

By: Ellis

S.B. No. 831

Substitute the following for S.B. No. 831:

By: Straus

C.S.S.B. No. 831

A BILL TO BE ENTITLED

AN ACT

relating to energy savings performance contracts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (f) and (i), Section 44.901, Education Code, are amended to read as follows:

(f) An energy savings performance contract may be financed:

(1) under a lease/purchase contract that has a term not to exceed 20 [~~15~~] years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing;

(2) with the proceeds of bonds; or

(3) 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 from the final date of installation or the average useful life of the energy or water conservation or usage measures [~~15 years from the final date of installation~~].

(i) Before entering into an energy savings performance contract, the board must 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. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the

1 methodology and calculations related to cost savings, increases in
2 revenue, and, if applicable, efficiency or accuracy of metering
3 equipment [~~is not an officer or employee of an offeror for the~~
4 ~~contract under review or otherwise associated with the contract or~~
5 ~~the offeror~~]. An engineer who reviews a contract shall maintain the
6 confidentiality of any proprietary information the engineer
7 acquires while reviewing the contract. Sections 1001.053 and
8 1001.407, Occupations Code, apply to work performed under the
9 contract.

10 SECTION 2. Subsections (f), (g), and (i), Section 51.927,
11 Education Code, are amended to read as follows:

12 (f) The board may enter into an energy savings performance
13 contract for a period of more than one year only if the board finds
14 that the amount the institution would spend on the energy or water
15 conservation measures will not exceed the amount to be saved in
16 energy, water, wastewater, and operating costs over 20 [~~15~~] years
17 from the date of installation. If the term of the contract exceeds
18 one year, the institution's contractual obligation in any year
19 during the term of the contract beginning after the final date of
20 installation may not exceed the total energy, water, wastewater,
21 and operating cost savings, including electrical, gas, water,
22 wastewater, or other utility cost savings and operating cost
23 savings resulting from the measures, as determined by the board in
24 this subsection, divided by the number of years in the contract term
25 beginning after the final date of installation. The board shall
26 consider all costs of the energy or water conservation measures,
27 including costs of design, engineering, installation, maintenance,

1 repairs, and debt service.

2 (g) An energy savings performance contract may be financed:

3 (1) under a lease/purchase contract that has a term
4 not to exceed 20 [~~15~~] years from the final date of installation and
5 that meets federal tax requirements for tax-free municipal leasing
6 or long-term financing, including a lease/purchase contract under
7 the master equipment lease purchase program administered by the
8 Texas Public Finance Authority under Chapter 1232, Government Code;

9 (2) with the proceeds of bonds; or

10 (3) under a contract with the provider of the energy or
11 water conservation measures that has a term not to exceed the lesser
12 of 20 years from the final date of installation or the average
13 useful life of the energy or water conservation or usage measures
14 [~~15 years from the final date of installation~~].

15 (i) An energy savings performance contract shall be let
16 according to the procedures established for procuring certain
17 professional services by Section 2254.004, Government Code. Notice
18 of the request for qualifications shall be given in the manner
19 provided by Section 2156.002, Government Code. The Texas Higher
20 Education Coordinating Board, in consultation with the State Energy
21 Conservation Office with regard to energy and water conservation
22 measures, shall establish guidelines and an approval process for
23 awarding energy savings performance contracts. The guidelines must
24 require that the cost savings projected by an offeror be reviewed by
25 a licensed professional engineer who has a minimum of three years of
26 experience in energy calculation and review, is not an officer or
27 employee of an offeror for the contract under review, and is not

1 otherwise associated with the contract. In conducting the review,
2 the engineer shall focus primarily on the proposed improvements
3 from an engineering perspective, the methodology and calculations
4 related to cost savings, increases in revenue, and, if applicable,
5 efficiency or accuracy of metering equipment ~~[is not an officer or~~
6 ~~employee of an offeror for the contract under review or otherwise~~
7 ~~associated with the contract]~~. An engineer who reviews a contract
8 shall maintain the confidentiality of any proprietary information
9 the engineer acquires while reviewing the contract. A contract is
10 not required to be reviewed or approved by the State Energy
11 Conservation Office. Sections 1001.053 and 1001.407, Occupations
12 Code, apply to work performed under the contract.

