

CHAPTER 505

S.B. No. 802

An Act relating to the taking of competitive bids and the issuance of certificates of obligation by cities and counties; providing certain definitions and penalties; amending the Bond and Warrant Law of 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes), by amending Sections 1 and 2 and by making a contingent addition of Section 1a; amending Section 7, The Certificate of Obligation Act of 1971 (Article 2368a.1, Vernon's Texas Civil Statutes); repealing Articles 1658, 1659, 1659a, 1659b, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, and 2367, Revised Statutes; Section 4.436, County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes); and Sections 25 and 26, Chapter 300, Acts of the 52nd Legislature, 1951 (Article 6812b, Vernon's Texas Civil Statutes).

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1, Bond and Warrant Law of 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. The word 'city' as used in this Act shall include all cities and towns incorporated under General or Special Laws, and all cities operating under charter adopted under the provisions of Article 11, Section 5, of the Constitution of Texas, unless especially excepted under the terms of this Act.

"The term 'governing body' as used in this Act shall include the governing body of every city, whether designated as 'Board of Aldermen,' 'City Council,' 'City Commission,' or otherwise.

"For the purposes of this Act the term 'current funds,' shall include money in the treasury, taxes in process of collection during such tax year, and all other revenues which may be anticipated with reasonable certainty during such tax year.

"The term 'bond funds' shall include money in the treasury already received from the sale of bonds, and the proceeds of bonds theretofore voted but not yet issued and delivered.

"The term 'time warrant' as used in this Act shall include any warrant issued by a city [~~or county~~] not payable out of current funds.

"The term 'exempted procurements' shall include any of the following:

"(1) procurements made in case of public calamity, where it becomes necessary to act at once to appropriate money to relieve the necessity of the citizens or to preserve the property of the city;

"(2) procurements necessary to preserve or protect the public health or safety of the citizens of the city;

"(3) procurements made necessary by unforeseen damage to public property, machinery, or equipment;

"(4) procurements for personal or professional services;

"(5) procurements for work done and paid for by the day, as such work progresses;

"(6) the purchase of land or right-of-way; and

"(7) procurements where the functional requirements of the city can be satisfied by only one source. By way of example without limitation, this provision shall apply to procurements where competition is precluded because of the existence of patents, copyrights, secret processes, or natural monopolies; purchase of films, manuscripts, or books; purchases of electric power, gas, water, and other utility services; and the purchase of captive replacement parts or components for equipment.

"The term 'high technology procurement' means the procurement of equipment, goods, or services of a highly technical nature, including but not limited to: information processing equipment, software and firmware used in conjunction with information processing equipment, telecommunications equipment, radio and microwave systems, electronic distributed control systems (including building energy management systems) as well as technical services related to such equipment and goods.

"The short title of this Act shall be 'Bond and Warrant Law of 1931.'

"Nothing in this Act shall be construed as to affect any bonds or warrants legally issued or authorized to be issued and for which a tax has been levied for the payment of interest and principal thereof, prior to the time when this Act shall become effective and under the laws existing at that time, nor as affecting the matters covered by House Bill No. 981, Acts of the 42nd Legislature, Regular Session, provided that after June 1, 1932, the requirements of this Act with respect to notice, competitive bidding, and a referendum election shall also be complied with by all cities then acting under the provisions of said House Bill No. 981."

SECTION 2. Section 2, Bond and Warrant Law of 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 2. (a) Except in the case of exempted procurements, no city with a population of 50,000 or more shall make a contract requiring an expenditure or payment in amount exceeding \$10,000, out of any fund or funds of any city creating or imposing an obligation or liability of any nature or character upon such city, without first submitting such proposed contract to competitive sealed bidding or competitive sealed proposals as provided in this section. Except in the case of exempted procurements, no city with a population of less than 50,000 shall make a contract requiring expenditure or payment in an amount exceeding 5,000 without first submitting such proposed contract to competitive sealed bidding as provided in this section.

