

1-1 By: West S.B. No. 1488
1-2 (In the Senate - Filed March 10, 2011; March 22, 2011, read
1-3 first time and referred to Committee on Higher Education;
1-4 April 26, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 26, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1488 By: Watson

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

1-10 relating to the purchasing and contracting practices of junior
1-11 college districts; providing criminal penalties.

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

1-13 SECTION 1. Subsection (a), Section 44.0311, Education Code,
1-14 is amended to read as follows:

1-15 (a) Except as provided by Subchapter K, Chapter 130
1-16 [~~Subsection (c)~~], this subchapter applies to junior college
1-17 districts.

1-18 SECTION 2. Subchapter A, Chapter 130, Education Code, is
1-19 amended by adding Section 130.0104 to read as follows:

1-20 Sec. 130.0104. POLICY AND REPORT REGARDING HISTORICALLY
1-21 UNDERUTILIZED BUSINESSES. (a) In this section, "historically
1-22 underutilized business" has the meaning assigned by Section
1-23 2161.001, Government Code.

1-24 (b) This section applies only to a junior college district
1-25 that:

1-26 (1) is located wholly or partly in a county with a
1-27 population of one million or more; and

1-28 (2) had an annual enrollment of 30,000 or more
1-29 full-time equivalent students in one or more of the most recent five
1-30 academic years.

1-31 (c) Each junior college district shall adopt a policy
1-32 stating its commitment to developing, maintaining, and enhancing
1-33 participation by historically underutilized businesses in all
1-34 phases of the district's procurement processes in order to support,
1-35 to the greatest extent feasible, the efforts of historically
1-36 underutilized businesses to compete for purchases of equipment,
1-37 supplies, services, including professional services, and
1-38 construction contracts.

1-39 (d) Annually, each junior college district shall publish a
1-40 report of the total number and total value of contracts awarded by
1-41 the district in the preceding fiscal year and the number and total
1-42 value of those contracts awarded to historically underutilized
1-43 businesses. The report must be published in a newspaper of general
1-44 circulation in the county in which the majority of the territory or
1-45 population of the district is located not later than the 60th day
1-46 following the last day of the district's fiscal year.

1-47 SECTION 3. Chapter 130, Education Code, is amended by
1-48 adding Subchapters K, L, and M to read as follows:

1-49 SUBCHAPTER K. PURCHASING CONTRACTS FOR GOODS AND SERVICES OTHER
1-50 THAN CONSTRUCTION OR PROFESSIONAL SERVICES

1-51 Sec. 130.251. DEFINITIONS. In this subchapter:

1-52 (1) "Board of trustees" means the governing board of a
1-53 district.

1-54 (2) "District" means a junior college district.

1-55 (3) "Purchase of goods or services":

1-56 (A) includes:

1-57 (i) contracting for the rights to use
1-58 rather than own goods;

1-59 (ii) the purchase of the materials and
1-60 labor incidental to the delivery and installation of personal
1-61 property; and

