

1-1 By: Coleman (Senate Sponsor - West) H.B. No. 1694  
1-2 (In the Senate - Received from the House April 27, 2011;  
1-3 April 29, 2011, read first time and referred to Committee on  
1-4 Intergovernmental Relations; May 13, 2011, reported favorably by  
1-5 the following vote: Yeas 5, Nays 0; May 13, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the purchasing and contracting authority of certain  
1-9 governmental entities.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 262.011, Local Government Code, is  
1-12 amended by amending Subsections (f), (g), (k), (m), and (o) and  
1-13 adding Subsection (q) to read as follows:

1-14 (f) A purchase made by the county purchasing agent shall be  
1-15 paid for by an electronic transfer, check, or [a] warrant drawn by  
1-16 the county auditor on funds in the county treasury in the manner  
1-17 provided by law. The county auditor may not draw and the county  
1-18 treasurer may not honor an electronic transfer, check, or [a]  
1-19 warrant for a purchase unless the purchase is made by the county  
1-20 purchasing agent or on competitive bid as provided by law.

1-21 (g) The county purchasing agent may cooperate with the  
1-22 purchasing agent of a municipality in the county to purchase any  
1-23 item in volume as may be necessary. The county treasurer shall  
1-24 honor an electronic transfer, check, or [a] warrant drawn by the  
1-25 county auditor to reimburse the municipality's purchasing agent  
1-26 making the purchase for the county.

1-27 (k) The board that appoints the county purchasing agent  
1-28 shall set the salary of the agent in an amount not less than \$5,000 a  
1-29 year, payable in equal monthly installments or by any other  
1-30 distribution at the option of the county. The salary shall be paid  
1-31 by an electronic transfer, check, or warrant [warrants] drawn on  
1-32 funds in the county treasury.

1-33 (m) A person, including an officer, agent, or employee of a  
1-34 county or of a subdivision or department of a county, commits an  
1-35 offense if the person violates this section. An offense under this  
1-36 subsection is a misdemeanor punishable by a fine of not less than  
1-37 \$10 or more than \$100 [~~, by confinement in the county jail for not~~  
1-38 ~~less than 30 days or more than one year, or by both the fine and~~  
1-39 ~~confinement]. Each act in violation of this section is a separate~~  
1-40 offense.

1-41 (o) The county purchasing agent shall adopt the rules and  
1-42 procedures necessary to implement the agent's duties under this  
1-43 section subject to approval by the commissioners court.  
1-44 Notwithstanding Subsection (f) or other law, rules and procedures  
1-45 adopted under this subsection may include rules and procedures for  
1-46 persons to use county purchasing cards to pay for county purchases  
1-47 under the direction and supervision of the county purchasing agent.  
1-48 Procedures for use of purchasing cards may not avoid the  
1-49 competitive bidding requirements of this chapter or other  
1-50 requirements of county financial law.

1-51 (q) An electronic transfer under this chapter must provide  
1-52 the same level of internal controls and statutory authorizations as  
1-53 required for a check or warrant.

1-54 SECTION 2. Sections 262.0115(d) and (e), Local Government  
1-55 Code, are amended to read as follows:

1-56 (d) Under the supervision of the commissioners court, the  
1-57 purchasing agent shall carry out the functions prescribed by law  
1-58 for a purchasing agent under Section 262.011 and for any  
1-59 administrative function of the county auditor in regard to county  
1-60 purchases and contracts and shall administer the procedures  
1-61 prescribed by law for notice and public bidding for county  
1-62 purchases and contracts.

1-63 (e) A county that has established the position of county  
1-64 purchasing agent under this section may abolish the position at any

2-1 time. On the abolition of the position, the county auditor shall  
 2-2 assume the functions previously performed by the purchasing agent  
 2-3 regarding the notice for and opening of competitive bids or  
 2-4 proposals under this chapter and Chapter 271.

