

By: Ellis

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 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 or the offeror. The engineer's review shall focus only on the methodology and calculations related to cost savings, increases in

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

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

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

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

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

8 (2) with the proceeds of bonds; or

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

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

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

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

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

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

21 (1) under a lease/purchase contract that has a term  
22 not to exceed 20 [~~15~~] years from the final date of installation and  
23 that meets federal tax requirements for tax-free municipal leasing  
24 or long-term financing, including a lease/purchase contract under  
25 the master equipment lease purchase program administered by the  
26 Texas Public Finance Authority under Chapter 1232;

27 (2) with the proceeds of bonds; or

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

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

23 An engineer who reviews a contract shall maintain the  
24 confidentiality of any proprietary information the engineer  
25 acquires while reviewing the contract. An energy savings  
26 performance contract may not be entered into unless the contract  
27 has been approved by the State Energy Conservation Office.

1 Sections 1001.053 and 1001.407, Occupations Code, apply to work  
2 performed under the contract.

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

5 Sec. 302.001. DEFINITIONS. In this chapter:

6 (1) "Baseline" means a calculation or set of  
7 calculations, set forth in an energy savings performance contract,  
8 of:

9 (A) costs for energy or water usage by a local  
10 government and related net operating costs;

11 (B) billable revenues from providing energy,  
12 water, or other utilities to users; or

13 (C) the efficiency or accuracy, for any period,  
14 of:

15 (i) metering or related equipment, systems,  
16 or processes or procedures;

17 (ii) the calculation or set of calculations  
18 that may constitute or be based on historical costs, revenues, or  
19 accuracy; and

20 (iii) the components.

21 (2) "Energy or water conservation or usage measures"  
22 means the installation or implementation of any of the items,  
23 equipment, modifications, alterations, improvements, systems, and  
24 other measures described by Subdivision (4) that are intended to  
25 provide estimated energy savings, an estimated increase in billable  
26 revenues, or an estimated increase in meter accuracy, or the  
27 training for, or services related to, the operation of those items,

1 equipment, modifications, alterations, improvements, systems, or  
2 other measures.

3 (3) "Energy savings" means an estimated reduction in  
4 net fuel costs, energy costs, water costs, stormwater fees, other  
5 utility costs, or related net operating costs from or as compared to  
6 an established baseline of such costs.

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

22 (A) insulation of a building structure and  
23 systems within the building;

24 (B) storm windows or doors, caulking or weather  
25 stripping, multiglazed windows or doors, heat-absorbing or  
26 heat-reflective glazed and coated window or door systems, or other  
27 window or door system modifications that reduce energy consumption;

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

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

6 (E) lighting fixtures that increase energy  
7 efficiency;

8 (F) energy recovery systems;

9 (G) electric systems improvements;

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

13 (I) water-conserving landscape irrigation  
14 equipment;

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

17 (i) landscape contouring, including the use  
18 of berms, swales, and terraces; and

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

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

24 (L) equipment for recycling or reuse of water  
25 originating on the premises or from other sources, including  
26 treated municipal effluent;

27 (M) equipment needed to capture water from



1 nonconventional, alternate sources, including air-conditioning  
2 condensate or graywater, for nonpotable uses;

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

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

11 (5) "Guarantee" means the written guarantee of a  
12 provider that any or all of the energy savings, the increase in  
13 billable revenues, or the increase in meter accuracy from the  
14 energy or water conservation or usage measures in the energy  
15 savings performance contract will at least equal the cost of the  
16 energy or water conservation or usage measures, all causally  
17 connected work, and ancillary improvements under an energy savings  
18 performance contract. A guarantee, or the part of a broader  
19 guarantee, regarding any metering or related equipment, system, or  
20 process or procedure may be only a meter guarantee.

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

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

1 standards.

2 (8) "Local government" means a county, municipality,  
3 or other political subdivision of this state. The term does not  
4 include a school district authorized to enter into an energy  
5 savings performance contract under Section 44.901, Education Code.

6 (9) "Meter guarantee" means a guarantee of a  
7 stipulated or agreed upon increase in billable revenues, based on  
8 stipulated or agreed upon components of a billable revenue  
9 calculation, all as set forth in an energy savings performance  
10 contract, resulting from the estimated increase in meter accuracy  
11 also set forth in the contract.

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

15 ~~[(2) "Local government" means a county, municipality,~~  
16 ~~or other political subdivision of this state. The term does not~~  
17 ~~include a school district authorized to enter into an energy~~  
18 ~~savings performance contract under Section 44.901, Education~~  
19 ~~Code].~~

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

22 (b) Each energy or water conservation or usage measure must  
23 comply with current local, state, and federal construction,  
24 plumbing, and environmental codes and regulations.  
25 Notwithstanding any provision of Section 302.001 [~~302.001(1)~~], an  
26 energy savings performance contract may not include improvements or  
27 equipment that allow or cause water from any condensing, cooling,

1 or industrial process or any system of nonpotable usage over which  
2 public water supply system officials do not have sanitary control  
3 to be returned to the potable water supply.

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

6 Sec. 302.003. PAYMENT AND PERFORMANCE BOND.

7 Notwithstanding any other law, before entering into an energy  
8 savings performance contract, the governing body of the local  
9 government shall require the provider of the energy or water  
10 conservation or usage measures to file with the governing body a  
11 payment and performance bond relating to the installation of the  
12 measures in accordance with Chapter 2253, Government Code. The  
13 governing body may also require a separate bond to cover the value  
14 of the guarantee [~~guaranteed savings on the contract~~].

