

By: Hinojosa of Hidalgo

S.B. No. 1050

A BILL TO BE ENTITLED

AN ACT

relating to energy savings performance contracts for local governments; creating criminal offenses; authorizing a fee.

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

SECTION 1. Chapter 302, Local Government Code, is amended by designating Section 302.001 as Subchapter A and adding a subchapter heading to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Section 302.001, Local Government Code, is amended by amending Subdivisions (5) and (8) and adding Subdivisions (8-a), (11), (12), and (13) to read as follows:

(5) "Guarantee" and "written guarantee" mean ~~[means]~~ a written guarantee of a provider that the energy savings, increase in billable revenues, or increase in meter accuracy, as applicable, 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.

(8) "Local government" means a county, municipality, school district, or other political subdivision of this state. ~~[The term does not include a school district authorized to enter into an energy savings performance contract under Section 44.901, Education Code.]~~

(8-a) "Measurement and verification" means a method of

1 confirming whether a guaranteed energy savings, an increase in
2 billable revenues, or an increase in meter accuracy resulting from
3 an energy or water conservation or usage measure is being met as
4 specified under an energy savings performance contract and this
5 chapter.

6 (11) "Request for qualifications" means a competitive
7 selection process achieved by a multistep negotiated procurement
8 process that involves sequential steps for the evaluation of
9 submissions by prospective providers.

10 (12) "Subcontractor" means a person, other than an
11 employee of a provider, who contracts with the provider to furnish
12 labor or materials to fulfill an obligation to the provider who is
13 acting as a general contractor or prime contractor for any of the
14 authorized work, including installation, required by an energy
15 savings performance contract. The term includes a subcontractor of
16 any tier, supplier, vendor, fabricator, or manufacturer.

17 (13) "Third-party engineer" means a professional
18 engineer who is selected or designated by a local government under
19 Section 302.0031.

20 SECTION 3. Section 302.007, Local Government Code, is
21 transferred to Subchapter A, Chapter 302, Local Government Code, as
22 added by this Act, and redesignated as Section 302.0021, Local
23 Government Code, to read as follows:

24 Sec. 302.0021 [~~302.007~~]. EXEMPTION FROM OTHER CONTRACTING
25 LAW. Chapter 2269, Government Code, does not apply to this
26 chapter.

27 SECTION 4. Subchapter A, Chapter 302, Local Government

1 Code, as added by this Act, is amended by adding Section 302.0031 to
2 read as follows:

3 Sec. 302.0031. THIRD-PARTY ENGINEER. (a) A local
4 government shall select or designate a third-party engineer to:

5 (1) act as the local government's representative, and
6 serve as the local government's consultant, throughout the energy
7 savings performance contract procurement process and the duration
8 of the measurement and verification services under Section 302.301;

9 (2) assist the local government in evaluating the
10 qualifications, proposals, and change orders of, and any related
11 presentations by, a provider;

12 (3) provide to the local government a written report
13 containing both a qualitative and quantitative evaluation of a
14 provider's qualifications submitted in response to a request for
15 qualifications;

16 (4) review an investment grade audit report and
17 supporting documentation completed by the provider and any
18 subsequent change order, contract addendum, or other amendment to
19 the proposed energy savings performance contract;

20 (5) prepare written opinions in accordance with Section
21 302.104 and submit written opinions to the State Energy
22 Conservation Office if specified under Section 302.105 for the
23 office to archive;

24 (6) perform the measurement and verification review of
25 the meter guarantee under Sections 302.052 and 302.053;

26 (7) monitor the performance of the provider's or
27 independent third party's measurement and verification services

1 required under Section 302.301;

2 (8) review the provider's or independent third party's
3 measurement and verification reports under Section 302.301; and

4 (9) review the provider's annual reconciliation
5 statement under Section 302.302.

6 (b) The third-party engineer must be a professional
7 engineer licensed under Chapter 1001, Occupations Code, and must:

8 (1) have a minimum of three years of specialized
9 experience with energy savings performance contracts;

10 (2) have demonstrated technical competence in
11 relation to, and working knowledge of, the procurement process of
12 energy savings performance contracts;

13 (3) not be an officer or employee of:

14 (A) a provider for the energy savings performance
15 contract; or

16 (B) a wholly owned subsidiary, majority-owned
17 subsidiary, parent company, or affiliate of the provider for the
18 contract; and

19 (4) not be otherwise associated with the energy
20 savings performance contract.

21 (c) A local government:

22 (1) if the third-party engineer is not a full-time
23 employee of the local government, shall procure the third-party
24 engineer's services in accordance with the procedures prescribed
25 for procuring the professional services of an engineer under
26 Section 2254.004, Government Code; and

27 (2) shall pay a third-party engineer described by

1 Subdivision (1) a pre-negotiated fee based on the work completed if
2 the local government does not enter into an energy savings
3 performance contract that was reviewed by the third-party engineer
4 under Section 302.104.

5 (d) A provider selected to perform an investment grade audit
6 and propose an energy savings performance contract is prohibited
7 from suggesting, recommending, or arranging a third-party
8 engineer.

9 (e) Before the local government selects or designates a
10 third-party engineer, the third-party engineer shall certify in
11 writing to the local government that the engineer meets the
12 qualifications required under Subsection (b) and that there is no
13 conflict of interest with regard to the local government and the
14 proposals the third-party engineer is to evaluate that result from
15 the request for qualifications.

16 (f) A third-party engineer who reviews an energy savings
17 performance contract shall maintain the confidentiality of any
18 proprietary information the third-party engineer acquires while
19 reviewing the contract.

20 (g) A local government may require a provider to include in
21 the calculation of the cost of a proposal for an energy savings
22 performance contract any fees payable by the local government for
23 use of a third-party engineer who is not a full-time employee of the
24 local government. A fee charged by a third-party engineer
25 described by this subsection may not exceed 2.5 percent of the total
26 value of the energy savings performance contract at the time that a
27 contract is executed by that provider.