2-5 SECTION 3. Section 262.022, Local Government Code, is  
 2-6 amended by amending Subdivisions (5) and (6) and adding  
 2-7 Subdivisions (5-a) and (5-b) to read as follows:

2-8 (5) "Item" means any service, equipment, good, or  
 2-9 other tangible or intangible personal property, including  
 2-10 insurance and high technology items. The term does not include  
 2-11 professional services as defined by Section 2254.002, Government  
 2-12 Code.

2-13 (5-a) "Lowest and best" means a bid or offer providing  
 2-14 the best value considering associated direct and indirect costs,  
 2-15 including transport, maintenance, reliability, life cycle,  
 2-16 warranties, and customer service after a sale.

2-17 (5-b) "Normal purchasing practice" means:

2-18 (A) an accepted custom, practice, or standard for  
 2-19 government procurement in the state; or

2-20 (B) a practice recognized by a national  
 2-21 purchasing association regarding the purchase of a particular good  
 2-22 or service.

2-23 (6) "Purchase" means any kind of acquisition,  
 2-24 including by a lease or revenue contract ~~[, of an item]~~.

2-25 SECTION 4. Section 262.0225, Local Government Code, is  
 2-26 amended by adding Subsection (d) to read as follows:

2-27 (d) A county that complies in good faith with the  
 2-28 competitive bidding requirements of this chapter and receives no  
 2-29 responsive bids for an item may procure the item under Section  
 2-30 262.0245.

2-31 SECTION 5. Section 262.0245, Local Government Code, is  
 2-32 amended to read as follows:

2-33 Sec. 262.0245. COMPETITIVE PROCUREMENT PROCEDURES ADOPTED  
 2-34 BY COUNTY PURCHASING AGENTS OR COMMISSIONERS COURT. A county  
 2-35 purchasing agent or, in a county without a purchasing agent, the  
 2-36 commissioners court shall adopt procedures that provide for  
 2-37 competitive procurement, to the extent practicable under the  
 2-38 circumstances, for the county purchase of an item that is not  
 2-39 subject to competitive procurement or for which the county receives  
 2-40 no responsive bid.

2-41 SECTION 6. Section 262.025, Local Government Code, is  
 2-42 amended by amending Subsection (a) and adding Subsection (a-1) to  
 2-43 read as follows:

2-44 (a) A notice of a proposed purchase must be published at  
 2-45 least once a week for two consecutive weeks in a newspaper of  
 2-46 general circulation in the county, with the first day of  
 2-47 publication occurring at least 14 days before the ~~[14th day before~~  
 2-48 ~~the]~~ date of the bid opening. If there is no newspaper of general  
 2-49 circulation in the county, the notice must be posted in a prominent  
 2-50 place in the courthouse for 14 days before the date of the bid  
 2-51 opening. Notice published in a newspaper must include:

2-52 (1) a general statement of the proposed purchase;

2-53 (2) the name and telephone number of the purchasing  
 2-54 agent; and

2-55 (3) the county website address, if any.

2-56 (a-1) Subsection (a) does not require more than two notices  
 2-57 in one newspaper or limit the county from providing additional  
 2-58 notice for longer periods or in more locations.

2-59 SECTION 7. Section 262.0255, Local Government Code, is  
 2-60 amended by adding Subsection (c) to read as follows:

2-61 (c) A commissioners court purchasing personal property  
 2-62 under Section 271.083 of this code or Section 791.025, Government  
 2-63 Code, may negotiate with a vendor awarded a cooperative contract  
 2-64 under those sections an agreement for the vendor to purchase or  
 2-65 accept as trade used equipment owned by the county.

