

BILL ANALYSIS

Senate Research Center

H.B. 2277
By: Carter (Fraser)
State Affairs
5/8/2001
Committee Report (Amended)

DIGEST AND PURPOSE

Energy performance contracting is a financing method that allows a facility to complete energy-saving improvements within an existing budget by financing them with money saved through reduced utility expenditures. Over the past five legislative sessions, the legislature has passed and improved upon measures to allow state agencies, state universities, and local political subdivisions to enter into multi-year energy performance contracts. However, no state agency has taken advantage of this mechanism to finance energy efficiency retrofits. H.B. 2277 clarifies the authority of state agencies to use the master equipment lease purchase program administered by the Texas Public Finance Authority to finance energy efficiency programs, and makes other changes to encourage state agencies to utilize performance contracting.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 44.901(b), (e), (g), (h), and (i), Education Code, as follows:

(b) Provides that a contract to which this section applies includes a contract for the installation or implementation of certain items.

(e) Requires the board of trustees of a school district (board), before entering into a contract for energy conservation measures, to require the provider of the energy conservation measures to file with the board a payment and performance bond relating to the installation of energy conservation measures in accordance with Chapter 2253 (Public Work Performance and Payment Bonds), Government Code. Deletes existing text regarding the board's determination of a certain amount. Authorizes the board to also require a separate bond to cover the value of the guaranteed savings on the contract. Deletes existing text regarding the faithful execution of the terms of the contract.

(g) Prohibits the school district's contractual obligations in any one year during the term of the contract beginning after the final date of installation, if the term of a contract for energy conservation measures exceeds one year, from exceeding the total energy and operating cost savings, including but not limited to electrical, gas, or other utility cost savings and operating cost savings resulting from the measures, rather than automatic monitoring and control, as determined by the school district in this subsection, divided by the number of years in the contract term.

(h) Requires, rather than authorizes, a contract under this section to be let according to the, rather than under competitive proposal, procedures established for professional services by Section 2254.004, Government Code. Requires notice of the request for qualifications, rather than proposals, to be published in the manner provided for competitive bidding. Deletes

existing text regarding a request for proposal.

Deletes existing text of Subsection (i) relating to proposal revision.

SECTION 2. Amends Sections 51.927(b), (e), (f), and (h)-(l), Education Code, as follows:

(b) Makes conforming and nonsubstantive changes.

(e) Requires the board, before entering into a contract for energy conservation measures, to require the provider of the energy conservation measures to file with the board a payment and performance bond in accordance with Chapter 2253, Government Code. Authorizes the board to also require a separate bond to cover the value of the guaranteed savings on the contract. Deletes existing text regarding the determination of a reasonable and necessary amount.

(f) Makes a conforming change.

(h) Deletes existing text regarding maintenance and repairs.

(i) Deletes existing text regarding the Texas Energy Coordination Council. Deletes existing text regarding the award of the contract. Makes conforming and nonsubstantive changes.

(j) Deletes existing text of Subsections (j) and (k) and reletters existing text of Subsection (l) as Subsection (j).

SECTION 3. Amends Sections 2166.406(b), (e), and (g)-(m), Government Code, as follows:

(b) Makes a conforming change.

(e) Makes conforming changes.

(g) Authorizes energy conservation measures with respect to existing buildings or facilities to be financed by one of three certain methods.

(h) Prohibits the agency's contractual obligation, including costs of design, engineering, installation, and anticipated debt service, in any year during the term of the contract beginning after the final date of installation, if the term of a contract for energy conservation measures exceeds one year, from exceeding the total energy and operating cost savings, including but not limited to electrical, gas, or other utility cost savings and operating cost savings resulting from the measures, as determined by the state agency in this subsection, divided by the number of years in the contract term.

(i) Requires the State Energy Conservation Office to establish guidelines and an approval process for contracts awarded under this section. Requires the guidelines adopted under this subsection to require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who is not an officer or employee of an offeror for the contract under review or otherwise associated with the contract. Requires an engineer who reviews a contract to maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Provides that Section 19, The Texas Engineering Practice Act, Article 3271a, V.T.C.S., applies to work performed under the contract. Deletes existing text regarding submission of the selected proposal for review and comment.

(j) Deletes existing text of Subsections (j) - (l). Reletters existing text of Subsection (m) as Subsection (j).

SECTION 4. Amends Section 302.002(b), Local Government Code, to make a conforming change.

SECTION 5. Amends Section 302.003, Local Government Code, to require, rather than authorize at its option, the governing body of the local government, notwithstanding any other law to the contrary, before entering into a contract for energy conservation measures, to require the provider of the energy conservation measures to file with the governing body a payment and performance bond relating to the installation of energy conservation measures in accordance with Chapter 2253, Government Code. Deletes existing text regarding a payment and performance bond. Makes conforming and nonsubstantive changes.

SECTION 6. Amends Section 302.004, Local Government Code, to delete existing text regarding existing buildings. Makes a conforming change.

SECTION 7. Amends Section 302.005, Local Government Code, to authorize a contract under this chapter to be let in accordance with the, rather than under competitive proposal, procedures established for professional services by Section 2254.004, Government Code. Makes conforming and nonsubstantive changes. Deletes existing text regarding. Deletes existing text of Subsections (b) and (c) regarding the award of the contract.

SECTION 8. Effective date: September 1, 2001.
Makes application of this Act prospective.

SUMMARY OF COMMITTEE CHANGES

Committee Amendment No. 1.

Amends page 13, line 25 to replace “shall” with “may” in SECTION 7 (Section 302.005, Local Government Code).