

1-1 By: Coleman (Senate Sponsor - West) H.B. No. 3487  
1-2 (In the Senate - Received from the House May 6, 2009;  
1-3 May 7, 2009, read first time and referred to Committee on  
1-4 Intergovernmental Relations; May 18, 2009, reported adversely,  
1-5 with favorable Committee Substitute by the following vote: Yeas 5,  
1-6 Nays 0; May 18, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3487 By: West

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the purchasing and contracting authority of counties;  
1-11 providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 262.002, Local Government Code, is  
1-14 amended to read as follows:

1-15 Sec. 262.002. AUTHORITY TO COOPERATIVELY PURCHASE GOODS  
1-16 [ROAD EQUIPMENT] AND SERVICES [TIRES THROUGH COMPTROLLER]. (a) A  
1-17 county may purchase an item through a cooperative purchasing  
1-18 program. The program must use a competitive bidding procedure if  
1-19 the item is otherwise required by law to be purchased through a  
1-20 competitive bidding procedure. [The commissioners court of a county  
1-21 may purchase through the comptroller road machinery and equipment,  
1-22 tires, and tubes to be used by the county.]

1-23 (b) A county may purchase an item according to a competitive  
1-24 bidding procedure promulgated by an authorized state agency if the  
1-25 item is otherwise required by law to be purchased through a  
1-26 competitive bidding procedure. [The commission must purchase an  
1-27 item under this section on competitive bids and in accordance with  
1-28 any rules of the commission.]

1-29 (c) A county may purchase an item cooperatively through an  
1-30 interlocal agreement. The agreement must provide for a competitive  
1-31 bidding procedure if the item is otherwise required by law to be  
1-32 purchased through a competitive bidding procedure. [A purchase  
1-33 under this section must be made on the requisition of the  
1-34 commissioners court. When the court sends the requisition to the  
1-35 commission, the court must include with the requisition a general  
1-36 description of the item desired and a certification of the funds  
1-37 available to pay for the item.]

1-38 (d) A cooperative purchase under this section does not  
1-39 violate competitive bidding statutes. [The commission may adopt  
1-40 rules to carry out the purpose of this section.]

1-41 SECTION 2. Section 262.003, Local Government Code, is  
1-42 amended to read as follows:

1-43 Sec. 262.003. SMALL, SOLE-SOURCE PURCHASE EXEMPT FROM  
1-44 COMPETITIVE BIDDING. [(a) Any law that requires a county to follow  
1-45 a competitive bidding procedure in making a purchase requiring the  
1-46 expenditure of \$25,000 or less does not apply to the purchase of an  
1-47 item available for purchase from only one supplier.

1-48 [(b)] If a county makes a sole-source purchase as described  
1-49 by Section 262.024(a)(7) [covered by Subsection (a)], the county  
1-50 auditor or other appropriate county officer or employee may not  
1-51 refuse payment for the purchase because a competitive bidding  
1-52 procedure was not followed.

1-53 SECTION 3. Section 262.011, Local Government Code, is  
1-54 amended by amending Subsections (f), (g), (k), (m), and (o) and  
1-55 adding Subsection (q) to read as follows:

1-56 (f) A purchase made by the county purchasing agent shall be  
1-57 paid for by an electronic transfer, check, or [a] warrant drawn by  
1-58 the county auditor on funds in the county treasury in the manner  
1-59 provided by law. The county auditor may not draw and the county  
1-60 treasurer may not honor an electronic transfer, check, or [a]  
1-61 warrant for a purchase unless the purchase is made by the county  
1-62 purchasing agent or on competitive bid as provided by law.

1-63 (g) The county purchasing agent may cooperate with the

2-1 purchasing agent of a municipality in the county to purchase any  
 2-2 item in volume as may be necessary. The county treasurer shall  
 2-3 honor an electronic transfer, check, or [a] warrant drawn by the  
 2-4 county auditor to reimburse the municipality's purchasing agent  
 2-5 making the purchase for the county.

2-6 (k) The board that appoints the county purchasing agent  
 2-7 shall set the salary of the agent in an amount not less than \$5,000 a  
 2-8 year, payable in equal monthly installments or by any other  
 2-9 distribution at the option of the county. The salary shall be paid  
 2-10 by an electronic transfer, check, or warrant [~~warrants~~] drawn on  
 2-11 funds in the county treasury.

