



STATE OF TENNESSEE
ENERGY EFFICIENT SCHOOLS INITIATIVE
10th FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0375

BILL LEE
GOVERNOR

PAUL CROSS
EXECUTIVE DIRECTOR

June 17, 2019

Deborah V. Loveless, C.P.A.
Division of State Audit
Office of the Comptroller
State of Tennessee

Dear Ms. Loveless,

Pursuant to your letter of May 17, 2019, and the request from the Fiscal Review Committee, I am forwarding this report on the progress EESI has made in addressing the EESI Performance Audit for January 1, 2014 to October 31, 2018. We have attached documentation of what has been accomplished, and advising of some rule changes we are in the process of proposing for Fiscal Review to consider in the near future.

Our Audit resulted in one two-fold finding, and one observation regarding the need for EESI to have access to legal counsel. Both issues have been fully addressed as was reported to the Fiscal Review Committee as part of the EESI Sunset Extension Process this year.

The first part of the finding was that EESI had never fully promulgated its rules governing the application and issuance of loans to LEAs for projects to reduce energy consumption and cost. The rules being followed had been developed by the EESI Council and its first executive director in 2010. As second executive director, I had no reason to suspect that those rules were not properly promulgated. The issue came up during the audit and was immediately rectified and reported to Fiscal Review as part of completing the promulgation process. That part of the issue was satisfied prior to completion of the audit in 2018. Documentation is attached from the Secretary of State acknowledging official promulgation of the EESI Loan Rules.

The second part of the finding regarded the failure of EESI to follow one of the loan rules requiring loan applications to be signed by the District Director, School Board Chair, and the mayor of the district's jurisdictional authority. A majority of district directors preferred to defer involvement of their county or municipal mayors until they had documentation that the energy savings would be sufficient to fund the debt and that EESI was willing to make the loan. At that point they could ask their jurisdictional authority to take on the loan debt for the benefit of the school district. EESI has initiated the process to amend that and other rules that make the loan application process unduly burdensome. A copy of the drafted rule changes is attached. Working with our legal counsel, we plan to submit this revision request to Fiscal Review later this summer.

Finally, the one recommendation involved the need for EESI to secure legal counsel which is not the responsibility of the Department of Education. We were advised to confer with the Office of the Attorney General to resolve this issue. Deputy Attorney General Jay Ballard researched the possibilities and determined that our needs were minimal and could be handle by their offices. An attached email from Deputy General Ballard is attached confirming that he will provide our counsel and, if necessary, route our matters to the particular relevant division. We will be sending our proposed rule amendments for his review in July.

I have directed that this report and the relevant documentation be emailed as per your request. I will follow up with Fiscal Review no later than Monday June 24, to make sure the information we sent is all that is needed.

Sincerely,

A handwritten signature in black ink that reads "PCross / bz". The signature is written in a cursive, somewhat informal style.

Paul Cross

Cc: Shirley Henry
Krista Lee Carsner
Denny Hastings
Brooxie Carlton
Matt Stennett

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For Department of State Use Only

Sequence Number: _____
Rule ID(s): _____
File Date: _____
Effective Date: _____

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Energy Efficient Schools Council
Division:	
Contact Person:	Paul Cross
Address:	10 th Floor Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-532-9643
Email:	Paul.Cross@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
0520-13-01	Energy Efficient Schools Initiative Loan Program
Rule Number	Rule Title
0520-13-01-.05	Loan Application
0520-13-01-.06	Loan Terms
0520-13-01-.08	Reporting Requirements

RULES OF THE ENERGY EFFICIENT SCHOOLS COUNCIL
CHAPTER 0520-13-01
ENERGY EFFICIENT SCHOOLS LOAN PROGRAM

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0520-13-01-.01	Authority	0520-13-01-.06	Loan Terms
0520-13-01-.02	Purpose and Scope	0520-13-01-.07	Loan Repayment
0520-13-01-.03	Definitions	0520-13-01-.08	Reporting Requirements
0520-13-01-.04	Eligible Projects		
0520-13-01-.05	Loan Application		

0520-13-1-.01 AUTHORITY. Pursuant to the provisions of T.C.A. § 49-17-104(b), the Energy Efficient Schools Council ("Council") may promulgate rules and regulations necessary for operation.

Authority: T.C.A. § 49-17-104(b).

0520-13-01-.02 PURPOSE AND SCOPE. The Energy Efficient Schools Council may award grants or loans to school systems for qualifying capital outlay projects.

Authority: T.C.A. § 49-17-103(e).

0520-13-01-.03 DEFINITIONS. The following definitions shall apply to these rules:

- (1) Applicant – Any Tennessee public K-12 school district.
- (2) Energy Efficient Schools Council ("Council") – A twelve (12) member body that includes the commissioners of education, environment and conservation, and economic and community development or their designees; three (3) members appointed by the Governor; three (3) members appointed by the speaker of the senate; and, three (3) members appointed by the house of representatives pursuant to the provisions of T.C.A. § 49-17-103.
- (3) Technical Advisory Committee ("TAC") - A seven (7) member body that includes two (2) Ex-Officio members representing Oak Ridge National Laboratory and Tennessee Valley Authority, and five (5) members chosen by the Council pursuant to the provisions of T.C.A. § 49-17-103.
- (4) Payback Period – The time within which the cost savings realized by incorporating energy efficient technologies equals the initial cost of the technology employed.
- (5) Prescriptive Measures – Energy efficient technologies that the Council has determined through a cost-benefit analysis have a reasonable payback period.
- (6) Qualifying Capital Outlay Project - Any project for new or existing kindergarten through grade twelve (K-12) education facilities that satisfies the Council guidelines for improving energy efficiency.

