

LOCAL GOVERNMENT CODE
TITLE 9. PUBLIC BUILDINGS AND GROUNDS
SUBTITLE C. PUBLIC BUILDING PROVISIONS APPLYING TO MORE THAN ONE
TYPE OF LOCAL GOVERNMENT
CHAPTER 302. ENERGY SAVINGS PERFORMANCE CONTRACTS FOR LOCAL
GOVERNMENTS

Sec. 302.001. DEFINITIONS. In this chapter:

(1) "Baseline" means a calculation or set of calculations in an energy savings performance contract that:

(A) may be based on:

(i) historical costs, revenues, accuracy, or related components; or

(ii) avoided anticipated costs; and

(B) may be used for determining:

(i) the costs for energy or water usage and related net operating costs;

(ii) the billable revenues from providing energy, water, or other utilities to users; or

(iii) the efficiency or accuracy of metering or related equipment, systems, or processes or procedures.

(2) "Energy or water conservation or usage measures" means:

(A) the installation or implementation of any of the items, equipment, modifications, alterations, improvements, systems, and other measures described by Subdivision (4) that are intended to provide:

(i) estimated energy savings;

(ii) an estimated increase in billable revenues; or

(iii) an estimated increase in meter accuracy; or

(B) the training for, or services related to, the operation of the items, equipment, modifications, alterations, improvements, systems, or other measures described by Paragraph (A).

(3) "Energy savings" means an estimated reduction in

net fuel costs, energy costs, water costs, stormwater fees, or other utility costs, or related net operating costs, including costs for anticipated equipment replacement and repair, from or as compared to an established baseline of those costs. The term does not include an estimated reduction due to a decrease in energy rates that is not derived from increased conservation or reduced usage.

(4) "Energy savings performance contract" means a contract with a provider for energy or water conservation or usage measures in which the estimated energy savings, utility cost savings, increase in billable revenues, or increase in meter accuracy resulting from the measures is subject to guarantee to offset the cost of the energy or water conservation or usage measures over a specified period. The term 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. The term includes a contract related to the pilot program described by Subdivision (9-a) and a contract for the installation or implementation of the following in new or existing facilities, including all causally connected work:

(A) insulation of a building structure and systems within the building;

(B) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;

(C) automatic energy control systems, including computer software and technical data licenses;

(D) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;

(E) lighting fixtures that increase energy efficiency;

(F) energy recovery systems;

(G) electric systems improvements;

(H) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;

(I) water-conserving landscape irrigation equipment;

(J) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:

(i) landscape contouring, including the use of berms, swales, and terraces; and

(ii) the use of soil amendments that increase the water-holding capacity of the soil, including compost;

(K) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;

(L) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;

(M) equipment needed to capture water from nonconventional, alternate sources, including air-conditioning condensate or graywater, for nonpotable uses;

(N) metering or related equipment or systems that improve the accuracy of billable-revenue-generation systems;

(O) alternative fuel programs resulting in energy cost savings and reduced emissions for local government vehicles, including fleet vehicles;

(P) programs resulting in utility cost savings;
or

(Q) other energy or water conservation-related improvements or equipment, including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse.

(5) "Guarantee" means a written guarantee of a provider that the energy savings, increase in billable revenues, or increase in meter accuracy from the energy or water conservation or usage measures will at least equal the cost of the energy or water conservation or usage measures, all causally connected work, and ancillary improvements provided for in an energy savings performance contract.

(6) "Increase in billable revenues" means an estimated increase in billable revenues as compared to an established

baseline of billable revenues.

(7) "Increase in meter accuracy" means an estimated increase in efficiency or accuracy of metering or related equipment, systems, or processes or procedures that is calculated or determined by using applicable industry engineering standards.

(8) "Local government" means a county, municipality, or other political subdivision of this state. The term does not include a school district authorized to enter into an energy savings performance contract under Section 44.901, Education Code.

(9) "Meter guarantee" means a guarantee of a stipulated or agreed upon increase in billable revenues to result from the estimated increase in meter accuracy, based on stipulated or agreed upon components of a billable revenue calculation in an energy savings performance contract.

(9-a) "Pilot program" means a pilot program operated by the Energy Systems Laboratory at the Texas A&M Engineering Experiment Station, in consultation with the Texas Facilities Commission and the State Energy Conservation Office, that:

(A) establishes and implements energy efficiency improvements to state-owned buildings maintained by the commission;

(B) generates savings in utility costs resulting from the improvements resulting in at least a 30 percent annual return on the costs of the improvements;

(C) provides for the participation of not fewer than two companies selected by the commission; and

(D) provides for any money attributable to utility cost savings resulting from the pilot program to be appropriated only to the commission.

(10) "Provider" means an entity in the business of designing, implementing, and installing of energy or water conservation or usage measures or an affiliate of such an entity.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997.

Amended by Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 78, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. 831), Sec. 4, eff.

June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. [1728](#)), Sec. 5, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1021 (H.B. [1184](#)), Sec. 1, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 258 (H.B. [1571](#)), Sec. 4, eff. May 29, 2017.

Acts 2021, 87th Leg., R.S., Ch. 495 (H.B. [3583](#)), Sec. 1, eff. June 14, 2021.

Sec. 302.002. ENERGY SAVINGS PERFORMANCE CONTRACTS. (a) The governing body of a local government may enter into an energy savings performance contract in accordance with this chapter.

(b) Each energy or water conservation or usage measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding Section [302.001](#), an energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which public water supply system officials do not have sanitary control to be returned to the potable water supply.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997.

Amended by Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 79, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 5, eff. June 16, 2007.