1-62 (iii) the purchase of services to repair or
1-63 replace equipment; and

2-1 (B) does not include the purchase or lease of
2-2 real property.
2-3 (4) "Services" does not include:
2-4 (A) construction services; or
2-5 (B) professional services, including services of
2-6 a consultant, to which Subchapter M applies.
2-7 Sec. 130.2511. USE OF TERMS "BIDDER," "VENDOR," AND "BID."
2-8 (a) In this subchapter, the terms "bidder" and "vendor" are used
2-9 interchangeably to identify an entity that responds to a request
2-10 for competitive bids, proposals, or qualifications.
2-11 (b) In this subchapter, the term "bid" is used to refer to a
2-12 competitive bid, proposal, or statement of qualifications.
2-13 Sec. 130.252. CONFLICT WITH OTHER LAW. To the extent of any
2-14 conflict, this subchapter prevails over any other law relating to
2-15 the purchase of goods or services by a district other than a law
2-16 relating to:
2-17 (1) contracting with historically underutilized
2-18 businesses; or
2-19 (2) the procurement of goods and services from persons
2-20 with disabilities.
2-21 Sec. 130.253. PURCHASE METHODS. (a) Except as otherwise
2-22 provided by this subchapter and subject to Section 130.264, each
2-23 contract for the purchase of goods or services by a district with a
2-24 value of \$50,000 or more that covers one or more fiscal years shall
2-25 be made by the method, of the following methods, that provides the
2-26 best value for the district:
2-27 (1) competitive sealed bids;
2-28 (2) competitive sealed proposals;
2-29 (3) the reverse auction procedure defined by Section
2-30 2155.062(d), Government Code; or
2-31 (4) the formation of a political subdivision
2-32 corporation under Section 304.001, Local Government Code.
2-33 (b) Only one of the methods listed in Subsection (a) may be
2-34 used for any individual contract. The district must determine
2-35 which method provides the best value for the district before
2-36 publishing the notice required by Section 130.258.
2-37 (c) If the district uses the competitive sealed proposal
2-38 method, the district shall:
2-39 (1) reveal when the proposals are opened the names of
2-40 the companies submitting proposals; and
2-41 (2) keep the contents of the proposals confidential
2-42 until the district concludes negotiations and awards a contract.
2-43 (d) Without complying with Subsection (a), a district may
2-44 purchase a good or service that is available from only one source,
2-45 including:
2-46 (1) an item for which competition is precluded because
2-47 of the existence of a patent, copyright, secret process, or
2-48 monopoly;
2-49 (2) a film, recording, periodical, manuscript, book,
2-50 or computer software;
2-51 (3) a utility service, including gas or water;
2-52 (4) a captive replacement part or component for
2-53 equipment;
2-54 (5) a product needed to match or work with like
2-55 products;
2-56 (6) technical or specialized services, including
2-57 advertising, audio/video production, and the repair and
2-58 maintenance of specialized equipment; and
2-59 (7) perishable goods, vehicle fuel, advertising
2-60 services, meeting and catering services, and travel services,
2-61 including airfare, ground transportation, and lodging.
2-62 (e) Without complying with Subsection (a), a district may
2-63 purchase a good or service under:
2-64 (1) an interlocal contract under Chapter 791,
2-65 Government Code;
2-66 (2) a contract established by the comptroller or
2-67 Department of Information Resources, including a contract for the
2-68 purchase of travel services, telephone service, computers, and
2-69 computer-related equipment and service, cabling, and software; or

3-1 (3) a purchase made under Subchapter D, F, or G,
 3-2 Chapter 271, Local Government Code.

3-3 (f) A contract for services that results in no cost to the
 3-4 district or that provides income greater than \$50,000 to the
 3-5 district must be based on bids, proposals, or qualifications that
 3-6 are solicited and awarded in the same manner as a contract for the
 3-7 purchase of goods or services. Such contracts include contracts
 3-8 for bookstore services, food services, and vending services.

3-9 (g) If district property is destroyed, stolen, severely
 3-10 damaged, or unusable, or a contractor is unable to fulfill its
 3-11 obligations in providing goods and services, and the board of
 3-12 trustees, or its designee, determines that the delay posed by using
 3-13 the methods required by Subsection (a) would pose a material threat
 3-14 to personal safety or of potential damage to other property or would
 3-15 prevent or substantially impair the conduct of classes or other
 3-16 essential district activities, then contracts for the replacement
 3-17 or repair of the property may be made by methods other than those
 3-18 required by Subsection (a).

3-19 (h) Without complying with Subsection (a), a district may
 3-20 purchase, license, or otherwise acquire library goods and services,
 3-21 including in any manner authorized by law for the purchase,
 3-22 license, or acquisition of library goods and services by a public
 3-23 senior college or university, as defined by Section 61.003. In this
 3-24 subsection, "library goods and services" means:

3-25 (1) serial and journal subscriptions, including
 3-26 electronic databases, digital content, and information products;

3-27 (2) other library materials and resources, including
 3-28 books, e-books, and media not available under a statewide contract
 3-29 and papers;

3-30 (3) library services, including periodical jobber and
 3-31 binding services not available under a statewide contract;

3-32 (4) equipment and supplies specific to the storage and
 3-33 access of library content; and

3-34 (5) library or resource-sharing programs operated by
 3-35 the Texas State Library and Archives Commission.

3-36 Sec. 130.254. PURCHASE OF INSURANCE. (a) A district may
 3-37 acquire insurance using a two-step process to obtain competitive
 3-38 sealed proposals. In the first step, the district shall determine
 3-39 which insurance providers are represented by agents interested in
 3-40 providing insurance for the district. If more than one agent
 3-41 indicates a desire to represent the same provider, the agent with
 3-42 the longest and most substantial relationship with the insurance
 3-43 provider shall be authorized to submit a proposal for the
 3-44 designated insurance provider. In the second step, the district
 3-45 shall notify the interested agents in writing as to which insurance
 3-46 providers the agents represent and request the agents to submit
 3-47 proposals for providing insurance.