"(b) The competitive sealed bidding procedure as provided herein shall be used for the award of all contracts subject to the provisions of this section, except that in the case of high technology procurements the city may follow the competitive sealed proposal procedure provided in Subsection (c) of this section.

"Whenever the competitive sealed bidding procedure applies to a proposed contract, notice of the time and place when and where such a contract shall be let shall be published in such city once a week for two (2) consecutive weeks prior to the time set for letting such contract, the date of the first publication to be at least fourteen (14) days prior to the date set for letting said contract; and said contract shall be let to the lowest responsible bidder. The governing body shall have the right to reject any and all bids, and if the contract is for the construction of public works, then the successful bidder shall be required to give a good and sufficient bond in the full amount of the contract price, for the faithful performance of such contract, executed by some surety company authorized to do business in this state in accordance with the provisions of Article 5160, Revised Statutes, and the amendments thereto. However, the city in making any contract calling for or requiring the expenditure or payment of less than \$100,000 may, in lieu of the bond requirement, provide in the contract that no money will be paid to the contractor until completion and acceptance of the work by the city. If there is no newspaper published in such city, then the notice of letting such contract shall be given by causing notice thereof to be posted at the city hall for 14 days prior to the time of letting such contract. Trade secrets and confidential information contained in the competitive sealed bids shall not be open for public inspection.

"(c) The competitive sealed proposal procedure as provided in this subsection may be used by cities with a population of 50,000 or more for high technology procurements. Quotations shall be solicited through a request for proposals. Public notice for the request for proposals shall be made in the same manner as provided in Subsection (b) of this section for competitive sealed bidding. The request for proposals shall specify the relative importance of price and other evaluation factors, and the award of contract shall be made to the responsible offeror whose proposal is determined to be the most advantageous to the city taking into consideration the relative importance of price and other evaluation factors set forth in the request for proposals.

"Where provided in the request for proposals, proposals shall be opened so as to avoid disclosure of contents to competing offerors and kept secret during the process of negotiation. Provided, however, all proposals that have been submitted shall be open for public inspection after contract award. Trade secrets and confidential information contained in the proposals shall not be open for public inspection.

"As provided in the request for proposals and under regulations promulgated by the governing body, discussions may be conducted with offerors who submit proposals determined to be reasonably qualified for selection for award. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers.

"(d) The notice provisions provided in Subsection (b) of this section shall apply to all contracts for which the governing body intends to issue time warrants with the right of referendum as contemplated in Sections 3 and 4 hereof respectively.

"(e) Provisions in reference to notice, advertisement thereof, requirements as to the taking of sealed bids based upon specifications for public improvements or purchases, and the manner of letting of contracts, as contained in the charter of a city, if in conflict with the provisions of this Act, shall be followed in such city notwithstanding any other provisions of this Act. The provisions of this Act and of Article 5160, Revised Statutes, as amended, relating to the furnishing of surety bond by contractors may be adopted by ordinance of the governing body of a city, notwithstanding conflicting city charter provisions.

"(f) Any and all such contracts hereafter made by any city of this state without complying with the terms of this law shall be void and shall not be enforceable in any court of this state, and the performance of same and the payment of any money thereunder may be enjoined by any property taxpayer citizen of such city.

"(g) Nothing in this law shall prevent a city from selecting a licensed insurance broker as the sole broker of record to obtain proposals and coverages for excess or surplus insurance which provides necessary coverage provisions and adequate limits of coverage in structuring layered excess coverages in all areas of risk requiring special consideration, including but not limited to public official liability, police professional liability, and airport liability. The insurance broker shall be retained on a fee basis only and shall not receive any other remuneration from any other source.

"(h) **CRIMINAL PENALTY.** (1) A city officer or employee who knowingly or intentionally makes or authorizes purchases in order to avoid the competitive bidding requirements of this Act commits an offense. The offense is a Class C misdemeanor. [No county, acting through its Commissioners Court, and no city in this state shall hereafter make any contract calling for or requiring an expenditure or payment in an amount exceeding five thousand dollars (\$5,000.00) out of any fund or funds of any city or county or subdivision of any county creating or imposing an obligation or liability of any nature or character upon such county or any subdivision of such county, or upon such city, without first submitting such proposed contract to competitive bids.

