

## **BILL ANALYSIS**

H.B. 1728  
By: Keffer  
Energy Resources  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties express concern that the current energy savings performance contract statutes do not allow public entities the flexibility to use other available money to pay for a performance contract or additional work requested of the entity as part of a performance contract. The interested parties further note that this restricts a public entity's ability to make a change to the scope of a contract because the energy savings achieved in the original scope would not pay for the change despite newly available funds and a continued desire to use the expertise of the performance contractor to complete a comprehensive project. The expressed concern is that the public entity may not be allowed to use performance contracting even though the entity has funds available to pay for the costs of the change in the scope of work or the project costs.

In addition, there is concern that current energy savings performance contract statutes do not clearly state if performance contracting can be implemented for new buildings and can even be interpreted to explicitly exclude new buildings. H.B. 1728 seeks to address these issues.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 1728 amends the Education Code, in provisions of law relating to energy savings performance contracts in public education facilities and higher education facilities, to authorize the board of trustees of a public school district or the governing board of an institution of higher education to use any available money, other than money borrowed from the state, to pay the provider of the energy or water conservation measures under the contract and specifies that the board of trustees or governing board is not required to pay for the energy or water conservation measures solely out of the savings realized by the school district or institution of higher education under an energy savings performance contract. The bill redefines "energy savings performance contract."

H.B. 1728 amends the Government Code, in provisions of law relating to energy savings performance contracts in governmental facilities, to authorize a state agency to use any available money, other than money borrowed from the state, to pay the provider of the energy or water conservation measures under the contract and specifies that the state agency is not required to pay for the energy or water conservation measures solely out of the savings realized by the state agency under an energy savings performance contract. The bill redefines "energy savings performance contract" and makes a conforming change.

H.B. 1728 amends the Local Government Code, in provisions of law relating to energy savings performance contracts, to authorize the governing body of a local government to use any available money, other than money borrowed from the state, to pay the provider of the energy or water conservation measures under the contract and specifies that the governing body is not

required to pay for energy or water conservation measures solely out of the savings realized by the local government under an energy savings performance contract. The bill redefines "energy savings performance contract."

**EFFECTIVE DATE**

September 1, 2011.