3-48 (b) In notifying the interested agents to begin the second
 3-49 step, the district is not required to comply with Section 130.258.
 3-50 However, the district in the request for proposals shall give the
 3-51 interested agents notice of the date, time, and place where
 3-52 proposals are to be submitted. Proposals received after the date
 3-53 and time stated in the request for proposals may not be considered.

3-54 Sec. 130.255. MULTIYEAR CONTRACT. A contract for the
 3-55 purchase of goods or services that extends past the end of a
 3-56 district's fiscal year must include a provision that permits
 3-57 termination at the end of each fiscal year. Contracts solely for
 3-58 the purchase of goods may not exceed five years in duration.

3-59 Sec. 130.256. EVALUATION AND AWARD OF CONTRACT.

3-60 (a) Except as otherwise provided by this subchapter, a district
 3-61 shall award a contract for the purchase of goods or services to the
 3-62 lowest responsible bidder offering the best value to the district
 3-63 according to the selection criteria established by the district.
 3-64 The district shall publish in the request for bids, proposals, or
 3-65 qualifications the criteria the district will use to evaluate the
 3-66 offers.

3-67 (b) In determining the lowest responsible bidder, the
 3-68 district shall consider:

3-69 (1) the purchase price, including delivery and

4-1 installation charges;
4-2 (2) the reputation of the bidder and of the bidder's
4-3 goods or services;
4-4 (3) the quality of the bidder's goods or services;
4-5 (4) the extent to which the offered goods or services
4-6 meet the district's needs;
4-7 (5) the bidder's past relationship with the district;
4-8 (6) the total long-term cost to the district to
4-9 acquire the bidder's goods or services;
4-10 (7) the extent to which the offers comply with the
4-11 requirements of the request for bids, proposals, or qualifications;
4-12 (8) any other relevant factor specifically listed in
4-13 the request for bids or proposals; and
4-14 (9) the impact on the ability of the district to comply
4-15 with laws and rules relating to historically underutilized
4-16 businesses.
4-17 (c) A district may reject any or all bids, proposals, or
4-18 qualifications, or parts of bids, proposals, or qualifications, if
4-19 the rejection serves the district's interest.
4-20 (d) The district shall provide all bidders with the
4-21 opportunity to bid to provide the same goods or services on equal
4-22 terms and to have bids judged according to the same standards as
4-23 those set forth in the request for bids.
4-24 (e) Bids may be opened only by the district in a
4-25 district-owned or district-controlled facility. The meeting or
4-26 other occasion at which bids are opened shall be open to the public.
4-27 At the time the district opens a bid, if one or more members of the
4-28 public are present, the appropriate employee or officer of the
4-29 district shall read aloud the name of the bidder and the total bid
4-30 amount, if the bid is of a type that should contain a single bid
4-31 amount. When opening proposals or qualifications, the appropriate
4-32 employee or officer shall read aloud only the name of the
4-33 respondents and may not disclose the contents of a proposal or
4-34 qualification on opening or during negotiations with competing
4-35 bidders. At least two district employees or members of the
4-36 district's board of trustees must be present at the bid, proposal,
4-37 or qualification opening.
4-38 (f) A bid that has been opened may not be changed for the
4-39 purpose of correcting an error in the bid price. If there is a
4-40 discrepancy between the total price and the unit price of a bid, the
4-41 unit price prevails. If there is a discrepancy between the written
4-42 price and the numerical price of a bid, the written price prevails.
4-43 (g) This subchapter does not change the common law right of
4-44 a bidder to withdraw a bid due to a material mistake in the bid.
4-45 (h) The district shall document the basis of its selection
4-46 and shall make its evaluations public not later than the seventh day
4-47 after the date the contract is awarded. The district shall state in
4-48 writing the reasons for making an award.
4-49 (i) A contract awarded in violation of this subchapter is
4-50 void.
4-51 (j) In awarding a contract by competitive sealed bid under
4-52 this section, a district that has its central administrative office
4-53 located in a municipality with a population of less than 250,000 may
4-54 consider a bidder's principal place of business in the manner
4-55 provided by Section 271.9051, Local Government Code. This
4-56 subsection does not apply to the purchase of telecommunications
4-57 services or information services, as those terms are defined by 47
4-58 U.S.C. Section 153.
4-59 Sec. 130.257. RULES AND PROCEDURES; AUDITS BY STATE
4-60 AUDITOR. (a) The board of trustees may adopt rules and procedures
4-61 for the acquisition of goods or services by the district.
4-62 (b) District purchases of goods or services are subject to
4-63 audit by the state auditor in accordance with Chapter 321,
4-64 Government Code.
4-65 Sec. 130.258. NOTICE. (a) Except as otherwise provided by
4-66 this subchapter, for any method of contracting selected under
4-67 Section 130.253(a), the district shall, within a seven-day period,
4-68 publish the notice required by this section in at least two issues
4-69 of any newspaper of general circulation in the county in which the

