

1-1 By: Ellis S.B. No. 831  
1-2 (In the Senate - Filed February 22, 2007; March 7, 2007, read  
1-3 first time and referred to Committee on Business and Commerce;  
1-4 March 12, 2007, rereferred to Committee on Government Organization;  
1-5 March 21, 2007, reported adversely, with favorable Committee  
1-6 Substitute by the following vote: Yeas 5, Nays 0; March 21, 2007,  
1-7 sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR S.B. No. 831 By: Ellis

1-9 A BILL TO BE ENTITLED  
1-10 AN ACT

1-11 relating to energy savings performance contracts.  
1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
1-13 SECTION 1. Subsections (f) and (i), Section 44.901,  
1-14 Education Code, are amended to read as follows:  
1-15 (f) An energy savings performance contract may be financed:  
1-16 (1) under a lease/purchase contract that has a term  
1-17 not to exceed 20 [~~15~~] years from the final date of installation and  
1-18 that meets federal tax requirements for tax-free municipal leasing  
1-19 or long-term financing;  
1-20 (2) with the proceeds of bonds; or  
1-21 (3) under a contract with the provider of the energy or  
1-22 water conservation measures that has a term not to exceed the lesser  
1-23 of 20 years or the average useful life of the energy or water  
1-24 conservation or usage measures [~~15 years from the final date of~~  
1-25 ~~installation~~].  
1-26 (i) Before entering into an energy savings performance  
1-27 contract, the board must require that the cost savings projected by  
1-28 an offeror be reviewed by a licensed professional engineer who has a  
1-29 minimum of three years of experience in energy calculation and  
1-30 review, is not an officer or employee of an offeror for the contract  
1-31 under review, and is not otherwise associated with the contract or  
1-32 the offeror. In conducting the review, the engineer shall focus  
1-33 only on the methodology and calculations related to cost savings,  
1-34 increases in revenue, and, if applicable, efficiency or accuracy of  
1-35 metering equipment [~~is not an officer or employee of an offeror for~~  
1-36 ~~the contract under review or otherwise associated with the contract~~  
1-37 ~~or the offeror~~]. An engineer who reviews a contract shall maintain  
1-38 the confidentiality of any proprietary information the engineer  
1-39 acquires while reviewing the contract. Sections 1001.053 and  
1-40 1001.407, Occupations Code, apply to work performed under the  
1-41 contract.  
1-42 SECTION 2. Subsections (f), (g), and (i), Section 51.927,  
1-43 Education Code, are amended to read as follows:  
1-44 (f) The board may enter into an energy savings performance  
1-45 contract for a period of more than one year only if the board finds  
1-46 that the amount the institution would spend on the energy or water  
1-47 conservation measures will not exceed the amount to be saved in  
1-48 energy, water, wastewater, and operating costs over 20 [~~15~~] years  
1-49 from the date of installation. If the term of the contract exceeds  
1-50 one year, the institution's contractual obligation in any year  
1-51 during the term of the contract beginning after the final date of  
1-52 installation may not exceed the total energy, water, wastewater,  
1-53 and operating cost savings, including electrical, gas, water,  
1-54 wastewater, or other utility cost savings and operating cost  
1-55 savings resulting from the measures, as determined by the board in  
1-56 this subsection, divided by the number of years in the contract term  
1-57 beginning after the final date of installation. The board shall  
1-58 consider all costs of the energy or water conservation measures,  
1-59 including costs of design, engineering, installation, maintenance,  
1-60 repairs, and debt service.  
1-61 (g) An energy savings performance contract may be financed:  
1-62 (1) under a lease/purchase contract that has a term  
1-63 not to exceed 20 [~~15~~] years from the final date of installation and

2-1 that meets federal tax requirements for tax-free municipal leasing  
 2-2 or long-term financing, including a lease/purchase contract under  
 2-3 the master equipment lease purchase program administered by the  
 2-4 Texas Public Finance Authority under Chapter 1232, Government Code;

2-5 (2) with the proceeds of bonds; or  
 2-6 (3) under a contract with the provider of the energy or  
 2-7 water conservation measures that has a term not to exceed the lesser  
 2-8 of 20 years or the average useful life of the energy or water  
 2-9 conservation or usage measures [15 years from the final date of  
 2-10 installation].