2-12 (m) A person, including an officer, agent, or employee of a  
 2-13 county or of a subdivision or department of a county, commits an  
 2-14 offense if the person violates this section. An offense under this  
 2-15 subsection is a misdemeanor punishable by a fine of not less than  
 2-16 \$10 or more than \$100 [~~, by confinement in the county jail for not~~  
 2-17 ~~less than 30 days or more than one year, or by both the fine and~~  
 2-18 ~~confinement~~]. Each act in violation of this section is a separate  
 2-19 offense.

2-20 (o) The county purchasing agent shall adopt the rules and  
 2-21 procedures necessary to implement the agent's duties under this  
 2-22 section subject to approval by the commissioners court.  
 2-23 Notwithstanding Subsection (f) or other law, rules and procedures  
 2-24 adopted under this subsection may include rules and procedures for  
 2-25 persons to use county purchasing cards to pay for county purchases  
 2-26 under the direction and supervision of the county purchasing agent.  
 2-27 Procedures for use of purchasing cards may not avoid the  
 2-28 competitive bidding requirements of this chapter or other  
 2-29 requirements of county financial law.

2-30 (q) An electronic transfer under this chapter must provide  
 2-31 the same level of internal controls and statutory authorizations as  
 2-32 required for a check or warrant.

2-33 SECTION 4. Sections 262.0115(d) and (e), Local Government  
 2-34 Code, are amended to read as follows:

2-35 (d) Under the supervision of the commissioners court, the  
 2-36 purchasing agent shall carry out the functions prescribed by law  
 2-37 for a purchasing agent under Section 262.011 and for any  
 2-38 ministerial function of the county auditor in regard to county  
 2-39 purchases and contracts and shall administer the procedures  
 2-40 prescribed by law for notice and public bidding for county  
 2-41 purchases and contracts.

2-42 (e) A county that has established the position of county  
 2-43 purchasing agent under this section may abolish the position at any  
 2-44 time. On the abolition of the position, the county auditor shall  
 2-45 assume the rights and responsibilities of bid or proposal notice  
 2-46 and opening under this chapter and Chapter 271 [~~functions~~  
 2-47 ~~previously performed by the purchasing agent~~].

2-48 SECTION 5. Section 262.012, Local Government Code, is  
 2-49 amended to read as follows:

2-50 Sec. 262.012. [~~COUNTY AUDITORS AS~~] PURCHASING AGENTS IN  
 2-51 [~~CERTAIN~~] COUNTIES WITH POPULATION OF 100,000 OR LESS. (a) In a  
 2-52 county with a population of 100,000 or less:

2-53 (1) a county auditor may, on request of the  
 2-54 commissioners court, assume purchasing responsibilities [~~The~~  
 2-55 ~~commissioners court of a county that employs a county auditor~~  
 2-56 ~~jointly with one or more counties under Section 84.008 may require~~  
 2-57 ~~the auditor to act as the purchasing agent~~] for the county, in  
 2-58 addition to performing the regular duties of the auditor as  
 2-59 required by law; or

2-60 (2) the commissioners court may employ a person to  
 2-61 serve as county purchasing agent at the pleasure of the  
 2-62 commissioners court.

2-63 (b) A purchasing agent employed under Subsection (a)(2):

2-64 (1) acts under the commissioners court's supervision;

2-65 (2) carries out the functions prescribed by law for  
 2-66 county purchases and contracts; and

2-67 (3) administers public notice and bidding procedures  
 2-68 for a county purchase or contract. [~~In a county with a population~~  
 2-69 ~~of 41,680 to 42,100, the county auditor shall act as the purchasing~~

3-1 ~~agent for the county in addition to performing the regular duties of~~  
3-2 ~~the auditor as required by law.]~~

3-3 (c) This section applies only to a county in which a county  
3-4 purchasing agent has not been appointed under Section 262.011.

3-5 SECTION 6. Subchapter B, Chapter 262, Local Government  
3-6 Code, is amended by adding Section 262.013 to read as follows:

3-7 Sec. 262.013. QUALIFICATION. A person authorized to make a  
3-8 purchase on behalf of a county or a county department or office may  
3-9 not make any purchase until providing to the county or county  
3-10 department or office a signed acknowledgment that the person  
3-11 understands the requirements of this chapter and Chapters 263, 270,  
3-12 and 271. The acknowledgment must be maintained in the person's  
3-13 personnel file or with the official bond of an elected or appointed  
3-14 official.