5-1 district's central administrative office is located. The deadline
 5-2 for receiving bids or proposals may not be less than 10 business
 5-3 days after the date of the publication of the first newspaper
 5-4 notice. The deadline for receiving responses to a request for
 5-5 qualifications may not be less than five business days after the
 5-6 date of the publication of the last newspaper notice. If there is
 5-7 not a newspaper of general circulation in the county in which the
 5-8 district's central administrative office is located, the notice
 5-9 shall be published in a newspaper of general circulation in a
 5-10 location nearest the district's central administrative office. In
 5-11 a two-step procurement process, the time and place where the
 5-12 second-step bids, proposals, or responses will be received are not
 5-13 required to be included in the notice.

5-14 (b) The district may, as an alternative to publishing notice
 5-15 in a newspaper exclusively under Subsection (a), publish on a
 5-16 publicly accessible Internet website the notice required by this
 5-17 section. Before or at the same time the district first publishes
 5-18 the Internet notice, the district shall publish a notice in a
 5-19 newspaper of general circulation, as described by Subsection (a),
 5-20 that includes the name of the goods or services to be purchased, the
 5-21 date, time, and place for receiving and opening bids, proposals, or
 5-22 statements of qualifications, and the Internet address of the
 5-23 Internet website where detailed requirements may be found. The
 5-24 notice posted on the Internet under this subsection must be posted
 5-25 every day for at least five business days before the deadline for
 5-26 receiving the bids or proposals or statements of qualifications.

5-27 (c) Except as otherwise provided by Subsection (b) for the
 5-28 newspaper notice required by that subsection, the notice required
 5-29 by this section must include:

5-30 (1) the location where the request for bid, proposal,
 5-31 or qualification documents may be obtained or examined;

5-32 (2) the date, time, and place for receiving and
 5-33 opening bids, proposals, or statements of qualifications;

5-34 (3) a general description of the goods or services;

5-35 (4) the location and time of any mandatory site
 5-36 inspections or pre-bid meetings; and

5-37 (5) the amount of any required bid bond, payment bond,
 5-38 or performance bond.

5-39 Sec. 130.259. DISCUSSION AND REVISION OF PROPOSALS.

5-40 (a) As provided in a request for proposals and under rules adopted
 5-41 by the district, the district may discuss acceptable or potentially
 5-42 acceptable proposals with bidders to assess a bidder's ability to
 5-43 meet the solicitation requirements.

5-44 (b) After receiving a proposal but before making an award,
 5-45 the district may permit the three highest-ranking bidders to revise
 5-46 their proposals, within the scope of the published specifications,
 5-47 to obtain the best final offer.

5-48 Sec. 130.260. PRE-BID CONFERENCE OR SITE VISIT. (a) The
 5-49 district may require a principal, officer, or employee of each
 5-50 prospective bidder to attend a mandatory pre-bid conference or site
 5-51 visit, or both, as a condition of a request for bid or proposal.
 5-52 Notice of a requirement under this subsection must be included in
 5-53 the notice published under Section 130.258.

5-54 (b) After the district conducts a mandatory pre-bid
 5-55 conference or site visit, the district may send any additional
 5-56 required notice for the proposed contract only to prospective
 5-57 bidders who attended or were represented at the conference or who
 5-58 are documented as having visited the site.