Sec. 302.003. PAYMENT AND PERFORMANCE BOND. Notwithstanding any other law, before entering into an energy savings performance contract, the governing body of the local government shall require the provider of the energy or water conservation or usage measures to file with the governing body a payment and performance bond relating to the installation of the measures in accordance with Chapter [2253](#), Government Code. The

governing body may also require a separate bond to cover the value of the guarantee.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997.
Amended by Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 80, 121(23), eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 6, eff. June 16, 2007.

Sec. 302.004. METHOD OF FINANCING; TERMS OF CONTRACT. (a)
An energy savings performance contract may be financed:

(1) under a lease-purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation or usage measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

(a-1) Notwithstanding other law, the governing body of a local government may use any available money to pay the provider of the energy or water conservation measures under this section, and the governing body is not required to pay for such costs solely out of the savings realized by the local government under an energy savings performance contract. The governing body may contract with the provider to perform work that is related to, connected with, or otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

(b) An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation or usage measures to provide a guarantee. If the term of the contract exceeds one year, the local government's contractual obligations in any one year during the term of the

contract beginning after the final date of installation may not exceed the total energy and water savings, the net operating cost savings, and the stipulated or agreed upon increase in billable revenues resulting from the estimated increase in meter accuracy, divided by the number of years in the contract term.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997.

Amended by Acts 1999, 76th Leg., ch. 361, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 573, Sec. 6, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 6, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 81, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 7, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. [1728](#)), Sec. 6, eff. September 1, 2011.

Acts 2017, 85th Leg., R.S., Ch. 258 (H.B. [1571](#)), Sec. 5, eff. May 29, 2017.

Sec. 302.005. BIDDING PROCEDURES; AWARD OF CONTRACT. (a) An energy savings performance contract under this chapter may be let in accordance with the procedures established for procuring certain professional services by Section [2254.004](#), Government Code. Notice of the request for qualifications shall be published in the manner provided for competitive bidding.

(b) Before entering into an energy savings performance contract, the governing body must require that the energy savings, increase in billable revenues, or increase in meter accuracy estimated or projected by a provider be reviewed by a licensed professional engineer who:

(1) has a minimum of three years of experience in energy calculation and review;

(2) is not an officer or employee of a provider for the contract under review; and

(3) is not otherwise associated with the contract.

(c) In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost

savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Sections [1001.053](#) and [1001.407](#), Occupations Code, apply to work performed under the contract.

(d) The scope of an energy savings performance contract may not be modified under this section 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) 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.

Added by Acts 1997, 75th Leg., ch. 635, Sec. 1, eff. June 11, 1997. Amended by Acts 2001, 77th Leg., ch. 573, Sec. 12, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 7; Acts 2003, 78th Leg., ch. 1276, Sec. 12.005, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1310, Sec. 82, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 8, eff. June 16, 2007.

Acts 2021, 87th Leg., R.S., Ch. 495 (H.B. [3583](#)), Sec. 2, eff. June 14, 2021.

Sec. 302.006. METER GUARANTEES. (a) This section applies to any energy savings performance contract that:

(1) provides for any metering or related equipment, system, or process or procedure; and

(2) includes a meter guarantee by the provider, regardless of whether the meter guarantee is a part of a broader guarantee applicable to other energy or water conservation or usage

measures or causally connected work.

(b) Not later than the fifth anniversary of the effective date of an energy savings performance contract, an engineer shall test a statistically relevant sample of the meters installed or implemented under the contract to determine or calculate the actual average accuracy and shall compare the actual average accuracy to the baseline average accuracy of those tested meters.

(c) A meter guarantee applies if the engineer reports to the local government and the provider that the average accuracy of the tested meters as of the testing date is less than the baseline average accuracy of the tested meters as of the testing date.

(d) The amount payable under the meter guarantee must be determined for each year subject to the engineer's report and is equal to the difference between:

(1) the agreed increase in billable revenues based on the estimated accuracy of all of the meters for each year, according to the energy savings performance contract; and

(2) the revenues for the same year that would result from applying the engineer's reported actual average accuracy of the tested meters to all of the meters subject to the energy savings performance contract, using the same contract components that were used to calculate the agreed increase in billable revenues for that year, assuming the annual decrease in actual average accuracy of all the meters was a pro rata percentage of the reported total decrease in actual average accuracy.

(e) Notwithstanding Subsection (d), if the meter guarantee in the contract is part of a broader guarantee applicable to other energy or water conservation or usage measures or causally connected work under the contract, the amount payable under the meter guarantee for any year during the measurement period is reduced or offset by the difference between:

(1) the sum of the energy savings and the increase in billable revenues resulting from the other energy or water conservation or usage measures or causally connected work for that year during the measurement period; and

(2) the guaranteed amount of the energy savings and the increase in billable revenues from the other energy or water

conservation or usage measures or causally connected work for that year during the measurement period.

(f) A test conducted under this section must be performed in accordance with the procedures established by the International Performance Measurement and Verification Protocol or succeeding standards of the United States Department of Energy.

(g) An engineer conducting a test under this section shall:

(1) verify that the tested meters have been properly maintained and are operating properly; and

(2) comply with Section [302.005\(c\)](#).

Added by Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. [831](#)), Sec. 9, eff. June 16, 2007.

Sec. 302.007. EXEMPTION FROM OTHER CONTRACTING LAW. Chapter [2269](#), Government Code, does not apply to this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 3.04, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. [1093](#)), Sec. 22.002(25), eff. September 1, 2013.

Sec. 302.008. ENFORCEMENT. (a) A contract entered into or an arrangement made in violation of this chapter is voidable as against public policy.

(b) This chapter may be enforced through an action for declaratory or injunctive relief filed not later than the 10th day after the date the contract is awarded.

Added by Acts 2021, 87th Leg., R.S., Ch. 495 (H.B. [3583](#)), Sec. 3, eff. June 14, 2021.