H.B. No. 3583

AN ACT

relating to energy savings performance contracts.

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

SECTION 1.  Section 302.001(4), Local Government Code, is amended to read as follows:

(4)  "Energy savings performance contract" means a contract with a provider for energy or water conservation or usage measures in which the estimated energy savings, utility cost 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 measures over a specified period. The term does not include the design or new construction of a water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, or drainage project. The term includes a contract related to the pilot program described by Subdivision (9-a) and a contract for the installation or implementation of the following in new or existing facilities, including all causally connected work:

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

(B)  storm windows or doors, caulking or weather stripping, 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;

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

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

(E)  lighting fixtures that increase energy efficiency;

(F)  energy recovery systems;

(G)  electric systems improvements;

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

(I)  water-conserving landscape irrigation equipment;

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

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

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

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

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

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

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

(O)  alternative fuel programs resulting in energy cost savings and reduced emissions for local government vehicles, including fleet vehicles;

(P)  programs resulting in utility cost savings; or

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

SECTION 2.  Section 302.005, Local Government Code, is amended by adding Subsections (d) and (e) to read as follows:

(d)  The scope of an energy savings performance contract may not be modified under this section by change order, contract addendum, or other method:

(1)  to perform work that is not related to, connected with, or otherwise ancillary to the measures identified in the original scope of an energy savings performance contract; or

(2)  in a way that increases the price of the original awarded contract by more than 25 percent of the original contract value.

(e)  Subsection (d) 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.

SECTION 3.  Chapter 302, Local Government Code, is amended by adding Section 302.008 to read as follows:

Sec. 302.008.  ENFORCEMENT. (a) A contract entered into or an arrangement made in violation of this chapter is voidable as against public policy.

(b)  This chapter may be enforced through an action for declaratory or injunctive relief filed not later than the 10th day after the date the contract is awarded.

SECTION 4.  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 5.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.

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    President of the Senate Speaker of the House

I certify that H.B. No. 3583 was passed by the House on May 13, 2021, by the following vote:  Yeas 145, Nays 0, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 3583 was passed by the Senate on May 21, 2021, by the following vote:  Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

                    Date

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                  Governor