5-59 Sec. 130.261. IDENTICAL BIDS. If, after considering the
 5-60 factors described by Section 130.256, the district determines that
 5-61 the district has received identical bids, the district shall cast
 5-62 lots to determine which bidder will be awarded the contract. The
 5-63 district shall invite the bidders to witness the selection process
 5-64 under this section. The selection process must be conducted by at
 5-65 least two district employees or members of the district's board of
 5-66 trustees.

5-67 Sec. 130.262. BID DEPOSIT. (a) The district may, as the
 5-68 district determines necessary, require a bid deposit in an amount
 5-69 determined by the district. The amount of the deposit, if any, must

6-1 be stated in the notice required by Section 130.258 of the
 6-2 invitation to bid.

6-3 (b) On the award of a contract or the rejection of all bids,
 6-4 the district shall return the bid deposit of an unsuccessful
 6-5 bidder. The bid deposit of the successful bidder may be retained
 6-6 until the contract is signed by the district. A bid deposit may not
 6-7 be held longer than 90 days.

6-8 (c) The bid deposit required by the district, if any, must
 6-9 be in the form of a cashier's check, certified check, or bid bond
 6-10 written by a surety authorized to conduct business in this state. A
 6-11 district may elect to require a bid deposit to be in the form of a
 6-12 bid bond.

6-13 Sec. 130.263. PERFORMANCE BOND. A district may require a
 6-14 contractor to provide a performance bond in the amount of the
 6-15 contract before executing a contract for the use or purchase of
 6-16 goods or services with a value of \$100,000 or more. The bond must be
 6-17 written by a surety authorized to conduct business in this state and
 6-18 generally comply with the performance bond requirements of Chapter
 6-19 2253, Government Code.

6-20 Sec. 130.264. ENFORCEMENT OF PURCHASING PROCEDURES:
 6-21 CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY; INJUNCTION. (a) In
 6-22 this section:

6-23 (1) "Component purchases" means purchases of the
 6-24 component parts of an item that in normal purchasing practices
 6-25 would be purchased in one purchase.

6-26 (2) "Separate purchases" means purchases, made
 6-27 separately, of goods or services that in normal purchasing
 6-28 practices would be purchased in one purchase.

6-29 (3) "Sequential purchases" means purchases, made over
 6-30 a period, of goods or services that in normal purchasing practices
 6-31 would be purchased in one purchase.

6-32 (b) An officer, employee, or agent of a district commits an
 6-33 offense if the person with criminal negligence makes or authorizes
 6-34 separate, sequential, or component purchases for the purpose of
 6-35 avoiding the requirements of Section 130.253, 130.256, or 130.266.
 6-36 An offense under this subsection is a Class B misdemeanor and is an
 6-37 offense involving moral turpitude that results in a forfeiture of
 6-38 an officer's public office.

6-39 (c) An officer, employee, or agent of a district commits an
 6-40 offense if the person with criminal negligence violates Section
 6-41 130.253, 130.256, or 130.266 other than by conduct described by
 6-42 Subsection (b). An offense under this subsection is a Class B
 6-43 misdemeanor and is an offense involving moral turpitude that
 6-44 results in a forfeiture of an officer's public office.

6-45 (d) An officer or employee of a district commits an offense
 6-46 if the officer or employee knowingly violates Section 130.253,
 6-47 130.256, or 130.266 other than by conduct described by Subsection
 6-48 (b) or (c). An offense under this subsection is a Class C
 6-49 misdemeanor.

6-50 (e) The final conviction of a person other than a member of
 6-51 the board of trustees for an offense under Subsection (b) or (c)
 6-52 results in the immediate removal from office or employment of that
 6-53 person. A trustee who is convicted of an offense under this section
 6-54 is subject to removal as provided by Chapter 66, Civil Practice and
 6-55 Remedies Code. For four years after the date of the final
 6-56 conviction, the removed person is ineligible to be a candidate for
 6-57 or to be appointed or elected to a public office in this state, is
 6-58 ineligible to be employed by or act as an agent for this state or a
 6-59 political subdivision of this state, and is ineligible to receive
 6-60 any compensation through a contract with this state or a political
 6-61 subdivision of this state. This subsection does not prohibit the
 6-62 payment of retirement benefits to the removed person or the payment
 6-63 of workers' compensation benefits to the removed person for an
 6-64 injury that occurred before the commission of the offense for which
 6-65 the person was removed. This subsection does not make a person
 6-66 ineligible for an office for which the federal or state
 6-67 constitution prescribes exclusive eligibility requirements.

