

CHAPTER 641

S.B. No. 807

An Act relating to the procedures governing purchases made by counties; providing penalties; amending Sections 2, 2a, 2b, 3, 4, and 5, Bond and Warrant Law of 1931, as amended; Subsection (b), Section 6, and Section 7, The Certificate of Obligation Act of 1971, as amended; Section 1, Chapter 453, Acts of the 45th Legislature, Regular Session, 1937, as amended; Section 1, Chapter 360, Acts of the 47th Legislature, Regular Session, 1941, as amended; Section 1, Chapter 424, Acts of the 47th Legislature, Regular Session, 1941; Sections 1 and 2, Chapter 116, Acts of the 56th Legislature, Regular Session, 1959, as amended; Subdivision 2, Subsection (e), Section 3.102, and Section 3.211, County Road and Bridge Act, as amended (Articles 2368a, 2368a.1, 2351a, 2351a-1, 2351a-2, 2367a, and 6702-1, Vernon's Texas Civil Statutes); and repealing Articles 1658, 1659, 1659a, 1659b, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, and 2367, Revised Statutes, and Section 4.436, County Road and Bridge Act and Sections 25 and 26, Chapter 299, Acts of the 52nd Legislature, 1951 (Articles 6702-1 and 6812b, Vernon's Texas Civil Statutes).

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

SECTION 1. The County Purchasing Act is enacted to read as follows:

"Section 1. **SHORT TITLE.** This Act may be cited as the County Purchasing Act.

"Section 2. **DEFINITIONS.** In this Act:

"(1) 'Current funds' means funds in the county treasury that are available in the current tax year, revenue that may be anticipated with reasonable certainty to come into the county treasury during the current tax year, and emergency funds.

"(2) 'Bond funds' means money in the county treasury received from the sale of bonds, and proceeds of bonds that have been voted but that have not been issued and delivered.

"(3) 'Item' means any service, equipment, good, or other tangible or intangible personal property. The term includes insurance and high technology items.

"(4) 'High technology item' means a service, equipment, or good of a highly technical nature, including: data processing equipment and software and firmware used in conjunction with data processing equipment; telecommunications, radio, and microwave systems; electronic distributed control systems (including building energy management systems); and technical services related to these items.

"(5) 'Time warrant' means any warrant issued by a county that is not payable out of current funds.

"Section 3. **COMPETITIVE BIDDING REQUIREMENT.** (a) Before a county may purchase one or more items under a contract that will require an expenditure exceeding \$5,000, the commissioners court of the county must comply with the competitive bidding or competitive proposal procedures prescribed by this Act. All bids or proposals must be sealed.

"(b) The competitive bidding and competitive proposal requirements established by Subsection (a) of this section apply only to contracts for which payment will be made from current funds or bond funds or through time warrants. However, contracts for which payments will be made through certificates of obligation are governed by The Certificate of Obligation Act of 1971 (Article 2368a.1, Vernon's Texas Civil Statutes).

"(c) In applying the competitive bidding and competitive proposal requirements established by Subsection (a) of this section, all separate, sequential, and/or component purchases of items ordered or purchased, with the intent of avoiding the competitive bidding and competitive proposal requirements of this Act, from the same supplier by the same county officer, department, or institution are treated as if they are part of a single purchase and of a single contract.

"Section 4. **EXEMPTIONS.** (a) A contract for the purchase of any of the following items is exempt from the requirement established by Section 3 of this Act if the commissioners court by order grants the exemption:

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

"(2) an item necessary to preserve or protect the public health or safety of the residents of the county;

"(3) an item made necessary by unforeseen damage to public property;

"(4) a personal or professional service;

“(5) any work performed and paid for by the day, as the work progresses;

“(6) any land or right-of-way; or

“(7) an item that can be obtained from only one source, including: items for which competition is precluded because of the existence of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; electric power, gas, water, and other utility services; and captive replacement parts or components for equipment.

“(b) If an item exempted under Subdivision (7) of Subsection (a) of this section is purchased, the commissioners court, after accepting a signed statement from the county official who makes purchases for the county as to the existence of only one source, must enter in its minutes a statement to that effect.

“Section 5. **COMPETITIVE BIDDING NOTICE.** (a) A notice of a proposed purchase must be published at least once a week in a newspaper of general circulation in the county, with the first day of publication at least 14 days before the date of the bid opening. If there is no newspaper of general circulation in the county, the notice must be posted in a prominent place in the courthouse for 14 days before the date of the bid opening.