3-15 SECTION 7. Section 262.022, Local Government Code, is  
3-16 amended by adding Subdivisions (3-a), (5-a), and (5-b) and amending  
3-17 Subdivisions (5) and (6) to read as follows:

3-18 (3-a) "Day" means a calendar day unless otherwise  
3-19 designated.

3-20 (5) "Item" means any service, equipment, good, or  
3-21 other tangible or intangible personal property, including  
3-22 insurance and high technology items. The term does not include  
3-23 professional services as defined by Section 2254.002, Government  
3-24 Code.

3-25 (5-a) "Lowest and best" means a bid or offer providing  
3-26 the best value considering associated direct and indirect costs,  
3-27 including transport, maintenance, reliability, life cycle,  
3-28 warranties, and customer service after a sale.

3-29 (5-b) "Normal purchasing practice" means:

3-30 (A) an accepted custom, practice, or standard for  
3-31 government procurement in the state; or

3-32 (B) a practice recognized by the National  
3-33 Institute of Government Purchasing regarding the purchase of a  
3-34 particular good or service.

3-35 (6) "Purchase" means any kind of acquisition,  
3-36 including a lease, of an item regardless of the generation or return  
3-37 of revenue to the county.

3-38 SECTION 8. Section 262.0225, Local Government Code, is  
3-39 amended by adding Subsection (d) to read as follows:

3-40 (d) A county that complies with the competitive bidding  
3-41 requirements of this chapter and receives no responsive bids for an  
3-42 item may procure the item under Section 262.0245.

3-43 SECTION 9. Section 262.023, Local Government Code, is  
3-44 amended by amending Subsection (c) and adding Subsections (d) and  
3-45 (e) to read as follows:

3-46 (c) Under this section, a person is presumed to have intent  
3-47 to avoid the competitive bidding requirement if:

3-48 (1) the person makes separate, sequential, or  
3-49 component purchases of items for that person's office or department  
3-50 within a single fiscal year;

3-51 (2) the office or department budget for similar items  
3-52 exceeds the competitive bidding threshold; and

3-53 (3) the purchase is not office supplies [In applying  
3-54 the requirements established by Subsection (a), all separate,  
3-55 sequential, or component purchases of items ordered or purchased,  
3-56 with the intent of avoiding the requirements of this subchapter,  
3-57 from the same supplier by the same county officer, department, or  
3-58 institution are treated as if they are part of a single purchase and  
3-59 of a single contract. In applying this provision to the purchase of  
3-60 office supplies, separate purchases of supplies by an individual  
3-61 department are not considered to be part of a single purchase and  
3-62 single contract by the county if a specific intent to avoid the  
3-63 requirements of this subchapter is not present].

3-64 (d) A person may rebut the presumption under Subsection (c)  
3-65 if the person:

3-66 (1) timely obtained an exemption for the purchases  
3-67 from the commissioners court under Section 262.024;

3-68 (2) initiated competitive bidding procedures within a  
3-69 reasonable time after reaching the competitive bidding threshold;

4-1 or  
4-2 (3) complied with a routine competitive procurement  
4-3 practice adopted by the county purchasing agent or commissioners  
4-4 court under Section 262.0245.

4-5 (e) In applying the requirements established in Subsection  
4-6 (a), "expenditure" means the final price to be paid for the item or  
4-7 items purchased.

4-8 SECTION 10. Section 262.024, Local Government Code, is  
4-9 amended by amending Subsections (a), (b), and (d) and adding  
4-10 Subsection (b-1) to read as follows:

4-11 (a) A contract for the purchase of any of the following  
4-12 items is exempt from the requirement established by Section 262.023  
4-13 if the commissioners court by order grants the exemption:

4-14 (1) an item that must be purchased in a case of public  
4-15 calamity if it is necessary to make the purchase promptly to relieve  
4-16 the necessity of the citizens or to preserve the property of the  
4-17 county;

4-18 (2) an item necessary to preserve or protect the  
4-19 public health or safety of the residents of the county;

4-20 (3) an item necessary because of unforeseen damage to  
4-21 public property;

4-22 (4) a personal or professional service;

4-23 (5) any individual work performed and paid for by the  
4-24 day, as the work progresses, provided that no individual is  
4-25 compensated under this subsection for more than 20 working days in  
4-26 any three month period;

4-27 (6) any land or right-of-way;

4-28 (7) an item that can be obtained from only one source,  
4-29 including:

4-30 (A) items for which competition is precluded  
4-31 because of the existence of patents, copyrights, secret processes,  
4-32 or monopolies;

