcontractor and its employees are not paid, the general contractor shall be subject to all penalties, criminal and civil, to which an employer that fails or refuses to pay wages is subject under § [40.1-29](#). Any liability of a general contractor pursuant to § [40.1-29](#) shall be joint and several with the subcontractor that failed or refused to pay the wages to its employees.

D. Except as otherwise provided in a contract between the general contractor and the subcontractor, the subcontractor shall indemnify the general contractor for any wages, damages, interest, penalties, or attorney fees owed as a result of the subcontractor's failure to pay wages to the subcontractor's employees as provided in subsection B, unless the subcontractor's failure to pay the wages was due to the general contractor's failure to pay moneys due to the subcontractor in accordance with the terms of their construction contract.

E. The provisions of this section shall only apply if (i) it can be demonstrated that the general contractor knew or should have known that the subcontractor was not paying his employees all wages due, (ii) the construction contract is related to a project other than a single family residential project, and (iii) the value of the project, or an aggregate of projects under one construction contract, is greater than \$500,000.

2020, c. [1038](#).

#### **§§ 11-5 through 11-7. Repealed.**

Repealed by Acts 1964, c. 219.

#### **§ 11-7.1. Certain entities' authority to extend performance agreements.**

A. The Department of Small Business and Supplier Diversity, the Virginia Economic Development Partnership Authority, the Virginia Tourism Authority, the Tobacco Region Revitalization Commission, a nonprofit, nonstock corporation created pursuant to § [2.2-2240.1](#), any county, city, or town, or local or regional industrial or economic development authorities created in accordance with law have the authority, upon the agreement of the parties, to extend the performance period for any performance agreement.

B. For the purposes of this section, "performance agreement" means any agreement, contract, or memorandum of understanding that imposes an obligation for minimum private investment or the creation of new jobs in exchange for grants or other funds, or loans of money from an entity specified in subsection A.

C. Nothing in this section shall be construed or interpreted to authorize or allow for any payment or appropriation of funds except as provided in the general appropriation act.

2009, c. [224](#); 2013, c. [482](#).

#### **§ 11-8. Instruments executed by minors or surviving spouses to obtain benefits under certain federal legislation.**



Any person under the age of 18 or surviving spouse who has not remarried who is eligible for a guaranty of credit under the provisions of Title III of an Act of Congress of the United States approved June 22, 1944, entitled the "Servicemen's Readjustment Act of 1944," as now or hereafter amended, or other like federal law, shall be upon complying with the terms of this section, qualified to contract for and purchase any real or personal property with respect to which the guaranteed loan is to be made, to execute the note or other evidence of the loan indebtedness and to secure the debt by the execution of a deed of trust or chattel mortgage, or other instrument, upon the real or personal property acquired as aforesaid in connection with the proposed loan or theretofore acquired by such person, whether by purchase or otherwise, and such person shall, in all respects, be bound by such contracts or other instruments entered into as though he were of full age.

When any such person is under the age of 18 years, no contract, note, deed of trust, mortgage, or other instrument required to obtain benefits under such federal legislation shall be executed by such person unless the circuit or corporation court of the city or county, or judge thereof in vacation, in which the property is located or to be used, after a petition signed by any such person has been filed with it or him, approves the same. Such petition shall set forth the facts pertaining to the proposed transaction and shall state why the judge or court should approve and authorize the execution of the necessary instruments.

The petition shall be heard by the court without a jury, and its decision thereon shall be final. A guardian ad litem shall be appointed who shall make an investigation and report in writing whether in his opinion the best interest of the petitioner would be served by permitting the petitioner to enter into such transaction, and the report shall be filed with the papers in the case. No such petition shall be approved by the court unless such approval is recommended by the report of the guardian ad litem and unless it is also recommended by the testimony of at least two disinterested and qualified witnesses appointed by the court, or the judge thereof in vacation. The order of approval shall recite the recommendation of the guardian ad litem and the witnesses and also their names and addresses. And the judge of the court hearing the case shall fix a reasonable fee for the attorneys and guardians ad litem.

