

BILL ANALYSIS

Senate Research Center

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

An energy savings performance contract (performance contract) allows a political subdivision, public school, public college or university, or state agency to use the guaranteed benefits from enhanced energy or water conservation or usage improvements to pay for same. Such contracts are used by public entities across the state. Under current law, there is an apparent conflict in the performance contract statutory language. Chapter 302, Local Government Code, expressly includes "meters" among permissible performance contract improvements. However, the overarching definition of "energy performance contract" requires that performance contracting improvements be paid for through increased "savings," rather than the increased revenue capture that results from more accurate utility meters, which is inconsistent in the manner meters provide benefits. In addition, periodic reviews are not currently required to be conducted by independent professional engineers to ensure that the increase in meter accuracy is equal to or exceeds the provider's guarantee. Also, performance contracts currently have a 15-year maximum term, which can be too short to allow public entities an opportunity to finance larger pay-for-themselves energy or water savings or usage projects. For this reason, the majority of states have increased the maximum term for such contracts to 20 years. Finally, the current statutory language does not preclude engineers from wandering to areas outside their expertise.

As proposed, S.B. 831 redefines the statutory terms related to performance contracts to include increased revenue capture resulting from more accurate water, electricity, and other utility meters. This bill also requires the meter's accuracy to be reviewed periodically by an independent professional engineer. Furthermore, this bill extends the maximum duration of performance contracts from 15 years to 20 years. Finally, this bill requires professional engineers who review performance contracts and their results to stay within their particular area of expertise.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 44.901(f) and (i), Education Code, as follows:

(f) Authorizes an energy savings performance contract (performance contract) to be financed under a lease/purchase contract not to exceed 20, rather than 15, years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing. Authorizes a performance contract to be financed under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years or the average useful life of the energy or water conservation or usage measures, rather than 15 years from the final date of installation.

(i) Requires the board of trustees of a school district, before entering into a performance contract, to require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract or the offeror. Requires the engineer's review to focus only on the methodology and calculations related to cost

savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment.

SECTION 2. Amends Sections 51.927(f), (g), and (i), Education Code, as follows:

(f) Authorizes the governing board of an institution of higher education (board) to enter into a performance contract for a period of more than one year only if the board finds that the amount the institution would spend on the energy or water conservation measures will not exceed the amount to be saved in energy, water, wastewater, and operating costs over 20, rather than 15, years from the date of installation.

(g) Makes conforming changes.

(i) Requires the guidelines established by the Texas Higher Education Coordinating Board, in consultation with the State Energy Conservation Office (conservation office), for awarding performance contracts, to require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract or the offeror. Requires the engineer's review to focus only on the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment.

SECTION 3. Amends Sections 2166.406(f), (g), and (i), Government Code, as follows:

(f) Authorizes the state agency to enter into a performance contract for a period of more than one year only if the state agency finds that the amount the state agency would spend on the energy or water conservation measures will not exceed the amount to be saved in energy, water, wastewater, and operating costs over 20, rather than 15, years from the date of installation.

(g) Authorizes a performance contract with respect to existing buildings or facilities to be financed under a lease/purchase contract not to exceed 20, rather than 15, years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing, including a lease/purchase contract under the master equipment lease purchase program administered by the Texas Public Finance Authority under Chapter 1232. Authorizes a performance contract to be financed under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years or the average useful life of the energy or water conservation or usage measures, rather than 15 years from the final date of installation.

(i) Requires the guidelines adopted by the conservation office for awarding performance contracts to require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract or the offeror. Requires the engineer's review to focus only on the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment.

SECTION 4. Amends Section 302.001, Local Government Code, as follows:

Sec. 302.001. DEFINITIONS. Defines, "baseline," "energy or water conservation or usage measures," "energy savings," "guarantee," "increase in billable revenues," "increase in meter accuracy," "local government," "meter guarantee," and "provider." Redefines "energy savings performance contract." Deletes existing definition of "local government."

