

BILL ANALYSIS

Senate Research Center
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H.B. 1694
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Intergovernmental Relations
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1694 amends current law relating to the purchasing and contracting authority of certain governmental entities.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioners court of a county is modified in SECTION 12 (Section 262.0276, Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 262.011, Local Government Code, by amending Subsections (f), (g), (k), (m), and (o) and adding Subsection (q), as follows:

(f) Requires that a purchase made by the county purchasing agent be paid for by an electronic transfer, check, or warrant drawn by the county auditor on funds in the county treasury in the manner provided by law. Prohibits the county auditor from drawing and the county treasurer from honoring an electronic transfer, check, or warrant for a purchase unless the purchase is made by the county purchasing agent or on competitive bid as provided by law.

(g) Requires the county treasurer to honor an electronic transfer, check, or warrant drawn by the county auditor to reimburse the municipality's purchasing agent making the purchase for the county.

(k) Requires that the salary be paid by an electronic transfer, check, or warrant, rather than by warrants, drawn on funds in the county treasury.

(m) Provides that an offense under this subsection is a misdemeanor punishable by a fine of not less than \$10 or more than \$100, rather than by a fine of not less than \$10 or more than \$100, by confinement in the county jail for not less than 30 days or more than one year, or by both the fine and confinement.

(o) Prohibits procedures for use of purchasing cards from avoiding the competitive bidding requirements of this chapter or other requirements of county financial law.

(q) Requires that an electronic transfer under this chapter provide the same level of internal controls and statutory authorizations as required for a check or warrant.

SECTION 2. Amends Sections 262.0115(d) and (e), Local Government Code, as follows:

(d) Requires the purchasing agent, under the supervision of the commissioners court, to carry out the functions prescribed by law for a purchasing agent under Section 262.011 (Purchasing Agents) and for any administrative function of the county auditor in regard to county purchases and contracts and to administer the procedures prescribed by law for notice and public bidding for county purchases and contracts.

(e) Requires the county auditor, on the abolition of the position of county purchasing agent, to assume the functions previously performed by the purchasing agent regarding the notice for and opening of competitive bids or proposals under this chapter and Chapter 271 (Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments).

SECTION 3. Amends Section 262.022, Local Government Code, by amending Subdivisions (5) and (6) and adding Subdivisions (5-a) and (5-b) to redefine "item" and "purchase" and define "lowest and best" and "normal purchasing practice."

SECTION 4. Amends Section 262.0225, Local Government Code, by adding Subsection (d) to authorize a county that complies in good faith with the competitive bidding requirements of this chapter and receives no responsive bids for an item to procure the item under Section 262.0245.

SECTION 5. Amends Section 262.0245, Local Government Code, as follows:

Sec. 262.0245. New heading: COMPETITIVE PROCUREMENT PROCEDURES ADOPTED BY COUNTY PURCHASING AGENTS OR COMMISSIONERS COURT. Requires a county purchasing agent or, in a county without a purchasing agent, the commissioners court to adopt procedures that provide for competitive procurement, to the extent practicable under the circumstances, for the county purchase of an item that is not subject to competitive procurement or for which the county receives no responsive bid.

SECTION 6. Amends Section 262.025, Local Government Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires that a notice of a proposed purchase be published at least once a week for two consecutive weeks in a newspaper of general circulation in the county, with the first day of publication occurring at least 14 days before the date of the bid opening. Requires that the notice published in a newspaper include a general statement of the proposed purchase, the name and telephone number of the purchasing agent, and the county website address, if any.

(a-1) Provides that Subsection (a) does not require more than two notices in one newspaper or limit the county from providing additional notice for longer periods or in more locations.

SECTION 7. Amends Section 262.0255, Local Government Code, by adding Subsection (c), to authorize a commissioners court purchasing personal property under Section 271.083 (Local Government Participation) of this code or Section 791.025 (Contracts for Purchases), Government Code, to negotiate with a vendor awarded a cooperative contract under those sections an agreement for the vendor to purchase or accept as trade used equipment owned by the county.

SECTION 8. Reenacts Section 262.0256, Local Government Code, as amended by Chapters 660 (H.B. 2242) and 725 (H.B. 3089), Acts of the 78th Legislature, Regular Session, 2003, and amends it as follows:

Sec. 262.0256. PRE-BID CONFERENCE FOR CERTAIN COUNTIES OR A DISTRICT GOVERNED BY THOSE COUNTIES. (a) Deletes existing text of Subsection (a) providing that this section applies only to a county with a population of 2.8 million or more. Redesignates existing Subsection (b) as Subsection (a). Makes no further changes.

