

## BILL ANALYSIS

Senate Research Center

S.B. 1544  
By: West, Royce  
S/C on Higher Education  
4/10/2005  
As Filed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Even though many of their operations are very different, junior and community colleges presently use the same purchasing statute as public schools. Unlike public schools, community colleges are in a very competitive environment for students and need to be able to promptly respond to the demands of the communities being served. Accordingly, to establish more relevant and efficient purchasing and contracting regulations, a new statute is needed specifically for junior and community colleges.

As proposed, S.B. 1544 establishes a purchasing and contracting statute expressly for junior and community colleges. S.B. 1544 incorporates many provisions of the public school statutes as well as selected provisions from governmental statutes.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the board of trustees of a junior or community college district in SECTION 6 (Section 130.305, Education Code) and SECTION 7 (130.404, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. SHORT TITLE. Authorizes this Act to be cited as the Public Junior College and Community College District Purchasing Act.

SECTION 2. Amends Section 44.0311, Education Code, as follows:

Sec. 44.0311. APPLICABILITY TO JUNIOR COLLEGE DISTRICTS. Provides that this subchapter does not apply to junior college districts.

SECTION 3. Amends Section 271.023, Local Government Code to provide that To the extent of any conflict, the provisions of Title 3, Higher Education, Subchapter K, Chapter 130, relating to the purchase of goods and services under contract by a junior college prevail over this subchapter.

SECTION 4. Amends [Section] 51.776 (2), Education Code to redefine "board."

SECTION 5. Amends Chapter 130, Education Code, by deleting Sections 130.010 and 130.0101.

SECTION 6. Amends Title 3, Education Code, by adding Subchapter K, Chapter 130.3, as follows:

#### CHAPTER 130.3. PURCHASING CONTRACTS OTHER THAN CONSTRUCTION

Sec. 130.301. DEFINITIONS. Defines "district," "board of trustees," "purchase of goods," "bidder," "vendor," and "services"

Sec. 130.302. Provides that to the extent of any conflict, this subchapter prevails over any other law relating to the purchasing of goods and services except a law relating to contracting with historically underutilized businesses.

Sec. 130.303. PURCHASING CONTRACTS METHODS. (a) Requires all contracts for the purchase of goods or services valued at \$25,000 or more in the aggregate for each twelve (12) month fiscal year or other permitted period, except as provided by this subchapter, to be made by one of certain methods that provides the best value for the public junior college or community district (district).

(b) Authorizes that only one of the methods listed in section 130.303(a) to be used for any individual contract and requires the district, prior to advertising as required in Section 130.306, to determine which method provides the best value for the district.

(c) Requires the district, when the method of contracting uses the competitive sealed proposal method, when the proposals are opened, to reveal the names of the companies submitting proposals, but authorizes the district, at its sole option, to keep the contents of the proposals confidential until concluding negotiations and award of a contract.

(d) Requires contracts for goods or services that will result in an income of \$25,000 or more during the term of the contract, to be solicited and awarded in the same manner as a purchase contract. Provides that such contracts include the sale of personal property.

(e) Authorizes a district to acquire insurance using a two step request for proposal process. Requires the first step to be to determine which insurance companies are represented by agents interested in providing insurance for the district. Requires the district, in the second step, to notify the agents as to which insurance companies the agents represent and submit offers for providing insurance. Requires the agent with the longest and largest relationship with the insurance company, if in the first step more than one agent indicates a desire to represent the same company, to be authorized to submit a proposal for the designated insurance company. Provides that when the notice of the request for proposal for insurance is published as required under Section 130.306, notice of the second step is not required to be advertised. Requires the interested parties to be given notice of the date, time and place where their proposals are to be submitted. Prohibits a proposal received after the date and time stated in the request for proposals from being considered.

(f) Authorizes a district, to purchase certain items or services that are available from only one source, without complying with Section 130.303(a).

(g) Authorizes a district to purchase advertising services, meeting and catering services, and travel services including airfare, ground transportation and lodging without complying with Section 103.303(a). Requires a district to exercise reasonable and prudent efforts to determine whether a contract with a company will provide the best value to the district. Requires the district to document the process for selecting the provider of said services including a list of companies contacted and the basis for selecting the provider. Requires any company that has provided written notice to the district that it is interested in being considered as a supplier of the subject services to be given the opportunity to make an offer to provide the services. Requires the district, after rating and ranking the offers, to attempt to negotiate a contract with the highest ranked company. Requires the next highest [ranked] company to be contacted, if a contract cannot be negotiated with the highest ranked company.

(h) Authorizes a district to purchase an item or service under certain contracts without complying with Section 103.303(a).