4-33 (B) films, manuscripts, or books;

4-34 (C) electric power, gas, water, and other utility  
4-35 services; and

4-36 (D) captive replacement parts or components for  
4-37 equipment;

4-38 (8) an item of food;

4-39 (9) personal property sold:

4-40 (A) at an auction by a state licensed auctioneer  
4-41 or in a commercial online auction available to the general public;

4-42 (B) at a going out of business sale held in  
4-43 compliance with Subchapter F, Chapter 17, Business & Commerce Code;  
4-44 or

4-45 (C) by a political subdivision of this state, a  
4-46 state agency of this state, or an entity of the federal government;

4-47 (10) any work performed under a contract for community  
4-48 and economic development made by a county under Section 381.004;  
4-49 [~~or~~]

4-50 (11) vehicle and equipment repairs; or

4-51 (12) transportation and lodging purchased in  
4-52 compliance with travel policies adopted by the commissioners court.

4-53 (b) The renewal or extension of an [a lease or of an  
4-54 equipment maintenance] agreement to purchase equipment, supplies,  
4-55 or maintenance service is exempt from the requirement established  
4-56 by Section 262.023 if the commissioners court by order grants the  
4-57 exemption and if:

4-58 (1) [~~the lease or agreement has gone through the~~  
4-59 ~~competitive bidding procedure within the preceding year,~~

4-60 [~~2~~] the renewal or extension does not exceed one  
4-61 year; and

4-62 (2) [~~3~~] the renewal or extension is the first or  
4-63 second renewal or extension of the [~~lease or~~] agreement.

4-64 (b-1) The renewal or extension of an agreement to purchase  
4-65 equipment, supplies, or maintenance service initially obtained  
4-66 through a competitive bidding process is exempt from the  
4-67 requirement established by Section 262.023.

4-68 (d) The exemption granted under Subsection (a)(8) of this  
4-69 section shall apply only to the sealed competitive bidding

5-1 requirements on food purchases. Counties shall solicit at least  
5-2 three bids for purchases of food items by telephone or written  
5-3 quotation at intervals specified by the commissioners court.  
5-4 Counties shall award food purchase contracts to the responsible  
5-5 bidder who submits the lowest and best bid or shall reject all bids  
5-6 and repeat the bidding process, as provided by this subsection. The  
5-7 purchasing officer taking telephone or written bids under this  
5-8 subsection shall maintain, on a form approved by the commissioners  
5-9 court, a record of all bids solicited and the vendors contacted.  
5-10 This record may be ~~[shall be kept in the purchasing office for a~~  
5-11 ~~period of at least one year or until]~~ audited by the county auditor.

5-12 SECTION 11. Section 262.0245, Local Government Code, is  
5-13 amended to read as follows:

5-14 Sec. 262.0245. COMPETITIVE BIDDING PROCEDURES ADOPTED BY  
5-15 COUNTY PURCHASING AGENTS OR COMMISSIONERS COURT. A county  
5-16 purchasing agent or, in a county without a purchasing agent, the  
5-17 commissioners court shall adopt procedures that provide for  
5-18 competitive procurement ~~[bidding]~~, to the extent practicable under  
5-19 the circumstances, for the county purchase of an item ~~[under a~~  
5-20 ~~contract]~~ that is not subject to competitive bidding under Section  
5-21 262.023 or for which the county receives no responsive bid.

5-22 SECTION 12. Section 262.025, Local Government Code, is  
5-23 amended by amending Subsection (a) and adding Subsections (a-1),  
5-24 (b-1), and (b-2) to read as follows:

5-25 (a) A notice of a proposed purchase must be published at  
5-26 least once ~~[a week]~~ in a newspaper of general circulation in the  
5-27 county, with the first day of publication occurring at least 14 days  
5-28 before the ~~[14th day before the]~~ date of the bid opening. If there  
5-29 is no newspaper of general circulation in the county, the notice  
5-30 must be posted in a ~~[prominent]~~ place described by Section 51.002,  
5-31 Property Code, [in the courthouse] for 14 days before the date of  
5-32 the bid opening. Notice published in a newspaper under this section  
5-33 must include:

- 5-34 (1) a general statement of the proposed purchase;
- 5-35 (2) the name and telephone number of the purchasing  
5-36 agent; and
- 5-37 (3) the county website address, if any.

