



**Written Testimony for the Senate Committee on Government  
Organization  
Charge 4: Energy Savings Performance Contracts  
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Energy Savings Performance Contracts (ESPCs) are excellent vehicles for funding upgrades to an institution's infrastructure that can be funded by future savings. While the immediate savings would be used to service the debt associated with the project and it is unlikely the institution would realize an immediate gain, the benefit to the environment is indeed immediate. Less demand on natural resources yields an immediate gain to the public good.

As a result of the 2008 SAO audit findings, numerous changes were made to the Texas Higher Education Coordinating Board (THECB) rules and procedures to ensure maximum mitigation of the discovered issues. The report found:

- Project costs that we not covered by guaranteed savings
- Payback periods longer than the term of the contract
- Over-reliance on third-party reviewers to conclude savings met or exceeded costs
- THECB did not review copies of the contract before approving them
- THECB did not review completeness of third-party reviews
- THECB did not compare projected costs and savings stated by the contractor and third-party reviewer
- THECB does not specifically state, by rule, who at the institution is to certify guaranteed savings exceed costs

Changes at the THECB took the form of rule changes instituted in FY 2009 that addressed many of the issues:

- Chief Financial Officers (CFOs) are required to certify the financing and coverage of costs
- General Counsel is required to certify that all legal safeguards are in place to ensure the best interest of the institution, as it pertains to the guaranteed savings, are in place.
- THECB staff review treats these projects with increased scrutiny and is sensitive to ensure the potential and actual errors found by the SAO report are not repeated.
- THECB staff aligned with SECO by adopting the forms and processes used at SECO to reduce administrative burden and provide comprehensive review of essential aspects.

- In the role as a coordinating board rather than a governing board, the THECB does not approve the actual contract. Staff reviews the application and the certification from the appropriate executive that all statutory requirements are met and requires the institution to provide a copy of the executed contract within 30 days of execution.

While many things can happen throughout the project process, it is the position of the THECB that ample safeguards are currently in place to resume the process of using ESPCs to fund upgrades to infrastructure.