1 (h) The written report under Subsection (a)(3) must include
2 a recommendation for selecting a provider, but the local government
3 is not obligated to follow the recommendation.

4 SECTION 5. Chapter 302, Local Government Code, is amended
5 by adding Subchapter B, and a heading is added to that subchapter to
6 read as follows:

7 SUBCHAPTER B. ENERGY SAVINGS PERFORMANCE CONTRACT

8 SECTION 6. Sections 302.002 and 302.006, Local Government
9 Code, are transferred to Subchapter B, Chapter 302, Local
10 Government Code, as added by this Act, redesignated as Sections
11 302.051 and 302.052, Local Government Code, respectively, and
12 amended to read as follows:

13 Sec. 302.051 [~~302.002~~]. ENERGY SAVINGS PERFORMANCE
14 CONTRACTS. (a) The governing body of a local government may enter
15 into an energy savings performance contract in accordance with this
16 chapter if:

17 (1) the contract includes the provisions required
18 under this section; and

19 (2) the local government receives approval for the
20 contract from the State Energy Conservation Office under Section
21 302.105.

22 (b) Each energy or water conservation or usage measure must
23 comply with current local, state, and federal construction,
24 plumbing, and environmental codes and
25 regulations. Notwithstanding Section 302.001, an energy savings
26 performance contract may not include improvements or equipment that
27 allow or cause water from any condensing, cooling, or industrial

1 process or any system of nonpotable usage over which public water
2 supply system officials do not have sanitary control to be returned
3 to the potable water supply.

4 (b-1) An energy savings performance contract must contain
5 provisions requiring the provider of the energy or water
6 conservation or usage measures to provide a written guarantee.

7 (c) An energy savings performance contract must contain a
8 provision requiring the provider to provide to the local government
9 an annual reconciliation statement of the written guarantee as
10 required by Section 302.302.

11 (d) The written guarantee must require the provider to pay
12 the local government for any shortfall amounts based on the results
13 of the measurement and verification review required under Section
14 302.301. If the energy savings, increase in billable revenues, or
15 both, resulting from an energy savings performance contract fall
16 short of the energy savings and increase in billable revenues
17 projected under the contract and all required shortfall payments to
18 the local government have not been made, the local government may
19 terminate the contract without incurring any additional obligation
20 to the provider.

21 (e) An energy savings performance contract and any other
22 contract entered into by the local government with a provider under
23 this chapter must contain a prohibition against contingent fees as
24 follows: "The provider warrants that he or she has not employed or
25 retained any company or person, other than a bona fide employee
26 working solely for the provider, to solicit or secure this
27 agreement and that he or she has not paid or agreed to pay any

1 person, company, corporation, individual, or firm, other than a
2 bona fide employee working solely for the provider, any fee,
3 commission, percentage, gift, or other consideration contingent
4 upon or resulting from the award or making of this agreement."

5 (f) An energy savings performance contract and any other
6 contract entered into by the local government with a provider must
7 contain the following provision: "The provider agrees that through
8 the term of the performance contract and contract amendment
9 thereafter the provider will maintain a compliance program and
10 internal controls designed to detect and deter fraudulent and
11 corrupt conduct through, among other things: policies and
12 procedures to create redundancy in the subcontractor bid review,
13 bid normalization, bid revision, subcontractor selection, and
14 energy savings and cost review processes."

15 (g) The provisions required by Subsections (b-1)-(f) cannot
16 be waived in a contract.

17 (h) The energy savings performance contract must contain a
18 provision stating that the contract is not executory until approval
19 is obtained under Section 302.105.

20 Sec. 302.052 [302.006]. METER GUARANTEES. (a) This
21 section applies to any energy savings performance contract that:

22 (1) provides for any metering or related equipment,
23 system, or process or procedure; and

24 (2) includes a meter guarantee by the provider,
25 regardless of whether the meter guarantee is a part of a broader
26 guarantee applicable to other energy or water conservation or usage
27 measures or causally connected work.

1 (b) Not later than the fifth anniversary of the effective
2 date of an energy savings performance contract, the third-party
3 ~~[an]~~ engineer shall test a statistically relevant sample of the
4 meters installed or implemented under the contract to determine or
5 calculate the actual average accuracy and shall compare the actual
6 average accuracy to the baseline average accuracy of those tested
7 meters.

8 (c) A meter guarantee applies if the third-party engineer
9 reports to the local government and the provider that the average
10 accuracy of the tested meters as of the testing date is less than
11 the baseline average accuracy of the tested meters as of the testing
12 date.

13 (d) The amount payable under the meter guarantee, based on
14 the results of the measurement and verification report under
15 Section 302.301, must be determined for each year subject to the
16 provider's annual reconciliation statement under Section 302.302
17 ~~[engineer's report]~~ and is equal to the difference between:

18 (1) the agreed increase in billable revenues based on
19 the estimated accuracy of all of the meters for each year, according
20 to the energy savings performance contract; and

21 (2) the actual revenues for the same year that would
22 result from applying the third-party engineer's reported actual
23 average accuracy of the tested meters to all of the meters subject
24 to the energy savings performance contract, using the same contract
25 components that were used to calculate the agreed increase in
26 billable revenues for that year, assuming the annual decrease in
27 actual average accuracy of all the meters was a pro rata percentage

1 of the reported total decrease in actual average accuracy.

2 (e) Notwithstanding Subsection (d), if the meter guarantee
3 in the contract is part of a broader guarantee applicable to other
4 energy or water conservation or usage measures that are greater in
5 value [~~or causally connected work~~] under the contract, the amount
6 payable under the meter guarantee for any year during the
7 measurement and verification period is subtracted from [~~reduced or~~
8 ~~offset by~~] the difference between:

9 (1) the actual sum of the energy savings and the
10 increase in billable revenues resulting from the other energy or
11 water conservation or usage measures or causally connected work for
12 that year during the measurement and verification period; and

13 (2) the guaranteed amount of the energy savings and
14 the increase in billable revenues from the other energy or water
15 conservation or usage measures or causally connected work for that
16 year during the measurement and verification period.