5-38 (a-1) Nothing in Subsection (a) shall be construed to  
5-39 require more than one notice in one newspaper or to limit the county  
5-40 from providing additional notice for longer periods or in more  
5-41 locations.

5-42 (b-1) If a county maintains an Internet website, the county,  
5-43 instead of meeting the publication requirements under Subsection  
5-44 (a), may:

- 5-45 (1) publish notice in a newspaper described by  
5-46 Subsection (a) once not later than the 14th day before the bid  
5-47 receipt deadline; and
- 5-48 (2) post notice continuously on its website for at  
5-49 least 14 days immediately preceding the bid receipt deadline.

5-50 (b-2) The newspaper notice under Subsection (b-1) must  
5-51 include the time and place at which the bids will be publicly opened  
5-52 and the website address for the procurement information.

5-53 SECTION 13. Section 262.0255, Local Government Code, is  
5-54 amended by adding Subsection (c) to read as follows:

5-55 (c) A commissioners court purchasing earth-moving,  
5-56 material-handling, road maintenance, or construction equipment  
5-57 under Section 271.083 of this code or Section 791.025, Government  
5-58 Code, may negotiate with a vendor awarded a cooperative contract  
5-59 under those sections an agreement for the vendor to purchase or  
5-60 accept as trade used equipment owned by the county.

5-61 SECTION 14. Section 262.0256, Local Government Code, as  
5-62 amended by Chapters 660 (H.B. 2242) and 725 (H.B. 3089), Acts of the  
5-63 78th Legislature, Regular Session, 2003, is reenacted and amended  
5-64 to read as follows:

5-65 Sec. 262.0256. PRE-BID CONFERENCE FOR CERTAIN COUNTIES OR A  
5-66 DISTRICT GOVERNED BY THOSE COUNTIES. (a) ~~[This section applies~~  
5-67 ~~only to a county with a population of 2.8 million or more.~~

5-68 ~~[(b)]~~ The commissioners court of the county or the governing  
5-69 body of a district or authority created under Section 59, Article

6-1 XVI, Texas Constitution, if the governing body is the commissioners  
 6-2 court of the county in which the district is located, may require a  
 6-3 principal, officer, or employee of each prospective bidder to  
 6-4 attend a mandatory pre-bid conference conducted for the purpose of  
 6-5 discussing contract requirements and answering questions of  
 6-6 prospective bidders.

6-7 (b) [~~(c)~~] After a conference is conducted under Subsection  
 6-8 (a) [~~(b)~~], any additional required notice for the proposed purchase  
 6-9 may be sent by certified mail, return receipt requested, only to  
 6-10 prospective bidders who attended the conference. Notice under this  
 6-11 subsection is not subject to the requirements of Section 262.025.

6-12 SECTION 15. Section 262.026(b), Local Government Code, is  
 6-13 amended to read as follows:

6-14 (b) Opened bids shall be kept on file and available for  
 6-15 inspection by anyone desiring to see them until the first  
 6-16 anniversary of the date of opening.

6-17 SECTION 16. Section 262.027, Local Government Code, is  
 6-18 amended by amending Subsection (c) and adding Subsection (g) to  
 6-19 read as follows:

6-20 (c) A contract may not be awarded to a bidder who is not the  
 6-21 lowest dollar bidder meeting specifications unless, before the  
 6-22 award, each lower bidder is given:

6-23 (1) notice of the proposed award;  
 6-24 (2) the purchasing agent's evaluation and  
 6-25 recommendation to the commissioners court or the commissioners  
 6-26 court's evaluation of the bid as lowest and best; and

6-27 (3) [~~is given~~] an opportunity to appear before the  
 6-28 commissioners court and present previously unconsidered evidence  
 6-29 concerning the value of the lower bid, which may include evidence of  
 6-30 the bidder's responsibility.

6-31 (g) If after the award the successful bidder fails to  
 6-32 qualify for required bonds, or is otherwise unable to meet the  
 6-33 requirements of the award, the commissioners court may award the  
 6-34 contract to the next bidder in order of ranking as lowest and best  
 6-35 bid.