2-11 (i) An energy savings performance contract shall be let  
 2-12 according to the procedures established for procuring certain  
 2-13 professional services by Section 2254.004, Government Code. Notice  
 2-14 of the request for qualifications shall be given in the manner  
 2-15 provided by Section 2156.002, Government Code. The Texas Higher  
 2-16 Education Coordinating Board, in consultation with the State Energy  
 2-17 Conservation Office with regard to energy and water conservation  
 2-18 measures, shall establish guidelines and an approval process for  
 2-19 awarding energy savings performance contracts. The guidelines must  
 2-20 require that the cost savings projected by an offeror be reviewed by  
 2-21 a licensed professional engineer who has a minimum of three years of  
 2-22 experience in energy calculation and review, is not an officer or  
 2-23 employee of an offeror for the contract under review, and is not  
 2-24 otherwise associated with the contract or the offeror. In  
 2-25 conducting the review, the engineer shall focus only on the  
 2-26 methodology and calculations related to cost savings, increases in  
 2-27 revenue, and, if applicable, efficiency or accuracy of metering  
 2-28 equipment ~~[is not an officer or employee of an offeror for the~~  
 2-29 ~~contract under review or otherwise associated with the contract]~~.  
 2-30 An engineer who reviews a contract shall maintain the  
 2-31 confidentiality of any proprietary information the engineer  
 2-32 acquires while reviewing the contract. A contract is not required  
 2-33 to be reviewed or approved by the State Energy Conservation Office.  
 2-34 Sections 1001.053 and 1001.407, Occupations Code, apply to work  
 2-35 performed under the contract.

2-36 SECTION 3. Subsections (f), (g), and (i), Section 2166.406,  
 2-37 Government Code, are amended to read as follows:

2-38 (f) The state agency may enter into an energy savings  
 2-39 performance contract for a period of more than one year only if the  
 2-40 state agency finds that the amount the state agency would spend on  
 2-41 the energy or water conservation measures will not exceed the  
 2-42 amount to be saved in energy, water, wastewater, and operating  
 2-43 costs over 20 [15] years from the date of installation.

2-44 (g) An energy savings performance contract with respect to  
 2-45 existing buildings or facilities may be financed:

2-46 (1) under a lease/purchase contract that has a term  
 2-47 not to exceed 20 [15] years from the final date of installation and  
 2-48 that meets federal tax requirements for tax-free municipal leasing  
 2-49 or long-term financing, including a lease/purchase contract under  
 2-50 the master equipment lease purchase program administered by the  
 2-51 Texas Public Finance Authority under Chapter 1232;

2-52 (2) with the proceeds of bonds; or  
 2-53 (3) under a contract with the provider of the energy or  
 2-54 water conservation measures that has a term not to exceed the lesser  
 2-55 of 20 years or the average useful life of the energy or water  
 2-56 conservation or usage measures [15 years from the final date of  
 2-57 installation].

2-58 (i) An energy savings performance contract shall be let  
 2-59 according to the procedures established for procuring certain  
 2-60 professional services by Section 2254.004. Notice of the request  
 2-61 for qualifications shall be given in the manner provided by Section  
 2-62 2156.002. The State Energy Conservation Office shall establish  
 2-63 guidelines and an approval process for awarding energy savings  
 2-64 performance contracts. The guidelines adopted under this  
 2-65 subsection must require that the cost savings projected by an  
 2-66 offeror be reviewed by a licensed professional engineer who has a  
 2-67 minimum of three years of experience in energy calculation and  
 2-68 review, is not an officer or employee of an offeror for the contract  
 2-69 under review, and is not otherwise associated with the contract or

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

3-13 SECTION 4. Section 302.001, Local Government Code, is  
 3-14 amended to read as follows:

3-15 Sec. 302.001. DEFINITIONS. In this chapter:

3-16 (1) "Baseline" means a calculation or set of  
 3-17 calculations in an energy savings performance contract that may be  
 3-18 based on historical costs, revenues, accuracy, or related  
 3-19 components and used for determining:

3-20 (A) the costs for energy or water usage by a local  
 3-21 government and related net operating costs;

3-22 (B) the billable revenues from providing energy,  
 3-23 water, or other utilities to users; or

3-24 (C) the efficiency or accuracy of metering or  
 3-25 related equipment, systems, or processes or procedures.

3-26 (2) "Energy or water conservation or usage measures"  
 3-27 means:

3-28 (A) the installation or implementation of any of  
 3-29 the items, equipment, modifications, alterations, improvements,  
 3-30 systems, and other measures described by Subdivision (4) that are  
 3-31 intended to provide:

3-32 (i) estimated energy savings;  
 3-33 (ii) an estimated increase in billable  
 3-34 revenues; or

3-35 (iii) an estimated increase in meter  
 3-36 accuracy; or

3-37 (B) the training for, or services related to, the  
 3-38 operation of the items, equipment, modifications, alterations,  
 3-39 improvements, systems, or other measures described by Paragraph  
 3-40 (A).