“(b) The notice must include:

“(1) the specifications describing the item to be purchased or a statement of where the specifications may be obtained;

“(2) the time and place for receiving and opening bids and the name and position of the county official or employee to whom the bids are to be sent;

“(3) whether the bidder should use lump-sum or unit pricing;

“(4) the method of payment by the county; and

“(5) the type of bond required by the bidder.

“(c) If any part of the payment for a proposed purchase will be made through time warrants, the notice also must include a statement of the maximum amount of time warrant indebtedness, the rate of interest on the time warrants, and the maximum maturity date of the time warrants.

“Section 6. **OPENING OF BIDS.** (a) The county official who makes purchases for the county shall open the bids on the date specified in the notice. The date specified in the notice may be extended by the commissioners court if an error is discovered in the original specifications or the nature of the item to be purchased requires an extension in order for the county to best utilize the provisions of Section 10 of this Act.

“(b) Opened bids shall be kept on file and available for inspection by anyone desiring to see them.

“Section 7. **AWARDING OF CONTRACT.** (a) The officer in charge of opening the bids shall present them to the commissioners court in session. The court shall award the contract to the responsible bidder who submits the lowest and best bid, or the court shall reject all bids and publish a new notice.

“(b) In cases where two responsible bidders submit the lowest and best bid, the commissioners court shall decide between the two by drawing lots in a manner prescribed by the county judge.

“(c) A contract may not be awarded to a bidder who is not the lowest dollar bidder meeting specifications unless, before the award, each lower bidder is given notice of the proposed award and is given an opportunity to appear before the commissioners court and present evidence concerning the lower bidder's responsibility.

“Section 8. **LUMP-SUM OR UNIT PRICE METHOD.** A purchase may be proposed on a lump-sum or unit price basis. If the county chooses to use unit pricing in its notice, the information furnished bidders shall specify the approximate quantities estimated on the best available information, but the compensation paid the bidder must be based upon the actual quantities purchased.

“Section 9. **TIME WARRANT ELECTION.** If before the date tentatively set for the authorization of the issuance of time warrants applying to a contract covered by this Act or if before that authorization a petition signed by five percent of the registered voters of the county is filed with the county clerk protesting the issuance of the time warrants, the county may not issue the time warrants unless the issuance is approved at an election called, held, and conducted in the manner provided for county bond elections under Chapter 1, Title 22, Revised Statutes.

“Section 10. **ALTERNATIVE COMPETITIVE PROPOSAL PROCEDURE FOR CERTAIN PURCHASES.** (a) The competitive proposal procedure as provided in this section may be used for the purchase of insurance or high technology items. Quotations shall be solicited through a request for proposals. Public notice for the request for proposals must be made in the same manner as provided in the competitive bidding procedure. The request for proposals must specify the relative importance of price and other evaluation factors. The award of the contract shall be made to the responsible offeror whose proposal is determined to be the lowest evaluated

offer resulting from negotiation taking into consideration the relative importance of price and other evaluation factors set forth in the request for proposals.

“(b) If 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. However, all proposals that have been submitted shall be open for public inspection after the contract is awarded, except for trade secrets and confidential information contained in the proposals and identified as such.

“(c) As provided in the request for proposals and under rules adopted by the commissioners court, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before award for the purpose of obtaining best and final offers.

“Section 11. CHANGES IN PLANS AND SPECIFICATIONS. (a) If it becomes necessary to make changes in plans, specifications, or proposals after a contract is made or if it becomes necessary to increase or decrease the quantity of items purchased, the commissioners court may make the changes. However, the total contract price may not be increased unless the cost of the change can be paid from available funds.

“(b) If a change order involves an increase or decrease in cost of \$15,000 or less, the commissioners court may grant general authority to an employee to approve the change orders. However, the original contract price may not be increased by more than 25 percent. The original contract price may not be decreased by 18 percent or more without the consent of the contractor.

“Section 12. BOND REQUIREMENTS FOR BIDDERS. (a) If the contract is for the construction of public works or is under a contract exceeding \$50,000, the bid specifications or request for proposals may require the bidder to furnish a good and sufficient bid bond in the amount of five percent of the total contract price and executed with a surety company authorized to do business in this state.