6-36 SECTION 17. Section 262.0271(b), Local Government Code, is  
 6-37 amended to read as follows:

6-38 (b) In purchasing items under this chapter through a  
 6-39 competitive bidding process, if a county receives one or more bids  
 6-40 from a bidder who provides reasonable [~~comparable~~] health insurance  
 6-41 coverage to its employees and requires a subcontractor the bidder  
 6-42 intends to use to provide reasonable [~~comparable~~] health insurance  
 6-43 coverage to the subcontractor's employees and whose bid is within  
 6-44 five percent of the lowest and best bid price received by the county  
 6-45 from a bidder who does not provide or require reasonable  
 6-46 [~~comparable~~] health insurance coverage, the commissioners court of  
 6-47 the county may give preference to the bidder who provides and  
 6-48 requires reasonable [~~comparable~~] health insurance coverage.

6-49 SECTION 18. Section 262.0276, Local Government Code, is  
 6-50 amended by amending Subsection (a) and adding Subsection (d) to  
 6-51 read as follows:

6-52 (a) By an order adopted and entered in the minutes of the  
 6-53 commissioners court and after notice is published in a newspaper of  
 6-54 general circulation in the county, the commissioners court may  
 6-55 adopt rules permitting the county to refuse to enter into a contract  
 6-56 or other transaction with a person who owes a debt [~~indebted~~] to the  
 6-57 county.

6-58 (d) In this section, "debt" includes delinquent taxes,  
 6-59 finances, fees, and indebtedness arising from written agreements with  
 6-60 the county.

6-61 SECTION 19. Section 262.0295(d), Local Government Code, is  
 6-62 amended to read as follows:

6-63 (d) Within 30 days after the date the unpriced proposals are  
 6-64 opened under Subsection (c), the county official shall present the  
 6-65 priced bids to the commissioners court. The award of the contract  
 6-66 shall be made to the responsible offeror whose bid is determined to  
 6-67 be the lowest and best evaluated offer resulting from negotiation.  
 6-68 All proposals and bids that have been submitted shall be available  
 6-69 and open for public inspection after the contract is awarded.

7-1 SECTION 20. Section 262.030(b), Local Government Code, is  
7-2 amended to read as follows:

7-3 (b) Quotations must be solicited through a request for  
7-4 proposals. Public notice for the request for proposals must be made  
7-5 in the same manner as provided in the competitive bidding  
7-6 procedure. The request for proposals must specify the relative  
7-7 importance of price and other evaluation factors. The award of the  
7-8 contract shall be made to the responsible offeror whose proposal is  
7-9 determined to be the lowest and best evaluated offer resulting from  
7-10 negotiation, taking into consideration the relative importance of  
7-11 price and other evaluation factors set forth in the request for  
7-12 proposals.

7-13 SECTION 21. Section 262.032, Local Government Code, is  
7-14 amended by adding Subsection (e) to read as follows:

7-15 (e) The commissioners court may establish financial  
7-16 criteria for accepting surety companies that provide bid, payment,  
7-17 or performance bonds.

7-18 SECTION 22. Section 262.034, Local Government Code, is  
7-19 amended to read as follows:

7-20 Sec. 262.034. CRIMINAL PENALTIES. (a) A county officer or  
7-21 employee commits an offense if the officer or employee  
7-22 intentionally or knowingly:

- 7-23 (1) violates Section 262.023; or
- 7-24 (2) makes or authorizes separate, sequential, or  
7-25 component purchases to avoid the competitive bidding requirements  
7-26 of Section 262.023.

7-27 (b) Except as provided by Subsection (c), an offense under  
7-28 this section is a Class C misdemeanor.

7-29 (c) An offense under this section [subsection] is:

- 7-30 (1) a Class B misdemeanor if the officer or employee  
7-31 has a personal relationship with the selected vendor that has not  
7-32 been previously disclosed to and approved by the appropriate  
7-33 governing body; or

- 7-34 (2) a Class A misdemeanor if the officer or employee  
7-35 receives or has received from the vendor a benefit as defined by  
7-36 Section 1.07, Penal Code, not provided to all employees.

7-37 (d) For purposes of this section, "personal relationship"  
7-38 means a connection by blood, marriage, business, or friendship with  
7-39 another person or business entity such that the officer or employee  
7-40 has a direct and substantial interest in the welfare of that person  
7-41 or business entity.

7-42 (e) This section does not apply to a purchase that complies  
7-43 with a procedure adopted under Section 262.0245.