(i) Authorizes a district, where the Texas Building and Procurement Commission, an institution of higher education, as defined by Section 61.003(8) (Definitions), Education Code, or a Texas political subdivision, county, or municipality has entered into a contract with a company to provide goods or services other than

construction services, during the term of the contract, to purchase such goods or services, directly from the company if the company agrees to sell such goods or services to the district at the same or a lower cost stated in the contract. Requires purchases made under such contracts, provided that the original contract was awarded in compliance with the statutory requirements applicable to the governmental entity that awarded the contract, to satisfy the competitive bid requirements of this subchapter, provided the district's purchase order references the original contract and identifies the parties thereto.

Sec. 130.304. EVALUATION AND AWARDING CONTRACTS: (a) Requires a contract awarded by a district, except as provided by this subchapter, to be to the lowest responsible vendor offering the best value to the district according to the selection criteria that were established by the district. Requires the district to publish in the request for bids, proposals, or qualifications the criteria that will be used to evaluate the offer's [sic] and the relative weights given to the criteria that are known at the time of the publication.

(b) Authorizes the district to make certain considerations in determining the lowest responsible vendor to whom to award a contract,.

(c) Authorizes the district to reject all bids, proposals, or parts thereof if the rejection serves the district's interest.

(d) Requires the district, in the method used under Section 130.303(a), to provide all bidders with the opportunity to bid on the same items on equal terms and have bids judged according to the same standards as set forth in the specifications.

(e) Requires a district to receive bids under this subchapter in a fair and confidential manner.

(f) Authorizes bids to be opened only by the district at a public meeting in a district owned or controlled facility. Requires the name of the bidder and the total bid amount, at the time a competitive bid is opened, to be read out loud if a member of the public is present. Requires at least two district employees or trustees to be present at the bid opening. Requires that, when proposals or qualifications are opened, only the name of the respondents to be read and requires the district to avoid disclosing the contents of each proposal on opening the proposal and during negotiations with competing offerors.

(g) Prohibits a bid that has been opened from being changed for the purpose of correcting an error in the bid price.

(h) Provides that this subchapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

(i) Requires the district to document the basis of its selection and to make the evaluations public not later than the seventh day after the date the contract is awarded. Requires the district to state in writing in the contract file the reasons for making an award.

(j) Provides that a contract awarded in violation of this subchapter is void.

(k) Authorizes the state auditor to audit purchases of goods or services by the district.

(l) Provides that if a purchase is made at the campus level in a community college district with independently accredited colleges, and the district delegates purchasing decisions to the campus level, this section applies only to the campus and does not require the district to aggregate and jointly award purchasing contracts. Requires a district that adopts site-based purchasing under this subsection to adopt a policy to ensure that campus purchases achieve the best

value to the district and are not intended or used to avoid the requirement that a district aggregate purchases under Subsection (a).

(m) Provides that if district property is destroyed, stolen, or severely damaged or a building or equipment undergoes major operational or structural failure, or a contractor is unable to fulfill its obligations in providing goods or services, and the board of trustees determines that the delay posed by the methods provided for in this section would pose material threat to personal safety or potential damage to other property, or prevent or substantially impair the conduct of classes or other essential district activities, then contracts for the replacement or repair of the property may be made by methods other than those required by Section 103.303(a)[sic].

Sec. 130.305. RULES AND PROCEDURES ADOPTED BY A DISTRICT.

(a) Authorizes the board of trustees of the district to adopt rules and procedures for the acquisition of goods or services.

(b) Requires the rules and procedures, to increase efficiency of operations must include a requirement for the district to purchase like goods or services on a scheduled basis, except as provided in this subchapter.

(c) Authorizes contracts for the purchase of goods, to achieve efficiencies of operations, to cover a period of up to three years and contracts for the purchase of services to cover a term of up to five years. Requires such multi-year contracts to include a provision that permits termination at the end on [sic] each fiscal year.

Sec. 130.306. NOTICES. (a) Requires notice of the time by when and place where the bids will be received and opened to be published in the county in which the district's central administrative office is located, in at least two successive issues of any newspaper of general circulation in the county in which the district is located. Prohibits the deadline for receiving bids, proposals, or responses to a request for qualifications from being less than ten (10) business days after the date of the last newspaper notice. Requires the advertising, if there is not a newspaper in that county, to be published in a newspaper in the county nearest the county seat of the county in which the district's central administrative office is located. Provides that in a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately.

(b) Authorizes the district, as an alternative to publishing individual notices in a newspaper, provided at least one time per week the district publishes in a newspaper of general circulation the Internet address where notices may be found, to publish on a public [sic] accessible Internet site, notice of bids, proposals, or responses to a request for qualifications. Requires such publication to be posted every day for at least ten (10) business days prior to the deadline.

(c) Requires the notice to include the date, time and place for receiving bids, proposals or request for qualifications, a description of the goods or services, any mandatory site inspections or pre-bid meetings, where bid, proposal or qualification documents may be obtained or examined, and any required bid bond, payment bond, or performance bond.

Sec. 130.307. DISCUSSION AND REVISION OF PROPOSALS. (a) Authorizes the district, as provided in a request for proposals and under rules adopted by a district, to discuss acceptable or potentially acceptable proposals with offerors to assess an offeror's ability to meet the solicitation requirements.