17 [~~(f) A test conducted under this section must be performed~~
18 ~~in accordance with the procedures established by the International~~
19 ~~Performance Measurement and Verification Protocol or succeeding~~
20 ~~standards of the United States Department of Energy.~~]

21 (g) A third-party [~~An~~] engineer conducting a test under this
22 section shall:

23 (1) verify that the tested meters have been properly
24 maintained and are operating properly; [~~and~~]

25 (2) comply with Sections 302.0031 and 302.104(b);

26 (3) conduct the test in accordance with the
27 methodologies authorized under Section 302.053; and

1 (4) perform the measurement and verification review of
2 the meter guarantee under Section 302.053 [~~Section 302.005(c)~~].

3 (h) A provider shall select both old and new meters to test
4 when performing an investment grade audit and developing baseline
5 average accuracy of existing meters to include in the investment
6 grade audit report. In developing the baseline average accuracy,
7 the provider may not include within its guarantee calculation
8 meters that were inactive or out of service at the time of the
9 investment grade audit. The meter guarantee may not include an
10 escalation factor that assumes water will increase by a certain
11 percentage each year.

12 SECTION 7. Subchapter B, Chapter 302, Local Government
13 Code, as added by this Act, is amended by adding Sections 302.053,
14 302.054, and 302.055 to read as follows:

15 Sec. 302.053. MEASUREMENT AND VERIFICATION OF GUARANTEE.
16 Any guaranteed energy savings, increase in billable revenues, and,
17 if applicable, efficiency or accuracy of metering equipment must:

18 (1) be consistent with the investment grade audit
19 report under Section 302.103; and

20 (2) be determined using one of the measurement and
21 verification methodologies listed in:

22 (A) the United States Department of Energy's
23 measurement and verification guidelines for energy savings
24 performance contracts;

25 (B) the International Performance Measurement
26 and Verification Protocol maintained by the Efficiency Valuation
27 Organization; or

1 (C) Guideline 14-2023 of the American Society of
2 Heating, Refrigerating, and Air-Conditioning Engineers.

3 Sec. 302.054. MAINTENANCE SERVICES. (a) The local
4 government may not be required under the terms of an energy savings
5 performance contract to purchase a maintenance contract or other
6 maintenance agreement from the provider if the local government
7 takes appropriate action to budget for its own personnel or another
8 provider to maintain new systems installed pursuant to an existing
9 system affected by the energy savings performance contract. The
10 provider shall provide proper training and a sufficient number of
11 operation and maintenance manuals for all equipment replacements or
12 upgrades at each facility location.

13 (b) A provider shall provide to the local government the
14 full capabilities to operate, maintain, repair, update,
15 reconfigure, and engineer changes necessary to accommodate
16 facility or operational changes or to incorporate new energy
17 savings control strategies for any system, including a facility
18 automation and control system, proposed under this chapter. A
19 provider is not required under this subsection to provide the local
20 government with access to the operating system of the provider, but
21 the user interface software must provide for all capabilities
22 described by this subsection.

23 (c) If a local government agrees to retain the same provider
24 subject to the written guarantee to perform maintenance services
25 for energy or water conservation or usage measures under an energy
26 savings performance contract or a subsequent change order, contract
27 addendum, or other amendment to the energy savings performance

1 contract, an agreement for the maintenance services must include a
2 provision stating that the maintenance services:

3 (1) are subject to budget appropriations of the local
4 government on an annual basis; and

5 (2) may be discontinued at any time over the
6 guaranteed period with no negative impact to the energy savings
7 performance contract.

8 Sec. 302.055. REQUIRED PROVISION FOR CHANGE ORDER OR
9 CONTRACT ADDENDUM. A change order or contract addendum to an energy
10 savings performance contract must contain a provision that the
11 change order or contract addendum, as applicable, is not executory
12 until approval is obtained under Section 302.105. The provisions
13 of the energy savings performance contract not subject to the
14 change order or addendum may continue while approval of the change
15 order or addendum is pending.

16 SECTION 8. Chapter 302, Local Government Code, is amended
17 by adding Subchapter C, and a heading is added to that subchapter to
18 read as follows:

19 SUBCHAPTER C. PROCUREMENT PROCEDURES FOR ENERGY SAVINGS
20 PERFORMANCE CONTRACTS

21 SECTION 9. Section 302.005, Local Government Code, is
22 transferred to Subchapter C, Chapter 302, Local Government Code, as
23 added by this Act, redesignated as Section 302.101, Local
24 Government Code, and amended to read as follows:

25 Sec. 302.101 [~~302.005~~]. BIDDING PROCEDURES; REQUEST FOR
26 QUALIFICATIONS [~~AWARD OF CONTRACT~~]. (a) An energy savings
27 performance contract under this chapter may be let in accordance

1 with the procedures established for procuring certain professional
2 services by Section 2254.004, Government Code. Notice of the
3 request for qualifications must ~~[shall]~~ be published in the manner
4 provided for competitive bidding.

5 (a-1) Before issuing a request for qualifications, a local
6 government shall select or designate a third-party engineer to act
7 as the local government's representative and serve as its
8 consultant in accordance with Section 302.0031.

9 ~~[(b) Before entering into an energy savings performance~~
10 ~~contract, the governing body must require that the energy savings,~~
11 ~~increase in billable revenues, or increase in meter accuracy~~
12 ~~estimated or projected by a provider be reviewed by a licensed~~
13 ~~professional engineer who:~~

14 ~~[(1) has a minimum of three years of experience in~~
15 ~~energy calculation and review,~~

16 ~~[(2) is not an officer or employee of a provider for~~
17 ~~the contract under review, and~~

18 ~~[(3) is not otherwise associated with the contract.]~~

19 (c) ~~[In conducting the review, the engineer shall focus~~
20 ~~primarily on the proposed improvements from an engineering~~
21 ~~perspective, the methodology and calculations related to cost~~
22 ~~savings, increases in revenue, and, if applicable, efficiency or~~
23 ~~accuracy of metering equipment. An engineer who reviews a contract~~
24 ~~shall maintain the confidentiality of any proprietary information~~
25 ~~the engineer acquires while reviewing the contract.]~~ Sections
26 1001.053 and 1001.407, Occupations Code, apply to work performed
27 under the contract.

