

BILL ANALYSIS

Senate Research Center
81R10811 YDB-F

S.B. 1973
By: Ellis
Government Organization
4/5/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill establishes a State Energy Savings Performance Contract Advisory Council (advisory council) intended to help to ensure compliance with applicable state statutes governing contracting requirements, project performance, and independent verification of energy savings, sufficient to repay the loan.

The intent is to provide uniformity and oversight of this special financing of energy management projects for energy improvements in state government, higher education, local government, and school districts. This function is currently provided by four different agencies—the State Energy Conservation Office (SECO) within the Office of the Comptroller of Public Accounts (comptroller's office), the Texas Public Finance Authority, the Bond Review Board, and the Texas Higher Education Coordinating Board—and has resulted in duplicative, inconsistent, and sometimes ineffective management and controls, according to a report by the State Auditor's Office.

As proposed, S.B. 1973 establishes an advisory council within the comptroller's office to advise and assist the comptroller, state agencies, and institutions of higher education on optimizing energy savings through energy savings performance contracts. The bill requires that the advisory council send a report to the governor and legislature every two years on the savings or lack of savings of all energy savings performance contracts; the attainment of individual state agency energy savings reduction goals; a statement from each agency and higher education that the contractual savings are, or are not, being met; and a statement on the impact on the agency's utility funding and on student fees and tuition for higher education. The bill provides that the advisory council is administratively attached to the comptroller, independent of SECO, and funded by interest collected under the Texas LoanSTAR program.

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 Subtitle D, Title 10, Government Code, by adding Chapter 2178, as follows:

CHAPTER 2178. STATE ENERGY SAVINGS PERFORMANCE CONTRACT ADVISORY COUNCIL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2178.001. DEFINITIONS. Defines "advisory council," "energy savings," "energy savings performance contract," "institution of higher education," and "state agency."

Sec. 2178.002. ADMINISTRATIVELY ATTACHED TO COMPTROLLER'S OFFICE. Provides that the state energy savings performance contract advisory council (advisory council) is administratively attached to the Office of the Comptroller of Public Accounts (comptroller). Requires the comptroller to provide the staff and facilities necessary to assist the advisory council in performing its duties.

[Reserves Sections 2178.003-2178.050 for expansion.]

SUBCHAPTER B. ADVISORY COUNCIL

Sec. 2178.051. ESTABLISHMENT OF ADVISORY COUNCIL. (a) Requires the comptroller to establish the advisory council as an independent council separate from the State Energy Conservation Office (SECO).

(b) Provides that Chapter 2110 (State Agency Advisory Committes) does not apply to the advisory council.

Sec. 2178.052. APPOINTMENT OF ADVISORY COUNCIL MEMBERS. (a) Requires the comptroller to appoint the members of the advisory council. Sets forth the required members of the advisory council.

(b) Provides that the advisory council members serve four-year terms. Authorizes an advisory council member to be reappointed for a second term.

(c) Requires the comptroller, not later than the 90th day after the date the comptroller receives notice of a member's resignation, to fill the vacancy on the advisory council.

Sec. 2178.053. PRESIDING OFFICER. Requires the members of the advisory council by majority vote to appoint a presiding officer.

Sec. 2178.054. COMPENSATION AND REIMBURSEMENT. Provides that an advisory council member is not entitled to compensation but is entitled to reimbursement for actual travel expenses incurred by the member while conducting the business of the advisory council, as provided in the General Appropriations Act.

Sec. 2178.055. MEETINGS. Requires the advisory council to meet at the call of the presiding officer or comptroller.

[Reserves Sections 2178.056-2178.100 for expansion.]

SUBCHAPTER C. DUTIES OF ADVISORY COUNCIL

Sec. 2178.101. GENERAL DUTIES. Requires the advisory council to advise the comptroller and assist state agencies and institutions of higher education with optimizing energy savings, complying with the requirements for energy savings performance contracts, verifying energy savings, and overseeing contracts for energy services and energy conservation measures under performance contracts that guarantee savings.

Sec. 2178.102. BEST PRACTICES AND GUIDELINES. (a) Requires the advisory council to identify strategies for state agencies to use in measuring and verifying savings from energy, water, improved operations and maintenance, retro-commissioning, renewable energy, and cogeneration projects implemented through energy savings performance contracts.

(b) Requires the advisory council to base the strategies identified under Subsection (a) on certain best practices identified by other entities.

(c) Requires the advisory council, with the approval of the comptroller, to develop and publish uniform contracts, guidelines, and procedures to be used by state agencies, institutions of higher education, SECO, the Bond Review Board, and the Texas Public Finance Authority for monitoring and verifying savings derived from the use of energy savings performance contracts. Sets forth the required content of the guidelines and procedures.

(d) Requires the advisory council, with the approval of the comptroller, to annually update the terminology, guidelines, and procedures developed under

Subsection (c) to harmonize with the latest techniques and technologies for monitoring and verification of energy and water savings.