(b) Authorizes the district, after receiving a proposal but before making an award, to permit the offeror to revise the proposal to obtain the best final offer.

(c) Prohibits the district from disclosing information derived from proposals submitted from competing offerors in conducting discussions under this section.

(d) Requires the district to provide each offeror an equal opportunity to discuss and revise proposals.

Sec. 130.308. PRE-BID CONFERENCE. (a) Authorizes the district to require a principal, officer, or employee of each prospective bidder to attend a mandatory pre-bid conference conducted for the purpose of discussing contract requirements and answering questions of prospective bidders. Requires notice under this subsection to be included in the notice published under Section 130.306.

(b) Authorizes any additional required notice for the proposed contract, after a mandatory pre-bid conference is conducted, to be sent only to prospective bidders who attended the conference.

Sec. 130.309. TIE BIDS. (a) [sic] Requires a contract, in the case of tie bids with all factors being equal, to be awarded under rules established by the board of trustees.

(b) Bill as drafted does not contain a Subsection (b).

Sec. 130.310. BID DEPOSIT. (a) Authorizes the district, as considered necessary, to require a bid deposit in an amount determined by the district. Requires the amount of the deposit, if any, to be stated in the public notice and the invitation to bid.

(b) Requires the district, on the award of a bid or the rejection of all bids, to refund the bid deposit of an unsuccessful bidder.

(c) Authorizes the bid deposit required by the district, if any, for public work contracts, to only be in the in the form of a bid bond written by a surety authorized to conduct business in this state.

Sec. 130.310. [sic] PERFORMANCE BOND FOR CONTRACTS OTHER THAN CONSTRUCTION. (a) [sic] Authorizes the district to require a contractor to provide a performance bond in the amount of the contract before executing a contract for the purchase goods or services with a value of \$100,000 or more. Requires the bond to be written by a surety authorized to conduct business in this state.

(b) Bill as drafted does not contain a Subsection (b).

Sec. 130.311. DELEGATION. (a) Authorizes the board of trustees of a district, as appropriate, to delegate its authority under this subchapter regarding an action authorized or required by this subchapter to be taken by a district to a designated person, representative, or committee. Requires the district to provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications or in an addendum to the request. Provides that if the district fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications other than by the board of trustees in an open public meeting is advisory only.

(b) Prohibits the board from delegating the authority to act regarding an action authorized or required by this subchapter to be taken by the board of trustees of a district.

Sec. 130.312. ENFORCEMENT OF PURCHASE PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY. (a) Defines "component purchases," "separate purchases," and "sequential purchases."

(b) Provides that an officer, employee, or agent of a district commits an offense if the person with criminal negligence makes or authorizes separate, sequential, or component purchases to avoid the requirements of Sections 130.303 or 130.304. Provides that an offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude.

(c) Provides that an officer, employee, or agent of a district commits an offense if the person with criminal negligence violates Sections 130.303 or 130.304 other than by conduct described by Subsection (b). Provides that an offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude.

(d) Provides that an officer or employee of a district commits an offense if the officer or employee knowingly violates Section 130.010, other than by conduct described by Subsection (b) or (c). Provides that an offense under this subsection is a Class C misdemeanor.

(e) Provides that the final conviction of a person other than a trustee of a district for an offense under Subsection (b) or (c) results in the immediate removal from office or employment of that person. Provides that a trustee who is convicted of an offense under this section is considered to have committed official misconduct for purposes of Chapter 87 (Removal of County Officers From Office; Filling Vacancies), Local Government Code, and is subject to removal as provided by that chapter and Section 24, Article V, Texas Constitution. Provides that for four years after the date of the final conviction, the removed person is ineligible to be a candidate for or to be appointed or elected to a public office in this state, is ineligible to be employed by or act as an agent for the state or a political subdivision of the state, and is ineligible to receive any compensation through a contract with the state or a political subdivision of the state. Provides that this subsection does not prohibit the payment of retirement benefits to the removed person or the payment of workers' compensation benefits to the removed person for an injury that occurred before the commission of the offense for which the person was removed. Provides that this subsection does not make a person ineligible for an office for which the federal or state constitution prescribes exclusive eligibility requirements.

(f) Authorizes a court to enjoin performance of a contract made in violation of this subchapter. Provides that a county attorney, a district attorney, a criminal district attorney, a citizen of the county in which the district is located, or any interested party to bring an action for an injunction. Entitles a party who prevails in an action brought under this subsection to reasonable attorney's fees as approved by the court.

Sec. 130.313. MISCELLANEOUS COMMODITY PURCHASES. (a) Requires this section to apply to the purchase of tangible personal property, including produce, gasoline and fuel oil where the price of the commodity must be determined at the time the need arises. Requires this section to also apply to services other than construction services job order contracts.