(b) Redesignates existing Subsection (c) as Subsection (b). Makes a conforming change.

SECTION 9. Amends Section 262.026(b), Local Government Code, as follows:

(b) Requires that opened bids be kept on file and available for inspection by anyone desiring to see them until the first anniversary of the date of opening. Provides that opened bids are subject to disclosure under Chapter 552 (Public Information), Government Code.

SECTION 10. Amends Section 262.027, Local Government Code, by amending Subsection (c) and adding Subsections (g) and (h), as follows:

(c) Prohibits a contract from being awarded to a bidder who is not the lowest dollar bidder meeting specifications unless, before the award, each lower bidder is given notice of the proposed award and an opportunity to appear before the commissioners court and present previously unconsidered evidence concerning the lower bid as best, which may include evidence of the bidder's responsibility.

(g) Authorizes the commissioners court, if after the award the successful bidder fails to qualify for required bonds, or is otherwise unable to meet the requirements of the award, to award the contract to the next bidder in order of ranking as lowest and best bid.

(h) Requires a bidder, before a contract is awarded, to give written notice to the officer authorized to open bids that the bidder intends to protest an award of the contract under Subsection (c). Provides that this subsection does not limit the ability of a bidder to speak at a public meeting of the commissioners court under rules established by the court.

SECTION 11. Amends Section 262.0271(b), Local Government Code, as follows:

(b) Authorizes the commissioners court of the county, in purchasing items under this chapter through a competitive bidding process, if a county receives one or more bids from a bidder who provides reasonable, rather than comparable, health insurance coverage to its employees and requires a subcontractor the bidder intends to use to provide reasonable health insurance coverage to the subcontractor's employees and whose bid is within five percent of the lowest and best bid price received by the county from a bidder who does not provide or require reasonable health insurance coverage, to give preference to the bidder who provides and requires reasonable health insurance coverage. Makes conforming changes.

SECTION 12. Amends Section 262.0276, Local Government Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Authorizes the commissioners court, by an order adopted and entered in the minutes of the commissioners court and after notice is published in a newspaper of general circulation in the county, to adopt rules permitting the county to refuse to enter into a contract or other transaction with a person who owes a debt, rather than indebted, to the county.

(d) Defines, in this section, "debt."

SECTION 13. Amends Section 262.0295(d), Local Government Code, to require that the award of the contract be made to the responsible offeror whose bid is determined to be the lowest and best evaluated offer, rather than the lowest evaluated offer, resulting from negotiation.

SECTION 14. Amends Section 262.030(b), Local Government Code, to require that the award of the contract be made to the responsible offeror whose proposal is determined to be the lowest and best evaluated offer, rather than the lowest evaluated offer, resulting from negotiation, taking into consideration the relative importance of price and other evaluation factors set forth in the request for proposals.

SECTION 15. Amends Section 262.034(c), Local Government Code, to provide that a county officer or employee commits an offense if the officer or employee intentionally or knowingly violates this subchapter, other than by conduct described by Subsection (a) (relating to a county officer or employee committing an offense if the officer or employee intentionally or knowingly

makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements), rather than conduct described by Subsection (a) or (b) (relating to a county officer or employee committing an offense if the officer or employee intentionally or knowingly violates a certain statute, other than by conduct described by Subsection (a)).

SECTION 16. Amends Section 262.036(a), Local Government Code, to authorize a county, rather than a county with a population of 800,000 or more, notwithstanding any other provision in this chapter, to select an appropriately licensed insurance agent as the sole broker of record to obtain proposals and coverages for insurance that provides necessary coverage and adequate limits of coverage in all areas of risk, including public official liability, property, casualty, workers' compensation, and specific and aggregate stop-loss coverage for self-funded health care.

SECTION 17. Amends Subchapter C, Chapter 262, Local Government Code, by adding Section 262.037, as follows:

Sec. 262.037. QUALIFICATION. Prohibits an officer authorized to make a purchase on behalf of a county or a county department or office from making any purchase until providing to the county judge a signed acknowledgment that the officer has read and understands this chapter. Provides that this section does not apply in a county that has appointed a purchasing agent under Subchapter B (Purchasing Agents).

