

By: Ellis

S.B. No. 1973

A BILL TO BE ENTITLED

AN ACT

relating to the creation and duties of the state energy savings performance contract advisory council.

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

SECTION 1. Subtitle D, Title 10, Government Code, is amended by adding Chapter 2178 to read as follows:

CHAPTER 2178. STATE ENERGY SAVINGS PERFORMANCE CONTRACT ADVISORY COUNCIL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2178.001. DEFINITIONS. In this chapter:

(1) "Advisory council" means the state energy savings performance contract advisory council.

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

(3) "Energy savings performance contract" means a contract between a state agency and a provider for energy or water conservation or usage measures in which the estimated energy savings, increase in billable revenues, or increase in meter accuracy resulting from the measures is subject to guarantee to offset the cost of the energy or water conservation or usage

1 measures over a specified period. The term includes a contract for  
2 the installation or implementation of the following, including all  
3 causally connected work:

4 (A) insulation of a building structure and  
5 systems within the building;

6 (B) storm windows or doors, caulking or weather  
7 stripping, multiglazed windows or doors, heat-absorbing or  
8 heat-reflective glazed and coated window or door systems, or other  
9 window or door system modifications that reduce energy consumption;

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

12 (D) heating, ventilating, or air-conditioning  
13 system modifications or replacements that reduce energy or water  
14 consumption;

15 (E) lighting fixtures that increase energy  
16 efficiency;

17 (F) energy recovery systems;

18 (G) electric systems improvements;

19 (H) water-conserving fixtures, appliances, and  
20 equipment or the substitution of non-water-using fixtures,  
21 appliances, and equipment;

22 (I) water-conserving landscape irrigation  
23 equipment;

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

26 (i) landscape contouring, including the use  
27 of berms, swales, and terraces; and

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

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

6           (L) equipment for recycling or reuse of water  
7 originating on the premises or from other sources, including  
8 treated municipal effluent;

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

12           (N) metering or related equipment or systems that  
13 improve the accuracy of billable-revenue-generation systems; or

14           (O) other energy or water conservation related  
15 improvements or equipment, including improvements or equipment  
16 relating to renewable energy or nonconventional water sources or  
17 water reuse.

18           (4) "Institution of higher education" has the meaning  
19 assigned by Section 61.003, Education Code.

20           (5) "State agency" means an office, department,  
21 commission, or board of any branch of state government.

22           Sec. 2178.002. ADMINISTRATIVELY ATTACHED TO COMPTROLLER'S  
23 OFFICE. The advisory council is administratively attached to the  
24 comptroller's office. The comptroller shall provide the staff and  
25 facilities necessary to assist the advisory council in performing  
26 its duties.

27           [Sections 2178.003-2178.050 reserved for expansion]

SUBCHAPTER B. ADVISORY COUNCIL

Sec. 2178.051. ESTABLISHMENT OF ADVISORY COUNCIL. (a) The comptroller shall establish the state energy savings performance contract advisory council as an independent council separate from the State Energy Conservation Office.

(b) Chapter 2110 does not apply to the advisory council.

Sec. 2178.052. APPOINTMENT OF ADVISORY COUNCIL MEMBERS.

(a) The comptroller shall appoint the members of the advisory council. The advisory council must include:

(1) at least one representative from each of the following:

(A) an institution of higher education;

(B) a state agency, other than an agency already represented on the advisory council;

(C) the State Energy Conservation Office;

(D) the Texas Higher Education Coordinating Board;

(E) the Bond Review Board;

(F) the Texas Public Finance Authority;

(G) the attorney general's office; and

(H) the Texas Engineering Experiment Station;

(2) a licensed professional mechanical engineer, who is licensed in this state and is proficient in monitoring and verification techniques; and

(3) a representative from the energy savings performance contract industry.

(b) The advisory council members serve four-year terms. An

1 advisory council member may be reappointed for a second term.

2 (c) Not later than the 90th day after the date the  
3 comptroller receives notice of a member's resignation, the  
4 comptroller shall fill the vacancy on the advisory council.

5 Sec. 2178.053. PRESIDING OFFICER. The members of the  
6 advisory council by majority vote shall appoint a presiding  
7 officer.

8 Sec. 2178.054. COMPENSATION AND REIMBURSEMENT. An advisory  
9 council member is not entitled to compensation but is entitled to  
10 reimbursement for actual travel expenses incurred by the member  
11 while conducting the business of the advisory council, as provided  
12 in the General Appropriations Act.