13 SECTION 3. Subsections (f), (g), and (i), Section 2166.406,
14 Government Code, are amended to read as follows:

15 (f) The state agency may enter into an energy savings
16 performance contract for a period of more than one year only if the
17 state agency finds that the amount the state agency would spend on
18 the energy or water conservation measures will not exceed the
19 amount to be saved in energy, water, wastewater, and operating
20 costs over 20 ~~[15]~~ years from the date of installation.

21 (g) An energy savings performance contract with respect to
22 existing buildings or facilities may be financed:

23 (1) under a lease/purchase contract that has a term
24 not to exceed 20 ~~[15]~~ years from the final date of installation and
25 that meets federal tax requirements for tax-free municipal leasing
26 or long-term financing, including a lease/purchase contract under
27 the master equipment lease purchase program administered by the

1 Texas Public Finance Authority under Chapter 1232;

2 (2) with the proceeds of bonds; or

3 (3) under a contract with the provider of the energy or
4 water conservation measures that has a term not to exceed the lesser
5 of 20 years from the final date of installation or the average
6 useful life of the energy or water conservation or usage measures
7 ~~[15 years from the final date of installation]~~.

8 (i) An energy savings performance contract shall be let
9 according to the procedures established for procuring certain
10 professional services by Section 2254.004. Notice of the request
11 for qualifications shall be given in the manner provided by Section
12 2156.002. The State Energy Conservation Office shall establish
13 guidelines and an approval process for awarding energy savings
14 performance contracts. The guidelines adopted under this
15 subsection must require that the cost savings projected by an
16 offeror be reviewed by a licensed professional engineer who has a
17 minimum of three years of experience in energy calculation and
18 review, is not an officer or employee of an offeror for the contract
19 under review, and is not otherwise associated with the contract. In
20 conducting the review, the engineer shall focus primarily on the
21 proposed improvements from an engineering perspective, the
22 methodology and calculations related to cost savings, increases in
23 revenue, and, if applicable, efficiency or accuracy of metering
24 equipment ~~[is not an officer or employee of an offeror for the~~
25 ~~contract under review or otherwise associated with the contract]~~.

26 An engineer who reviews a contract shall maintain the
27 confidentiality of any proprietary information the engineer

1 acquires while reviewing the contract. An energy savings
2 performance contract may not be entered into unless the contract
3 has been approved by the State Energy Conservation Office.
4 Sections 1001.053 and 1001.407, Occupations Code, apply to work
5 performed under the contract.

6 SECTION 4. Section 302.001, Local Government Code, is
7 amended to read as follows:

8 Sec. 302.001. DEFINITIONS. In this chapter:

9 (1) "Baseline" means a calculation or set of
10 calculations in an energy savings performance contract that may be
11 based on historical costs, revenues, accuracy, or related
12 components and used for determining:

13 (A) the costs for energy or water usage by a local
14 government and related net operating costs;

15 (B) the billable revenues from providing energy,
16 water, or other utilities to users; or

17 (C) the efficiency or accuracy of metering or
18 related equipment, systems, or processes or procedures.

19 (2) "Energy or water conservation or usage measures"
20 means:

21 (A) the installation or implementation of any of
22 the items, equipment, modifications, alterations, improvements,
23 systems, and other measures described by Subdivision (4) that are
24 intended to provide:

25 (i) estimated energy savings;

26 (ii) an estimated increase in billable
27 revenues; or

1 (iii) an estimated increase in meter
2 accuracy; or

3 (B) the training for, or services related to, the
4 operation of the items, equipment, modifications, alterations,
5 improvements, systems, or other measures described by Paragraph
6 (A).