"[(b) Notice of the time and place when and where such contracts shall be let shall be published in such county (if concerning a county contract or contracts for such subdivision of such county) and in such city; (if concerning a city contract); once a week for two (2) consecutive weeks prior to the time set for letting such contract; the date of the first publication to be at least fourteen (14) days prior to the date set for letting said contract; and said contract shall be let to the lowest responsible bidder. The court and/or governing body shall have the right to reject any and all bids; and if the contract is for the construction of public works, then the successful bidder shall be required to give a good and sufficient bond in the full amount of the contract price; for the faithful performance of such contract, executed by some surety company authorized to do business in this state in accordance with the provisions of Article 5160, Revised Statutes of 1925, and the amendments thereto. However, the city or county in making any contract calling for or requiring the expenditure or payment of less than Fifty Thousand Dollars (\$50,000.00) may, in lieu of the bond requirement, provide in the contract that no money will be paid to the contractor until completion and acceptance of the work by the city or county. If there is no newspaper published in such county, the notice of the letting of such contract by such county shall be given by causing notice thereof to be posted at the County Court House door for fourteen (14) days prior to the time of letting such contract. If there is no newspaper published in such city, then the notice of letting such contract shall be given by causing notice thereof to be posted at the City Hall for fourteen (14) days prior to the time of letting such contract. Provided; that in case of public calamity, where it becomes necessary to act at once to appropriate money to relieve the necessity of the citizens; or to preserve the property of such county, subdivision, or city; or when it is necessary to preserve or protect the public health of the citizens of such county or city; or in case of unforeseen damage to public property, machinery or equipment; this provision shall not apply; and provided further, as to contracts for personal or professional services; work done by such county or city and paid for by the day, as such work progresses; and the purchase of land and right/of/way for authorized needs and purposes; the provisions hereof requiring competitive bids shall not apply and in such cases the notice herein provided shall be given but only with

respect to an intention to issue time warrants with right of referendum as contemplated in Sections 3 and 4 hereof respectively.

~~"[(e) Provisions in reference to notice to bidders; advertisement thereof; requirements as to the taking of sealed bids based upon specifications for public improvements or purchases; and the manner of letting of contracts; as contained in the charter of a city; if in conflict with the provisions of this Act; shall be followed in such city notwithstanding any other provisions of this Act. The provisions of this Act and of Article 5160, Revised Statutes of 1925; as amended; relating to the furnishing of surety bonds by contractors may be adopted by ordinance of the governing body of a city; notwithstanding conflicting city charter provisions.~~

~~"[(d) Any and all such contracts or agreements hereafter made by any county or city in this state, without complying with the terms of this section; shall be void and shall not be enforceable in any court of this state and the performance of same and the payment of any money thereunder may be enjoined by any property taxpaying citizen of such county or city.]"~~

SECTION 3. Section 7, The Certificate of Obligation Act of 1971 (Article 2368a.1, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 7. The provisions of Section 6 of this Act relating to advertisement for competitive bids shall not apply in the following instances:

"(1) in case of a public calamity where it becomes necessary to act at once to relieve the necessity of the citizens or to preserve the property of such city or county; or

"(2) where it is necessary to preserve or protect the public health of the citizens of such city or county; or

"(3) in the case of unforeseen damage to public property, machinery or equipment; or

"(4) contracts for personal or professional services; or

"(5) work done by employees of the issuer and paid for as such work progresses; or

"(6) the purchase of land, buildings, existing utility systems or rights-of-way for authorized needs and purposes; or

"(7) expenditures for or relating to improvements to a city water system, sewer system, streets or drainage (any one or all) where the cost of at least one-third (1/3) of which is to be paid by special assessments levied against properties to be benefited thereby; or