(e) Requires the advisory council, with the approval of the comptroller, to establish cost guidelines for efficient monitoring and verification of savings by energy savings performance contract contractors and require that any proposed contractor costs for measurement and verification that exceed the guidelines are required to be preapproved by the comptroller with the advice of the advisory council.

(f) Authorizes the advisory council to provide special contract provisions for institutions of higher education if required by statute.

Sec. 2178.103. OPTIMIZATION OF SAVINGS AND REDUCTION OF RISK; TRAINING. (a) Authorizes the advisory council to enlist a state agency or institution of higher education with expertise in monitoring and verification to provide services and expertise to optimize savings and reduce risk from inadequate savings, including short-course training, testing, and certification to increase the proficiency of independent, third-party providers and their employees related to energy savings performance contracts for monitoring and verification services under this chapter.

(b) Authorizes the advisory council to collect reasonable fees to conduct the training described by Subsection (a).

Sec. 2178.104. ADVISORY COUNCIL DUTIES RELATED TO RULES. Requires the advisory council to advise the comptroller on the development of rules and guidelines relating to energy savings performance contracts under Section 2166.406 (Energy Savings Performance Contracts) and Section 44.901 (Energy Savings Performance Contracts), Education Code.

Sec. 2178.105. CONTRACT WITH STATE AGENCY OR INSTITUTION OF HIGHER EDUCATION. Authorizes the advisory council to contract with a state agency or institution of higher education with expertise in monitoring and verifying energy savings to oversee energy savings performance contract plans and reporting under this chapter.

Sec. 2178.106. REPORTS. (a) Requires the advisory council, not later than January 1 of each odd-numbered year, to submit a report to the governor and both houses of the legislature on the savings or lack of savings of all energy savings performance contracts entered into by a state agency during the preceding two years and on the performance of contractors under the contracts; and the fulfillment of state agency energy savings reduction goals under Section 2166.406 and of institutions of higher education under Section 44.901, Education Code.

(b) Authorizes the report required under Subsection (a) to also contain recommendations for increased savings by state agencies and institutions of higher education, including the use of energy savings performance contracts and other forms of financing.

(c) Requires each state agency and institution of higher education to provide to the advisory council adequate, timely information necessary to prepare the report.

(d) Requires each state agency and institution of higher education to provide a list of all energy savings performance contracts to the governor, both houses of the legislature, and the Legislative Budget Board that includes a summary of the savings and operational performance under the contract; a statement that the savings guarantee is or is not being met annually; a statement on the impact of the contract for a state agency, on the agency's request to the legislature for utility funding; or for institutions of higher education, on student fees and tuition.

Sec. 2178.107. FUNDING. Authorizes the advisory council to use funds from interest collected by the loanstar program established under Section 2305.032 to perform the functions assigned under this chapter and for training.

SECTION 2. Amends Section 2166.406, Government Code, by amending Subsection (i) and adding Subsection (k), as follows:

(i) Requires that the guidelines adopted under this subsection 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, has successfully completed the monitoring and verification training required under Chapter 2178, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract.

(k) Requires that an energy savings performance contract comply with the requirements and guidelines established under Chapter 2178.

SECTION 3. Amends Section 2305.032, Government Code, by adding Subsections (g) and (h), as follows:

(g) Requires that all loans, including energy savings performance contract loans, made under this section for state agencies, institutions of higher education, local governments, and school districts, comply with the uniform measurement and verification plans and mandatory monitoring and verification guidelines established under Chapter 2178.

(h) Requires that a portion of the interest earned on a loan made under this section be used to fund the advisory council established under Chapter 2178.

SECTION 4. Amends Section 44.901, Education Code, by amending Subsection (i) and adding Subsection (j), as follows:

(i) Requires the State Board of Education, before entering into an energy savings 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, has successfully completed the monitoring and verification training required under Chapter 2178, Government Code, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract.

(j) Requires that an energy savings performance contract comply with the requirements and guidelines established under Chapter 2178, Government Code.

SECTION 5. (a) Requires the comptroller, as soon as practicable after the effective date of this Act, to appoint members to the state energy savings performance contract advisory council.

(b) Requires the advisory council, with the approval of the comptroller, not later than September 1, 2010, to develop and publish the uniform contracts, guidelines, and procedures as required under Chapter 2178, Government Code, as added by this Act.

(c) Provides that all existing regulations, policies, and guidelines established by SECO on the effective date of this Act remain in force until the date any conflicting guidelines are adopted under Subsection (b) of this section.

(d) Requires that an existing energy savings performance contract conform to the guidelines developed under Chapter 2178, Government Code, as added by this Act, if the contract is materially amended or extended on or after the date any conflicting guidelines are adopted under Subsection (b) of this section.

SECTION 6. Effective date: upon passage or September 1, 2009.