7 (3) "Energy savings" means an estimated reduction in
8 net fuel costs, energy costs, water costs, stormwater fees, other
9 utility costs, or related net operating costs from or as compared to
10 an established baseline of those costs. The term does not include
11 an estimated reduction due to a decrease in energy rates that is not
12 derived from increased conservation or reduced usage.

13 (4) "Energy savings performance contract" means a
14 contract between a local government and a provider for energy or
15 water conservation or usage measures [~~to reduce energy or water~~
16 ~~consumption or operating costs of local government facilities~~] in
17 which the estimated energy savings, increase in billable revenues,
18 or increase in meter accuracy [~~in utility costs~~] resulting from the
19 measures is subject to guarantee [~~guaranteed~~] to offset the cost of
20 the energy or water conservation or usage measures over a specified
21 period. The term includes a contract for the installation or
22 implementation of the following, including all causally connected
23 work:

24 (A) insulation of a building structure and
25 systems within the building;

26 (B) storm windows or doors, caulking or weather
27 stripping, multiglazed windows or doors, heat-absorbing or

1 heat-reflective glazed and coated window or door systems, or other
2 window or door system modifications that reduce energy consumption;

3 (C) automatic energy control systems, including
4 computer software and technical data licenses;

5 (D) heating, ventilating, or air-conditioning
6 system modifications or replacements that reduce energy or water
7 consumption;

8 (E) lighting fixtures that increase energy
9 efficiency;

10 (F) energy recovery systems;

11 (G) electric systems improvements;

12 (H) water-conserving fixtures, appliances, and
13 equipment or the substitution of non-water-using fixtures,
14 appliances, and equipment;

15 (I) water-conserving landscape irrigation
16 equipment;

17 (J) landscaping measures that reduce watering
18 demands and capture and hold applied water and rainfall, including:

19 (i) landscape contouring, including the use
20 of berms, swales, and terraces; and

21 (ii) the use of soil amendments that
22 increase the water-holding capacity of the soil, including compost;

23 (K) rainwater harvesting equipment and equipment
24 to make use of water collected as part of a storm-water system
25 installed for water quality control;

26 (L) equipment for recycling or reuse of water
27 originating on the premises or from other sources, including

1 treated municipal effluent;

2 (M) equipment needed to capture water from
3 nonconventional, alternate sources, including air-conditioning
4 condensate or graywater, for nonpotable uses;

5 (N) metering or related equipment or systems that
6 improve the accuracy of billable-revenue-generation systems
7 ~~[equipment needed to segregate water use in order to identify water~~
8 ~~conservation opportunities or verify water savings]~~; or

9 (O) other energy or water conservation-related
10 improvements or equipment, including improvements or equipment
11 relating to renewable energy or nonconventional water sources or
12 water reuse.

13 (5) "Guarantee" means a written guarantee of a
14 provider that the energy savings, increase in billable revenues, or
15 increase in meter accuracy from the energy or water conservation or
16 usage measures will at least equal the cost of the energy or water
17 conservation or usage measures, all causally connected work, and
18 ancillary improvements provided for in an energy savings
19 performance contract.

20 (6) "Increase in billable revenues" means an estimated
21 increase in billable revenues as compared to an established
22 baseline of billable revenues.

23 (7) "Increase in meter accuracy" means an estimated
24 increase in efficiency or accuracy of metering or related
25 equipment, systems, or processes or procedures that is calculated
26 or determined by using applicable industry engineering standards.

27 (8) [~~2~~] "Local government" means a county,

1 municipality, or other political subdivision of this state. The
2 term does not include a school district authorized to enter into an
3 energy savings performance contract under Section 44.901,
4 Education Code.

5 (9) "Meter guarantee" means a guarantee of a
6 stipulated or agreed upon increase in billable revenues to result
7 from the estimated increase in meter accuracy, based on stipulated
8 or agreed upon components of a billable revenue calculation in an
9 energy savings performance contract.

