

SUBJECT: Prohibiting certain modifications to energy savings performance contracts

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 8 ayes — Goldman, Anchia, Darby, Ellzey, Geren, T. King, Leman, Reynolds

0 nays

3 absent — Herrero, Craddick, Longoria

WITNESSES: For — Peyton McKnight, American Council of Engineering Companies of Texas; Perry Fowler, Texas Water Infrastructure Network; (*Registered, but did not testify*: Jimmy Carlile, Fasken Oil and Ranch)

Against — John Pouland, NAESCO; Matt Lombardo, Schneider Electric; (*Registered, but did not testify*: Chance Sampson, Johnson Controls International PLC; Elizabeth Hadley, NORESKO LLC)

On — (*Registered, but did not testify*: Kenneth Flippin, U.S. Green Building Council Texas Chapter)

BACKGROUND: Local Government Code ch. 302 governs energy savings performance contracts for local governments.

Reports of energy savings performance contracts being inappropriately expanded beyond their original scope to design and build unrelated facilities and structures have raised concerns regarding increased costs to government entities and transparency.

DIGEST: CSHB 3583 would specify that the scope of an energy savings performance contract could not be modified by change order, contract addendum, or other method:

- to perform work that was not related to, connected with, or otherwise ancillary to the measures identified in the original scope

- of an energy savings performance contract; or
- in a way that increased the price of the original awarded contract by more than 25 percent of the original contract value.

These provisions would apply 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. The bill would specify that the term "energy saving contract" did not include such projects.

A contract entered into or an arrangement made in violation of Local Government Code ch. 302 would be voidable as against public policy, and the chapter could be enforced through an action for declaratory or injunctive relief filed by the 10th day after a contract was awarded.

The bill would not apply to an energy savings performance contract entered into before the bill's effective date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.