2-66 SECTION 8. Section 262.0256, Local Government Code, as  
 2-67 amended by Chapters 660 (H.B. 2242) and 725 (H.B. 3089), Acts of the  
 2-68 78th Legislature, Regular Session, 2003, is reenacted and amended  
 2-69 to read as follows:

3-1 Sec. 262.0256. PRE-BID CONFERENCE FOR CERTAIN COUNTIES OR A  
 3-2 DISTRICT GOVERNED BY THOSE COUNTIES. (a) [~~This section applies~~  
 3-3 ~~only to a county with a population of 2.8 million or more.~~

3-4 [~~(b)~~] The commissioners court of the county or the governing  
 3-5 body of a district or authority created under Section 59, Article  
 3-6 XVI, Texas Constitution, if the governing body is the commissioners  
 3-7 court of the county in which the district is located, may require a  
 3-8 principal, officer, or employee of each prospective bidder to  
 3-9 attend a mandatory pre-bid conference conducted for the purpose of  
 3-10 discussing contract requirements and answering questions of  
 3-11 prospective bidders.

3-12 (b) [~~(c)~~] After a conference is conducted under Subsection  
 3-13 (a) [~~(b)~~], any additional required notice for the proposed purchase  
 3-14 may be sent by certified mail, return receipt requested, only to  
 3-15 prospective bidders who attended the conference. Notice under this  
 3-16 subsection is not subject to the requirements of Section 262.025.

3-17 SECTION 9. Section 262.026(b), Local Government Code, is  
 3-18 amended to read as follows:

3-19 (b) Opened bids shall be kept on file and available for  
 3-20 inspection by anyone desiring to see them until the first  
 3-21 anniversary of the date of opening. Opened bids are subject to  
 3-22 disclosure under Chapter 552, Government Code.

3-23 SECTION 10. Section 262.027, Local Government Code, is  
 3-24 amended by amending Subsection (c) and adding Subsections (g) and  
 3-25 (h) to read as follows:

3-26 (c) A contract may not be awarded to a bidder who is not the  
 3-27 lowest dollar bidder meeting specifications unless, before the  
 3-28 award, each lower bidder is given:

- 3-29 (1) notice of the proposed award; and
- 3-30 (2) [~~is given~~] an opportunity to appear before the  
 3-31 commissioners court and present previously unconsidered evidence  
 3-32 concerning the lower bid as best, which may include evidence of the  
 3-33 bidder's responsibility.

3-34 (g) If after the award the successful bidder fails to  
 3-35 qualify for required bonds, or is otherwise unable to meet the  
 3-36 requirements of the award, the commissioners court may award the  
 3-37 contract to the next bidder in order of ranking as lowest and best  
 3-38 bid.

3-39 (h) Before a contract is awarded, a bidder must give written  
 3-40 notice to the officer authorized to open bids that the bidder  
 3-41 intends to protest an award of the contract under Subsection (c).  
 3-42 This subsection does not limit the ability of a bidder to speak at a  
 3-43 public meeting of the commissioners court under rules established  
 3-44 by the court.

3-45 SECTION 11. Section 262.0271(b), Local Government Code, is  
 3-46 amended to read as follows:

3-47 (b) In purchasing items under this chapter through a  
 3-48 competitive bidding process, if a county receives one or more bids  
 3-49 from a bidder who provides reasonable [~~comparable~~] health insurance  
 3-50 coverage to its employees and requires a subcontractor the bidder  
 3-51 intends to use to provide reasonable [~~comparable~~] health insurance  
 3-52 coverage to the subcontractor's employees and whose bid is within  
 3-53 five percent of the lowest and best bid price received by the county  
 3-54 from a bidder who does not provide or require reasonable  
 3-55 [~~comparable~~] health insurance coverage, the commissioners court of  
 3-56 the county may give preference to the bidder who provides and  
 3-57 requires reasonable [~~comparable~~] health insurance coverage.

3-58 SECTION 12. Section 262.0276, Local Government Code, is  
 3-59 amended by amending Subsection (a) and adding Subsection (d) to  
 3-60 read as follows:

3-61 (a) By an order adopted and entered in the minutes of the  
 3-62 commissioners court and after notice is published in a newspaper of  
 3-63 general circulation in the county, the commissioners court may  
 3-64 adopt rules permitting the county to refuse to enter into a contract  
 3-65 or other transaction with a person who owes a debt [~~indebted~~] to the  
 3-66 county.