The court, if of opinion that entry into such transaction would benefit the petitioner, shall approve the prayer of the petition, and the petitioner, if he enters into such transaction and executes any instrument required therein, shall be bound thereby as if of full age whether all or part of the obligation secured is so guaranteed.

All rights that have accrued or obligations that have arisen under this section prior to January 30, 1947, are hereby declared valid and binding.

If the court approves the prayer of the petition, such approval shall operate to vest title and confer the power to encumber or convey title to real or personal property acquired pursuant to such approval.

Any infant spouse of an infant veteran permitted by the court to make loans under this section may unite in any conveyance to effectuate such a loan as if he were a spouse of an adult signing as

provided under the provisions of § 55-42, relating to the removal of disability of infancy in certain cases.

1946, p. 432; Michie Suppl. 1946, § 5760a; 1947, p. 102; 1954, c. 602; 1972, c. 825; 2020, c. [900](#).

**§ 11-9. Writing payable to deceased person.**

A bond, note or other writing to a person or persons who, or some of whom, are dead at the time of its execution, shall be as valid as if such person or persons were then alive.

Code 1919, § 5761.

**§§ 11-9.1 through 11-9.7. Repealed.**

Repealed by Acts 2010, cc. [455](#) and [632](#), cl. 2.

**§ 11-9.8. Construction of certain terms of offer to contract; use of experience modification factor prohibited.**

A. As used in this section:

"Contract" means an agreement for the provision of construction services under which the contractor will be required to have and maintain a policy of insurance as defined in § [38.2-119](#).

"Experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § [38.2-1913](#).

"Offer to contract" means a solicitation of bids, Request for Proposals, or similar invitation to enter into a contract that is extended to potential contractors for construction services.

"Person" means any individual; firm; cooperative; association; corporation; limited liability company; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy; club, society, or other group or combination acting as a unit; or public body, including but not limited to (i) the Commonwealth; (ii) any other state; and (iii) any agency, department, institution, political subdivision, or instrumentality of the Commonwealth or any other state.

B. A term of an offer to contract issued that requires that the successful bidder have a specified experience modification factor is prohibited.

C. Any contract or offer to contract that requires the contractor or bidder responding to the offer to contract to have a specified experience modification factor is prohibited.

2016, c. [754](#).

## **Chapter 2 - COMPROMISE AND SATISFACTION**

**§ 11-10. Compromise by creditor with co-obligor, etc.**

A creditor may compound or compromise with any joint contractor or co-obligor, and release him from all liability on his contract or obligation, without impairing the contract or obligation as to the other joint contractors or co-obligors.

Code 1919, § 5763.

**§ 11-11. Crediting contract; surety.**

When such compounding or compromise is made, the contract or obligation shall be credited with a full share of the party released, except where the compounding or compromise is with a surety or cosurety, and in that case, as between the creditor and principal, the credit shall be for the sum actually paid by the compounding debtor.

Code 1919, § 5764.

**§ 11-12. Part performance extinguishing obligation.**

Part performance of an obligation, promise or undertaking, either before or after a breach thereof, when expressly accepted by the creditor in satisfaction and rendered in pursuance of an agreement for that purpose, though without any new consideration, shall extinguish such obligation, promise, or undertaking.

Code 1919, § 5765.

**§ 11-13. Right of contribution not affected.**

Nothing contained in §§ [11-10](#) through [11-12](#) shall affect or impair the right of contribution between joint contractors and co-obligors.

Code 1919, § 5766.

## **Chapter 3 - GAMING CONTRACTS**

**§ 11-14. Gaming contracts void.**

Except as otherwise provided in this section, all wagers, conveyances, assurances, and all contracts and securities whereof the whole or any part of the consideration is money or other valuable thing won, laid, or bet, at any game, horse race, sport or pastime, and all contracts to repay any money knowingly lent at the time and place of such game, race, sport or pastime, to any person for the purpose of so gaming, betting, or wagering, or to repay any money so lent to any person who shall, at such time and place, so pay, bet or wager, shall be utterly void.

Notwithstanding any other provision of law, a contract governing the distribution of state lottery proceeds shall be valid and enforceable as between the parties to the contract.