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

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

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

10 (e) Subsection (d) applies only to the design or
11 construction of a water supply project, water plant, wastewater
12 plant, water and wastewater distribution or conveyance facility, or
13 drainage project.

14 SECTION 10. Subchapter C, Chapter 302, Local Government
15 Code, as added by this Act, is amended by adding Sections 302.102,
16 302.103, 302.104, 302.105, 302.106, 302.107, and 302.108 to read as
17 follows:

18 Sec. 302.102. PRELIMINARY UTILITY AUDIT. (a) In response
19 to a request for qualifications, a local government may request a
20 provider to complete a preliminary utility audit in accordance with
21 this section and submit a written report based on the results of the
22 preliminary utility audit before entering into an agreement for an
23 investment grade audit under Section 302.103. The results of the
24 preliminary utility audit may form the basis for a provider's
25 proposed investment grade audit under that section.

26 (b) The preliminary utility audit must show for each
27 proposed energy or water conservation or usage measure, at a

1 minimum, a comparison of the estimated costs and estimated project
2 energy savings, increase in billable revenues, and, if applicable,
3 efficiency or accuracy of metering equipment to support
4 justification for each proposed energy or water conservation or
5 usage measure.

6 (c) To complete a preliminary utility audit, the provider
7 must conduct an on-site survey of the facilities identified in the
8 published request for qualifications. The local government shall
9 assist the provider with the collection of necessary facility
10 technical information, including by providing to the provider:

11 (1) at least three years of utility bills;

12 (2) floor plans as needed; and

13 (3) maintenance records as needed.

14 (d) A preliminary utility audit:

15 (1) must be performed on a representative sample of
16 existing facilities; or

17 (2) if the local government is considering
18 constructing a new facility, must be completed using comparative
19 existing facilities with similar floor plans and identical uses.

20 (e) The preliminary utility audit must be provided at no
21 cost to the local government and with no obligation to select the
22 provider to perform an investment grade audit.

23 (f) For a preliminary utility audit requested under this
24 section and before an agreement for an investment grade audit under
25 Section 302.103 is executed, a local government may not require a
26 provider to submit:

27 (1) a full engineering evaluation of the facilities;

1 (2) a detailed scope of construction; or

2 (3) any architectural or engineering designs.

3 Sec. 302.103. INVESTMENT GRADE AUDIT; REPORT. (a)

4 Following successful negotiations of an investment grade audit
5 agreement, the selected qualified provider shall perform an
6 investment grade audit to establish the exact scope of work to be
7 performed under a proposed energy savings performance contract.
8 The results of the audit will form the basis for negotiating the
9 energy savings performance contract with the local government.

10 (b) Before entering into an agreement for an investment
11 grade audit under this section, the local government shall request
12 the selected qualified provider to submit to the local government
13 the provider's costing methodology. The costing methodology under
14 this subsection:

15 (1) must include the provider's:

16 (A) policy on subcontractor markup;

17 (B) definition of general conditions;

18 (C) range of costs for general conditions;

19 (D) policy on retainage;

20 (E) policy on contingencies;

21 (F) discount for prompt payment; and

22 (G) expected staffing for administrative duties;

23 and

24 (2) may not include a guaranteed maximum price or bid
25 for overall design or construction under an energy savings
26 performance contract.

27 (c) The scope of work for an investment grade audit must

1 include:

2 (1) collecting facility information, such as data and
3 background information on:

4 (A) facilities;

5 (B) equipment;

6 (C) operations; and

7 (D) utility use and costs;

8 (2) conducting an inventory of existing systems and
9 equipment, which requires a physical inspection of the facility and
10 an interview with a facility manager to log information on major
11 energy and water-using equipment;

12 (3) establishing the current baseline and base year
13 consumption and reconciling those with end-use consumption
14 projections;

15 (4) identifying and assessing a list of potential
16 energy or water conservation or usage measures with a detailed
17 projection of energy savings, increase in billable revenues, or
18 accuracy of metering equipment to be obtained at the facilities as a
19 result of the implementation of the recommended energy or water
20 conservation or usage measures; and

21 (5) preparing a detailed investment grade audit report
22 that includes:

23 (A) a proposed measurement and verification
24 plan;

25 (B) a sample periodic utility savings report and
26 annual reconciliation statement; and

27 (C) the items described by Subsection (d).

1 (d) The investment grade audit report under Subsection
2 (c)(5) must:

3 (1) specify the total and itemization cost of each
4 recommended energy or water conservation or usage measure that will
5 be included in a proposed energy savings performance contract,
6 including projected costs associated with:

7 (A) the investment grade audit;

8 (B) the design of the measure;

9 (C) any engineering services;

10 (D) any financing and debt services;

11 (E) the third-party engineer services;

12 (F) annual measurement and verification
13 services;

14 (G) annual maintenance services;

15 (H) training of employees; and

16 (I) repairs;

17 (2) identify the methodologies for measurement and
18 verification, in accordance with Section 302.053, of the energy
19 savings or increase in billable revenues, or both, for each
20 recommended energy or water conservation or usage measure;

21 (3) identify all design and compliance issues that
22 require the professional services of an architect or engineer, and
23 identify the architect or engineer who will provide those services;

24 (4) include a schedule of all costs, showing a
25 calculation of each cost of implementing the proposed energy or
26 water conservation or usage measures and the projected energy
27 savings, increase in billable revenues, or increase in meter

1 accuracy that could be realized and maximized;

2 (5) list the subcontractors and vendors to be used by
3 the provider with respect to the proposed energy savings
4 performance contract; and

5 (6) identify maintenance requirements necessary to
6 ensure continued energy savings, an increase in billable revenues,
7 or an increase in meter accuracy that could be realized and
8 maximized and describe how those requirements will be fulfilled.