10 (10) "Provider" means an entity in the business of
11 designing, implementing, and installing of energy or water
12 conservation or usage measures or an affiliate of such an entity.

13 SECTION 5. Subsection (b), Section 302.002, Local
14 Government Code, is amended to read as follows:

15 (b) Each energy or water conservation or usage measure must
16 comply with current local, state, and federal construction,
17 plumbing, and environmental codes and regulations.
18 Notwithstanding Section 302.001 [~~302.001(1)~~], an energy savings
19 performance contract may not include improvements or equipment that
20 allow or cause water from any condensing, cooling, or industrial
21 process or any system of nonpotable usage over which public water
22 supply system officials do not have sanitary control to be returned
23 to the potable water supply.

24 SECTION 6. Section 302.003, Local Government Code, is
25 amended to read as follows:

26 Sec. 302.003. PAYMENT AND PERFORMANCE BOND.
27 Notwithstanding any other law, before entering into an energy

1 savings performance contract, the governing body of the local
2 government shall require the provider of the energy or water
3 conservation or usage measures to file with the governing body a
4 payment and performance bond relating to the installation of the
5 measures in accordance with Chapter 2253, Government Code. The
6 governing body may also require a separate bond to cover the value
7 of the guarantee [~~guaranteed savings on the contract~~].

8 SECTION 7. Section 302.004, Local Government Code, is
9 amended to read as follows:

10 Sec. 302.004. METHOD OF FINANCING; TERMS OF CONTRACT.

11 (a) An energy savings performance contract may be financed:

12 (1) under a lease-purchase contract that has a term
13 not to exceed 20 [~~15~~] years from the final date of installation and
14 that meets federal tax requirements for tax-free municipal leasing
15 or long-term financing;

16 (2) with the proceeds of bonds; or

17 (3) under a contract with the provider of the energy or
18 water conservation or usage measures that has a term not to exceed
19 the lesser of 20 years from the final date of installation or the
20 average useful life of the energy or water conservation or usage
21 measures [~~15 years from the final date of installation~~].

22 (b) An energy savings performance contract shall contain
23 provisions requiring the provider of the energy or water
24 conservation or usage measures to provide a guarantee [~~the amount~~
25 ~~of the savings to be realized by the local government under the~~
26 ~~contract~~]. If the term of the contract exceeds one year, the local
27 government's contractual obligations in any one year during the

1 term of the contract beginning after the final date of installation
2 may not exceed the total energy and~~[7]~~ water savings, the net~~[7,~~
3 ~~wastewater, and]~~ operating cost savings, and the stipulated or
4 agreed upon increase in billable revenues resulting from the
5 estimated increase in meter accuracy ~~[including electrical, gas,~~
6 ~~water, wastewater, or other utility cost savings and operating cost~~
7 ~~savings resulting from the measures as determined by the local~~
8 ~~government in this subsection]~~, divided by the number of years in
9 the contract term.

10 SECTION 8. Section 302.005, Local Government Code, is
11 amended by amending Subsection (b) and adding Subsection (c) to
12 read as follows:

13 (b) Before entering into an energy savings performance
14 contract, the governing body must require that the energy savings,
15 increase in billable revenues, or increase in meter accuracy
16 estimated or ~~[cost savings]~~ projected by a provider ~~[an offeror]~~ be
17 reviewed by a licensed professional engineer who:

18 (1) has a minimum of three years of experience in
19 energy calculation and review;

20 (2) is not an officer or employee of a provider ~~[an~~
21 ~~offeror]~~ for the contract under review; and

22 (3) is not ~~[or]~~ otherwise associated with the
23 contract.