(b) Requires the notice requirements under Section 130.306 to apply to this section. Requires the notices to specify the categories of personal property or services to be purchased under this section and soliciting the names, addresses, and telephone numbers of vendors that are interested in supplying any of the categories to the district. Requires the district, for each category, to create a vendor list consisting of each qualified vendor that responds to the published notice and any additional vendors the district elects to include.

(c) Requires the district, before the district makes a purchase from a category of personal property or service, to obtain written or telephone price quotations from at least three vendors from the list for that category. Requires the district, if fewer than three vendors are on the list, to contact each vendor on the list. Requires that, whenever possible, telephone quotes be confirmed in writing, including email or facsimile. Requires the bidding records to be retained with the district's competitive bidding records and are subject to audit. Authorizes the district, in determining from whom to purchase the products or services, to consider the provisions of Section 130.304.

Sec. 130.314. NOTIFICATION OF CRIMINAL HISTORY OF CONTRACTOR.

(a) Requires a person or business entity that enters into a contract with a district to give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. Requires the notice to include a general description of the conduct resulting in the conviction of a felony.

(b) Authorizes the district to terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. Requires the district to compensate the person or business entity for services performed before the termination of the contract.

(c) Provides that this section does not apply to a publicly held corporation.

SECTION 7. Amends Title 3, Education Code, by adding Subchapter L, Chapter 130.4, as follows:

CHAPTER 130.4. CONSTRUCTION CONTRACTS

Sec. 130.401. DEFINITIONS. Defines "district," "board of trustees," "construction," "architect," "engineer," "bidder," "vendor," "contractor," "facility," "fee," and "general conditions."

Sec. 130.402. METHODS OF CONSTRUCTION CONTRACTING. (a) Requires all contracts for construction valued at \$25,000 or more in the aggregate, except as provided by this subchapter, to be made by certain methods that provide the best value for the district.

(b) Authorizes the district to use only one of the methods listed in Section 130.402(a) for any individual contract and requires the district, prior to advertising as required in Section 130.306, to determine which method provides the best value for the district.

(c) Requires the district, when the method of contracting uses the competitive sealed proposal method, when the proposals are opened, to reveal the names of the companies submitting proposals, but authorizes the district at its sole option, to keep the contents of the proposals confidential until concluding negotiations and award of a contract.

(d) Requires job order contracts that will or may result in spending \$25,000 or more with a contractor or to the district during the term of the contract to be solicited and awarded in the same manner as a purchase contract.

(e) Provides that this section does not apply to a contract for consultants or professional services rendered, including services of an architect, engineer, auditor, accountant, attorney, or fiscal agent. Authorizes a district to contract for other professional services and consultants in the manner provided by Section 2254.003 (Selection of Provider; Fees), Government Code, or [Section] 130.3, Education Code.

(f) Requires the district in the method used under Section 130.402(a), to provide all bidders with the opportunity to bid on the same items on equal terms and have bids judged according to the same standards as set forth in the specifications.

(g) Requires a district to receive bids under this subchapter in a fair and confidential manner.

(h) Authorizes bids to be opened only by the district at a public meeting in a district owned or controlled facility. Requires the name of the bidder and the total bid amount, at the time a competitive bid is opened, to be read out loud if a member of the public is present. Requires at least two district employees or

trustees to be present at the bid opening. Requires only the name of the respondents to be read when proposals or qualifications are opened, and requires the district to avoid disclosing the contents of each proposal on opening the proposal and during negotiations with competing offerors.

(i) Prohibits a bid that has been opened from being changed for the purpose of correcting an error in the bid price.

(j) Provides that this subchapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

(k) Authorizes the state auditor to audit purchases of goods or services by the district.

Sec. 130.403. EVALUATION AND AWARDED CONTRACTS. (a) Requires a contract awarded by a district, except as provided by this subchapter, to be to the lowest responsible vendor offering the best value to the district according to the selection criteria that were established by the district. Requires the district to publish in the request for bids, proposals, or qualifications the criteria that will be used to evaluate the offer's [sic] and the relative weights given to the criteria that are known at the time of the publication.

(b) Authorizes the district to make certain considerations in determining the lowest responsible bidder to whom to award a contract.

(c) Authorizes a district to reject all bids, proposals, qualifications or parts thereof if the rejection serves the district's interest.

(d) Requires the district to document the basis of its selection and to make the evaluations public not later than the seventh day after the date the contract is awarded. Requires the district to state in writing in the contract file the reasons for making an award.

(e) Provides that a contract awarded in violation of this subchapter is void.

(f) Authorizes contracts for the replacement or repair of the property, if district property is destroyed, stolen or severely damaged or a building or equipment, undergoes major operational or structural failure, or a contractor is unable to fulfill its obligations in providing goods or services, and the board of trustees determines that the delay posed by the methods provided for in Section 103.402(a) would pose material threat to personal safety or potential damage to other property, prevent or substantially impair the conduct of classes or other essential district activities, to then be made by methods other than those required by Section 103.402(a) [sic].