9 (e) The outcome of an investment grade audit cannot be
10 predetermined. The provider may not make up losses or
11 inefficiencies to make the cost of the energy savings performance
12 contract project appear budget neutral.

13 (f) The cost for an investment grade audit must be based on
14 the cost per square foot actually audited and is intended to be the
15 market rate for an investment grade audit. The cost may then be
16 adjusted by mutual written agreement of the parties in the event
17 that the audited square footage is changed by either party.

18 (g) On completion of the investment grade audit, the
19 provider shall submit the investment grade audit report prepared
20 under this section to the local government.

21 Sec. 302.104. REVIEW BY THIRD-PARTY ENGINEER; REPORT. (a)
22 Before obtaining approval of a proposed energy savings performance
23 contract as required by Section 302.105, the local government shall
24 require the third-party engineer selected or designated under
25 Section 302.0031 to review the investment grade audit report and
26 supporting documentation and any subsequent change order, contract
27 addendum, or other amendment to the proposed contract. The

1 third-party engineer must verify that the proposed energy savings
2 performance contract, the investment grade audit report, and the
3 measurement and verification plan present a cohesive package that
4 fully describes the intended scope of services.

5 (b) In conducting the review under Subsection (a), the
6 third-party engineer shall provide the local government with a
7 written opinion evaluating and validating the methodology and
8 calculations related to energy savings, increase in billable
9 revenues, and, if applicable, efficiency or accuracy of metering
10 equipment associated with each proposed energy or water
11 conservation or usage measure identified in the investment grade
12 audit report that will become part of the final energy savings
13 performance contract or any subsequent change order, contract
14 addendum, or other amendment to the final energy savings
15 performance contract. The third-party engineer may recommend that
16 the local government not enter into the contract.

17 (c) In identifying and developing potential energy or water
18 conservation or usage measures, the third-party engineer shall
19 certify that the documents described by Subsection (a) have been
20 reviewed and are complete.

21 Sec. 302.105. REVIEW BY STATE AGENCY. (a) Before awarding
22 an energy savings performance contract, a local government shall
23 submit the proposed contract to the State Energy Conservation
24 Office for review and approval in accordance with this section. The
25 office shall review the documents submitted and evaluate the
26 economic assumptions that purportedly support the implementation
27 of each energy or water conservation or usage measure.

1 (b) The State Energy Conservation Office shall evaluate the
2 technical and economic feasibility of each energy or water
3 conservation or usage measure in the proposed contract and either
4 approve or disapprove each of those proposed energy or water
5 conservation or usage measures.

6 (c) In addition to the submission of a final proposed energy
7 savings performance contract under Subsection (a), the local
8 government must submit:

9 (1) the final investment grade audit report under
10 Section 302.103;

11 (2) the proposed measurement and verification plan;

12 (3) a sample periodic utility savings report;

13 (4) the written certifications listed under
14 Subsection (e); and

15 (5) any other relevant documents determined necessary
16 by the State Energy Conservation Office to streamline the review.

17 (d) In conducting an evaluation under this section, the
18 State Energy Conservation Office shall make the office's
19 determination on the basis of a review of:

20 (1) the project's scope and whether it is appropriate
21 for an energy savings performance contract;

22 (2) the project's compliance with applicable
23 provisions of this chapter;

24 (3) the written certifications required under
25 Subsection (e); and

26 (4) the methodology and calculations related to energy
27 savings, increase in billable revenues, and, if applicable,

1 efficiency or accuracy of metering equipment.

2 (e) To obtain approval for the proposed energy savings
3 performance contract, the local government shall submit the
4 following written certifications for review as provided by this
5 section:

6 (1) each member of the governing body shall certify
7 that in lieu of competitive bidding or competitive sealed proposals
8 for construction services under a public work contract, the energy
9 savings performance contract was procured under a request for
10 qualifications process in accordance with this chapter;

11 (2) the provider shall certify that neither the
12 provider nor any of the provider's affiliates or subcontractors, or
13 employees of the provider or the provider's affiliates or
14 subcontractors, has bribed, or attempted to bribe, an official or
15 employee of the local government in connection with the energy
16 savings performance contract and has not participated in the
17 creation of the request for qualifications for the energy savings
18 performance contract;

19 (3) the provider or any third-party engineer
20 contracted to perform a measurement and verification review shall
21 certify that the methodologies for determining energy savings,
22 increase in billable revenues, and, if applicable, efficiency or
23 accuracy of metering equipment will be performed in accordance with
24 Section 302.053; and

25 (4) the third-party engineer shall certify that the
26 engineer is free from financial interest in the provider of the
27 energy savings performance contract that conflicts with the proper

1 completion of work associated with the contract.

2 (f) The State Energy Conservation Office shall complete the
3 office's review and provide its approval or disapproval not later
4 than the 90th business day after the date of receiving a complete
5 proposed energy savings performance contract. Submission of an
6 incomplete contract may result in delayed review and approval.

7 (g) The State Energy Conservation Office may charge a
8 reasonable fee for conducting a review under this section, and the
9 payment of the fee may be included in the financing for the energy
10 savings performance contract.

11 (h) A local government that fails to provide documentation
12 required by the State Energy Conservation Office in accordance with
13 this section may not engage in further energy savings performance
14 contracts until the documentation has been provided.

15 (i) The local government shall hold harmless the State
16 Energy Conservation Office and the officers, employees, and
17 representatives of the office from all liability, actions, claims,
18 demands, or suits associated with the execution or performance of
19 the energy savings performance contract.

20 (j) The State Energy Conservation Office may adopt rules
21 necessary to implement this section.

22 Sec. 302.106. AWARDING OF ENERGY SAVINGS PERFORMANCE
23 CONTRACT. (a) Prior to the award of any energy savings performance
24 contract, the local government shall, in accordance with Section
25 302.105, submit the technical documents needed and obtain approval
26 from the State Energy Conservation Office.

