

SUBJECT: Transferring higher education energy savings contract approval to SECO

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 8 ayes — Zerwas, Howard, Clardy, Crownover, Martinez, Morrison,  
Raney, C. Turner

0 nays

1 absent — Alonzo

WITNESSES: For — Cyrus Reed, Lone Star Chapter Sierra Club; (*Registered, but did not testify*: Justin Yancy, Texas Business Leadership Council)

Against — None

On — (*Registered, but did not testify*: Dub Taylor and Robert Wood, Comptroller of Public Accounts; Susan Brown and Raymund Paredes, Texas Higher Education Coordinating Board)

BACKGROUND: Education Code, sec. 51.927 describes the Texas Higher Education Coordinating Board's responsibility for approving energy savings performance contracts at public institutions of higher education. Energy savings performance contracting is a construction financing method that allows an entity to finance the completion of energy-saving improvements with money saved through reduced utility expenses.

Under sec. 51.927(i), the coordinating board is required to create guidelines and an approval process for energy savings performance contracts in consultation with the State Energy Conservation Office (SECO). SECO is not required to review or approve energy savings performance contracts.

DIGEST: CSHB 599 would transfer responsibility for awarding energy savings performance contracts at public higher education institutions away from the Texas Higher Education Coordinating Board to the State Energy

Conservation Office (SECO). All energy savings performance contracts would have to be approved by SECO. Under the bill, the coordinating board could not review the contracts.

The bill would take effect September 1, 2015, and would apply to contracts submitted for approval on or after that date.

**SUPPORTERS  
SAY:**

CSHB 599 would reflect the spirit of the Sunset Advisory Commission's recommendations for the 83rd legislative session that certain projects be transferred away from the Texas Higher Education Coordinating Board, allowing it to focus more narrowly on its charge. Transferring approval authority over energy savings performance contracts would be consistent with this goal. In addition, this change is a legislative priority of the coordinating board.

The bill's transfer of approval authority for energy savings contracts to the State Energy Conservation Office (SECO) would result in a more efficient and consistent process for these contracts. SECO already consults with the coordinating board to develop guidelines and processes for contract approval in addition to managing contract approval for all other state agencies, making it the entity best suited to take on this role. The board still would have the opportunity to offer input on these projects through SECO, as it does for other capital projects through the governor and the Legislature.

While the coordinating board no longer would be responsible for reviewing or approving these contracts, the bill would improve oversight of the process, not weaken it. CSHB 599 merely would shift the responsibility from the coordinating board to another office, SECO, that has more experience. The state plays an important role in approving these kinds of contracts at public institutions because the state's money is on the line if contractors do not perform as required under their contracts. The approval process also is not a selection process, as contracts would be approved by SECO only after the schools had selected a contractor through established criteria.

While a 2008 report indicated that previous energy savings performance contracts did not provide the required statement of utility costs savings the state would recover by investing in facilities upgrades or operations, that contractual language has since been corrected and no longer affects the processes at either the coordinating board or SECO for contracts they approve. The report also said that sufficient energy savings from these contracts may be achieved over the life of the contract to pay for the work done.

Recently, the coordinating board has had to approve only one or two contracts per year, so transferring the responsibility to SECO would have a minimal impact on the office. The fiscal note for this bill also indicates no significant impact.

OPPONENTS  
SAY:

CSHB 599 would transfer approval of energy savings performance contracts to SECO, but nothing in the Sunset Advisory Commission's most recent report on the coordinating board indicated that responsibility for energy savings performance contracts should be transferred from the coordinating board.

At a time when government must monitor state contracting carefully, the bill would remove a source of oversight from the approval of energy savings performance contracts by barring the coordinating board from reviewing the contracts, thereby placing the process in the hands of one entity, SECO, rather than two.

The bill would constrain the oversight of contracts whose benefit to the state already is far from clear. A 2008 study indicated that energy savings performance contracts often do not fulfill the requirement that they recover the cost of performing the contracts in utility cost savings. In these circumstances, the state's effort to save money is costing more than the energy savings performance contracts actually recover.

SECO's handling of energy savings performance contracts for all institutions of higher education could present an administrative burden and strain the office's budget, which did not include funds for this

additional responsibility in fiscal 2016-17. SECO's more stringent standards also could make it harder for higher education institutions to find contractors to perform work under the contracts.

OTHER  
OPPONENTS  
SAY:

CSHB 599 would continue to give the government a role it should not have in selecting winners and losers for service contracts. Institutions of higher education should be able to access the free market to determine the best investment for their respective facilities.

NOTES:

CSHB 599 differs from the bill as introduced in that it would not permit the coordinating board to review energy savings contracts, whereas the bill as introduced would have allowed but not required the board to review such contracts.