Sec. 130.404. RULES AND PROCEDURES ADOPTED BY A DISTRICT. (a) [sic] Authorizes the board of trustees of the district to adopt rules and procedures for the acquisition of construction services.

(b) Bill as drafted does not contain a Subsection (b).

Sec. 130.405. NOTICES (a) Requires notice of the time by when and place where the bids, proposals or the responses to a request for qualifications will be received and opened, except as provided in this subchapter, for the method of contracting selected under section 130.402(a), to be published in the county in which the district's central administrative office is located, in at least two successive issues of any newspaper of general circulation in the county in which the district is located. Requires the deadline for receiving bids, proposals, or responses to a request for qualifications to not be less than ten (10) business days after the date of the last newspaper notice. Requires the advertising, if there is not a newspaper in that county, to be published in a newspaper in the county nearest the county seat of the county in which the district's central administrative office is located. Provides that in a two-step procurement process, the



time and place where the second-step bids, proposals, or responses will be received are not required to be published separately.

(b) Authorizes the district, as an alternative to publishing individual notices in a newspaper, provided at least one time per week the district publishes in a newspaper of general circulation the Internet address where notices may be found, to publish on a public [sic] accessible Internet site, notice of bids, proposals, or responses to a request for qualifications. Requires such publication to be posted every day for at least ten (10) business days prior to the deadline.

(c) Requires the notice to include the date, time and place for receiving bids, proposals or request for qualifications, a description of the goods or services, any mandatory site inspections or pre-bid meetings, where bid, proposal or qualification documents may be obtained or examined, and any required bid bond, payment bond or performance bond.

Sec. 130.406. DISCUSSION AND REVISION OF PROPOSALS. (a) Authorizes the district, as provided in a request for proposals and under rules adopted by a district, to discuss acceptable or potentially acceptable proposals with offerors to assess an offeror's ability to meet the solicitation requirements.

(b) Authorizes the district, after receiving a proposal but before making an award, to permit the offeror to revise the proposal to obtain the best final offer.

(c) Prohibits the district from disclosing information derived from proposals submitted from competing offerors in conducting discussions under this section.

(d) Requires the district to provide each offeror an equal opportunity to discuss and revise proposals.

Sec. 130.407. PRE-BID CONFERENCE. (a) Authorizes the district to require a principal, officer, or employee of each prospective bidder to attend a mandatory pre-bid conference conducted for the purpose of discussing contract requirements and answering questions of prospective bidders. Requires notice under this subsection to be included in the notice published under Section 130.405.

(b) Authorizes any additional required notice for the proposed contract, after a mandatory pre-bid conference is conducted, to be sent only to prospective bidders who attended the conference.

Sec. 130.408. TIE BIDS. (a) [sic] Requires a contract, in the case of tie bids with all factors being equal, to be awarded under rules established by the board of trustees.

(b) Bill as drafted does not contain a Subsection (b).

Sec. 130.409. BID DEPOSIT. (a) Authorizes the district, as considered necessary, to require a bid deposit in an amount determined by the district. Requires the amount of the deposit, if any, to be stated in the public notice and the invitation to bid.

(b) Requires the district, on the award of a bid or the rejection of all bids, to refund the bid deposit of an unsuccessful bidder.

(c) Authorizes the bid deposit required by the district, if any, for public work contracts, to only be in the form of a bid bond written by a surety authorized to conduct business in this state.

Sec. 130.410. PERFORMANCE AND PAYMENT BONDS FOR CONSTRUCTION. (a) [sic] Authorizes the district to require a contractor to provide a performance bond in the amount of the contract before executing a contract for the purchase goods or services with a value of \$100,000 or more. Requires the bond to be written by a surety authorized to conduct business in this state.

(b) Bill as drafted does not contain a Subsection (b).

Sec. 130.411. DELEGATION. (a) Authorizes the board of trustees of a district, as appropriate, to delegate its authority under this subchapter regarding an action authorized or required by this subchapter to be taken by a district to a designated person, representative, or committee. Requires the district to provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications or in an addendum to the request. Provides that if the district fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications other than by the board of trustees in an open public meeting is advisory only.

(b) Prohibits the board from delegating its the authority to act regarding an action authorized or required by this subchapter to be taken by the board of trustees of a district.

Sec. 130.412. ENFORCEMENT OF PURCHASE PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY. (a) Defines "component purchases," "separate purchases," and "sequential purchases"

(b) Provides that an officer, employee, or agent of a district commits an offense if the person with criminal negligence makes or authorizes separate, sequential, or component purchases to avoid the requirements of Sections 130.011(a) or (b). Provides that an offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude.

(c) Provides that an officer, employee, or agent of a district commits an offense if the person with criminal negligence violates Sections 130.011(a) or (b) other than by conduct described by Subsection (b). Provides an offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude.