Code 1919, § 5558; 1998, c. [400](#).

**§ 11-15. Recovery of money or property lost in gaming.**

Any person who shall, by playing at any game or betting on the sides or hands of such as play at any game, lose within twenty-four hours, the sum or value of five dollars, or more, and pay or deliver the same, or any part thereof, may, within three months next following, recover from the winner, the money or the value of the goods so lost and paid or delivered, with costs of suit in civil action, either by suit or warrant, according to the amount or value thereof.

Code 1919, § 5559.

**§ 11-16. Bill by loser; repayment discharges winner from punishment.**

Such loser may file a bill in equity against such winner, who shall answer the same, and upon discovery and repayment of the money or property so won, or its value, such winner shall be discharged from any forfeiture or punishment which he may have incurred for winning the same.

Code 1919, § 5560.

**§ 11-16.1. Exemption from the chapter.**

This chapter shall not apply to any bet, wager, or casino gaming permitted by Chapter 41 (§ [58.1-4100](#) et seq.) of Title 58.1 or to any contract, conduct, or transaction arising from conduct lawful thereunder.

2020, cc. [1197](#), [1248](#).

**§ 11-16.2. Exemption; authorized sports betting.**

This chapter shall not apply to any sports betting or related activity that is lawful under Article 2 (§ [58.1-4030](#) et seq.) of Chapter 40 of Title 58.1.

2020, cc. [1218](#), [1256](#), § 11-16.1.

**Chapter 4 - PUBLIC CONTRACTS IN GENERAL [Repealed]**

**§ 11-17. Repealed.**

Repealed by Acts 1982, c. 647.

**§ 11-17.1. Expired.**

Expired by the terms of Acts 1980, c. 95, cl. 2, on July 1, 1983.

**§§ 11-18 through 11-23.5. Repealed.**

Repealed by Acts 1982, c. 647.

**Chapter 4.1 - USE OF DOMESTIC STEEL IN PUBLIC WORKS PROJECTS [Repealed]**

**§§ 11-23.6 through 11-23.10. Expired.**

Expired by the terms of Acts 1981, c. 379, cl. 2, on June 30, 1986.

**Chapter 5 - BURIAL, ETC., CONTRACT [Repealed]**

**§§ 11-24 through 11-29. Repealed.**

Repealed by Acts 1989, c. 684.

**Chapter 6 - CREDIT CARDS**

**§§ 11-30 through 11-34. Repealed.**

Repealed by Acts 2010, c. [794](#), cl. 11, effective October 1, 2010.

## 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.

2001, c. [219](#).

### § 11-34.2. Definitions.

As used in this chapter:

"Contracting entity" means any public body as defined in § [2.2-4301](#).

"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 BTUs 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.

2001, c. [219](#).

### **§ 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. For the purposes of this chapter, energy conservation or operational efficiency measures shall not include roof replacement projects.



B. The energy performance contractor shall be selected through competitive sealed bidding or competitive negotiation as set forth in § [2.2-4302.1](#) or [2.2-4302.2](#). 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. Notwithstanding any other provision of law, any contracting entity may purchase energy conservation or operational efficiency measures under an energy performance-based contract entered into by another contracting entity pursuant to this chapter even if it did not participate in the request for proposals if the request for proposals specified that the procurement was being conducted on behalf of other contracting entities.

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 20 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 20 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 20 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 20 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.

G. The Department of Mines, Minerals and Energy (the Department) shall make a reasonable effort, as long as workload permits, to:

1. Provide general advice, upon request, to local governments that wish to consider pursuit of an energy performance-based contract pursuant to this section;

2. Annually compile a list of performance-based contracts entered into by local governments of which the Department may become aware.

2001, c. [219](#); 2004, c. [197](#); 2009, c. [399](#); 2013, c. [583](#); 2017, c. [259](#).

#### **§ 11-34.4. Application of chapter.**

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

2001, c. [219](#).

## **Chapter 7 - VIRGINIA PUBLIC PROCUREMENT ACT**

### **§§ 11-35 through 11-80. Repealed.**

Repealed by Acts 2001, c. [844](#), cl. 13, effective October 1, 2001.