6-68 (f) A court may enjoin performance of a contract made in
 6-69 violation of this subchapter. A county attorney, district

7-1 attorney, criminal district attorney, citizen of the county in
 7-2 which the district is located, or an interested party may bring an
 7-3 action for an injunction. A party who prevails in an action brought
 7-4 under this subsection is entitled to reasonable attorney's fees as
 7-5 approved by the court.

7-6 Sec. 130.265. NOTIFICATION OF CRIMINAL HISTORY OF
 7-7 CONTRACTOR. (a) A person or business entity that enters into a
 7-8 contract with a district must give advance notice to the district if
 7-9 the person or an owner or operator of the business entity has been
 7-10 convicted of a felony. The notice must include a general
 7-11 description of the conduct resulting in the conviction of a felony.

7-12 (b) A district may refuse to enter into a contract or other
 7-13 transaction with a person who has been convicted of a felony or with
 7-14 a business entity if an owner or operator of the entity has been
 7-15 convicted of a felony.

7-16 (c) A district may terminate a contract with a person or
 7-17 business entity if the district determines that the person or
 7-18 business entity failed to give notice as required by Subsection (a)
 7-19 or misrepresented the conduct resulting in the conviction. The
 7-20 district must compensate the person or business entity for goods
 7-21 delivered or services performed before the termination of the
 7-22 contract.

7-23 (d) This section does not apply to a publicly held
 7-24 corporation.

7-25 Sec. 130.266. EFFICIENCY AND SAVINGS. In order to increase
 7-26 efficiency of operations and to achieve savings through volume
 7-27 purchases, on an annual basis a district shall identify common
 7-28 types of goods and services to be purchased from the district's
 7-29 budget and, to the extent the district determines practicable,
 7-30 consolidate the purchase of those goods or services under contracts
 7-31 entered into under this subchapter.

7-32 Sec. 130.267. DELEGATION. (a) Except as provided by
 7-33 Subsection (b), the board of trustees may, as appropriate, delegate
 7-34 its authority under this subchapter to a designated person,
 7-35 representative, or committee. In procuring goods or services, the
 7-36 district shall provide notice of the delegation and the limits of
 7-37 the delegation in the request for bids, proposals, or
 7-38 qualifications or in an addendum to the request. If the district
 7-39 fails to provide that notice, a ranking, selection, or evaluation
 7-40 of bids, proposals, or qualifications other than by the board of
 7-41 trustees in an open public meeting is advisory only.

7-42 (b) The board of trustees may not delegate the authority to
 7-43 act regarding an action specifically authorized or required by this
 7-44 subchapter to be taken by the board of trustees.

7-45 SUBCHAPTER L. DISPOSAL OF SURPLUS PERSONAL PROPERTY

7-46 Sec. 130.301. SALE OF PERSONAL PROPERTY. A junior college
 7-47 district shall dispose of surplus personal property in an
 7-48 accountable manner that best serves the interest of the district. A
 7-49 sale or transfer of personal property that is not covered by Chapter
 7-50 791, Government Code, must be solicited and awarded in the same
 7-51 manner as a contract for the purchase of goods or services under
 7-52 Subchapter K.

7-53 Sec. 130.302. METHODS OF DISPOSAL. (a) A junior college
 7-54 district may use any of the following methods to dispose of surplus
 7-55 personal property:

7-56 (1) the use of a licensed auctioneer to conduct live or
 7-57 Internet-based auctions;

7-58 (2) a direct sale by the district to a person
 7-59 submitting the highest and best bid through a competitive process,
 7-60 including an Internet-based bidding system;

7-61 (3) the trade-in of items when purchasing new items;

7-62 (4) a sale or transfer to another governmental entity
 7-63 at a mutually agreed price; or

7-64 (5) a donation to a governmental entity in this state.

7-65 (b) If the junior college district is unable to find a buyer
 7-66 or governmental entity who wants the surplus property, the property
 7-67 may be:

7-68 (1) discarded in accordance with applicable federal,
 7-69 state, and local laws, ordinances, and rules; or

8-1 (2) removed by an interested party at no charge or for
8-2 a nominal charge.

8-3 (c) Except as provided by this section, a junior college
8-4 district may not give, donate, loan, or transfer surplus property
8-5 to any person or entity.