3-67 (d) In this section, "debt" includes delinquent taxes,  
 3-68 finances, fees, and delinquencies arising from written agreements with  
 3-69 the county.

4-1 SECTION 13. Section 262.0295(d), Local Government Code, is  
 4-2 amended to read as follows:

4-3 (d) Within 30 days after the date the unpriced proposals are  
 4-4 opened under Subsection (c), the county official shall present the  
 4-5 priced bids to the commissioners court. The award of the contract  
 4-6 shall be made to the responsible offeror whose bid is determined to  
 4-7 be the lowest and best evaluated offer resulting from negotiation.  
 4-8 All proposals and bids that have been submitted shall be available  
 4-9 and open for public inspection after the contract is awarded.

4-10 SECTION 14. Section 262.030(b), Local Government Code, is  
 4-11 amended to read as follows:

4-12 (b) Quotations must be solicited through a request for  
 4-13 proposals. Public notice for the request for proposals must be made  
 4-14 in the same manner as provided in the competitive bidding  
 4-15 procedure. The request for proposals must specify the relative  
 4-16 importance of price and other evaluation factors. The award of the  
 4-17 contract shall be made to the responsible offeror whose proposal is  
 4-18 determined to be the lowest and best evaluated offer resulting from  
 4-19 negotiation, taking into consideration the relative importance of  
 4-20 price and other evaluation factors set forth in the request for  
 4-21 proposals.

4-22 SECTION 15. Section 262.034(c), Local Government Code, is  
 4-23 amended to read as follows:

4-24 (c) A county officer or employee commits an offense if the  
 4-25 officer or employee intentionally or knowingly violates this  
 4-26 subchapter, other than by conduct described by Subsection (a) [~~or~~  
 4-27 ~~(b)~~]. An offense under this subsection is a Class C misdemeanor.

4-28 SECTION 16. Section 262.036(a), Local Government Code, is  
 4-29 amended to read as follows:

4-30 (a) Notwithstanding any other provision in this chapter, a  
 4-31 county [~~with a population of 800,000 or more~~] may select an  
 4-32 appropriately licensed insurance agent as the sole broker of record  
 4-33 to obtain proposals and coverages for insurance that provides  
 4-34 necessary coverage and adequate limits of coverage in all areas of  
 4-35 risk, including public official liability, property, casualty,  
 4-36 workers' compensation, and specific and aggregate stop-loss  
 4-37 coverage for self-funded health care.

4-38 SECTION 17. Subchapter C, Chapter 262, Local Government  
 4-39 Code, is amended by adding Section 262.037 to read as follows:

4-40 Sec. 262.037. QUALIFICATION. An officer authorized to make  
 4-41 a purchase on behalf of a county or a county department or office  
 4-42 may not make any purchase until providing to the county judge a  
 4-43 signed acknowledgment that the officer has read and understands  
 4-44 this chapter. This section does not apply in a county that has  
 4-45 appointed a purchasing agent under Subchapter B.

4-46 SECTION 18. Section 271.029(c), Local Government Code, is  
 4-47 amended to read as follows:

4-48 (c) An officer or employee of a governmental entity commits  
 4-49 an offense if the officer or employee intentionally or knowingly  
 4-50 violates this subchapter, other than by conduct described by  
 4-51 Subsection (a) [~~or (b)~~]. An offense under this subsection is a  
 4-52 Class C misdemeanor.

4-53 SECTION 19. Section 271.042, Local Government Code, is  
 4-54 amended to read as follows:

4-55 Sec. 271.042. PURPOSE; CONFLICT. (a) It is the purpose of  
 4-56 this subchapter to provide:

4-57 (1) a procedure for certain financing that is an  
 4-58 alternative to the more cumbersome procedure under Chapter 252 or  
 4-59 262; and

4-60 (2) a new class of securities to be issued and  
 4-61 delivered within the financial capabilities of an issuer on  
 4-62 compliance with the procedures prescribed by this subchapter.

