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A BILL TO BE ENTITLED

AN ACT

relating to the authority of a local government to enter into energy savings performance contracts.

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

SECTION 1. Section 51.927(a), Education Code, is amended to read as follows:

(a) In this section, "energy savings performance contract" has the meaning assigned by Section 2166.406(a), Government Code [~~302.001, Local Government Code~~].

SECTION 2. Section 2166.406(a), Government Code, is amended to read as follows:

(a) In this section:

(1) "Baseline" means a calculation or set of calculations in an energy savings performance contract that:

(A) may be based on:

(i) historical costs, revenues, accuracy, or related components; or

(ii) avoided anticipated costs; and

(B) may be used for determining:

(i) the costs for energy or water usage and related net operating costs;

(ii) the billable revenues from providing energy, water, or other utilities to users; or

(iii) the efficiency or accuracy of

metering or related equipment, systems, or processes or procedures.

(2) "Energy or water conservation or usage measures" means:

(A) the installation or implementation of any of the items, equipment, modifications, alterations, improvements, systems, and other measures described by Subdivision (4) that are intended to provide:

(i) estimated energy savings;

(ii) an estimated increase in billable revenues; or

(iii) an estimated increase in meter accuracy; or

(B) the training for, or services related to, the operation of the items, equipment, modifications, alterations, improvements, systems, or other measures described by Paragraph (A).

(3) "Energy savings" means an estimated reduction in net fuel costs, energy costs, water costs, stormwater fees, or other utility costs, or related net operating costs, including costs for anticipated equipment replacement and repair, from or as compared to an established baseline of those costs. The term does not include an estimated reduction due to a decrease in energy rates that is not derived from increased conservation or reduced usage.

(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 (8) 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 stormwater 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 agency 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.

(5) "Guarantee" means a written guarantee of a provider that the energy savings, increase in billable revenues, or increase in meter accuracy from the energy or water conservation or usage measures will at least equal the cost of the energy or water conservation or usage measures, all causally connected work, and ancillary improvements provided for in an energy savings performance contract.

(6) "Increase in billable revenues" means an estimated increase in billable revenues as compared to an established baseline of billable revenues.

(7) "Increase in meter accuracy" means an estimated increase in efficiency or accuracy of metering or related equipment, systems, or processes or procedures that is calculated or determined by using applicable industry engineering standards.

(8) "Pilot program" means a pilot program operated by the Energy Systems Laboratory at the Texas A&M Engineering Experiment Station, in consultation with the Texas Facilities Commission and the State Energy Conservation Office, that:

(A) establishes and implements energy efficiency improvements to state-owned buildings maintained by the commission;

(B) generates savings in utility costs resulting from the improvements resulting in at least a 30 percent annual return on the costs of the improvements;

(C) provides for the participation of not fewer than two companies selected by the commission; and

(D) provides for any money attributable to utility cost savings resulting from the pilot program to be appropriated only to the commission.

(9) "Provider" means an entity in the business of designing, implementing, and installing energy or water conservation or usage measures or an affiliate of such an entity [~~, "energy savings performance contract" has the meaning assigned by Section 302.001, Local Government Code~~].

SECTION 3. Section 388.005(b), Health and Safety Code, is amended to read as follows:

(b) Each [~~political subdivision,~~] institution of higher education[~~,~~] or state agency shall implement all energy efficiency measures that meet the standards established for a contract for energy conservation measures under former Section 302.004(b), Local Government Code, as that section existed immediately before September 1, 2023, in order to reduce electricity consumption by the existing facilities of the entity.

SECTION 4. The following provisions are repealed:

(1) Section 44.901, Education Code; and

(2) Chapter 302, Local Government Code.

SECTION 5. The changes in law made by this Act apply to an energy savings performance contract entered into or amended or modified on or after the effective date of this Act. An energy savings performance contract entered into or amended or modified before the effective date of this Act is governed by the law in effect on the date the contract was entered into or amended or modified, and the former law is continued in effect for that

purpose.

SECTION 6. This Act takes effect September 1, 2023.