27 (b) On receiving notice of approval from the State Energy

1 Conservation Office under Section 302.105, a local government shall
2 enter into the energy savings performance contract with the
3 qualified provider for the work, including any construction work,
4 identified in the investment grade audit report.

5 (c) The local government shall provide a copy of the
6 executed energy savings performance contract and corresponding
7 addenda to the State Energy Conservation Office not later than the
8 30th day after the effective date of the contract.

9 Sec. 302.107. CHANGE ORDER AND CONTRACT ADDENDUM SUBJECT TO
10 SAME REVIEW PROCESS. Each change order or contract addendum to an
11 energy savings performance contract is subject to the same review
12 and approval requirements of the energy savings performance
13 contract under Sections 302.104 and 302.105.

14 Sec. 302.108. PROCUREMENT OF CERTAIN CONSTRUCTION-RELATED
15 SERVICES. (a) This section applies to the purchase of a
16 construction-related service from a provider related to an energy
17 savings performance contract in an amount that exceeds \$50,000.

18 (b) A local government may not use a purchasing cooperative
19 under Chapter 791, Government Code, or a local cooperative
20 organization under Subchapter F, Chapter 271, of this code for the
21 purchase of a preliminary utility audit, an investment grade audit,
22 architectural services, design services, or engineering services
23 from a provider under an energy savings performance contract.

24 SECTION 11. Chapter 302, Local Government Code, is amended
25 by adding Subchapter D, and a heading is added to that subchapter to
26 read as follows:

1 SUBCHAPTER D. PAYMENTS; METHOD OF FINANCING

2 SECTION 12. Section 302.003, Local Government Code, is
3 transferred to Subchapter D, Chapter 302, Local Government Code, as
4 added by this Act, and redesignated as Section 302.151, Local
5 Government Code, to read as follows:

6 Sec. 302.151 [~~302.003~~]. PAYMENT AND PERFORMANCE BOND.
7 Notwithstanding any other law, before entering into an energy
8 savings performance contract, the governing body of the local
9 government shall require the provider of the energy or water
10 conservation or usage measures to file with the governing body a
11 payment and performance bond relating to the installation of the
12 measures in accordance with Chapter 2253, Government Code. The
13 governing body may also require a separate bond to cover the value
14 of the guarantee.

15 SECTION 13. Subchapter D, Chapter 302, Local Government
16 Code, as added by this Act, is amended by adding Section 302.152 to
17 read as follows:

18 Sec. 302.152. PAYMENTS TO PROVIDERS. (a) Subject to
19 Subsection (b), the governing body of a local government may pay the
20 provider of an energy or water conservation or usage measure,
21 including payment of debt service as defined by Section 26.012, Tax
22 Code, solely out of the energy savings or increase in billable
23 revenues realized by the local government under the energy savings
24 performance contract.

25 (b) A payment to the provider must be based on the
26 percentage of project completion, and not on a pre-established
27 schedule.

1 (c) A local government may use excess actual guaranteed
2 energy savings or increase in billable revenues revealed by an
3 annual reconciliation statement under Section 302.302 throughout
4 the term of an energy savings performance contract to reinvest in
5 other energy or water conservation or usage measures within the
6 scope of the contract through a change order or contract addendum as
7 authorized under this chapter.

8 SECTION 14. Section 302.004, Local Government Code, is
9 transferred to Subchapter D, Chapter 302, Local Government Code, as
10 added by this Act, redesignated as Section 302.153, Local
11 Government Code, and amended to read as follows:

12 Sec. 302.153 [~~302.004~~]. METHOD OF FINANCING; CONTRACTUAL
13 OBLIGATIONS FOR CERTAIN CONTRACTS [~~TERMS OF CONTRACT~~]. (a) An
14 energy savings performance contract may be financed:

15 (1) under a lease-purchase contract that has a term
16 not to exceed 20 years from the final date of installation and that
17 meets federal tax requirements for tax-free municipal leasing or
18 long-term financing;

19 (2) with the proceeds of bonds; or

20 (3) under a contract with the provider of the energy or
21 water conservation or usage measures that has a term not to exceed
22 the lesser of 20 years from the final date of installation or the
23 average useful life of the energy or water conservation or usage
24 measures.

25 [~~(a-1) Notwithstanding other law, the governing body of a~~
26 ~~local government may use any available money to pay the provider of~~
27 ~~the energy or water conservation measures under this section, and~~

1 ~~the governing body is not required to pay for such costs solely out~~
2 ~~of the savings realized by the local government under an energy~~
3 ~~savings performance contract. The governing body may contract with~~
4 ~~the provider to perform work that is related to, connected with, or~~
5 ~~otherwise ancillary to the measures identified in the scope of an~~
6 ~~energy savings performance contract.]~~

7 (b) ~~[An energy savings performance contract shall contain~~
8 ~~provisions requiring the provider of the energy or water~~
9 ~~conservation or usage measures to provide a guarantee.]~~ If the term
10 of the contract exceeds one year, the local government's
11 contractual obligations in any one year during the term of the
12 contract beginning after the final date of installation may not
13 exceed the total energy and water savings, the net operating cost
14 savings, and the stipulated or agreed upon increase in billable
15 revenues resulting from the estimated increase in meter accuracy,
16 divided by the number of years in the contract term.

17 SECTION 15. Chapter 302, Local Government Code, is amended
18 by adding Subchapters E, F, and G to read as follows:

19 SUBCHAPTER E. WORK PERFORMED UNDER PERFORMANCE CONTRACT

20 Sec. 302.201. SUBCONTRACTORS FOR AUTHORIZED WORK UNDER
21 PERFORMANCE CONTRACT. (a) A provider may be designated as the
22 general contractor or prime contractor for the installation or
23 implementation of any authorized work under an energy savings
24 performance contract, including any improvements to be made
25 pursuant to the contract, provided that a subcontractor contracting
26 with the provider for that purpose:

27 (1) is experienced in the design, installation, or

1 implementation of the energy or water conservation or usage
2 measures agreed to between the provider and local government; and

3 (2) submits to the local government all written
4 certifications required under this chapter.