4-63 (b) If there is a conflict between a provision of this  
 4-64 subchapter and a provision of Chapter 252 or 262, an issuer may use  
 4-65 either provision, and it is not necessary for the governing body to  
 4-66 designate the law under which action is being taken.

4-67 SECTION 20. Section 271.064(c), Local Government Code, is  
 4-68 amended to read as follows:

4-69 (c) An officer or employee of an issuer commits an offense

5-1 if the officer or employee intentionally or knowingly violates this  
 5-2 subchapter, other than by conduct described by Subsection (a) [~~or~~  
 5-3 ~~(b)~~]. An offense under this subsection is a Class C misdemeanor.

5-4 SECTION 21. Sections 271.181(2) and (6), Local Government  
 5-5 Code, are amended to read as follows:

5-6 (2) "Civil works project" means:

5-7 (A) roads, streets, bridges, utilities, water  
 5-8 supply projects, water plants, wastewater plants, water  
 5-9 distribution and wastewater conveyance facilities, desalination  
 5-10 projects, wharves, docks, airport runways and taxiways, storm  
 5-11 drainage and flood control projects, or transit projects;

5-12 (B) types of projects or facilities related to  
 5-13 those described by Paragraph (A) and associated with civil  
 5-14 engineering construction; and

5-15 (C) buildings or structures that are incidental  
 5-16 to projects or facilities that are described by Paragraphs (A) and  
 5-17 (B) and that are primarily civil engineering construction projects.

5-18 (6) "Local governmental entity" means a municipality,  
 5-19 a county, a river authority, a defense base development authority  
 5-20 established under Chapter 379B, a board of trustees under Chapter  
 5-21 54, Transportation Code, a municipally owned water utility with a  
 5-22 separate governing board appointed by the governing body of a  
 5-23 municipality, or any other special district or authority authorized  
 5-24 by law to enter into a public works contract for a civil works  
 5-25 project. The term does not include a regional tollway authority  
 5-26 created under Chapter 366, Transportation Code, a regional mobility  
 5-27 authority created under Chapter 370, Transportation Code, or a  
 5-28 water district or authority created under Section 52, Article III,  
 5-29 or Section 59, Article XVI, Texas Constitution, with a population  
 5-30 of less than 50,000.

5-31 SECTION 22. Section 271.182, Local Government Code, as  
 5-32 amended by Chapters 135 (S.B. 1047) and 725 (S.B. 229), Acts of the  
 5-33 81st Legislature, Regular Session, 2009, is reenacted and amended  
 5-34 to read as follows:

5-35 Sec. 271.182. APPLICABILITY. (a) This subchapter applies  
 5-36 to:

5-37 (1) a local governmental entity with a population of  
 5-38 more than 100,000 within its geographic boundaries or service area;

5-39 (2) a board of trustees under Chapter 54,  
 5-40 Transportation Code; and ~~[-]~~

5-41 (3) ~~[(c) This subchapter applies to]~~ a municipally  
 5-42 owned combined electric, water, and wastewater utility situated in  
 5-43 an economically distressed area and located within 30 miles of the  
 5-44 Lower Texas Gulf Coast.

5-45 (b) For purposes of Subsection (a)(3) [this subchapter],  
 5-46 "combined" means that the utilities are managed and controlled by  
 5-47 one board whose members are appointed by the governing body of the  
 5-48 municipality and that the financing of capital improvements is  
 5-49 secured from the revenue [revenues] of all three utilities.

