

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 18, 2023

TO: Honorable Charles Schwertner, Chair, Senate Committee on Business & Commerce

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: SB1828 by Hinojosa (Relating to the procurement by local governments of energy savings performance contracts for certain conservation measures; creating criminal offenses; authorizing a fee.), **As Introduced**

The fiscal implications of the bill cannot be determined due to the number of energy performance contracts that may be procured by local governments and submitted for agency review and the amount and timing of any fee revenue to offset the costs of that review being unknown.

The bill would add a new chapter in Local Government Code creating rules for local government procurements of energy savings performance contracts with qualified providers for certain conservation measures, including water conservation-related measures.

Local governments would be required to have their proposed performance contracts evaluated for technical and economic feasibility by the Texas Water Development Board (TWDB) and the State Energy Conservation Office (SECO) in the Comptroller of Public Accounts' (CPA) office.

The bill would authorize the TWDB and SECO to charge a reasonable fee for conducting these reviews, payment of which could be included in the financing for the proposed local performance contract.

Local governments could only enter into an energy savings performance contract if, after review of a certain audit prepared by the prospective service provider, the local government determines that the savings, increase in billable revenues, or both that result from the proposed conservation measures, which are guaranteed by the provider, would equal or exceed the total cost of the contract. Additionally, the bill would require a provision in these contracts where the provider must agree to pay the local government for any shortfall amounts.

The bill would create second degree felony offenses for the offer or receipt of certain compensation contingent on or resulting from the awarding or making of a performance contract.

This analysis assumes TWDB would need additional staff to implement the provisions of the bill. According to TWDB, two Engineer V and two Financial Analyst IV positions would be needed to review contractual information and evaluate the technical and economic feasibility of each conservation measure in a proposed water-related contract. Personnel related costs, including salary and benefits, would be \$666,742 in General Revenue for fiscal year 2024, and \$635,142 in General Revenue for fiscal year 2025 and each subsequent fiscal year. According to TWDB, there would be an anticipated cost of \$1,600,000 each year for consultant services that includes \$600,000 for conservation consulting and \$1,000,000 for rate savings and analysis consulting. The total cost to TWDB for administrative costs is \$2,266,742 in fiscal year 2024, and \$2,235,142 in fiscal year 2025.

This analysis assumes SECO would need additional staff to implement the provisions of the bill. According to the CPA, one Engineer V would be needed to review contractual information and evaluate the technical and economic feasibility of each conservation measure in a proposed non-water related contract. Personnel related costs, including salary and benefits would be \$142,000 in General Revenue for fiscal year 2024, and \$149,000 in General Revenue for fiscal year 2025.

In addition, SECO would need to contract with a professional engineering services company to complete on-site visits and provide independent reviews of submitted technical reports and financial documents as outlined in the bill. According to the CPA, the cost for anticipated contracting services is estimated to be \$377,000 per fiscal year of the biennium. This is estimated to increase to \$477,000 in the 2026-27 biennium.

The total cost to SECO for administrative costs is estimated to be \$519,000 in fiscal year 2024, and \$526,000 in fiscal year 2025.

It is assumed that any impact on state correctional populations or on the demand for state correctional resources related to the felony offenses would not be significant.

The fiscal implications of the bill cannot be determined due to the number of energy performance contracts that may be procured by local governments and submitted for agency review and the amount and timing of any fee revenue to offset the costs of that review being unknown.

Local Government Impact

The fiscal implications of the bill to units of local government cannot be determined due to the savings and/or increase in billable revenue that could result from conservation measures achieved under a performance contract being unknown. The bill could have an impact on local governments to the extent that additional contract development and management resources may be required. It is assumed that any fiscal impact to units of local government associated with enforcement, prosecution, supervision, or confinement related to the felony offenses would not be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 303 Facilities Commission, 304 Comptroller of Public Accounts, 352 Bond Review Board, 580 Water Development Board, 701 Texas Education Agency, 712 Texas A&M Engineering Experiment Station

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