

SUBJECT: Expanding the use of performance contracts for energy conservation

COMMITTEE: Energy Resources — committee substitute recommended

VOTE: 6 ayes — Holzheuser, Hawley, Driver, Merritt, Moffat, Smithee

0 nays

1 present, not voting — Davis

2 absent — Torres, Wilson

WITNESSES: For — Klip Weaver, Control Systems International

Against — None

BACKGROUND : In 1992, the Legislature authorized higher education institutions to enter into performance contracts for energy conservation measures to reduce energy consumption and operating costs at institutional facilities. In 1995, the Legislature authorized such contracts for school districts.

DIGEST: CSHB 3530 would allow state agencies to enter into energy conservation contracts and expand the range of projects allowed all entities under such contracts.

The bill would establish provisions for state agencies that track those relating to school districts and higher institutions. These provisions cover compliance with construction and environmental regulations, experienced contractors in design and installation measures, payment and performance bonds, 10-year performance contracts with provisions guaranteeing savings, and competitive sealed proposal procedures. The Legislature would base appropriations for an agency's energy costs on both estimated energy costs and any net savings from an energy conservation contract.

State agencies also would have to submit a proposed contract to the State Energy Conservation Office (SECO) and the Texas Energy Coordination Council (TECC) for review and comment. These two offices could charge a fee for analyzing the proposal. SECO would have authority for final review

and approval of a contract. Agencies could discuss proposals with offerors, but all offerors would have to be treated fairly and equally and secrecy maintained during negotiations. All proposals would be open for public inspection after a contract was awarded.

CSHB 3530 would expand the range of energy conservation measures for all entities to include improvements in electrical systems and projects or equipment related to renewable energy. All energy conservation contracts would have to comply with current local, state and federal construction and environmental codes and regulations. No improvements could involve returning nonpotable water from any condensing, cooling or industrial process to the potable water supply.

The bill would apply to school districts provisions similar to those that require state agencies and institutions of higher education to include in contracts guarantees of energy savings. Colleges and universities would be required to submit contracts to SECO and TECC for approval. These offices also would have to establish guidelines and an approval process for energy performance contracts.

The bill would take immediate effect if finally approved by a two-thirds record vote of the membership in each house.

**SUPPORTERS  
SAY:**

CSHB 3530 would bring state agencies into an established program that is producing savings for other governmental entities. The bill also would update and improve current law relating to energy conservation contracts. The bill would include electrical system improvements in performance contracts for energy conservation measures and remove inefficient and cumbersome barriers which impede the contracting process.

With CSHB 3530, state agencies could begin to take advantage of performance contracts for energy conservation measures. These contracts would provide a cost-effective way to fund energy improvements for agencies without increasing state appropriations or requiring up-front costs from limited state-funded loan programs. Under these contracts, all materials and equipment installed becomes government owned property at the end of the contract term. Institutions of higher education and school

districts have been entering into these contracts with great success without a single reported incidence of failure.

The bill would allow state agencies to enter into the most advantageous contract by allowing proposal revisions after submissions and before the contract is awarded. As additional safeguards, SECO would provide final review and approval and performance and payment bonds would be posted.

**OPPONENTS  
SAY:**

No apparent opposition.

**NOTES:**

The committee substitute added the provisions on nonpotable water, contractor requirements, pre-contract review, and appropriations for energy costs, and deleted requirements for proof of financial responsibility.

A related bill, HB 1243 by Holzheuser, allowing local government entities to enter into energy conservation contracts passed the House on April 30.