“(b) Not later than the 10th day after the day of the signing of a contract or issuance of a purchase order following the acceptance of a bid or proposal, the bidder or proposal offeror shall furnish a performance bond to the county, if required by the county, for the full amount of the contract if that contract exceeds \$50,000.

“(c) For those contracts that are for \$50,000 or less, the county may provide in the bid notice or request for proposals that no money will be paid to the contractor until completion and acceptance of the work or the fulfillment of the purchase obligation to the county.

“(d) A bidder or proposal offeror whose rates are subject to regulation by a state agency may not be required to furnish a performance bond or a bid bond under this section.

“Section 13. INJUNCTION. Performance under a contract made by a county without complying with this Act may be enjoined by any property tax paying citizen of the county.

“Section 14. CRIMINAL PENALTY. (a) A county officer or employee who knowingly or intentionally makes or authorizes separate, sequential, and/or component purchases in order to avoid the competitive bidding requirements of Section 3 of this Act commits an offense. The offense is a Class B misdemeanor and shall, upon final conviction, result in the immediate removal of the county officer or employee from office.

“(b) A county officer or employee who knowingly or intentionally violates this Act commits an offense. The offense is a Class C misdemeanor, except that a violation of the competitive bidding requirements under Subsection (a) of this section is a Class B misdemeanor.”

SECTION 2. Sections 2, 2a, 2b, 3, 4, and 5, Bond and Warrant Law of 1931, as amended (Article 2368a, Vernon's Texas Civil Statutes), are amended to read as follows:

“Section 2. (a) 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.

“(c) 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 2a. Contracts for the construction of public works or the purchase of materials, equipment and supplies may be let under the provisions of Section 2 on a lump sum basis or on a unit price basis, as the governing body ~~or Commissioners Court~~ shall determine. In the event a contract is to be let on a unit price basis, the information furnished bidders shall specify the approximate quantities estimated upon the best available information, but the compensation paid the contractor shall be based upon the actual quantities constructed or supplied.

“In the event it becomes necessary to make changes in the plans or specifications after performance of a contract has been commenced, or it becomes necessary to decrease or increase the quantity of work to be performed or materials, equipment or supplies to be furnished, the ~~Commissioners Court or~~ governing body shall be authorized to approve change orders effecting such changes but the total contract price shall not be increased thereby unless due provision has been made to provide for the payment of such added cost either by appropriating available funds for that purpose or by authorizing the issuance of time warrants as provided in the Act amended hereby.

“Where any change order involves a decrease or increase in cost of fifteen thousand dollars (\$15,000) or less, the ~~Commissioner's Court or~~ governing body may grant general authority to one of its administrative officials to approve such change orders.

“Provided, however, that the original contract price may not be increased under the provisions of this Section 2a by more than twenty-five (25%) per cent or decreased more than twenty-five (25%) per cent without the consent of the contractor to such decrease.

“Section 2b. Contracts for the purchase of machinery for the construction and/or maintenance of roads and/or streets, may be made by the governing bodies of all ~~counties and~~ cities within the State in accordance with the provisions of this Section. The order for purchase and notice for bids shall provide full specification of the machinery desired and contracts for the purchase thereof shall be let to the lowest and best bidder.

“Section 3. When it shall be the intention of the ~~Commissioners' Court, or of the~~ governing body, to issue time warrants for the payment of all or any part of the proposed contract, the notice to bidders required under Section 2 of this Act shall recite that fact, setting out the maximum amount of the proposed time warrant indebtedness, the rate of interest such time warrants are to bear, and the maximum maturity date thereof.

"Section 4. If, by the time set for the letting of the contract, as many as ten per cent (10%) in number of the qualified voters of said [county, or] city, [as the case may be,] whose names appear on the last approved tax rolls as property taxpayers, petition the [~~Commissioners' Court, or~~] governing body, in writing to submit to a referendum vote the question as to the issuance of bonds for such purpose, then such [~~Commissioners' Court, or~~] governing body, shall not be authorized to make said expenditure, and shall not finally award said contract unless the proposition to issue bonds for such purpose is sustained by a majority of the votes cast at such election. The law in reference to elections for the issuance of city [and county] bonds as contained in Chapters 1 and 2, Title 22, Revised Statutes of 1925, shall govern in so far as consistent with the provisions of this Act. The law in reference to the issuance, approval, registration and sale of bonds as contained in Chapters 1 and 2, Title 22, Revised Statutes of 1925, shall govern insofar as consistent with the provisions of this Act. Provided, that all such bonds shall mature and be payable as provided herein for funding bonds.