7-44 ~~[(b) A county officer or employee commits an offense if the~~  
7-45 ~~officer or employee intentionally or knowingly violates Section~~  
7-46 ~~262.023, other than by conduct described by Subsection (a). An~~  
7-47 ~~offense under this subsection is a Class B misdemeanor.~~

7-48 ~~[(c) A county officer or employee commits an offense if the~~  
7-49 ~~officer or employee intentionally or knowingly violates this~~  
7-50 ~~subchapter, other than by conduct described by Subsection (a) or~~  
7-51 ~~(b). An offense under this subsection is a Class C misdemeanor.]~~

7-52 SECTION 23. Section 262.036(a), Local Government Code, is  
7-53 amended to read as follows:

7-54 (a) Notwithstanding any other provision in this chapter, a  
7-55 county ~~[with a population of 800,000 or more]~~ may select an  
7-56 appropriately licensed insurance agent as the sole broker of record  
7-57 to obtain proposals and coverages for insurance that provides  
7-58 necessary coverage and adequate limits of coverage in all areas of  
7-59 risk, including public official liability, property, casualty,  
7-60 workers' compensation, and specific and aggregate stop-loss  
7-61 coverage for self-funded health care.

7-62 SECTION 24. Section 271.025(e), Local Government Code, is  
7-63 amended to read as follows:

7-64 (e) A ~~[In a county with a population of 3.3 million or more,~~  
7-65 ~~the] county~~ and any district or authority created under Article  
7-66 XVI, Section 59, of the Texas Constitution of which the governing  
7-67 body is the commissioners court may require that a minimum of 25  
7-68 percent of the work be performed by the bidder and, notwithstanding  
7-69 any other law to the contrary, may establish financial criteria for

8-1 the surety companies that provide payment and performance bonds.

8-2 SECTION 25. Section 271.029, Local Government Code, is  
8-3 amended to read as follows:

8-4 Sec. 271.029. CRIMINAL PENALTIES. (a) An officer or  
8-5 employee ~~[of a governmental entity]~~ commits an offense if the  
8-6 officer or employee intentionally or knowingly:

8-7 (1) violates Section 271.024; or

8-8 (2) makes or authorizes separate, sequential, or  
8-9 component purchases to avoid the competitive bidding requirements  
8-10 of the statute that requires a contract described by Section  
8-11 271.024 [to be awarded on the basis of competitive bids].

8-12 (b) Except as provided by Subsection (c), an offense under  
8-13 this section is a Class C misdemeanor.

8-14 (c) An offense under this subsection is:

8-15 (1) a Class B misdemeanor if the officer or employee  
8-16 has a personal relationship with the selected vendor that has not  
8-17 been previously disclosed to and approved by the appropriate  
8-18 governing body; or

8-19 (2) a Class A misdemeanor if the officer or employee  
8-20 receives or has received from the vendor a benefit as defined in  
8-21 Section 1.07, Penal Code, not provided to all employees.

8-22 (d) For purposes of this section, "personal relationship"  
8-23 means a connection by blood, marriage, business, or friendship with  
8-24 another person or business entity such that the officer or employee  
8-25 has a direct and substantial interest in the welfare of that person  
8-26 or business entity.

8-27 (e) This section does not apply to a purchase that complies  
8-28 with a procedure adopted under Section 271.024.

8-29 ~~[(b) An officer or employee of a governmental entity commits~~  
8-30 ~~an offense if the officer or employee intentionally or knowingly~~  
8-31 ~~violates the competitive bidding requirements of the statute that~~  
8-32 ~~requires a contract described by Section 271.024 to be awarded on~~  
8-33 ~~the basis of competitive bids, other than by conduct described by~~  
8-34 ~~Subsection (a). An offense under this subsection is a Class B~~  
8-35 ~~misdemeanor.~~

8-36 ~~[(c) An officer or employee of a governmental entity commits~~  
8-37 ~~an offense if the officer or employee intentionally or knowingly~~  
8-38 ~~violates this subchapter, other than by conduct described by~~  
8-39 ~~Subsection (a) or (b). An offense under this subsection is a Class~~  
8-40 ~~C misdemeanor.]~~

8-41 SECTION 26. Section 271.042, Local Government Code, is  
8-42 amended by amending Subsection (b) and adding Subsection (c) to  
8-43 read as follows:

8-44 (b) If there is a conflict between a provision of this  
8-45 subchapter and a provision of Chapter 252 or 262, an issuer may use  
8-46 either provision, and it is not necessary for the governing body to  
8-47 designate the law under which action is being taken.

8-48 (c) Notwithstanding Subsection (b), for purposes of  
8-49 enforcement or penalty, a county official or employee is presumed  
8-50 to act under Chapter 262.