13 Sec. 2178.055. MEETINGS. The advisory council shall meet at  
14 the call of the presiding officer or comptroller.

15 [Sections 2178.056-2178.100 reserved for expansion]

16 SUBCHAPTER C. DUTIES OF ADVISORY COUNCIL

17 Sec. 2178.101. GENERAL DUTIES. The advisory council shall  
18 advise the comptroller and assist state agencies and institutions  
19 of higher education with:

- 20 (1) optimizing energy savings;  
21 (2) complying with the requirements for energy savings  
22 performance contracts;  
23 (3) verifying energy savings; and  
24 (4) overseeing contracts for energy services and  
25 energy conservation measures under performance contracts that  
26 guarantee savings.

27 Sec. 2178.102. BEST PRACTICES AND GUIDELINES. (a) The

1 advisory council shall identify strategies for state agencies to  
2 use in measuring and verifying savings from energy, water, improved  
3 operations and maintenance, retro-commissioning, renewable energy,  
4 and cogeneration projects implemented through energy savings  
5 performance contracts.

6 (b) The advisory council shall base the strategies  
7 identified under Subsection (a) on best practices identified by  
8 other entities, including:

9 (1) ASHRAE Guideline 14: Measurement of Energy and  
10 Demand Savings;

11 (2) the International Performance Measurement and  
12 Verification Protocol; and

13 (3) the Federal Energy Management Program Guidelines  
14 for Measurement and Verification.

15 (c) The advisory council, with the approval of the  
16 comptroller, shall develop and publish uniform contracts,  
17 guidelines, and procedures to be used by state agencies,  
18 institutions of higher education, the State Energy Conservation  
19 Office, the Bond Review Board, and the Texas Public Finance  
20 Authority for monitoring and verifying savings derived from the use  
21 of energy savings performance contracts. The guidelines and  
22 procedures must:

23 (1) require each contract to contain provisions that  
24 require the contractor to undertake measurement and verification  
25 activities and provide documentation adequate to demonstrate that  
26 the savings guarantee will be met over the contract period and will  
27 minimize financial risk for all parties;

1           (2) require uniform monitoring and verification plans  
2 to be approved by the comptroller with the advice of the advisory  
3 council;

4           (3) establish guidelines that require all costs  
5 associated with an energy savings performance contract, including  
6 actual equipment costs, interest, management fees, monitoring and  
7 verification fees, and commissioning and default obligations, to be  
8 fully disclosed before the contract is executed;

9           (4) require that savings must exceed payments in every  
10 year of an energy savings performance contract;

11           (5) require all monitoring and verification plans to  
12 contain a statement issued by a provider attesting that the project  
13 savings will meet or exceed all costs of the projects implemented by  
14 an energy savings performance contract; and

15           (6) establish procedures to ensure that life-cycle  
16 cost analysis be conducted and that replacement costs for equipment  
17 with a useful life expectancy that is less than the term of the  
18 contract be accounted for and that the contract addresses ongoing  
19 maintenance and commissioning.

20           (d) The advisory council, with the approval of the  
21 comptroller, shall annually update the terminology, guidelines,  
22 and procedures developed under Subsection (c) to harmonize with the  
23 latest techniques and technologies for monitoring and verification  
24 of energy and water savings.

25           (e) The advisory council, with the approval of the  
26 comptroller, shall establish cost guidelines for efficient  
27 monitoring and verification of savings by energy savings

1 performance contract contractors and require that any proposed  
2 contractor costs for measurement and verification that exceed the  
3 guidelines must be preapproved by the comptroller with the advice  
4 of the advisory council.

5 (f) The advisory council may provide special contract  
6 provisions for institutions of higher education if required by  
7 statute.

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

17 (b) The advisory council may collect reasonable fees to  
18 conduct the training described by Subsection (a).

19 Sec. 2178.104. ADVISORY COUNCIL DUTIES RELATED TO RULES.  
20 The advisory council shall advise the comptroller on the  
21 development of rules and guidelines relating to energy savings  
22 performance contracts under Section 2166.406 and Section 44.901,  
23 Education Code.

24 Sec. 2178.105. CONTRACT WITH STATE AGENCY OR INSTITUTION OF  
25 HIGHER EDUCATION. The advisory council may contract with a state  
26 agency or institution of higher education with expertise in  
27 monitoring and verifying energy savings to oversee energy savings



1 performance contract plans and reporting under this chapter.

2 Sec. 2178.106. REPORTS. (a) Not later than January 1 of  
3 each odd-numbered year, the advisory council shall submit a report  
4 to the governor and both houses of the legislature on:

5 (1) the savings or lack of savings of all energy  
6 savings performance contracts entered into by a state agency during  
7 the preceding two years and on the performance of contractors under  
8 the contracts; and

9 (2) the fulfillment of state agency energy savings  
10 reduction goals under Section 2166.406 and of institutions of  
11 higher education under Section 44.901, Education Code.

