

SENATE AMENDMENTS

2nd Printing

By: Keffer

H.B. No. 1728

A BILL TO BE ENTITLED

AN ACT

relating to energy savings performance contracts and energy efficiency planning.

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

SECTION 1. Section 44.901, Education Code, is amended by amending Subsection (a) and adding Subsection (f-1) to read as follows:

(a) In this section, "energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of new or existing school facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term includes a contract for the installation or implementation of:

(1) insulation of a building structure and systems within the building;

(2) storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;

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

(4) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water

1 consumption;
2 (5) lighting fixtures that increase energy
3 efficiency;
4 (6) energy recovery systems;
5 (7) electric systems improvements;
6 (8) water-conserving fixtures, appliances, and
7 equipment or the substitution of non-water-using fixtures,
8 appliances, and equipment;
9 (9) water-conserving landscape irrigation equipment;
10 (10) landscaping measures that reduce watering
11 demands and capture and hold applied water and rainfall, including:
12 (A) landscape contouring, including the use of
13 berms, swales, and terraces; and
14 (B) the use of soil amendments that increase the
15 water-holding capacity of the soil, including compost;
16 (11) rainwater harvesting equipment and equipment to
17 make use of water collected as part of a storm-water system
18 installed for water quality control;
19 (12) equipment for recycling or reuse of water
20 originating on the premises or from other sources, including
21 treated municipal effluent;
22 (13) equipment needed to capture water from
23 nonconventional, alternate sources, including air conditioning
24 condensate or graywater, for nonpotable uses;
25 (14) metering equipment needed to segregate water use
26 in order to identify water conservation opportunities or verify
27 water savings; or

1 (15) other energy or water conservation-related
2 improvements or equipment, including improvements or equipment
3 relating to renewable energy or nonconventional water sources or
4 water reuse.

5 (f-1) Notwithstanding other law, the board of trustees may
6 contract with the provider of the energy or water conservation
7 measures to perform work that is related to, connected with, or
8 otherwise ancillary to the measures identified in the scope of an
9 energy savings performance contract and may use any available
10 money, other than money borrowed from this state, to pay the
11 provider for such services under this section and the board is not
12 required to pay for such costs solely out of the savings realized by
13 the school district under an energy savings performance contract.

14 SECTION 2. Section 44.902, Education Code, is amended by
15 adding Subsection (b-1) and amending Subsection (d) to read as
16 follows:

17 (b-1) For purposes of Subsection (b), a strategy for
18 achieving energy efficiency includes facility design and
19 construction.

20 (d) The board of trustees may submit the plan required under
21 Subsection (a) to the State Energy Conservation Office for the
22 purposes of determining whether funds available through loan
23 programs administered by the office or tax incentives administered
24 by the state or federal government are available to the district.
25 The board may not disallow any proper allocation of incentives.

26 SECTION 3. Section 51.927, Education Code, is amended by
27 amending Subsection (a) and adding Subsection (g-1) to read as

1 follows:

2 (a) In this section, "energy savings performance contract"
3 means a contract for energy or water conservation measures to
4 reduce energy or water consumption or operating costs of new or
5 existing institutional facilities in which the estimated savings in
6 utility costs resulting from the measures is guaranteed to offset
7 the cost of the measures over a specified period. The term includes
8 a contract for the installation or implementation of:

9 (1) insulation of a building structure and systems
10 within a building;

11 (2) storm windows or doors, caulking or weather
12 stripping, multiglazed windows or doors, heat-absorbing or
13 heat-reflective glazed and coated window or door systems, or other
14 window or door system modifications that reduce energy consumption;

15 (3) automatic energy control systems, including
16 computer software and technical data licenses;

17 (4) heating, ventilating, or air conditioning system
18 modifications or replacements that reduce energy or water
19 consumption;

20 (5) lighting fixtures that increase energy
21 efficiency;

22 (6) energy recovery systems;

23 (7) electric systems improvements;

24 (8) water-conserving fixtures, appliances, and
25 equipment or the substitution of non-water-using fixtures,
26 appliances, and equipment;

27 (9) water-conserving landscape irrigation equipment;

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

(A) landscape contouring, including the use of berms, swales, and terraces; and

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

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

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

(13) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;

(14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or

(15) other energy or water conservation-related improvements or equipment, including improvements or equipment related to renewable energy or nonconventional water sources or water reuse.

(g-1) Notwithstanding other law, the board may contract with the provider of the energy or water conservation measures to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract and may use any available money, other

1 than money borrowed from this state, to pay the provider for such
2 services under this section and the board is not required to pay for
3 such costs solely out of the savings realized by the institution of
4 higher education under an energy savings performance contract.