(d) Provides that an officer or employee of a district commits an offense if the officer or employee knowingly violates Section 130.010, other than by conduct described by Subsection (b) or (c). Provides that an offense under this subsection is a Class C misdemeanor.

(e) Provides that the final conviction of a person other than a trustee of a district for an offense under Subsection (b) or (c) results in the immediate removal from office or employment of that person. Provides that a trustee who is convicted of an offense under this section is considered to have committed official misconduct for purposes of Chapter 87 (Removal of County Officers From Office; Filling Vacancies), Local Government Code, and is subject to removal as provided by that chapter and Section 24, Article V, Texas Constitution. Provides that for four years after the date of the final conviction, the removed person is ineligible to be a candidate for or to be appointed or elected to a public office in this state, is ineligible to be employed by or act as an agent for the state or a political subdivision of the state, and is ineligible to receive any compensation through a contract with the state or a political subdivision of the state. Provides that this subsection does not prohibit the payment of retirement benefits to the removed person or the payment of workers' compensation benefits to the removed person for an injury that occurred before the commission of the offense for which the person was removed. Provides that this subsection does not make a person ineligible for an office for which the federal or state constitution prescribes exclusive eligibility requirements.

(f) Authorizes a court to enjoin performance of a contract made in violation of this subchapter. Authorizes a county attorney, a district attorney, a criminal district attorney, a citizen of the county in which the district is located, or any interested party to bring an action for an injunction. Entitles a party who prevails in an action brought under this subsection to reasonable attorney's fees as approved by the court.

Sec. 130.413. NOTIFICATION OF CRIMINAL HISTORY OF CONTRACTOR.

(a) Requires a person or business entity that enters into a contract with a district to give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. Requires the notice to include a general description of the conduct resulting in the conviction of a felony.

(b) Authorizes a district to terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. Requires the district to compensate the person or business entity for services performed before the termination of the contract.

(c) Provides that this section does not apply to a publicly held corporation.

Sec. 130.414. CHANGE ORDERS. (a) Authorizes a district, after performance of a construction contract begins, to approve change orders if necessary to: make changes in plans or specifications; or decrease or increase the quantity of work to be performed or materials, equipment, or supplies to be furnished.

(b) Prohibits the total price of a contract from being increased by a change order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures. Prohibits the original contract price from being increased by more than 25 percent. Prohibits the original price from being decreased by more than 25 percent without the consent of the contractor.

Sec. 130.415. ERRORS & OMISSION INSURANCE. (a) [sic] Requires the architect or engineer that prepared the plans and specification for the public work, for any public work contract awarded under this subchapter, to protect the interest of the district, at its expense, to carry errors and omissions insurance in an amount not less than the amount of the public work contract.

(b) Bill as drafted does not contain a Subsection (b).

Sec. 130.416. DESIGN-BUILD CONTRACTS FOR FACILITIES. (a) Defines "design-build contract," "design-build firm," and "design criteria package."

(b) Authorizes a district to use the design-build method for the construction, rehabilitation, alteration, or repair of a facility. Requires the contracting district and the design-build firm, in using that method and in entering into a contract for the services of a design-build firm, to follow the procedures provided by Subsections (c)-(j).

(c) Authorizes the district to designate an engineer or architect to act as its representative. Requires any engineer or architect designated, if the district's engineer or architect is not a full-time employee of the district, to be selected on the basis of demonstrated competence and qualifications in accordance with Subchapter A, Chapter 2254, Government Code.

(d) Requires the district to prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. Requires the district to also prepare the design criteria package that includes more detailed information on the project. Requires that, if the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of The Texas Engineering Practice Act (Article 3271a, V. T. C. S.) or the practice of architecture within the meaning of Chapter 478, Acts of

the 45th Legislature, Regular Session, 1937 (Article 249a, V. T. C. S.), those services are to be provided in accordance with the applicable law.

(e) Requires the district to evaluate statements of qualifications and select a design-build firm in two phases:

(1) Requires the district, in phase one, to prepare a request for qualifications and evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Requires each offeror to certify to the district that each engineer or architect that is a member of its team was selected based on demonstrated competence and qualifications. Requires the district to qualify a maximum of five offerors to submit additional information and, if the district chooses, to interview for final selection.

(2) , Requires the district, in phase two, to evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of any interview. Authorizes the district to request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, costing methodology, or other factors as appropriate. Prohibits the district from requiring offerors to submit detailed engineering or architectural designs as part of the proposal. Requires the district to rank each proposal submitted on the basis of the criteria set forth in the request for qualifications. Requires the district to select the design-build firm that submits the proposal offering the best value for the district on the basis of the published selection criteria and on its ranking evaluations. Requires the district to first attempt to negotiate with the selected offeror a contract. Requires the district, if the district is unable to negotiate a satisfactory contract with the selected offeror, formally and in writing, to end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(f) Requires that firm's engineers or architects, following selection of a design-build firm under Subsection (e), to complete the design, submitting all design elements for review and determination of scope compliance to the district or district's engineer or architect before or concurrently with construction.