"(8) where the entire contractual obligation is to be paid from bond funds or current funds, or where an advertisement for bids has previously been published (in the manner authorized or permitted in Section 6) but the current funds or bond funds are not adequate to permit the awarding of a contract and the certificates are to be issued to provide the deficiency; ~~or~~

"(9) the sale of any public security as such term is defined in Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended by Chapter 3, Acts of 61st Legislature, 2nd Called Session, 1969; or

"(10) any other procurement for which the Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes), does not require competitive sealed bidding procedures as described in Section 6 of this Act.

"Certificates authorized to be issued for the purpose or purposes specified in this section, in the discretion of the governing body of the issuer, may be sold for cash and the proceeds thereof shall be used only for the purpose or purposes for which the same were authorized; provided, (i) accrued interest received, if any, shall be deposited in the interest and sinking fund established for the payment of such certificates and (ii) no certificate may be sold for cash to pay for work done by employees of the issuer and paid for as such work progresses and (iii) a certified copy of the proceedings relating to the authorization of such certificates shall be submitted to the Attorney General of Texas and be approved by such officer as having been authorized in accordance with the provisions of this Act. It shall be the duty of the Attorney General of Texas to examine the proceedings relating to the authorization of such certificates and the provisions of Article 709 through Article 716, inclusive, of Title 22 of the Revised Civil Statutes of Texas, 1925, as amended, and Chapter 204, Acts of the 57th Legislature, Regular Session, 1961, as amended by Chapter 290, Acts of the 60th Legislature, Regular Session, 1967, shall apply to and govern the execution, approval, registration, and validity of such certificates. From and after the registration of such certificates by the Comptroller of Public Accounts, the same shall be incontestable for any cause.

"Certificates approved by the Attorney General shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, and guardians, and for any sinking funds of cities, towns, villages, counties, school districts and other political corporations or subdivisions of the State of Texas. Such certificates shall be eligible to secure the deposit of any

and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts and other political corporations or subdivisions of the State of Texas, and shall be lawful and sufficient security for said deposits at their face value when accompanied by all unmatured coupons, if any, appurtenant thereto."

SECTION 4. (a) This section is contingent on S.B. 807, Acts of the 69th Legislature, Regular Session, 1985, not becoming law. If S.B. 807 does become law, this section has no effect.

(b) The Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes) is amended by adding Section 1a to read as follows:

"Section 1a. Section 2 of this Act applies to a county in the same manner that it applies to a city. In applying Section 2 to a county, a reference in the section to a city shall be treated as if it were referring to a county, a reference to a governing body shall be treated as if it were referring to a commissioners court, and a reference to a city officer or employee shall be treated as if it were referring to a county officer or employee. Any criminal penalty established by Section 2 applies to a county officer or employee to the same extent that it applies to a city officer or employee. To the extent that it is not possible to apply Section 2 to a county, such as in matters referring to a city charter, Section 2 does not apply to a county."

(c) The following laws are repealed:

(1) Articles 1658, 1659, 1659a, 1659b, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, and 2367, Revised Statutes;

(2) Section 4.436, County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes); and

(3) Sections 25 and 26, Chapter 300, Acts of the 52nd Legislature, 1951 (Article 6812b, Vernon's Texas Civil Statutes).

SECTION 5. (a) This section is contingent on S.B. 807, Acts of the 69th Legislature, Regular Session, 1985, becoming law. If S.B. 807 does not become law, this section has no effect.

(b) Until S.B. 807, Acts of the 69th Legislature, Regular Session, 1985, takes effect, a county continues to be subject to the same purchasing law that applies to the county on January 1, 1985.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 6, 1985, by the following vote: Yeas 30, Nays 0; Senate concurred in House amendments on May 27, 1985, by a viva-voce vote; passed the House, with amendments, on May 24, 1985, by a non-record vote.

Approved: June 12, 1985

Effective: August 26, 1985