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

16 (c) Each state agency and institution of higher education  
17 shall provide to the advisory council adequate, timely information  
18 necessary to prepare the report.

19 (d) Each state agency and institution of higher education  
20 shall provide a list of all energy savings performance contracts to  
21 the governor, both houses of the legislature, and the Legislative  
22 Budget Board that includes:

23 (1) a summary of the savings and operational  
24 performance under the contract;

25 (2) a statement that the savings guarantee is or is not  
26 being met annually; and

27 (3) a statement on the impact of the contract:

1           (A) for a state agency, on the agency's request  
2 to the legislature for utility funding; or

3           (B) for institutions of higher education, on  
4 student fees and tuition.

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

9           SECTION 2. Section 2166.406, Government Code, is amended by  
10 amending Subsection (i) and adding Subsection (k) to read as  
11 follows:

12           (i) An energy savings performance contract shall be let  
13 according to the procedures established for procuring certain  
14 professional services by Section 2254.004. Notice of the request  
15 for qualifications shall be given in the manner provided by Section  
16 2156.002. The State Energy Conservation Office shall establish  
17 guidelines and an approval process for awarding energy savings  
18 performance contracts. The guidelines adopted under this  
19 subsection must require that the cost savings projected by an  
20 offeror be reviewed by a licensed professional engineer who has a  
21 minimum of three years of experience in energy calculation and  
22 review, has successfully completed the monitoring and verification  
23 training required under Chapter 2178, is not an officer or employee  
24 of an offeror for the contract under review, and is not otherwise  
25 associated with the contract. In conducting the review, the  
26 engineer shall focus primarily on the proposed improvements from an  
27 engineering perspective, the methodology and calculations related

1 to cost savings, increases in revenue, and, if applicable,  
2 efficiency or accuracy of metering equipment. An engineer who  
3 reviews a contract shall maintain the confidentiality of any  
4 proprietary information the engineer acquires while reviewing the  
5 contract. An energy savings performance contract may not be  
6 entered into unless the contract has been approved by the State  
7 Energy Conservation Office. Sections 1001.053 and 1001.407,  
8 Occupations Code, apply to work performed under the contract.

9 (k) An energy savings performance contract must comply with  
10 the requirements and guidelines established under Chapter 2178.

11 SECTION 3. Section 2305.032, Government Code, is amended by  
12 adding Subsections (g) and (h) to read as follows:

13 (g) All loans, including energy savings performance  
14 contract loans, made under this section for state agencies,  
15 institutions of higher education, local governments, and school  
16 districts must comply with the uniform measurement and verification  
17 plans and mandatory monitoring and verification guidelines  
18 established under Chapter 2178.

19 (h) A portion of the interest earned on a loan made under  
20 this section shall be used to fund the state energy savings  
21 performance contract advisory council established under Chapter  
22 2178.

23 SECTION 4. Section 44.901, Education Code, is amended by  
24 amending Subsection (i) and adding Subsection (j) to read as  
25 follows:

26 (i) Before entering into an energy savings performance  
27 contract, the board must require that the cost savings projected by

1 an offeror be reviewed by a licensed professional engineer who has a  
2 minimum of three years of experience in energy calculation and  
3 review, has successfully completed the monitoring and verification  
4 training required under Chapter 2178, Government Code, is not an  
5 officer or employee of an offeror for the contract under review, and  
6 is not otherwise associated with the contract. In conducting the  
7 review, the engineer shall focus primarily on the proposed  
8 improvements from an engineering perspective, the methodology and  
9 calculations related to cost savings, increases in revenue, and, if  
10 applicable, efficiency or accuracy of metering equipment. An  
11 engineer who reviews a contract shall maintain the confidentiality  
12 of any proprietary information the engineer acquires while  
13 reviewing the contract. Sections 1001.053 and 1001.407,  
14 Occupations Code, apply to work performed under the contract.

15 (j) An energy savings performance contract must comply with  
16 the requirements and guidelines established under Chapter 2178,  
17 Government Code.

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

21 (b) Not later than September 1, 2010, the state energy  
22 savings performance contract advisory council, with the approval of  
23 the comptroller, shall develop and publish the uniform contracts,  
24 guidelines, and procedures as required under Chapter 2178,  
25 Government Code, as added by this Act.

26 (c) All existing regulations, policies, and guidelines  
27 established by the State Energy Conservation Office on the

1 effective date of this Act remain in force until the date any  
2 conflicting guidelines are adopted under Subsection (b) of this  
3 section.

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

9 SECTION 6. This Act takes effect immediately if it receives  
10 a vote of two-thirds of all the members elected to each house, as  
11 provided by Section 39, Article III, Texas Constitution. If this  
12 Act does not receive the vote necessary for immediate effect, this  
13 Act takes effect September 1, 2009.