(g) Requires an engineer to have responsibility for compliance with the engineering design requirements and all other applicable requirements of The Texas Engineering Practice Act (Article 3271a, V. T. C. S.). Requires an architect to have responsibility for compliance with the requirements of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, V. T. C. S.).

(h) Requires the district to provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the district. Requires the district to select those services for which it contracts in accordance with Section 2254.004, Government Code.

(i) Requires the design-build firm to supply a signed and sealed set of construction documents for the project to the district at the conclusion of construction.

(j) Provides that a payment or performance bond is not required for, and prohibits it from providing coverage for, the portion of a design-build contract under this section that includes design services only. Requires the penal sums of the performance and payment bonds delivered to the district, if a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, to each be in an amount equal to the project budget, as specified in the design criteria package. Requires the design-build firm to deliver the bonds not later than the 10th day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the district to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Sec. 130.417. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT. (a) Authorizes a district to use the construction manager-agent method for the construction, rehabilitation, alteration, or repair of a facility. Requires a district, in using that method and in entering into a contract for the services of a construction manager-agent, to follow the procedures prescribed by this section.

(b) Provides that a construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that provides consultation to the district regarding construction, rehabilitation, alteration, or repair of the facility. Authorizes a district using the construction manager-agent method to require, under the contract between the district and the construction manager-agent, the construction manager-agent to provide administrative personnel, equipment necessary to perform duties under this section, and on-site management and other services specified in the contract. Provides that a construction manager-agent represents the district in a fiduciary capacity.

(c) Requires the district, before or concurrently with selecting a construction manager-agent, to select or designate an engineer or architect who is required to prepare the construction documents for the project and who has full responsibility for complying with The Texas Engineering Practice Act (Article 3271a, V. T. C. S.) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, V. T. C. S.), as applicable. Requires the district, if the engineer or architect is not a full-time employee of the district, to select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. Prohibits the district's engineer or architect from serving, alone or in combination with another person, as the construction manager-agent unless the engineer or architect is hired to serve as the construction manager-agent under a separate or concurrent procurement conducted in accordance with this subchapter. Provides that this subsection does not prohibit the district's engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

(d) Requires a district to select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner as provided for the selection of engineers or architects under Section 2254.004, Government Code.

(e) Requires a district using the construction manager-agent method to procure, in accordance with applicable law and in any manner authorized by this chapter, a general contractor, trade contractors, or subcontractors who will serve as the prime contractor for their specific portion of the work.

(f) Requires the district or the construction manager-agent to procure in accordance with Section 2254.004, Government Code, all of the testing of construction materials engineering, the inspection services, and the verification testing services necessary for acceptance of the facility by the district.

Sec. 130.418. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK. (a) Authorizes a district to use the construction manager-at-risk method for the construction, rehabilitation, alteration, or repair of a facility. Requires the district in using that method and in entering into a contract for the services of a construction manager-at-risk, to follow the procedures prescribed by this section.

(b) Provides that a construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the district regarding construction during and after the design of the facility.

(c) Requires the district, before or concurrently with selecting a construction manager-at-risk, to select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with The Texas Engineering Practice Act (Article 3271a, V. T. C. S.) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, V. T. C. S.), as applicable. Requires the district, if the engineer or architect is not a full-time employee of the district, to select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. Prohibits the district's engineer, architect, or construction manager-agent for a project from serving, alone or in combination with another, as the construction manager-at-risk.

(d) Requires the district to provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the district. Requires the district to select those services for which it contracts in accordance with Section 2254.004, Government Code.

(e) Requires the district to select the construction manager-at-risk in either a one-step or two-step process. Requires the district to prepare a request for proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes general information on the project site, project scope, schedule, selection criteria, estimated budget, and the time and place for receipt of proposals or qualifications, as applicable, a statement as to whether the selection process is a one-step or two-step process, and other information that may assist the district in its selection of a construction manager-at-risk. Requires the district to state the selection criteria in the request for proposals or qualifications, as applicable. Authorizes the selection criteria to include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. Authorizes the district, if a one-step process is used, to request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. Prohibits the district, if a two-step process is used, from requesting fees or prices in step one. Authorizes that district, in step two, to request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions.

(f) Requires the district, at each step, to receive, publicly open, and read aloud the names of the offerors. Requires the district, at the appropriate step, to also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened. Requires the district, within 45 days after the date of opening the proposals, to evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

(g) Requires the district to select the offeror that submits the proposal that offers the best value for the district based on the published selection criteria and on its ranking evaluation. Requires the district to first attempt to negotiate with the

selected offeror a contract. Requires the district, if the district is unable to negotiate a satisfactory contract with the selected offeror, formally and in writing, to end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(h) Requires a construction manager-at-risk to publicly advertise, in accordance with Section 130.405, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. Authorizes a construction manager-at-risk to seek to perform portions of the work itself if the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the district determines that the construction manager-at-risk's bid or proposal provides the best value for the district.

