

BILL ANALYSIS

C.S.H.B. 3583
By: Paddie
Energy Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Reports have indicated recent instances in which energy savings performance contracts have been expanded well beyond their original scope, and beyond the intent of the law for these contracts, to design and build new and unrelated facilities without complying with public work project procurement statutes. By the execution of a change order a contract may be increased by millions of dollars at the expense of competition and transparency, effectively obligating the government and end users to absorb the costs. This trend has raised concerns as it effectively awards sole-source contracts for facilities outside of the scope of the original contracts. C.S.H.B. 3583 seeks to address these concerns by prohibiting certain modifications of the scope of certain energy savings performance contracts and excluding the design, new construction, or new capacity expansion of certain projects, plants, and facilities from inclusion in those contracts.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

C.S.H.B. 3583 amends the Local Government Code to prohibit the scope of an energy savings performance contract for a local government from being modified by change order, contract addendum, or other method as follows:

- to perform work that is not related to, connected with, or otherwise ancillary to the measures identified in the original scope of a contract; or
- in a way that increases the price of the original awarded contract by more than 25 percent of the original contract value.

The prohibition applies only to the design or construction of a water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, or drainage project. The bill excludes from an energy savings performance contract the design, new construction, or new capacity expansion of these projects, plants, or facilities.

C.S.H.B. 3583 makes an energy savings performance contract entered into or an arrangement made in violation of provisions governing these contracts voidable as against public policy and authorizes the provisions to be enforced through an action for declaratory or injunctive relief filed not later than the 10th day after the date the contract is awarded.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3583 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include a provision in the original removing statutory language authorizing the governing body of a local government to contract with the provider of 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. The substitute does not include the repeal of statutory provisions relating to the inapplicability of provisions governing contracting and delivery procedures for construction projects to certain energy savings performance contracts as in the original.

The substitute restricts the original's prohibition against the scope of an energy savings performance contract being modified to apply only to the following:

- a modification by change order, contract addendum, or other method as follows:
 - to perform work that is not related to, connected with, or otherwise ancillary to the measures identified in the original scope of the contract; or
 - in a way that increases the price of the original awarded contract by more than 25 percent of the original contract value; and
- the design or construction of a water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, or drainage project.

The substitute does not include a provision in the original establishing that a modification includes a change order or contract addendum that adds to the scope of work for projects not awarded under the original contract.

The substitute differs from the original in the exclusions from what comprises an energy savings performance contract and does not remove from inclusion under that term a contract for the installation or implementation of energy or water conservation-related improvements or equipment, including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse, in new or existing facilities, as in the original.

The substitute includes provisions not in the original making an energy savings performance contract entered into or an arrangement made in violation of provisions governing these contracts voidable as against public policy and authorizing these governing provisions to be enforced through an action for declaratory or injunctive relief filed not later than the 10th day after the date the contract is awarded.