3-41 (3) "Energy savings" means an estimated reduction in  
 3-42 net fuel costs, energy costs, water costs, stormwater fees, other  
 3-43 utility costs, or related net operating costs from or as compared to  
 3-44 an established baseline of those costs.

3-45 (4) "Energy savings performance contract" means a  
 3-46 contract between a local government and a provider for energy or  
 3-47 water conservation or usage measures [~~to reduce energy or water~~  
 3-48 ~~consumption or operating costs of local government facilities]~~ in  
 3-49 which the estimated energy savings, increase in billable revenues,  
 3-50 or increase in meter accuracy [~~in utility costs~~] resulting from the  
 3-51 measures is subject to guarantee [~~guaranteed~~] to offset the cost of  
 3-52 the energy or water conservation or usage measures over a specified  
 3-53 period. The term includes a contract for the installation or  
 3-54 implementation of the following, including all causally connected  
 3-55 work:

3-56 (A) insulation of a building structure and  
 3-57 systems within the building;

3-58 (B) storm windows or doors, caulking or weather  
 3-59 stripping, multiglazed windows or doors, heat-absorbing or  
 3-60 heat-reflective glazed and coated window or door systems, or other  
 3-61 window or door system modifications that reduce energy consumption;

3-62 (C) automatic energy control systems, including  
 3-63 computer software and technical data licenses;

3-64 (D) heating, ventilating, or air-conditioning  
 3-65 system modifications or replacements that reduce energy or water  
 3-66 consumption;

3-67 (E) lighting fixtures that increase energy  
 3-68 efficiency;

3-69 (F) energy recovery systems;

4-1 (G) electric systems improvements;  
 4-2 (H) water-conserving fixtures, appliances, and  
 4-3 equipment or the substitution of non-water-using fixtures,  
 4-4 appliances, and equipment;  
 4-5 (I) water-conserving landscape irrigation  
 4-6 equipment;  
 4-7 (J) landscaping measures that reduce watering  
 4-8 demands and capture and hold applied water and rainfall, including:  
 4-9 (i) landscape contouring, including the use  
 4-10 of berms, swales, and terraces; and  
 4-11 (ii) the use of soil amendments that  
 4-12 increase the water-holding capacity of the soil, including compost;  
 4-13 (K) rainwater harvesting equipment and equipment  
 4-14 to make use of water collected as part of a storm-water system  
 4-15 installed for water quality control;  
 4-16 (L) equipment for recycling or reuse of water  
 4-17 originating on the premises or from other sources, including  
 4-18 treated municipal effluent;  
 4-19 (M) equipment needed to capture water from  
 4-20 nonconventional, alternate sources, including air-conditioning  
 4-21 condensate or graywater, for nonpotable uses;  
 4-22 (N) metering or related equipment or systems that  
 4-23 improve the accuracy of billable-revenue-generation systems  
 4-24 [equipment needed to segregate water use in order to identify water  
 4-25 conservation opportunities or verify water savings]; or  
 4-26 (O) other energy or water conservation-related  
 4-27 improvements or equipment, including improvements or equipment  
 4-28 relating to renewable energy or nonconventional water sources or  
 4-29 water reuse.  
 4-30 (5) "Guarantee" means a written guarantee of a  
 4-31 provider that the energy savings, increase in billable revenues, or  
 4-32 increase in meter accuracy from the energy or water conservation or  
 4-33 usage measures will at least equal the cost of the energy or water  
 4-34 conservation or usage measures, all causally connected work, and  
 4-35 ancillary improvements provided for in an energy savings  
 4-36 performance contract.  
 4-37 (6) "Increase in billable revenues" means an estimated  
 4-38 increase in billable revenues as compared to an established  
 4-39 baseline of billable revenues.  
 4-40 (7) "Increase in meter accuracy" means an estimated  
 4-41 increase in efficiency or accuracy of metering or related  
 4-42 equipment, systems, or processes or procedures that is calculated  
 4-43 or determined by using applicable industry engineering standards.  
 4-44 (8) ~~(2)~~ "Local government" means a county,  
 4-45 municipality, or other political subdivision of this state. The  
 4-46 term does not include a school district authorized to enter into an  
 4-47 energy savings performance contract under Section 44.901,  
 4-48 Education Code.  
 4-49 (9) "Meter guarantee" means a guarantee of a  
 4-50 stipulated or agreed upon increase in billable revenues to result  
 4-51 from the estimated increase in meter accuracy, based on stipulated  
 4-52 or agreed upon components of a billable revenue calculation in an  
 4-53 energy savings performance contract.  
 4-54 (10) "Provider" means an entity in the business of  
 4-55 designing, implementing, and installing of energy or water  
 4-56 conservation or usage measures or an affiliate of such an entity.  
 4-57 SECTION 5. Subsection (b), Section 302.002, Local  
 4-58 Government Code, is amended to read as follows:  
 4-59 (b) Each energy or water conservation or usage measure must  
 4-60 comply with current local, state, and federal construction,  
 4-61 plumbing, and environmental codes and regulations.  
 4-62 Notwithstanding Section 302.001 ~~[302.001(1)]~~, an energy savings  
 4-63 performance contract may not include improvements or equipment that  
 4-64 allow or cause water from any condensing, cooling, or industrial  
 4-65 process or any system of nonpotable usage over which public water  
 4-66 supply system officials do not have sanitary control to be returned  
 4-67 to the potable water supply.  
 4-68 SECTION 6. Section 302.003, Local Government Code, is  
 4-69 amended to read as follows:

5-1           Sec. 302.003. PAYMENT           AND           PERFORMANCE           BOND.  
5-2 Notwithstanding any other law, before entering into an energy  
5-3 savings performance contract, the governing body of the local  
5-4 government shall require the provider of the energy or water  
5-5 conservation or usage measures to file with the governing body a  
5-6 payment and performance bond relating to the installation of the  
5-7 measures in accordance with Chapter 2253, Government Code. The  
5-8 governing body may also require a separate bond to cover the value  
5-9 of the guarantee [~~guaranteed savings on the contract~~].

5-10           SECTION 7. Section 302.004, Local Government Code, is  
5-11 amended to read as follows:

5-12           Sec. 302.004. METHOD OF FINANCING; TERMS OF CONTRACT.  
5-13 (a) An energy savings performance contract may be financed:

5-14           (1) under a lease-purchase contract that has a term  
5-15 not to exceed 20 [~~15~~] years from the final date of installation and  
5-16 that meets federal tax requirements for tax-free municipal leasing  
5-17 or long-term financing;

5-18           (2) with the proceeds of bonds; or

5-19           (3) under a contract with the provider of the energy or  
5-20 water conservation or usage measures that has a term not to exceed  
5-21 the lesser of 20 years or the average useful life of the energy or  
5-22 water conservation or usage measures [~~15 years from the final date~~  
5-23 ~~of installation~~].

5-24           (b) An energy savings performance contract shall contain  
5-25 provisions requiring the provider of the energy or water  
5-26 conservation or usage measures to provide a guarantee [~~the amount~~  
5-27 ~~of the savings to be realized by the local government under the~~  
5-28 ~~contract~~]. If the term of the contract exceeds one year, the local  
5-29 government's contractual obligations in any one year during the  
5-30 term of the contract beginning after the final date of installation  
5-31 may not exceed the total energy and [~~7~~] water savings, the net [~~7~~  
5-32 ~~wastewater, and~~] operating cost savings, and the stipulated or  
5-33 agreed upon increase in billable revenues resulting from the  
5-34 estimated increase in meter accuracy [~~including electrical, gas,~~  
5-35 ~~water, wastewater, or other utility cost savings and operating cost~~  
5-36 ~~savings resulting from the measures as determined by the local~~  
5-37 ~~government in this subsection~~], divided by the number of years in  
5-38 the contract term.

5-39           SECTION 8. Section 302.005, Local Government Code, is  
5-40 amended by amending Subsection (b) and adding Subsection (c) to  
5-41 read as follows:

5-42           (b) Before entering into an energy savings performance  
5-43 contract, the governing body must require that the energy savings,  
5-44 increase in billable revenues, or increase in meter accuracy  
5-45 estimated or [~~cost savings~~] projected by a provider [~~an offeror~~] be  
5-46 reviewed by a licensed professional engineer, who:

5-47           (1) has a minimum of three years of experience in  
5-48 energy calculation and review;

5-49           (2) is not an officer or employee of a provider [~~an~~  
5-50 ~~offeror~~] for the contract under review; and

5-51           (3) is not [~~or~~] otherwise associated with the contract  
5-52 or the provider.