SECTION 18. Amends Section 271.029(c), Local Government Code, to provide that an officer or employee of a governmental entity commits an offense if the officer or employee intentionally or knowingly violates this subchapter, other than by conduct described by Subsection (a) (relating to an officer or employee of a governmental entity committing an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of the statute that requires a contract to be awarded on the basis of competitive bids, rather than conduct described by Subsection (a) or (b) (relating to an officer or employee of a governmental entity committing an offense if the officer or employee intentionally or knowingly violates the competitive bidding requirements of the statute that requires a contract to be awarded on the basis of competitive bids, other than by conduct described by Subsection (a)).

SECTION 19. Amends Section 271.042, Local Government Code, as follows:

Sec. 271.042. PURPOSE; CONFLICT. (a) Provides that it is the purpose of this subchapter to provide a procedure for certain financing that is an alternative to the more cumbersome procedure under Chapter 252 (Contracting and Purchasing Authority of Municipalities) or 262 (Contracting and Purchasing Authority of Counties), and a new class of securities to be issued and delivered within the financial capabilities of an issuer on compliance with the procedures prescribed by this subchapter.

(b) Provides that, if there is a conflict between a provision of this subchapter and a provision of Chapter 252 or 262, an issuer is authorized to use either provision, and it is not necessary for the governing body to designate the law under which action is being taken.

SECTION 20. Amends Section 271.064(c), Local Government Code, to provide that an officer or employee of an issuer commits an offense if the officer or employee intentionally or knowingly violates this subchapter, other than by conduct described by Subsection (a) (relating to an officer or employee of an issuer committing an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements), rather than conduct described by Subsection (a) or (b) (relating to an officer or employee of an issuer committing an offense if the officer or employee intentionally or knowingly violates certain statute, other than by conduct described by Subsection (a)).

SECTION 21. Amends Sections 271.181(2) and (6), Local Government Code, to redefine "civil works project" and "local governmental entity."

SECTION 22. Reenacts Section 271.182, Local Government Code, as amended by Chapters 135 (S.B. 1047) and 725 (S.B. 229), Acts of the 81st Legislature, Regular Session, 2009, and amends it as follows:

Sec. 271.182. APPLICABILITY. (a) Creates this subsection from existing text. Deletes existing Subsection (c) designation. Provides that this subchapter applies to certain entities, including a board of trustees under Chapter 54 (Harbor and Port Facilities in Certain Municipalities), Transportation Code.

(b) Creates this subsection from existing text. Redefines, for purposes of Subsection (a)(3), rather than this subchapter, "combined."

SECTION 23. Amends Sections 271.186(a) and (b), Local Government Code, as follows:

(a) Provides that, during the first four years that this subchapter applies to a local governmental entity under Section 271.182, certain actions may be taken, including that a local governmental entity with a population of 100,000 or more but less than 500,000 and a board of trustees under Chapter 54, Transportation Code, may, under this subchapter, enter into contracts for not more than two projects in any fiscal year.

(b) Authorizes certain actions, after the period described by Subsection (a), to be taken, including that a local governmental entity with a population of 100,000 or more but less than 500,000 and a board of trustees under Chapter 54, Transportation Code, may, under this subchapter, enter into contracts for not more than four projects in any fiscal year.

SECTION 24. Repealers: Sections 262.0271(a) (defining "comparable health insurance coverage"), 262.0295(a)(3) (relating to this section applying only to a county with a population of 125,000 or more), 262.034(b) (relating to a county officer or employee committing an offense if the officer or employee intentionally or knowingly violates certain statute, other than by conduct described by Subsection (a)), 262.035 (Removal; Ineligibility), 271.029(b) (relating to an officer or employee of a governmental entity committing an offense if the officer or employee intentionally or knowingly violates the competitive bidding requirements of the statute that requires a contract to be awarded on the basis of competitive bids, other than by conduct described by Subsection (a)), 271.030 (Removal; Ineligibility), 271.064(b) (relating to an officer or employee of an issuer committing an offense if the officer or employee intentionally or knowingly violates certain statute, other than by conduct described by Subsection (a)), and 271.065 (Removal; Ineligibility), Local Government Code.

SECTION 25. Makes application of the changes in law made by this Act to purchases made or a bid deadline prospective to September 1, 2011.

SECTION 26. (a) Makes application of the changes in law made by this Act to Sections 262.034, 271.029, and 271.064, Local Government Code, prospective.

(b) Provides that an offense committed before the effective date of this Act is covered by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 27. Provides that, to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 28. Effective date: September 1, 2011.