5 (b) During the negotiation of an energy savings performance
6 contract, the provider shall submit to the local government a list
7 of subcontractors the provider intends to use and disclose whether
8 a subcontractor on the list is a subsidiary or wholly owned or
9 partially owned affiliate of the provider. The provider shall
10 update the disclosure during the term of the contract.

11 (c) A subsidiary or wholly owned or partially owned
12 affiliate of a provider may not be an eligible contractor or
13 subcontractor under an energy savings performance contract unless:

14 (1) an analysis provided to the local government
15 demonstrates that there is an economic advantage to the local
16 government in having the contractor or subcontractor perform work
17 as part of the contract; and

18 (2) the local government determines that having the
19 contractor or subcontractor perform work as part of the contract
20 provides the best value for the local government.

21 Sec. 302.202. WORK RELATED OR ANCILLARY TO MEASURES. The
22 governing body of a local government may contract with a provider of
23 energy or water conservation or usage measures to perform work that
24 is related to, connected with, or otherwise ancillary to the
25 measures identified in the scope of an energy savings performance
26 contract.

1 SUBCHAPTER F. FRAUD DETERRENCE PROGRAM

2 Sec. 302.251. COMPLIANCE PROGRAM AND INTERNAL CONTROL TO
3 DETECT AND DETER FRAUD. (a) A provider that enters into an energy
4 savings performance contract under this chapter shall maintain a
5 compliance program and internal controls designed to detect and
6 deter fraudulent and corrupt conduct, including:

7 (1) policies and procedures to create redundancy in
8 the subcontractor bid review, bid normalization, bid revision, and
9 selection process; and

10 (2) energy savings, increase in billable revenues, and
11 cost review processes.

12 (b) The policies and procedures described by Subsection
13 (a)(1) must specifically correct or prevent the circumstances that
14 would allow a single employee to control the subcontractor
15 selection process and obtain kickbacks or bribes either directly
16 from subcontractors and vendors or indirectly through
17 intermediaries in connection with the energy savings performance
18 contract.

19 (c) If necessary and appropriate, a provider shall modify an
20 existing compliance contract to ensure that the provider maintains
21 a rigorous compliance program that incorporates relevant internal
22 controls, policies, and procedures designed to effectively detect
23 and deter violation of fraud, anti-corruption, procurement
24 integrity, and anti-kickback laws.

25 SUBCHAPTER G. ANNUAL REPORTS AND STATEMENTS

26 Sec. 302.301. ANNUAL MEASUREMENT AND VERIFICATION REVIEW;
27 REPORT. (a) During the term of an energy savings performance

1 contract and at the discretion of the local government, a local
2 government shall retain the provider or an independent third party,
3 other than the third-party engineer, to perform an annual
4 measurement and verification review of, and prepare a report on,
5 energy savings, increase in billable revenues, and, if applicable,
6 efficiency or accuracy of metering equipment resulting from the
7 energy or water conservation or usage measures when compared with
8 the established baseline set forth in the energy savings
9 performance contract.

10 (b) The measurement and verification review and report must
11 comply with the measurement and verification methodologies
12 described by Section 302.053 that were published or listed on the
13 date the energy savings performance contract was entered into
14 between the local government and provider. An independent third
15 party retained under this section must:

16 (1) have the qualifications of a third-party engineer
17 as described by Section 302.0031(b); and

18 (2) be retained under a separate contract from the
19 third-party engineer selected under Section 302.0031.

20 Sec. 302.302. ANNUAL RECONCILIATION STATEMENT. (a)
21 Pursuant to Section 302.051(c), the provider shall provide an
22 annual reconciliation statement of the guaranteed energy savings or
23 increase in billable revenues based on the results of the
24 measurement and verification review under Section 302.301. The
25 statement must disclose any shortfall or surplus between guaranteed
26 energy savings or increase in billable revenues specified in the
27 energy savings performance contract and actual, not stipulated,

1 energy savings incurred during a given guarantee year as described
2 by Subsection (b). If the annual reconciliation statement reveals
3 an excess actual guaranteed energy savings or excess increase in
4 billable revenues in a given year, the surplus may not be used to
5 cover any shortfalls in subsequent contract years.

6 (b) A guarantee year consists of a 12-month term beginning
7 on the date all the energy or water conservation or usage measures
8 become fully operational.

9 (c) A provider shall pay the local government any shortfall
10 amount not later than the 30th day after the date the total year
11 energy savings have been determined.

12 SECTION 16. Chapter 302, Local Government Code, is amended
13 by adding Subchapter H, and a heading is added to that subchapter to
14 read as follows:

15 SUBCHAPTER H. ENFORCEMENT

16 SECTION 17. Section 302.008, Local Government Code, is
17 transferred to Subchapter H, Chapter 302, Local Government Code, as
18 added by this Act, redesignated as Sections 302.351 and 302.352,
19 Local Government Code, and amended to read as follows:

20 Sec. 302.351 [~~302.008~~]. CONTRACTS VOIDABLE [~~ENFORCEMENT~~].

21 [~~(a)~~] A contract entered into or an arrangement made in violation
22 of this chapter is voidable as against public policy.

23 Sec. 302.352. DECLARATORY OR INJUNCTIVE RELIEF.

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

27 SECTION 18. Subchapter H, Chapter 302, Local Government

1 Code, as added by this Act, is amended by adding Sections 302.353,
2 302.354, and 302.355 to read as follows:

3 Sec. 302.353. VIOLATION OF PERFORMANCE CONTRACT PROVISION
4 CONTAINING PROHIBITION AGAINST CONTINGENCY FEES. If a provider
5 violates the provision of an energy savings performance contract
6 described by Section 302.051(e), the local government may:

7 (1) terminate the contract without liability; and

8 (2) at the local government's discretion, deduct from
9 the contract price, including any finance charges subject to the
10 contract, or otherwise recover, the full amount of the fee,
11 commission, percentage, gift, or consideration.