5-50 SECTION 23. Sections 271.186(a) and (b), Local Government  
 5-51 Code, are amended to read as follows:

5-52 (a) During the first four years that this subchapter applies  
 5-53 to a local governmental entity under Section 271.182:

5-54 (1) a local governmental entity with a population of  
 5-55 500,000 or more may, under this subchapter, enter into contracts  
 5-56 for not more than three projects in any fiscal year;

5-57 (2) a local governmental entity with a population of  
 5-58 100,000 or more but less than 500,000 and a board of trustees under  
 5-59 Chapter 54, Transportation Code, may, under this subchapter, enter  
 5-60 into contracts for not more than two projects in any fiscal year;  
 5-61 and

5-62 (3) a municipally owned water utility with a separate  
 5-63 governing board appointed by the governing body of a municipality  
 5-64 with a population of 500,000 or more may:

5-65 (A) independently enter into a contract for not  
 5-66 more than one civil works project in any fiscal year; and

5-67 (B) enter into contracts for additional civil  
 5-68 works projects in any fiscal year, but not more than the number of  
 5-69 civil works projects prescribed by the limit in Subdivision (1) for

6-1 the municipality, provided that:

6-2 (i) the additional contracts for the civil  
6-3 works projects entered into by the utility under this paragraph are  
6-4 allocated to the number of contracts the municipality that appoints  
6-5 the utility's governing board may enter under Subdivision (1); and

6-6 (ii) the governing body of the municipality  
6-7 must approve the contracts.

6-8 (b) After the period described by Subsection (a):

6-9 (1) a local governmental entity with a population of  
6-10 500,000 or more may, under this subchapter, enter into contracts  
6-11 for not more than six projects in any fiscal year;

6-12 (2) a local governmental entity with a population of  
6-13 100,000 or more but less than 500,000 and a board of trustees under  
6-14 Chapter 54, Transportation Code, may, under this subchapter, enter  
6-15 into contracts for not more than four projects in any fiscal year;  
6-16 and

6-17 (3) a municipally owned water utility with a separate  
6-18 governing board appointed by the governing body of a municipality  
6-19 with a population of 500,000 or more may:

6-20 (A) independently enter into contracts for not  
6-21 more than two civil works projects in any fiscal year; and

6-22 (B) enter into contracts for additional civil  
6-23 works projects in any fiscal year, but not more than the number of  
6-24 civil works projects prescribed by the limit in Subdivision (1) for  
6-25 the municipality, provided that:

6-26 (i) the additional contracts for the civil  
6-27 works projects entered into by the utility under this paragraph are  
6-28 allocated to the number of contracts the municipality that appoints  
6-29 the utility's governing board may enter under Subdivision (1); and

6-30 (ii) the governing body of the municipality  
6-31 must approve the contracts.

6-32 SECTION 24. Sections 262.0271(a), 262.0295(a)(3),  
6-33 262.034(b), 262.035, 271.029(b), 271.030, 271.064(b), and 271.065,  
6-34 Local Government Code, are repealed.

6-35 SECTION 25. The changes in law made by this Act apply only  
6-36 to purchases made or a bid deadline that occurs on or after  
6-37 September 1, 2011. A purchase made or a bid deadline that occurs  
6-38 before September 1, 2011, is governed by the law as it existed  
6-39 immediately before the effective date of this Act, and that law is  
6-40 continued in effect for that purpose.

6-41 SECTION 26. (a) The changes in law made by this Act to  
6-42 Sections 262.034, 271.029, and 271.064, Local Government Code,  
6-43 apply only to an offense committed on or after the effective date of  
6-44 this Act. For purposes of this section, an offense is committed  
6-45 before the effective date of this Act if any element of the offense  
6-46 occurs before that date.

6-47 (b) An offense committed before the effective date of this  
6-48 Act is covered by the law in effect immediately before the effective  
6-49 date of this Act, and the former law is continued in effect for that  
6-50 purpose.

6-51 SECTION 27. To the extent of any conflict, this Act prevails  
6-52 over another Act of the 82nd Legislature, Regular Session, 2011,  
6-53 relating to nonsubstantive additions to and corrections in enacted  
6-54 codes.

6-55 SECTION 28. This Act takes effect September 1, 2011.

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