Authority: T.C.A. § 49-17-102, T.C.A. § 49-17-103, and T.C.A. § 49-17-104.

0520-13-01-.04 ELIGIBLE PROJECTS. Eligibility is determined either by:

- (1) Prescriptive measures approved by the Council; or,
- (2) Custom projects that contain a cost-benefit analysis that shows incorporating energy efficient technologies provides a reasonable payback period or warranted pre-determined energy use objectives.

Custom projects must be reviewed by the TAC and recommended to the Council for approval. Eligibility determinations may be appealed to the Council by submitting a written request to the EESI Executive Director for consideration by an appeals committee appointed by the Council President.

Authority: T.C.A. § 49-17-103 and T.C.A. § 49-17-104.

0520-13-01-.05 LOAN APPLICATION. Eligible Applicants must submit a completed and signed loan application to EESI in order to qualify for consideration for loan funds. The loan application must be signed by the School District Director or School Board Chair. Loan applications will be approved according to written policies established by the Council. Upon loan application approval, any loan agreement must be signed by the School District Director; School Board Chair; and, if the applicant is not a special school district, the jurisdictional County or City Mayor.

Authority: T.C.A. § 49-17-104.

0520-13-01-.06 LOAN TERMS. The repayment period and interest rate is established for each loan approved by the Council based upon written Council policy. The application must include a cost-benefit analysis which demonstrates that the annual energy, operational, and maintenance savings are sufficient to retire the loan within the term requested.

Authority: T.C.A. § 49-17-104.

0520-13-01-.07 LOAN REPAYMENT. The loan recipient will make monthly payments in accordance with a repayment schedule provided by EESI. A participating school system may repay the loan at any time without prepayment penalty.

Authority: T.C.A. § 49-17-104.

0520-13-01-.08 REPORTING REQUIREMENTS. Loan recipients will provide monthly progress reports to EESI during the construction phase of the project. All projects must be professionally commissioned and a commissioning report submitted to EESI. Loan recipients must enter baseline utility consumption and cost data in Energy Star Portfolio Manager for each facility for the year prior to project implementation, and shall update that data each month during the payback period. EESI shall be given access to reports on such data upon request. If loan projects are undertaken under a performance contract, the loan recipient shall require the contractor to provide annual measurement and verification reports.

Authority: T.C.A. § 49-17-104.

Signature

Date

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on _____ (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: _____

Signature: _____

Name of Officer: _____

Title of Officer: _____

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slatery III
Attorney General and Reporter

Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

Tre Hargett
Secretary of State

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

All proposed rules provided for herein are not projected to have an impact on small business.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

All proposed rules provided for herein are not projected to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Clarification to rules of the Energy Efficient Schools Council intent to provide loans to school systems from the Energy Efficient Schools Council Fund as provided in the Energy Efficient Schools Initiative Act of 2008. Includes project eligibility, application process and loan terms.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 49-17-101 et seq. Energy Efficient Schools Initiative Act of 2008.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The Energy Efficient Schools Council urges adoption of rules for the benefit of K-12 school systems in Tennessee.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

N/A

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The Energy Efficient Schools Council fund was created by the referenced statute with \$90 million from excess lottery funds and Fiscal year 2019 appropriation and these funds do not revert to the General Fund. All loans and administrative expenses are paid from original lottery funds. Fiscal year 2019 funds are for loan only and do not revert to General Fund.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Paul Cross, Executive Director Energy Efficient Schools Initiative
Paul.Cross@tn.gov

Scott Slusher, Deputy Director
Scott.S.Slusher@tn.gov

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Paul Cross, Executive Director Energy Efficient Schools Initiative
Paul.Cross@tn.gov

Scott Slusher, Deputy Director
Scott.S.Slusher@tn.gov

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Paul Cross, Executive Director Energy Efficient Schools Initiative

Paul.Cross@tn.gov

10th Floor, Andrew Johnson Tower

710 James Robertson Parkway

Nashville, TN 37243

615-532-9643

Scott Slusher, Deputy Director

Scott.S.Slusher@tn.gov

10th Floor, Andrew Johnson Tower

710 James Robertson Parkway

Nashville, TN 37243

615-741-4366

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Our Audit resulted in one two-fold finding, and one observation regarding the need for EESI to have access to legal counsel. Both issues have been fully addressed as was reported to the Fiscal Review Committee as part of the EESI Sunset Extension Process this year. This rule amendment is being submitted to clarify signatures required on loan applications.

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Authority: T.C.A. § 49-17-104.

Signature

Date