12 Sec. 302.354. CRIMINAL OFFENSES. (a) In this section,
13 "person" means an individual, corporation, association,
14 partnership, firm, or company.

15 (b) A person, including an employee working for a provider,
16 commits an offense if the person offers, agrees, or contracts to
17 solicit or secure an energy savings performance contract or
18 subcontract related to the contract for any other person and the
19 person is paid or to be paid any fee, commission, percentage, gift,
20 or other consideration contingent on, or resulting from, the
21 awarding or making of an energy savings performance contract.

22 (c) A person commits an offense if the person offers to pay,
23 or pays, any fee, commission, percentage, gift, or other
24 consideration contingent on, or resulting from, the awarding or
25 making of an energy savings performance contract.

26 (d) A local government official commits an offense if the
27 official offers to solicit or secure, or solicits or secures, an

1 energy savings performance contract between the local government
2 and a person and the official is to be paid, or is paid, any fee,
3 commission, percentage, gift, or other consideration contingent on
4 the awarding or making of the energy savings performance contract.

5 (e) A person who is a local government employee or
6 contractor with any influence on the awarding or making of an energy
7 savings performance contract commits an offense if the person
8 offers to solicit or secure, or solicits or secures, an energy
9 savings performance contract and the person is to be paid, or is
10 paid, any fee, commission, percentage, gift, or other consideration
11 contingent on the awarding or making of an energy savings
12 performance contract between the local government and another
13 person.

14 (f) An offense under this section is a felony of the second
15 degree.

16 (g) If conduct that constitutes an offense under this
17 section also constitutes an offense under another law, including
18 money laundering under Chapter 34, Penal Code, the actor may be
19 prosecuted under this section, the other law, or both.

20 Sec. 302.355. ENFORCEMENT BY ATTORNEY GENERAL AND LOCAL
21 PROSECUTOR. With the consent of the appropriate local county or
22 district attorney, the attorney general has concurrent
23 jurisdiction with that consenting local prosecutor to prosecute an
24 offense under Section 302.354.

25 SECTION 19. Article 59.01(2), Code of Criminal Procedure,
26 is amended to read as follows:

27 (2) "Contraband" means property of any nature,

1 including real, personal, tangible, or intangible, that is:

2 (A) used in the commission of:

3 (i) any first or second degree felony under
4 the Penal Code;

5 (ii) any felony under Section 15.031(b),
6 21.11, or 38.04 or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal
7 Code;

8 (iii) any felony under Chapter 43, Penal
9 Code, except as provided by Paragraph (B);

10 (iv) any felony under The Securities Act
11 (Title 12, Government Code); or

12 (v) any offense under Chapter 49, Penal
13 Code, that is punishable as a felony of the third degree or state
14 jail felony, if the defendant has been previously convicted three
15 times of an offense under that chapter;

16 (B) used or intended to be used in the commission
17 of:

18 (i) any felony under Chapter 481, Health
19 and Safety Code (Texas Controlled Substances Act);

20 (ii) any felony under Chapter 483, Health
21 and Safety Code;

22 (iii) a felony under Chapter 152, Finance
23 Code;

24 (iv) any felony under Chapter 20A or 34,
25 Penal Code;

26 (v) a Class A misdemeanor under Subchapter
27 B, Chapter 365, Health and Safety Code, if the defendant has been

- 1 previously convicted twice of an offense under that subchapter;
- 2 (vi) any felony under Chapter 32, Human
3 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
4 involves a health care program, as defined by Section 35A.01, Penal
5 Code;
- 6 (vii) a Class B misdemeanor under Chapter
7 522, Business & Commerce Code;
- 8 (viii) a Class A misdemeanor under Section
9 306.051, Business & Commerce Code;
- 10 (ix) any offense under Section 42.10, Penal
11 Code;
- 12 (x) any offense under Section 46.06(a)(1)
13 or 46.14, Penal Code;
- 14 (xi) any offense under Chapter 71, Penal
15 Code;
- 16 (xii) any offense under Section 20.05,
17 20.06, 20.07, 43.04, or 43.05, Penal Code;
- 18 (xiii) an offense under Section 326.002,
19 Business & Commerce Code;
- 20 (xiv) any offense under Section 545.420,
21 Transportation Code; or
- 22 (xv) any offense punishable under Section
23 42.03(d) or (e), Penal Code;
- 24 (C) the proceeds gained from the commission of a
25 felony listed in Paragraph (A) or (B) of this subdivision, a
26 misdemeanor listed in Paragraph (B)(vii), (ix), (x), (xi), (xii),
27 (xiv), or (xv) of this subdivision, or a crime of violence;

1 (D) acquired with proceeds gained from the
2 commission of a felony listed in Paragraph (A) or (B) of this
3 subdivision, a misdemeanor listed in Paragraph (B)(vii), (ix), (x),
4 (xi), (xii), (xiv), or (xv) of this subdivision, or a crime of
5 violence;

6 (E) used to facilitate or intended to be used to
7 facilitate the commission of a felony under Section 15.031 or
8 Chapter 43, Penal Code; ~~or~~

9 (F) used to facilitate or intended to be used to
10 facilitate the commission of an offense under Section 20.05, 20.06,
11 or 20.07 or Chapter 20A, Penal Code; or

12 (G) the proceeds gained from the commission of an
13 offense under Section 302.354(b), (c), (d), or (e), Local
14 Government Code.

15 SECTION 20. Section 44.901, Education Code, is repealed.

16 SECTION 21. The changes in law made by this Act apply to a
17 contract entered into or amended or modified on or after the
18 effective date of this Act. A contract entered into or amended or
19 modified before the effective date of this Act is governed by the
20 law in effect on the date the contract was entered into or amended
21 or modified, and the former law is continued in effect for that
22 purpose.

23 SECTION 22. This Act takes effect September 1, 2025.