"If such petition is not so filed with the [County Clerk, or the] City Secretary or Clerk, then the [~~Commissioners' Court or the~~] governing body may proceed with the final award of the contract and with the issuance of said warrants, but in the absence of such petition, the [~~Commissioners' Court or~~] governing body may at its discretion also submit such question to a vote of the people.

"Section 5. [~~The notice required in Sections 2 and 3, and the right to referendum election defined in Section 4, shall not be applicable to expenditures payable out of current funds or bond funds, as above described, nor to additional expenditures by counties unless in excess of Five Hundred (\$500.00) Dollars for each One Million (\$1,000,000.00) Dollars, or a part thereof, of taxable property in said county, according to the last approved tax rolls; provided, however, that in counties of a valuation of less than Six Million (\$6,000,000.00) Dollars, said restriction of Five Hundred (\$500.00) Dollars for each One Million (\$1,000,000.00) Dollars shall not apply, but in lieu thereof the maximum authorized warrants shall be Three Thousand (\$3,000.00) Dollars annually; said Five Hundred (\$500.00) Dollars for every One Million (\$1,000,000.00) Dollars of property shall be the maximum amount of time warrants for all purposes to be issued by such county during the current calendar year, including the proposed expenditure, except in the counties of a valuation of less than Six Million (\$6,000,000.00) Dollars as above provided; and provided further that no such warrants shall ever be issued by a county in excess of One Hundred Thousand (\$100,000.00) Dollars for any one year, without the duty to give notice and the right to referendum provided in Section 3. If in excess of the maximum, the expenditure cannot be authorized until the expiration of the time for filing the petition for referendum vote has expired.] The notice required and the right to referendum election defined in Sections 2, 3 and 4 shall not be applicable to expenditures payable out of the current funds or bond funds, as above described, nor to additional expenditures by cities unless in excess of Seven Thousand, Five Hundred (\$7,500.00) Dollars for cities having a population of five thousand (5,000) people, or less, as shown by the Federal Census immediately preceding; in excess of Ten Thousand (\$10,000.00) Dollars for cities having a population of more than five thousand (5,000), and less than twenty-five thousand (25,000) as shown by the Federal Census immediately preceding; in excess of Twenty-five Thousand (\$25,000.00) Dollars for cities having a population of more than twenty-five thousand (25,000) and less than fifty thousand (50,000), as shown by the Federal Census immediately preceding, and in excess of One Hundred Thousand (\$100,000.00) Dollars for cities having a population of more than fifty thousand (50,000) as shown by the Federal Census immediately preceding. Said respective amounts above described shall be the maximum amounts of time warrants for all purposes to be issued by such cities during the current calendar year, without the duty to give notice and the right to referendum, provided in Sections 2, 3 and 4; otherwise, the expenditure cannot be authorized until the expiration of time for the filing of petition for referendum vote has expired, including the proposed expenditure.~~

"Provided, that in case of public calamity caused by fire, flood, storm, or to protect the public health, or in case of unforeseen damage to public property, machinery or equipment, the [~~Commissioners' Court or the~~] governing body may issue such time warrants as are necessary to provide for the immediate repair, preservation or protection of public property and the lives and health of the citizens of such [county or] city, irrespective of the limitations contained in this Section and the restrictions imposed by Sections 2, 3 and 4 hereof."

SECTION 3. Subsection (b), Section 6, The Certificate of Obligation Act of 1971, as amended (Article 2368a.1, Vernon's Texas Civil Statutes), is amended to read as follows:

"(b) Notice of the time, place, when and where such contract shall be let shall be given in accordance with the provisions of (i) Section 2 [.] or Section 2(a) of the Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes) for cities, or the County Purchasing Act for counties [; as amended] or (ii) the home rule charter of an issuer or (iii) this Act. If such notice

is given under the provisions of this Act, it shall be published once a week for two consecutive weeks in a newspaper as defined in Chapter 84, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 28a, Vernon's Texas Civil Statutes), of general circulation in the city or county which is to receive bids, the date of the first publication to be 14 days prior to the date set for the receipt of bids, and shall specify that plans and specifications for the work to be done or specifications for machinery, supplies, equipment or materials to be purchased are on file with a designated official of the issuer where they may be examined without charge. All contracts for the construction of public works, the purchase of materials, equipment, supplies, or machinery let under the provisions of this Act shall be let to the lowest responsible bidder and may be let on a lump sum basis or on a unit price basis, as the governing body shall determine. In the event a contract is to be let on a unit price basis, the information furnished bidders shall specify the approximate quantities estimated upon the best available information, but the compensation paid the contractor shall be based upon the actual quantities constructed or supplied."

