



State of Tennessee passes legislation allowing State agencies to enter into Guaranteed ESCP projects

July 23, 2021

During the 2021 session of the Tennessee General Assembly, a new bill was passed (Public Chapter 279) which allows State agencies to enter into Guaranteed Energy Savings Performance Contracting (GESPC) agreements. The bill was subsequently signed into law by Gov. Bill Lee on May 3rd, 2021. The legislation amended Tenn. Code Ann. 12-4-118, converting a pilot GESPC program into a permanent program. This legislation provides State agencies with a valuable implementation and funding tool to address facility improvements which save money.

Highlights of the legislation are provided below.

Who does this apply to?

The revised statute applies to Tennessee State government agencies only and does not impact procurement, development, or implementation of projects for local government or school districts. Additionally, State higher education agencies are exempted from the statute, although their participation in the process and policies established by the State Building Commission (SBC) and State Funding Board (SFB) for State agencies may be allowable.

What scope is included?

GESPCs may include, but are not limited to, the following energy conservation or utility measures:

- Building envelope and weatherization
- Building automation controls
- Lighting and controls
- Water conservation, HVAC, chiller plant, boiler plant, or other mechanical modifications
- Submetering to measure performance of controls or systems
- Other energy or utility conservation measures that would result in cost savings

How will GESPC projects be executed?

To execute projects, State agencies must consult with the Department of General Services and follow policies established by the SBC and SFB. The Statute limits a GESPC's contract length to the lesser of 20 years or the aggregate weighted expected useful life of items in the project. Each GESPC requires an annual Measurement & Verification (M&V) audit, and associated audit report, to be performed by a third party, at the expense of the ESCO. The M&V report must be submitted annually to the Tennessee Department of Environment and Conservation (TDEC) Office of Energy Programs (OEP) within 30 days of the close of the fiscal year (June 30th).

At the time of writing, policies and processes are being developed to facilitate GESPC for State agencies.

How are these projects funded?



Tennessee Chapter

The legislation expressly allows third party financing, specifically, Tax Exempt Lease Purchases (TELPs) or “other appropriate financing agreement”. The financing agreement must include non-appropriation language (if appropriations for debt service are not approved, payment may be avoided). For each year of the project, the ESCO must provide a written guarantee that the operational, energy, or utility savings will be sufficient to pay for the financing repayment costs for that year.

Further, to insure guaranteed savings over the contract term, each GESPC agreement requires a surety for the first three years of the project’s performance period and may be renewed for subsequent terms of up to three years. A surety can take the form of a performance bond, a parent company guarantee, letter of credit or similar type of security instrument.

The Tennessee Chapter of the Energy Services Coalition (ESC) applauds the efforts by State leaders to make GESPC an option for State agencies to improve facilities and save money.

About Energy Services Coalition – Tennessee Chapter

The mission of the ESC-Tennessee Chapter is to accelerate the use of performance contracting throughout the State in order to support infrastructure modernization, sustainability, cost savings, and economic development. The chapter provides outreach and education regarding the benefits of Energy Savings Performance Contracts. For more information visit <https://tn.energyservicescoalition.org/>



Parking lot

On May 4th, 2021, Tennessee Governor Bill Lee signed new legislation to enable Tennessee State Government Agencies to enter into Guaranteed Energy Savings Performance Contracts (GESPCs). The legislation amends Tennessee Code Annotated Section 12-4-118 to allow