

BILL ANALYSIS

Senate Research Center
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S.B. 1554
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Energy savings performance contracting (ESPC) is a method of finance that allows a facility to complete energy-saving improvements within an existing budget by paying for them with money saved through reduced utility expenditures. Facilities make no up-front investments and instead finance projects through guaranteed annual energy savings. ESPC can be a valuable tool to assist public and government facilities to enhance energy efficiency and water conservation in facilities owned and operated by state agencies, public schools, public institutions of higher education and local government entities under various authorities delegated by state law. ESPC contracts are executed directly between these entities and private contractors and are approved by the State Energy Conservation Office (SECO).

Recently there have been instances where contracts awarded under ESPC statutes have been expanded well beyond those contracts' original scope and beyond the intent of the ESPC statutes to design and build new, completely unrelated facilities without complying with procurement statutes related to public works projects. Simply by executing a "change order," the contracts are being increased by tens of millions of dollars at the expense of competition and transparency, effectively obligating the government and end-user to absorb such costs. This is a disturbing trend which effectively awards sole-source contracts for facilities outside of the scope of original contracts and the traditional statutory procurement process.

S.B. 1554 addresses the misuse of ESPC contracts by ensuring that energy savings performance contracts are utilized in a transparent manner for the purpose originally intended, and not as a means to bypass statutes relating to the procurement of public works projects by simply modifying the scope or executing a change order to the original contract.

S.B. 1554 specifically prohibits the use of ESPC for public works and civil works projects that are subject to well-established contracting and procurement statutes by specifically prohibiting the use of ESPC for the design or construction of major civil works projects, which should be procured through the existing statutory framework for design and construction projects.

As proposed, S.B. 1554 amends current law relating to energy savings performance contracts.

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 Section 44.901, Education Code, by amending Subsection (f-1) and adding Subsection (k), as follows:

(f-1) Deletes existing text authorizing the board of trustees of a school district to contract with the provider of energy or water conservation measures (provider) 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.

(k) Prohibits the scope of an energy savings performance contract from being modified under Section 44.901 (Energy Savings Performance Contracts). Provides that for the purposes of this subsection, a modification includes a change order or contract addendum that adds to the scope of work for projects not awarded under the original contract.

SECTION 2. Amends Section 51.927, Education Code, by amending Subsection (g-1) and adding Subsection (m), as follows:

(g-1) Deletes existing text authorizing the governing board of an institution of higher education to contract with the provider 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.

(m) Prohibits the scope of an energy savings performance contract from being modified under Section 51.927 (Energy Savings Performance Contracts). Provides that for the purposes of this subsection, a modification includes a change order or contract addendum that adds to the scope of work for projects not awarded under the original contract.

SECTION 3. Amends Section 2166.406, Government Code, by amending Subsection (f-1) and adding Subsection (m), as follows:

(g-1) Deletes existing text authorizing the state agency to contract with the provider 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.

(m) Prohibits the scope of an energy savings performance contract from being modified under Section 2166.406 (Energy Savings Performance Contracts). Provides that for the purposes of this subsection, a modification includes a change order or contract addendum that adds to the scope of work for projects not awarded under the original contract.

SECTION 4. Amends Section 302.001(4), Local Government Code, as follows:

(4) Provides that the term "energy savings performance contract" does not include the design or construction of a highway, road, street, bridge, underground utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or other similar or related civil engineering construction project. Deletes existing text providing that a contract for the installation or implementation in new or existing facilities of other energy or water conservation-related improvements or equipment, including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse, is included in the term "energy savings performance contract." Makes a nonsubstantive change.

SECTION 5. Amends Section 302.004(a-1), Local Government Code, to delete existing text authorizing the governing body to contract with the provider 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.

SECTION 6. Amends Section 302.005, Local Government Code, by adding Subsection (d), as follows:

(d) Prohibits the scope of an energy savings performance contract from being modified under Section 302.005 (Bidding Procedures; Award of Contract). Provides that for the purposes of this subsection, a modification includes a change order or contract addendum that adds to the scope of work for projects not awarded under the original contract.

SECTION 7. (1) Repealer: Section 44.901(j) (relating to Chapter 2269 (Contracting and Delivery Procedures for Construction Projects), Government Code, not applying to this section), Education Code.

(2) Repealer: Section 51.927(k) (relating to Chapter 2269 not applying to this section), Education Code.

(3) Repealer: Section 2166.406(k) (relating to Chapter 2269 not applying to this section), Government Code.

(4) Repealer: Section 302.007 (Exemption From Other Contracting Law), Local Government Code.

SECTION 8. Provides that the changes in law made by this Act do not apply to an energy savings performance contract entered into before the effective date of this Act, and the former law governing the contract is continued in effect for that purpose.

SECTION 9. Effective date: upon passage or September 1, 2021.