SECTION 4. Section 7, The Certificate of Obligation Act of 1971, as amended (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 the 61st Legislature, 2nd Called Session, 1969; or

"(10) any other county contract for which the County Purchasing Act does not require competitive 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 5. Section 1, Chapter 453, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 2351a, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. The Commissioners Court in counties having a population of more than three hundred thousand (300,000) and less than three hundred and fifty thousand (350,000) inhabitants in accordance with the last preceding Federal Census, and in counties having a population of more than forty-eight thousand, five hundred (48,500) and less than forty-nine thousand (49,000) inhabitants, and in counties having a population of not less than twenty-two thousand and eighty-nine (22,089) nor more than twenty-two thousand, one hundred (22,100) inhabitants, and in counties having a population of more than six thousand, one hundred (6,100) and less than six thousand, one hundred and eighty (6,180) inhabitants in accordance with the last preceding Federal Census, shall have the authority to purchase fire trucks and other fire-fighting equipment [~~by first advertising and receiving bids thereon as provided by law;~~] to be used for the protection and preservation of bridges, county shops, county warehouses, and other property located without the limits of any incorporated city or town."

SECTION 6. Section 1, Chapter 360, Acts of the 47th Legislature, Regular Session, 1941 (Article 2351a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. The Commissioners Court in all counties of this State shall be authorized to furnish fire protection and fire-fighting equipment to the citizens of such county residing outside the city limits of any incorporated city, town or village within the county and/or adjoining counties. The Commissioners Court shall have the authority to purchase fire trucks and other fire-fighting equipment [~~by first advertising and receiving bids thereon;~~] and is hereby authorized to issue time warrants of the county and to levy and collect taxes to pay the interest and principal thereon as provided by law. The Commissioners Court of any county of this State shall also have the authority to enter into contracts with any city, town or village within the county and/or adjoining counties, upon such terms and conditions as shall be agreed upon between the Commissioners Court and the governing body of such city, town or village, for the use of the fire trucks and other fire-fighting equipment of the city, town or village. It is specifically provided that the acts of any person or persons while fighting fires, traveling to or from fires, or in any manner furnishing fire protection to the citizens of a county outside the city limits of any city, town or village, shall be considered as the acts of agents of the county in all respects, notwithstanding such person or persons may be regular employees or firemen of a city, town or village. No city, town or village within a county and/or adjoining counties shall be held liable for the acts of any of its employees while engaged in fighting fires outside the city limits pursuant to any contract theretofore entered into between the Commissioners Court of the county and the governing body of the city, town or village."

SECTION 7. Section 1, Chapter 424, Acts of the 47th Legislature, Regular Session, 1941 (Article 2351a-2, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 1. The Commissioners Court in counties having a population of more than three hundred and fifty thousand (350,000) and less than four hundred and fifty thousand (450,000) inhabitants in accordance with the last preceding Federal Census shall have the authority to purchase fire trucks and other fire-fighting equipment [~~by first advertising and receiving bids thereon as provided by law;~~] to be used for the protection and preservation of bridges, county shops, county warehouses, and other property located without the limits of any incorporated city or town."

SECTION 8. Sections 1 and 2, Chapter 116, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 2367a, Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 1. In all cases where bidding is required and where two or more responsible bidders submit the lowest and best bids in connection with a proposed [~~county;~~] city or district contract and these bids are identical in both amount and nature, [~~the Commissioners Court of the county or~~] the governing body of the city or district shall enter into a contract with only one of the responsible bidders and reject all other bids. The one bidder shall be selected by the casting of lots. The casting of lots shall be in such a manner as shall be prescribed by the [~~County Judge or~~] Mayor or governing body of the district, as the case may be, and shall be conducted in the presence of the governing body of the [~~county;~~] city or district at which time all qualified bidders or their legal representatives may also be present. Nothing herein shall prohibit the rejection of all bids by the awarding authority.