5 SECTION 4. Section 2166.406, Government Code, is amended by
6 amending Subsections (a) and (g) and adding Subsection (f-1) to
7 read as follows:

8 (a) In this section, "energy savings performance contract"
9 means a contract for energy or water conservation measures to
10 reduce energy or water consumption or operating costs of new or
11 existing governmental facilities in which the estimated savings in
12 utility costs resulting from the measures is guaranteed to offset
13 the cost of the measures over a specified period. The term includes
14 a contract for the installation of:

15 (1) insulation of a building structure and systems
16 within the building;

17 (2) storm windows or doors, caulking or weather
18 stripping, multiglazed windows or doors, heat absorbing or heat
19 reflective glazed and coated window or door systems, or other
20 window or door system modifications that reduce energy consumption;

21 (3) automatic energy control systems, including
22 computer software and technical data licenses;

23 (4) heating, ventilating, or air-conditioning system
24 modifications or replacements that reduce energy or water
25 consumption;

26 (5) lighting fixtures that increase energy
27 efficiency;

(6) energy recovery systems;

(7) electric systems improvements;

(8) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;

(9) water-conserving landscape irrigation equipment;

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

(A) landscape contouring, including the use of berms, swales, and terraces; and

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

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

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

(13) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;

(14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or

(15) other energy or water conservation-related improvements or equipment including improvements or equipment related to renewable energy or nonconventional water sources or

1 water reuse.

2 (f-1) Notwithstanding other law, the state agency may
3 contract with the provider of the energy or water conservation
4 measures to perform work that is related to, connected with, or
5 otherwise ancillary to the measures identified in the scope of an
6 energy savings performance contract and may use any available
7 money, other than money borrowed from this state, to pay the
8 provider for such services under this section and the state agency
9 is not required to pay for such costs solely out of the savings
10 realized by the local government under an energy savings
11 performance contract.

12 (g) An energy savings performance contract with respect to
13 ~~[existing]~~ buildings or facilities may be financed:

14 (1) under a lease/purchase contract that has a term
15 not to exceed 20 years from the final date of installation and that
16 meets federal tax requirements for tax-free municipal leasing or
17 long-term financing, including a lease/purchase contract under the
18 master equipment lease purchase program administered by the Texas
19 Public Finance Authority under Chapter 1232;

20 (2) with the proceeds of bonds; or

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

25 SECTION 5. Section 302.001(4), Local Government Code, is
26 amended to read as follows:

27 (4) "Energy savings performance contract" means a

1 contract between a local government and a provider for energy or
2 water conservation or usage measures in which the estimated energy
3 savings, increase in billable revenues, or increase in meter
4 accuracy resulting from the measures is subject to guarantee to
5 offset the cost of the energy or water conservation or usage
6 measures over a specified period. The term includes a contract for
7 the installation or implementation of the following in new or
8 existing facilities, including all causally connected work:

9 (A) insulation of a building structure and
10 systems within the building;

11 (B) storm windows or doors, caulking or weather
12 stripping, multiglazed windows or doors, heat-absorbing or
13 heat-reflective glazed and coated window or door systems, or other
14 window or door system modifications that reduce energy consumption;

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

17 (D) heating, ventilating, or air-conditioning
18 system modifications or replacements that reduce energy or water
19 consumption;

20 (E) lighting fixtures that increase energy
21 efficiency;

22 (F) energy recovery systems;

23 (G) electric systems improvements;

24 (H) water-conserving fixtures, appliances, and
25 equipment or the substitution of non-water-using fixtures,
26 appliances, and equipment;

27 (I) water-conserving landscape irrigation

1 equipment;

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

4 (i) landscape contouring, including the use
5 of berms, swales, and terraces; and

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

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

11 (L) equipment for recycling or reuse of water
12 originating on the premises or from other sources, including
13 treated municipal effluent;

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

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

19 (O) other energy or water conservation-related
20 improvements or equipment, including improvements or equipment
21 relating to renewable energy or nonconventional water sources or
22 water reuse.

23 SECTION 6. Section 302.004, Local Government Code, is
24 amended by adding Subsection (a-1) to read as follows:

25 (a-1) Notwithstanding other law, the governing body of a
26 local government may contract with the provider of the energy or
27 water conservation measures to perform work that is related to,

1 connected with, or otherwise ancillary to the measures identified
2 in the scope of an energy savings performance contract and may use
3 any available money, other than money borrowed from this state, to
4 pay the provider for such services under this section and the
5 governing body is not required to pay for such costs solely out of
6 the savings realized by the local government under an energy
7 savings performance contract.