SECTION 5. Amends Section 302.002(b), Local Government Code, to include each energy or water usage measure as required to comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Prohibits a performance contract from

including improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which public water supply system officials do not have sanitary control to be returned to the potable water supply, notwithstanding any provision of Section 302.001, rather than any provision of Section 302.001(1).

SECTION 6. Amends Section 302.003, Local Government Code, as follows:

Sec. 302.003 PAYMENT AND PERFORMANCE BOND. Requires the governing body of the local government, before entering into a performance contract, to require the provider of the energy or water usage measures to file with the governing body a payment and performance bond relating to the installation of the measures in accordance with Chapter 2253 (Public Work Performance and Payment Bonds), Government Code, notwithstanding any other law. Authorizes the governing body of the local government to also require a separate bond to cover the value of the guarantee, rather than the guaranteed savings on the contract.

SECTION 7. Amends Section 302.004, Local Government Code, as follows:

Sec. 302.004. METHOD OF FINANCING; TERMS OF CONTRACT. (a) Makes conforming changes.

(b) Requires a performance contract to contain provisions requiring the provider of the energy or water conservation or usage measures to provide a guarantee, rather than requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by the local government under the contract. Prohibits the local government's contractual obligations in any one year during the term of the contract beginning after the final date of installation under the contract, if the term of the contract exceeds one year, from exceeding the total energy and water, wastewater, savings, billable revenues, net operating cost savings, and stipulated or agreed upon increase in billable revenues resulting from the estimated increase in meter accuracy, divided by the number of years in the contract term. Deletes existing text that provides certain types of operating cost savings to be included in this calculation.

SECTION 8. Amends Section 302.005, Local Government Code, as follows:

Sec. 302.005. BIDDING PROCEDURES; AWARD OF CONTRACT. (a) Makes no change to this subsection.

(b) Requires the governing body, before entering into an energy savings performance contract, to require that the energy savings, the increase in billable revenues, or the increase in meter accuracy estimated or projected by a provider be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of a provider for the contract under review, and is not otherwise associated with the contract or the provider. Makes nonsubstantive changes.

(c) Requires the engineer's review to focus only on the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment.

SECTION 9. Amends Chapter 302, Local Government Code, by adding Section 302.006, as follows:

Sec. 302.006. METER GUARANTEES. (a) Sets forth the types of performance contracts to which this section applies.

(b)(1) Requires an engineer, on or before each five-year anniversary of the effective date of a performance contract, to test a statistically relevant sample of the meters installed or implemented under the contract to determine or calculate

their actual average accuracy and compare that actual average accuracy to the baseline average accuracy of those tested meters, as of that date.

(2) Provides that the meter guarantee in the contract applies if the engineer reports to the local government and the provider that the actual average accuracy of the tested meters as of the testing date is less than the baseline average accuracy of those tested meters as of the testing date.

(3) Requires the amount payable under the meter guarantee, if any, to be determined for each year in the five or fewer years subject to the engineer's report and provides the calculation for determining this amount.

(4) Requires the amount payable under the meter guarantee for any year during the measurement period to be reduced or offset by a certain calculated amount if the meter guarantee in the contract is part of a broader guarantee applicable to other energy or water conservation or usage measures or causally connected work under the contract, notwithstanding Subdivision (3) of this section.

(c) Requires each test conducted under Subsection (b) to be performed in accordance with the procedures established by the International Performance Measurement and Verification Protocol or succeeding standards of the United States Department of Energy.

(d) Requires an engineer conducting a test under Subsection (b) to verify that the tested meters have been properly maintained and are operating properly. Requires the engineer to also comply with Section 302.005(c).

SECTION 10. Amends Section 39.107, Utilities Code, by adding Subsection (i), to provide that this section (Metering and Billing Services) does not apply to a meter that was installed as part of a performance contract.

SECTION 11. Makes application of this Act prospective.

SECTION 12. Effective date: upon passage or September 1, 2007.