

SENATE BILL 2878

By Bailey

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 5; Title 6; Title 7; Title 12; Title 13 and Title
68, relative to public contracts.

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

SECTION 1. Tennessee Code Annotated, Title 12, Chapter 4, Part 1, is amended by
adding the following as a new section:

(a) As used in this section:

(1) "Party involved in the building delivery system" includes a provider of:

(A) Building design;

(B) Engineering and construction services; or

(C) Materials and equipment;

(2) "Political subdivision" means:

(A) A department, commission, institution, board, or agency of
this state; and

(B) A local governmental entity, including a county, metropolitan
form of government, or municipal government, including an agency or
unit;

(3) "Public agency" means an authority, board, commission, committee,
department, office, or other political subdivision; and

(4) "Public contract" means a contract by this state, a political subdivision
of this state, a public utility district, or a municipal or public corporation of this
state.

(b)

(1) A public contract must require that at least one (1) party involved in the building delivery system of a project for which a contract is being entered into warrant that the annual energy use of all habitable conditioned space within a newly constructed building or substantially renovated building will meet a predetermined energy use objective set by the public agency involved in the contract.

(2) An energy use objective for new construction must be thirty percent (30%) lower than the average energy use for similar buildings, as determined from the data and reports of the United States energy information administration. The public agency shall set the predefined energy use objective prior to a contractual commitment for services or, where applicable, equipment and materials.

(c) At least one (1) party involved in the building delivery system shall provide a warranty that, for a period of at least three (3) consecutive years, starting with the date of certification of occupancy, the energy use objective required by the public contract will be achieved. If the energy use objective is not met, then the party providing the warranty shall reimburse the public agency for seventy-five percent (75%) of the cost difference of the measured energy use and the energy use objective.

(d)

(1) If the energy use objective is met, then the public agency shall reimburse the party providing the warranty at the rate of twenty-seven cents (\$0.27) per square foot of conditioned space for the three (3) years of the warranty coverage by the public agency.

(2) If the energy use is less than the energy use objective, then the public agency shall reimburse the party providing the warranty at the rate of twenty-five

cents (\$0.25) per thousand British Thermal Unit (BTU) per square foot of conditioned space per year.

(3) If the energy use objectives are not met, then the public agency shall not reimburse the party providing the warranty.

(e) If a public agency is unable to find a party that will warrant the building's energy use objective, then the public agency is only required to set a predetermined energy use objective.

(f)

(1) Following the occupancy of the building, the public agency shall designate an independent auditor to annually conduct a measurement and verification audit of measured energy use for the duration of each individual contract. The audit report must include:

- (A) Energy use objectives achieved;
- (B) Actual measured energy use reported by meter or sub-meter;
- (C) Other energy use targets missed, achieved, or exceeded; and
- (D) Guarantees paid by the party providing the warranty.

(2)

(A) The independent auditor shall not have a financial interest in, or be affiliated with, the design or construction of the building to be audited.

(B) The selection of the independent auditor must comply with §§ 12-4-115 and 12-4-116.

(C)

(i) The annual measurement and verification audit may be conducted by, and the related audit report may be prepared by, a

third party at the expense of the party involved in the building delivery system that provides the warranty required under this section.

(ii) Each audit report must be submitted annually to the public agency and to the department of environment and conservation, office of energy programs, no later than thirty (30) days following the close of the state fiscal year.

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.