"Section 2. The provisions of this Act shall be applicable to all [~~counties;~~] cities and districts in the State of Texas where bidding is required and contracts are to be let on the basis of the lowest and best bid, regardless of whether the bids are submitted pursuant to the provisions of a General Law, a Special Law, a city charter, or a city ordinance; provided, however, that the provisions of this Act shall not apply or be construed to apply to the bidding by any person, bank, banking corporation or association for designation as depository of public funds of any

[county] city or district or to the letting of contracts therefor, nor shall such provisions apply to bids submitted to an independent school district by those persons or corporations seeking selection as a school depository under Subchapter E, Chapter 23, Education Code [appointment as treasurer of the School Fund under Article 2832, Revised Civil Statutes of Texas, 1925, as last amended by Chapter 48, Acts of the 56th Legislature, Regular Session 1959]."

SECTION 9. Subdivision (2), Subsection (e), Section 3.102, County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes), is amended to read as follows:

"(2) The commissioners court may, when considered best, construct, grade, gravel, or otherwise improve any road or bridge by contract [~~; advertise for bids, and reject any bid. The contract shall be awarded to the lowest responsible bidder, who shall enter into bond with good and sufficient sureties payable to and to be approved by the county judge, in a sum determined by the court, conditioned on the faithful compliance with the contract.~~]. At the time of making the contract the court shall direct the county treasurer to pass the amount of money stipulated in the contract to a particular fund and to keep a separate account of the money. The money may be used for no other purpose and can only be paid out on the order of the court."

SECTION 10. Section 3.211, County Road and Bridge Act (Article 6702-1, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3.211. **COMPETITIVE BIDDING.** All equipment, materials, and supplies for the construction and maintenance of county roads and for the county road department shall be purchased by the commissioners court on competitive bids in conformity with estimates and specifications prepared by the county road engineer. However, on recommendation of the county road engineer and when in the judgment of the commissioners court it is considered in the best interest of the county, purchases in an amount not to exceed \$5,000 [~~\$1,000~~] may be made through negotiation by the commissioners court or the commissioners court's authorized representative on requisition to be approved by the commissioners court or the county auditor without advertising for competitive bids. Before any claim covering the purchase of the equipment, materials, and supplies and for any services contracted for by the commissioners court may be ordered paid by the commissioners court, the county road engineer must certify in writing the correctness of the claim and must certify that the respective equipment, materials, and supplies covered by the claim conform to specifications approved by him, that the equipment, materials, and supplies were delivered in good condition, and that any road department services contracted for by the commissioners court have been satisfactorily performed. This section does not permit the division or reduction of purchases for the purpose of avoiding the requirement of taking formal bids on purchases that would otherwise exceed \$5,000 [~~\$1,000~~]."

SECTION 11. 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 299, Acts of the 52nd Legislature, 1951 (Article 6812b, Vernon's Texas Civil Statutes).

SECTION 12. The amendment by this Act of Section 2, Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes), is contingent on S.B. 802, Acts of the 69th Legislature, Regular Session, 1985, not becoming law. If S.B. 802 does become law, the amendment by this Act of Section 2, Bond and Warrant Law of 1931, has no effect.

SECTION 13. The County Purchasing Act and the amendments to laws made by this Act apply only to contracts for which the notice requesting bids or proposals is published or posted on or after the effective date of this Act. Other contracts are governed by the law as it existed before the effective date of this Act, and the former law is continued in force for this purpose.

SECTION 14. This Act takes effect September 1, 1985.

SECTION 15. 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.

Passed the Senate on April 11, 1985, by a viva-voce; on May 16, 1985, Senate concurred in House amendments; on May 17, 1985, Senate reconsidered vote; May 17, 1985, Senate refused to concur in House amendments and requested appointment of

Conference Committee; May 23, 1985, House granted request of the Senate; May 27, 1985, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 15, 1985, by a non-record vote; May 23, 1985, House granted request of the Senate for appointment of Conference Committee; May 27, 1985, House adopted Conference Committee Report by the following vote: Yeas 143, Nays 3, one present not voting.

Approved: June 14, 1985

Effective: September 1, 1985