8 SECTION 7. This Act takes effect September 1, 2011.

ADOPTED

MAY 24 2011

FLOOR AMENDMENT NO. 1

Antony Davis
Secretary of the Senate

BY:

Wentworth

1 Amend H.B. No. 1728 (senate committee printing) as follows:

2 (1) In SECTION 1 of the bill, strike proposed Section
3 44.901(f-1), Education Code (page, 1 line 62, through page 2,
4 line 6), and substitute the following:

5 (f-1) Notwithstanding other law, the board may use any
6 available money, other than money borrowed from this state, to
7 pay the provider of the energy or water conservation measures
8 under this section, and the board is not required to pay for
9 such costs solely out of the savings realized by the school
10 district under an energy savings performance contract. The
11 board may contract with the provider to perform work that is
12 related to, connected with, or otherwise ancillary to the
13 measures identified in the scope of an energy savings
14 performance contract.

15 (2) In SECTION 3 of the bill, strike proposed Section
16 51.927(g-1), Education Code (page 3, lines 1 through 9), and
17 substitute the following:

18 (g-1) Notwithstanding other law, the board may use any
19 available money, other than money borrowed from this state, to
20 pay the provider of the energy or water conservation measures
21 under this section, and the board is not required to pay for
22 such costs solely out of the savings realized by the institution
23 of higher education under an energy savings performance
24 contract. The board may contract with the provider to perform
25 work that is related to, connected with, or otherwise ancillary
26 to the measures identified in the scope of an energy savings
27 performance contract.

28 (3) In SECTION 4 of the bill, strike proposed Section
29 2166.406(f-1), Government Code (page 3, line 61, through page 4,
30 line 1), and substitute the following:

1 (f-1) Notwithstanding other law, the state agency may use
2 any available money, other than money borrowed from this state,
3 to pay the provider of the energy or water conservation measures
4 under this section, and the state agency is not required to pay
5 for such costs solely out of the savings realized by the state
6 agency under an energy savings performance contract. The state
7 agency may contract with the provider to perform work that is
8 related to, connected with, or otherwise ancillary to the
9 measures identified in the scope of an energy savings
10 performance contract.

11 (4) In SECTION 6 of the bill, strike proposed Section
12 302.004(a-1), Local Government Code (page 4, line 69, through
13 page 5, line 9), and substitute the following:

14 (a-1) Notwithstanding other law, the governing body of a
15 local government may use any available money, other than money
16 borrowed from this state, to pay the provider of the energy or
17 water conservation measures under this section, and the
18 governing body is not required to pay for such costs solely out
19 of the savings realized by the local government under an energy
20 savings performance contract. The governing body may contract
21 with the provider to perform work that is related to, connected
22 with, or otherwise ancillary to the measures identified in the
23 scope of an energy savings performance contract.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 25, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1728 by Keffer (Relating to energy savings performance contracts and energy efficiency planning.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend Education Code, Government Code, and Local Code to allow school districts, institutions of higher education, state agencies, and local governments to use any available money, with the exception of money borrowed from the state, to pay for an energy savings performance contract. These groups would no longer be required to pay for energy savings performance services solely out of the financial savings realized from execution of the contracts.

The bill would take effect September 1, 2011.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 303 Facilities Commission, 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 347 Public Finance Authority, 352 Bond Review Board, 696 Department of Criminal Justice, 701 Central Education Agency

LBB Staff: JOB, KY, KM, JI, SZ, JJO, EP

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 17, 2011

TO: Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1728 by Keffer (Relating to energy savings performance contracts and energy efficiency planning.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend Education Code, Government Code, and Local Code to allow school districts, institutions of higher education, state agencies, and local governments to use any available money, with the exception of money borrowed from the state, to pay for an energy savings performance contract. These groups would no longer be required to pay for energy savings performance services solely out of the financial savings realized from execution of the contracts. The bill would take effect September 1, 2011.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 303 Facilities Commission, 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 347 Public Finance Authority, 352 Bond Review Board, 696 Department of Criminal Justice, 701 Central Education Agency

LBB Staff: JOB, KM, JI, KY, SZ, JJO, EP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 23, 2011

TO: Honorable Jim Keffer, Chair, House Committee on Energy Resources

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB1728 by Keffer (Relating to energy savings performance contracts.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend Education Code, Government Code, and Local Code to allow school districts, institutions of higher education, state agencies, and local governments to use any available money, with the exception of money borrowed from the state, to pay for an energy savings performance contract. These groups would no longer be required to pay for energy savings performance services solely out of the financial savings realized from execution of the contracts. The bill would take effect September 1, 2011.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 303 Facilities Commission, 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 347 Public Finance Authority, 352 Bond Review Board, 696 Department of Criminal Justice, 701 Central Education Agency

LBB Staff: JOB, SZ, JI, KY, JJO, EP