(i) Requires the construction manager-at-risk and the district or its representative to review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or district. Requires all bids or proposals to be made public after the award of the contract or within seven days after the date of final selection of bids or proposals, whichever is later.

(j) Requires the district, if the construction manager-at-risk reviews, evaluates, and recommends to the district a bid or proposal from a trade contractor or subcontractor but the district requires another bid or proposal to be accepted, to compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk may incur because of the district's requirement that another bid or proposal be accepted.

(k) Authorizes the construction manager-at-risk, if a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this section, without advertising, to itself fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

(l) Requires that, if a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the district to each be in an amount equal to the project budget, as specified in the request for qualifications. Requires the construction manager to deliver the bonds not later than the 10th day after the date the construction manager executes the contract unless the construction manager furnishes a bid bond or other financial security acceptable to the district to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Sec. 130.419. SELECTING CONTRACTOR FOR CONSTRUCTION PURPOSES THROUGH COMPETITIVE SEALED PROPOSALS. (a) Requires a district, in selecting a contractor for construction, rehabilitation, alteration, or repair services for a facility through competitive sealed proposals, to follow the procedures prescribed by this section.

(b) Requires the district to select or designate an engineer or architect to prepare construction documents for the project. Provides that the selected or designated engineer or architect has full responsibility for complying with The Texas Engineering Practice Act (Article 3271a, V. T. C. S.) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, V. T. C. S.), as applicable. Requires the district, if the engineer or architect is not a full-time employee of the district, to select the engineer or architect on the basis of demonstrated

competence and qualifications as provided by Section 2254.004, Government Code.

(c) Requires the district to provide or contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the district. Requires the district to select those services for which it contracts in accordance with Section 2254.004, Government Code, and to identify them in the request for proposals.

(d) Requires the district to prepare a request for competitive sealed proposals that includes construction documents, selection criteria, estimated budget, project scope, schedule, and other information that contractors may require to respond to the request.

(e) Requires the district to receive, publicly open, and read aloud the names of the offerors and if any are required to be stated, all prices stated in each proposal. Requires the district, within 45 days after the date of opening the proposals, to evaluate and rank each proposal submitted in relation to the published selection criteria.

(f) Requires the district to first attempt to negotiate a contract with the selected offeror. Authorizes the district and its engineer or architect to discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. Requires the district, if it is unable to negotiate a contract with the selected offeror, to formally and in writing end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

Sec. 130.420. SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES THROUGH COMPETITIVE BIDDING. (a) [sic] Authorizes a district, except to the extent prohibited by other law and to the extent consistent with this subchapter, to use competitive bidding to select a contractor to perform construction, rehabilitation, alteration, or repair services for a facility.

(b) Bill as drafted does not contain a Subsection (b).

Sec. 130.421. JOB ORDER CONTRACTS FOR CONSTRUCTION SERVICES. (a) Authorizes a district to award job order contracts for the minor construction, repair, rehabilitation, or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks.

(b) Authorizes the district to establish contractual unit prices for a job order contract by certain methods

(c) Requires the district to advertise for, receive, and publicly open sealed proposals for job order contracts.

(d) Authorizes the district to require offerors to submit additional information besides rates, including experience, past performance, and proposed personnel and methodology.

(e) Authorizes the district to award job order contracts to one or more job order contractors in connection with each solicitation of bids or proposals.

(f) Requires an order for a job or project under the job order contract to be signed by the district's representative and the contractor. Authorizes the order to be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities or to be a unit price order based on the quantities and line items delivered.



(g) Requires the contractor to provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

(h) Provides that the base term of a job order contract is for the period and with any renewal option that the district sets forth in the request for proposals. Prohibits the base term, if the district fails to advertise that term, from exceeding two years and is not renewable without further advertisement and solicitation of proposals.

(i) Requires those services, if a job order contract or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering within the meaning of The Texas Engineering Practice Act (Article 3271a, V. T. C. S.) or the practice of architecture within the meaning of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, V. T. C. S.), to be provided in accordance with applicable law.

SECTION 8. Amends Title 3, , Education Code, by adding, Subchapter M, Chapter 130.5, as follows:

#### CHAPTER 130.5. HISTORICALLY UNDERUTILIZED BUSINESSES

Sec. 130.501. Requires a district located in a county with a population of one million or more, on an annual basis, to prepare a plan stating their [sic] objectives and methods to be used to achieve their [sic] objectives regarding purchases to be made from historically underutilized businesses as defined under the Texas Government Code.

Sec. 130.502. Requires the district, on an annual basis, to publish a report that shows the extent to which contracts awarded to historically underutilized businesses compare to the total contracts awarded. Requires the report to be published in a newspaper of general circulation in the county where the district is located within sixty days following the end of the district's fiscal year.

SECTION 9. Effective date: September 1, 2005