8-6 SUBCHAPTER M. PROFESSIONAL SERVICES AND CONSULTANT SERVICES

8-7 Sec. 130.351. PROFESSIONAL SERVICES. (a) For purposes of
8-8 this section, "professional service provider" means a person who
8-9 provides services of a predominantly mental or intellectual matter
8-10 and who is a member of a discipline requiring special knowledge or
8-11 the attainment of a high order of learning, skill, or intelligence.
8-12 The term includes a person who provides professional services, as
8-13 defined by Section 2254.002, Government Code.

8-14 (b) A junior college district shall select and enter into
8-15 contracts for professional services in accordance with Subchapter
8-16 A, Chapter 2254, Government Code. If the estimated value of a
8-17 contract for professional services is \$50,000 or more during a
8-18 fiscal year, or during the contract's term if the contract is a
8-19 multiple-year contract, the district shall publish notice of the
8-20 request for qualifications as provided by Section 130.258.

8-21 (c) A professional service provider selected by the junior
8-22 college district may be selected for a specific project or for
8-23 various projects that arise during the term of the provider's
8-24 contract. The term of a contract with a professional service
8-25 provider may not exceed five years, except that the professional
8-26 service provider shall complete services for projects started
8-27 before the end of the contract term.

8-28 Sec. 130.352. CONSULTANTS. (a) For purposes of this
8-29 section, "consultant" includes a financial advisor, fiscal agent,
8-30 auctioneer, personnel services provider, travel agent, technology
8-31 or educational services provider or advisor, and business engaged
8-32 to teach approved courses.

8-33 (b) A junior college district shall select and enter into
8-34 contracts with consultants in accordance with Section 130.253 or
8-35 Subchapter B, Chapter 2254, Government Code. If the estimated
8-36 value of a contract for consulting services is \$50,000 or more
8-37 during a fiscal year, or during the contract's term if the contract
8-38 is a multiple-year contract, the district shall publish notice of
8-39 the request for qualifications, bids, or proposals as provided by
8-40 Section 130.258.

8-41 (c) A consultant selected by the junior college district may
8-42 be selected for a specific project or for various projects that
8-43 arise during the term of the consultant's contract. The term of a
8-44 contract with a consultant may not exceed five years, except that
8-45 the consultant shall complete services for projects started before
8-46 the end of the contract term.

8-47 Sec. 130.353. RULES AND PROCEDURES; AUDITS BY STATE
8-48 AUDITOR. (a) The board of trustees of a junior college district
8-49 may adopt rules and procedures in accordance with Chapter 2254,
8-50 Government Code, for the acquisition of professional services and
8-51 consultants by the district.

8-52 (b) Junior college district contracts for professional
8-53 services or consultants are subject to audit by the state auditor in
8-54 accordance with Chapter 321, Government Code.

8-55 SECTION 4. Section 271.023, Local Government Code, is
8-56 amended to read as follows:

8-57 Sec. 271.023. CONFLICT OF LAWS. To the extent of any
8-58 conflict, the provisions of Subchapter B, Chapter 44, Education
8-59 Code, relating to the purchase of goods and services under contract
8-60 by a school district and the provisions of Subchapter K, Chapter
8-61 130, Education Code, relating to the purchase of goods or services
8-62 under contract by a junior college prevail over this subchapter.

8-63 SECTION 5. Subsection (c), Section 44.0311, and Sections
8-64 130.010 and 130.0101, Education Code, are repealed.

8-65 SECTION 6. The change in law made by this Act applies only
8-66 to a contract for which requests for bids, requests for proposals,
8-67 or requests for qualifications are published or distributed on or
8-68 after the effective date of this Act. A contract for which requests
8-69 for bids, requests for proposals, or requests for qualifications

9-1 are published or distributed before the effective date of this Act
9-2 is covered by the law in effect when the requests were published or
9-3 distributed, and the former law is continued in effect for that
9-4 purpose.

9-5 SECTION 7. This Act does not make an appropriation. A
9-6 provision in this Act that creates a new governmental program,
9-7 creates a new entitlement, or imposes a new duty on a governmental
9-8 entity is not mandatory during a fiscal period for which the
9-9 legislature has not made a specific appropriation to implement the
9-10 provision.

9-11 SECTION 8. This Act takes effect September 1, 2011.

9-12

* * * * *