5-53           (c) In conducting the review, the engineer shall focus only  
5-54 on the methodology and calculations related to cost savings,  
5-55 increases in revenue, and, if applicable, efficiency or accuracy of  
5-56 metering equipment [~~offeror~~]. An engineer who reviews a contract  
5-57 shall maintain the confidentiality of any proprietary information  
5-58 the engineer acquires while reviewing the contract. Sections  
5-59 1001.053 and 1001.407, Occupations Code, apply to work performed  
5-60 under the contract.

5-61           SECTION 9. Chapter 302, Local Government Code, is amended  
5-62 by adding Section 302.006 to read as follows:

5-63           Sec. 302.006. METER GUARANTEES. (a) This section applies  
5-64 to any energy savings performance contract that:

5-65           (1) provides for any metering or related equipment,  
5-66 system, or process or procedure; and

5-67           (2) includes a meter guarantee by the provider,  
5-68 regardless of whether the meter guarantee is a part of a broader  
5-69 guarantee applicable to other energy or water conservation or usage

6-1 measures or causally connected work.

6-2 (b) Not later than the fifth anniversary of the effective  
6-3 date of an energy savings performance contract, an engineer shall  
6-4 test a statistically relevant sample of the meters installed or  
6-5 implemented under the contract to determine or calculate the actual  
6-6 average accuracy and shall compare the actual average accuracy to  
6-7 the baseline average accuracy of those tested meters.

6-8 (c) A meter guarantee applies if the engineer reports to the  
6-9 local government and the provider that the average accuracy of the  
6-10 tested meters as of the testing date is less than the baseline  
6-11 average accuracy of the tested meters as of the testing date.

6-12 (d) The amount payable under the meter guarantee must be  
6-13 determined for each year subject to the engineer's report and is  
6-14 equal to the difference between:

6-15 (1) the agreed increase in billable revenues based on  
6-16 the estimated accuracy of all of the meters for each year, according  
6-17 to the energy savings performance contract; and

6-18 (2) the revenues for the same year that would result  
6-19 from applying the engineer's reported actual average accuracy of  
6-20 the tested meters to all of the meters subject to the energy savings  
6-21 performance contract, using the same contract components that were  
6-22 used to calculate the agreed increase in billable revenues for that  
6-23 year, assuming the annual decrease in actual average accuracy of  
6-24 all the meters was a pro rata percentage of the reported total  
6-25 decrease in actual average accuracy.

6-26 (e) Notwithstanding Subsection (d), if the meter guarantee  
6-27 in the contract is part of a broader guarantee applicable to other  
6-28 energy or water conservation or usage measures or causally  
6-29 connected work under the contract, the amount payable under the  
6-30 meter guarantee for any year during the measurement period is  
6-31 reduced or offset by the difference between:

6-32 (1) the sum of the energy savings and the increase in  
6-33 billable revenues resulting from the other energy or water  
6-34 conservation or usage measures or causally connected work for that  
6-35 year during the measurement period; and

6-36 (2) the guaranteed amount of the energy savings and  
6-37 the increase in billable revenues from the other energy or water  
6-38 conservation or usage measures or causally connected work for that  
6-39 year during the measurement period.

6-40 (f) A test conducted under this section must be performed in  
6-41 accordance with the procedures established by the International  
6-42 Performance Measurement and Verification Protocol or succeeding  
6-43 standards of the United States Department of Energy.

6-44 (g) An engineer conducting a test under this section shall:

6-45 (1) verify that the tested meters have been properly  
6-46 maintained and are operating properly; and

6-47 (2) comply with Section 302.005(c).

6-48 SECTION 10. Section 39.107, Utilities Code, is amended by  
6-49 adding Subsection (i) to read as follows:

6-50 (i) This section does not apply to a meter that was  
6-51 installed as part of an energy savings performance contract.

6-52 SECTION 11. The changes in law made by this Act apply only  
6-53 to an energy savings performance contract entered into on or after  
6-54 the effective date of this Act. An energy savings performance  
6-55 contract entered into before the effective date of this Act is  
6-56 governed by the law in effect at the time the contract was entered  
6-57 into, and the former law is continued in effect for that purpose.

6-58 SECTION 12. This Act takes effect immediately if it  
6-59 receives a vote of two-thirds of all the members elected to each  
6-60 house, as provided by Section 39, Article III, Texas Constitution.  
6-61 If this Act does not receive the vote necessary for immediate  
6-62 effect, this Act takes effect September 1, 2007.

6-63 \* \* \* \* \*