

HOUSE BILL 78

By Lamberth

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 25; Title 4, Chapter 56, Part 1; Title 12, Chapter 3, Part 3 and Title 12, Chapter 4, Part 1, relative to state government operations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 25, is amended by deleting the chapter.

SECTION 2. Tennessee Code Annotated, Section 4-56-103(a)(2), is amended by deleting the language ", and the chief procurement officer shall keep a permanent and accurate record of all of its proceedings" and adding the following language at the end of the subdivision:

The chief procurement officer shall keep a permanent and accurate record of the documents submitted to the committee regarding protests of solicitations. The commissioner of finance and administration shall keep a permanent and accurate record of the minutes, procedures, and proceedings of the committee.

SECTION 3. Tennessee Code Annotated, Section 12-3-305(c), is amended by deleting the language "maximum liability or total estimated purchase by agencies of state government" and substituting instead the language "total estimated scope or volume".

SECTION 4. Tennessee Code Annotated, Section 12-4-113(a), is amended by deleting the language "state agency,".

SECTION 5. Tennessee Code Annotated, Section 12-4-113(c), is amended by deleting the subsection and substituting instead the following:

(c) This section does not apply to the central procurement office, to any procurement conducted pursuant to chapter 3 of this title, or to any local agency contracts funded in whole or in part with state or federal highway funds.

SECTION 6. Tennessee Code Annotated, Section 12-4-118, is amended by deleting the section and substituting instead the following:

(a) Notwithstanding any law to the contrary, state procurement agencies, in consultation with the department of general services, and in accordance with policies established by the state building commission and state funding board, may enter into an energy performance or guaranteed savings contract using alternative procurement or contracting vehicles, including, but not limited to, existing in-state and out-of-state government contracts that have been competitively procured, that incorporate energy or utility savings into the scope of work to be performed under the contract, and that expressly authorize other contracting entities to execute contracts or price agreements under the terms and conditions of the master contract on behalf of a department, institution, agency, or campus having control of, or responsibility for, the management or operation of buildings and facilities; provided, that the contract award meets the requirements of § 12-4-110 relative to energy-related service contracts for counties, cities, metropolitan governments, towns, utility districts, and other municipal and public corporations of this state. Such contracts are subject to approval by the state building commission. Agencies shall make reasonable efforts to ensure that small businesses are not disadvantaged in the determination of a qualified energy services provider.

(b) Projects implemented under an energy performance or guaranteed energy savings contract under subsection (a) may include, but are not limited to, the following energy or utility conservation measures:

(1) Building envelope weatherization;

- (2) Building automation controls;
- (3) Lighting retrofits and controls;
- (4) Water conservation, HVAC, chiller plant, boiler plant, or other mechanical modifications;
- (5) Submetering to measure performance of controls or systems; and
- (6) Other energy or utility conservation measures that would result in cost savings.

(c) For the duration of each individual contract, an annual measurement and verification audit utilizing generally accepted auditing standards, such as the International Performance Measurement and Verification Protocol, must be conducted, and the related audit report must include, but not be limited to, energy or utility savings achieved, energy or utility savings targets met or exceeded, energy or utility savings targets missed, and guarantees paid by the energy service company executing the contract. The annual measurement and verification audit must be conducted by, and the related audit report must be prepared by, a third party at the expense of the energy service company executing the contract. Each audit report must be submitted annually by the state department, institution, or agency that has entered one (1) or more energy performance or guaranteed energy savings contracts to the department of environment and conservation's office of energy programs within thirty (30) days following the close of the fiscal year. The department of environment and conservation's office of energy programs shall submit the data to the governor, the commissioner of environment and conservation, state procurement agencies, the state building commission, the comptroller of the treasury, the speaker of the senate, and the speaker of the house of representatives no later than August 31 for each year in which each energy performance or guaranteed energy savings contract is executed and in effect.

(d) Notwithstanding any law to the contrary, any energy service company executing an energy performance contract or a guaranteed energy savings contract shall provide a written guarantee that the operational, energy, or utility savings produced by such contract during each year of the contract will be sufficient to pay for the financing repayment costs for that year. The energy service company shall post a performance bond, letter of credit, or similar surety with the procurement agency in the total amount of guaranteed savings over the contract term. The costs associated with the energy performance or guaranteed energy savings contract may be financed by a third-party installment payment agreement, tax exempt lease purchase agreement, or other appropriate financing agreement arranged by the energy service company for a term of up to the lesser of twenty (20) years or the expected useful life of any items that are the subject of the agreement. The financing agreement must provide that the state procurement agency may terminate the agreement if sufficient funds are not appropriated to the state procurement agency in any fiscal year during the term of the contract to make the payments under the contract.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.