8-51 SECTION 27. Section 271.055(e), Local Government Code, is  
8-52 amended to read as follows:

8-53 (e) A [In a county with a population of 3.3 million or more,  
8-54 the] county and any district or authority created under Article  
8-55 XVI, Section 59, of the Texas Constitution of which the governing  
8-56 body is the commissioners court may require that a minimum of 25  
8-57 percent of the work be performed by the bidder and, notwithstanding  
8-58 any other law to the contrary, may establish financial criteria for  
8-59 the surety companies that provide payment and performance bonds.

8-60 SECTION 28. Section 271.064, Local Government Code, is  
8-61 amended to read as follows:

8-62 Sec. 271.064. CRIMINAL PENALTIES. (a) An officer or  
8-63 employee of an issuer commits an offense if the officer or employee  
8-64 intentionally or knowingly:

8-65 (1) violates Section 271.054; or

8-66 (2) makes or authorizes separate, sequential, or  
8-67 component purchases to avoid the competitive bidding requirements  
8-68 of Section 271.054.

8-69 (b) Except as provided by Subsection (c), an offense under

9-1 this section is a Class C misdemeanor.

9-2 (c) An offense under this section [subsection] is:

9-3 (1) a Class B misdemeanor if the officer or employee  
9-4 has a personal relationship with the selected vendor that has not  
9-5 been previously disclosed to and approved by the appropriate  
9-6 governing body; or

9-7 (2) a Class A misdemeanor if the officer or employee  
9-8 receives or has received from the vendor a benefit as defined in  
9-9 Section 1.07, Penal Code, not provided to all employees.

9-10 (d) For purposes of this section, "personal relationship"  
9-11 means a connection by blood, marriage, business, or friendship with  
9-12 another person or business entity such that the officer or employee  
9-13 has a direct and substantial interest in the welfare of that person  
9-14 or business entity.

9-15 (e) This section does not apply to a purchase that complies  
9-16 with a procedure adopted under Section 271.054.

9-17 ~~[(b) An officer or employee of an issuer commits an offense~~  
9-18 ~~if the officer or employee intentionally or knowingly violates~~  
9-19 ~~Section 271.054, other than by conduct described by Subsection (a).~~  
9-20 ~~An offense under this subsection is a Class B misdemeanor.~~

9-21 ~~[(c) An officer or employee of an issuer commits an offense~~  
9-22 ~~if the officer or employee intentionally or knowingly violates this~~  
9-23 ~~subchapter, other than by conduct described by Subsection (a) or~~  
9-24 ~~(b). An offense under this subsection is a Class C misdemeanor.]~~

9-25 SECTION 29. Section 252.312, Transportation Code, is  
9-26 amended by amending Subsection (b) and adding Subsection (d) to  
9-27 read as follows:

9-28 (b) If the county road engineer so recommends and the  
9-29 commissioners court considers it to be in the best interest of the  
9-30 county, a purchase in an amount of \$25,000 or less may be made  
9-31 through negotiation by the commissioners court or the court's  
9-32 authorized representative under Subchapter B, Chapter 262, Local  
9-33 Government Code, on requisition to be approved by the commissioners  
9-34 court [or the county auditor] without advertising for competitive  
9-35 bids.

9-36 (d) The cost under this section is the final amount of the  
9-37 payment for the purchase.

9-38 SECTION 30. Sections 262.0295(a)(3), 262.035, 271.030, and  
9-39 271.065, Local Government Code, are repealed.

9-40 SECTION 31. The changes in law made by this Act apply only  
9-41 to purchases made or a bid deadline that occurs on or after  
9-42 September 1, 2009. A purchase made or a bid deadline that occurs  
9-43 before September 1, 2009, is governed by the law as it existed  
9-44 immediately before the effective date of this Act, and that law is  
9-45 continued in effect for that purpose.

9-46 SECTION 32. (a) Notwithstanding Section 31 of this Act, the  
9-47 changes in law made by this Act to Sections 262.034, 271.029, and  
9-48 271.064, Local Government Code, apply only to an offense committed  
9-49 on or after the effective date of this Act. For purposes of this  
9-50 section, an offense is committed before the effective date of this  
9-51 Act if any element of the offense occurs before that date.

9-52 (b) An offense committed before the effective date of this  
9-53 Act is covered by the law in effect immediately before the effective  
9-54 date of this Act, and the former law is continued in effect for that  
9-55 purpose.

9-56 SECTION 33. This Act takes effect September 1, 2009.

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