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

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

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

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

23 (2) with the proceeds of bonds; or

24 (3) under a contract with the provider of the energy or  
25 water conservation or usage measures that has a term not to exceed  
26 the lesser of 20 years or the average useful life of the energy or  
27 water conservation or usage measures [~~15 years from the final date~~

1 ~~of installation]~~.

2 (b) An energy savings performance contract shall contain  
3 provisions requiring the provider of the energy or water  
4 conservation or usage measures to provide a guarantee [~~the amount~~  
5 ~~of the savings to be realized by the local government under the~~  
6 ~~contract]~~. If the term of the contract exceeds one year, the local  
7 government's contractual obligations in any one year during the  
8 term of the contract beginning after the final date of installation  
9 under the contract may not exceed the total energy and[~~r~~] water,  
10 wastewater, savings, billable revenues, net [~~and~~] operating cost  
11 savings, and stipulated or agreed upon increase in billable  
12 revenues resulting from the estimated increase in meter accuracy  
13 [~~including electrical, gas, water, wastewater, or other utility~~  
14 ~~cost savings and operating cost savings resulting from the measures~~  
15 ~~as determined by the local government in this subsection]~~, divided  
16 by the number of years in the contract term.

17 SECTION 8. Section 302.005, Local Government Code, is  
18 amended to read as follows:

19 Sec. 302.005. BIDDING PROCEDURES; AWARD OF CONTRACT.

20 (a) An energy savings performance contract under this chapter may  
21 be let in accordance with the procedures established for procuring  
22 certain professional services by Section 2254.004, Government  
23 Code. Notice of the request for qualifications shall be published  
24 in the manner provided for competitive bidding.

25 (b) Before entering into an energy savings performance  
26 contract, the governing body must require that the energy savings,  
27 the increase in billable revenues, or the increase in meter

1 accuracy estimated or [~~cost savings~~] projected by a provider [~~an~~  
2 ~~offeror~~] be reviewed by a licensed professional engineer, who:

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

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

7 (3) is not [~~or~~] otherwise associated with the contract  
8 or the provider.

9 (c) The engineer's review shall focus only on the  
10 methodology and calculations related to cost savings, increases in  
11 revenue, and, if applicable, efficiency or accuracy of metering  
12 equipment [~~offeror~~]. An engineer who reviews a contract shall  
13 maintain the confidentiality of any proprietary information the  
14 engineer acquires while reviewing the contract. Sections 1001.053  
15 and 1001.407, Occupations Code, apply to work performed under the  
16 contract.

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

19 Sec. 302.006. METER GUARANTEES. (a) This section applies  
20 to any energy savings performance contract that provides for any  
21 metering or related equipment, system, or process or procedure and  
22 that includes a meter guarantee by the provider, whether or not the  
23 meter guarantee is part of a broader guarantee applicable to other  
24 energy or water conservation or usage measures or causally  
25 connected work.

26 (b)(1) On or before each five-year anniversary of the  
27 effective date of an energy savings performance contract, an

1 engineer shall test a statistically relevant sample of the meters  
2 installed or implemented under the contract to determine or  
3 calculate their actual average accuracy and shall compare that  
4 actual average accuracy to the baseline average accuracy of those  
5 tested meters, as of that date.

6 (2) If the engineer reports to the local government  
7 and the provider that the actual average accuracy of the tested  
8 meters as of the testing date is less than the baseline average  
9 accuracy of those tested meters as of the testing date, the meter  
10 guarantee in the contract applies.

11 (3) The amount payable under the meter guarantee, if  
12 any, must be determined for each year in the five or fewer years  
13 subject to the engineer's report and is equal to the difference  
14 between:

15 (A) the agreed upon increase in billable  
16 revenues, based on the estimated accuracy of all of the meters,  
17 under the energy savings performance contract for each such year;  
18 and

19 (B) the revenues for the same year that would  
20 result from applying the engineer's reported actual average  
21 accuracy of the tested meters to all of the meters subject to the  
22 energy savings performance contract, using the same agreed upon  
23 components set forth in the contract that were used to calculate the  
24 agreed upon increase in billable revenues set forth in the contract  
25 for that year and assuming that the annual decrease in actual  
26 average accuracy of all of the meters was a pro rata percentage of  
27 the reported total decrease in actual average accuracy.

1           (4) Notwithstanding Subdivision (3) of this section,  
2 if the meter guarantee in the contract is part of a broader  
3 guarantee applicable to other energy or water conservation or usage  
4 measures or causally connected work under the contract, the amount  
5 payable under the meter guarantee for any year during the  
6 measurement period shall be reduced or offset by the difference, if  
7 any, between:

8                   (A) the amount of the energy savings and increase  
9 in billable revenues resulting from the other energy or water  
10 conservation or usage measures or causally connected work for that  
11 year during the measurement period; and

12                   (B) the guaranteed amount of the energy savings  
13 and increase in billable revenues from such other energy or water  
14 conservation or usage measures or causally connected work for that  
15 year during the measurement period under the contract.

16           (c) Each test conducted under Subsection (b) must be  
17 performed in accordance with the procedures established by the  
18 International Performance Measurement and Verification Protocol or  
19 succeeding standards of the United States Department of Energy.

20           (d) An engineer conducting a test under Subsection (b) shall  
21 verify that the tested meters have been properly maintained and are  
22 operating properly. The engineer shall also comply with Section  
23 302.005(c).

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

26           (i) This section does not apply to a meter that was  
27 installed as part of an energy savings performance contract.

1           SECTION 11. The changes in law made by this Act apply only  
2 to an energy savings performance contract entered into on or after  
3 the effective date of this Act. An energy savings performance  
4 contract entered into before the effective date of this Act is  
5 covered by the law as it existed at the time the contract was  
6 entered into, and that law is continued in effect for that purpose.

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