24 (c) In conducting the review, the engineer shall focus
25 primarily on the proposed improvements from an engineering
26 perspective, the methodology and calculations related to cost
27 savings, increases in revenue, and, if applicable, efficiency or

1 accuracy of metering equipment [~~or the offeror~~]. An engineer who
2 reviews a contract shall maintain the confidentiality of any
3 proprietary information the engineer acquires while reviewing the
4 contract. Sections 1001.053 and 1001.407, Occupations Code, apply
5 to work performed under the contract.

6 SECTION 9. Chapter 302, Local Government Code, is amended
7 by adding Section 302.006 to read as follows:

8 Sec. 302.006. METER GUARANTEES. (a) This section applies
9 to any energy savings performance contract that:

10 (1) provides for any metering or related equipment,
11 system, or process or procedure; and

12 (2) includes a meter guarantee by the provider,
13 regardless of whether the meter guarantee is a part of a broader
14 guarantee applicable to other energy or water conservation or usage
15 measures or causally connected work.

16 (b) Not later than the fifth anniversary of the effective
17 date of an energy savings performance contract, an engineer shall
18 test a statistically relevant sample of the meters installed or
19 implemented under the contract to determine or calculate the actual
20 average accuracy and shall compare the actual average accuracy to
21 the baseline average accuracy of those tested meters.

22 (c) A meter guarantee applies if the engineer reports to the
23 local government and the provider that the average accuracy of the
24 tested meters as of the testing date is less than the baseline
25 average accuracy of the tested meters as of the testing date.

26 (d) The amount payable under the meter guarantee must be
27 determined for each year subject to the engineer's report and is

1 equal to the difference between:

2 (1) the agreed increase in billable revenues based on
3 the estimated accuracy of all of the meters for each year, according
4 to the energy savings performance contract; and

5 (2) the revenues for the same year that would result
6 from applying the engineer's reported actual average accuracy of
7 the tested meters to all of the meters subject to the energy savings
8 performance contract, using the same contract components that were
9 used to calculate the agreed increase in billable revenues for that
10 year, assuming the annual decrease in actual average accuracy of
11 all the meters was a pro rata percentage of the reported total
12 decrease in actual average accuracy.

13 (e) Notwithstanding Subsection (d), if the meter guarantee
14 in the contract is part of a broader guarantee applicable to other
15 energy or water conservation or usage measures or causally
16 connected work under the contract, the amount payable under the
17 meter guarantee for any year during the measurement period is
18 reduced or offset by the difference between:

19 (1) the sum of the energy savings and the increase in
20 billable revenues resulting from the other energy or water
21 conservation or usage measures or causally connected work for that
22 year during the measurement period; and

23 (2) the guaranteed amount of the energy savings and
24 the increase in billable revenues from the other energy or water
25 conservation or usage measures or causally connected work for that
26 year during the measurement period.

27 (f) A test conducted under this section must be performed in

1 accordance with the procedures established by the International
2 Performance Measurement and Verification Protocol or succeeding
3 standards of the United States Department of Energy.

4 (g) An engineer conducting a test under this section shall:

5 (1) verify that the tested meters have been properly
6 maintained and are operating properly; and

7 (2) comply with Section 302.005(c).

8 SECTION 10. Section 39.107, Utilities Code, is amended by
9 adding Subsection (i) to read as follows:

10 (i) Notwithstanding Subsection (b), a nonresidential
11 customer may have a meter installed and metering services provided
12 on a competitive basis as part of an energy savings performance
13 contract.

14 SECTION 11. The changes in law made by this Act apply only
15 to an energy savings performance contract entered into on or after
16 the effective date of this Act. An energy savings performance
17 contract entered into before the effective date of this Act is
18 governed by the law in effect at the time the contract was entered
19 into, and the former law is continued in effect for that purpose.

20 SECTION 12. This Act takes effect immediately if it
21 receives a vote of two-thirds of all the members elected to each
22 house, as provided by Section 39, Article III, Texas Constitution.
23 If this Act does not receive the vote necessary for immediate
24 effect, this Act takes effect September 1, 2007.