

## **BILL ANALYSIS**

Senate Research Center

H.B. 3583  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Energy savings performance contracting (ESPC) is a method of finance that allows a facility to complete energy-saving improvements within an existing budget by paying for them with money saved through reduced utility expenditures. Facilities make no up-front investments and instead finance projects through guaranteed annual energy savings. ESPC can be a valuable tool to assist public and government facilities to enhance energy efficiency and water conservation in facilities owned and operated by state agencies, public schools, public higher education institutions and local government entities under various authorities delegated by state law. ESPC contracts are executed directly between these entities and private contractors and are approved by the State Energy Conservation Office (SECO).

Recently there have been instances where contracts awarded under ESPC statutes have been expanded well beyond those contracts' original scope and beyond the intent of the ESPC statutes to design and build new, completely unrelated facilities, without complying with procurement statutes related to public works projects. Simply by executing a "change order," the contracts are being increased by tens of millions of dollars at the expense of competition and transparency, effectively obligating the government and end-user to absorb such costs. This is a disturbing trend which effectively awards sole-source contracts for facilities outside of the scope of original contracts and traditional, statutory procurement process.

H.B. 3583 addresses the misuse of ESPC contracts by ensuring that energy savings performance contracts are utilized in a transparent manner for the purpose originally intended, and not as a means to bypass statutes relating to the procurement of public works projects by simply modifying the scope or executing a change order to the original contract.

H.B. 3583 specifically prohibits the use of ESPC for public works and civil works projects that are subject to well established contracting and procurement statutes by specifically prohibiting the use of ESPC for the design or construction of major civil works projects, which should be procured through the existing statutory framework for design and construction projects.

H.B. 3583 amends current law relating to energy savings performance contracts.

### **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 Section 302.001(4), Local Government Code, to provide that the term "energy savings performance contract" in Chapter 302 (Energy Savings Performance Contracts for Local Governments) does not include the design or new construction of a water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, or drainage project.

SECTION 2. Amends Section 302.005, Local Government Code, by adding Subsections (d) and (e), as follows:

(d) Prohibits the scope of an energy savings performance contract from being modified under Section 302.005 (Bidding Procedures; Award of Contract) by change order, contract addendum, or other method:

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

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

(e) Provides that Subsection (d) applies 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.

SECTION 3. Amends Chapter 302, Local Government Code, by adding Section 302.008, as follows:

Sec. 302.008. ENFORCEMENT. (a) Provides that a contract entered into or an arrangement made in violation of Chapter 302 is voidable as against public policy.

(b) Authorizes Chapter 302 to be enforced through an action for declaratory or injunctive relief filed not later than the 10th day after the date the contract is awarded.

SECTION 4. Provides that the changes in law made by this Act do not apply to an energy savings performance contract entered into before the effective date of this Act, and the former law governing the contract is continued in effect for that purpose.

SECTION 5. Effective date: upon passage or September 1, 2021.