



Texas City Independent School District

1700 Ninth Avenue North, P.O. Box 1150, Texas City, TX 77592-1150

All purchases are governed by Texas Education Code 44.031, Texas City ISD Policy CH(Local), Texas City ISD Policy CH(Legal), and Texas City ISD's Purchasing Procedures Manual.

All purchases, regardless of amount, will be made using district purchase orders and are subject to the following conditions:

1. All communications concerning back orders, price increases, cancellations, etc. to the Purchase Order should be directed to the Business Office.
2. No back orders will be accepted without prior written approval from the Assistant Superintendent of Business and Operations.
3. No changes or substitutions will be permitted without prior approval from the Assistant Superintendent of Business and Operations.
4. Invoices exceeding the amount of the Purchase Order by more than ten percent must have written approval of the Assistant Superintendent of Business and Operations.
5. Tax exemption granter under Chapter 20, Title 122A, revised Civil Statutes of Texas.
6. Delivery terms and transportation charges FOB destination, freight prepaid and added to invoice.
7. The District will not pay interest on bills overdue.
8. No COD shipments of any type will be accepted.
9. The Purchase Order number must appear on all invoices, packages, delivery tickets, etc.
10. The School District is not responsible for goods delivered or work done without a written Purchase Order.
11. The title and risk of loss of the goods shall not pass to the buyer until the buyer actually receives and takes possession of the goods at the point of delivery.
12. Buyer shall have the right to inspect all goods at delivery before accepting them.
13. Purchase Orders shall be governed by the Uniform Commercial Code as adopted in the State of Texas and in force on the date of the order.
14. Cash discount periods will be computed either from the date of delivery and/or acceptance of the goods ordered or the date of receipt of the correct and proper invoice prepared in accordance with the terms of the District's Purchase Order, whichever date is later.
15. Invoices for partial shipments are not acceptable.
16. Do not reference more than one Purchase Order per invoice.

PURCHASING AND ACQUISITION

CH
(LOCAL)

PURCHASING
AUTHORITY

The Board delegates to the Superintendent or designee the authority to determine the method of purchasing, in accordance with CH(LEGAL), and to make budgeted purchases. However, any purchase of goods or services that costs \$50,000 or more shall require Board approval before a transaction may take place.

COMPETITIVE
BIDDING

If competitive bidding is chosen as the purchasing method, the Superintendent or designee shall prepare bid specifications. All bids shall be in accordance with administrative regulations, and the submission of any electronic bids shall also be in accordance with Board-adopted rules. All bidders shall be invited to attend the bid opening. Any bid may be withdrawn prior to the scheduled time for opening. Bids received after the specified time shall not be considered.

The District may reject any and all bids.

COMPETITIVE
SEALED
PROPOSALS

If competitive sealed proposals are chosen as the purchasing method, the Superintendent or designee shall prepare the request for proposals and/or specifications for items to be purchased. All proposals shall be in accordance with administrative regulations, and the submission of any electronic proposals shall also be in accordance with Board-adopted rules. Proposals received after the specified time shall not be considered. Proposals shall be opened at the time specified, and all proposers shall be invited to attend the proposal opening. Proposals may be withdrawn prior to the scheduled time of opening. Changes in the content of a proposal, and in prices, may be negotiated after proposals are opened.

The District may reject any and all proposals.

ELECTRONIC BIDS
OR PROPOSALS

Bids or proposals that the District has chosen to accept through electronic transmission shall be administered in accordance with Board-adopted rules. Such rules shall safeguard the integrity of the competitive procurement process; ensure the identification, security, and confidentiality of electronic bids or proposals; and ensure that the electronic bids or proposals remain effectively unopened until the proper time.

RESPONSIBILITY FOR
DEBTS

The Board shall assume responsibility for debts incurred in the name of the District so long as those debts are for purchases made in accordance with the adopted budget, state law, Board policy, and the District's purchasing procedures. [See CE] The Board shall not be responsible for debts incurred by persons or organizations not directly under Board control. Persons making unauthorized purchases shall assume full responsibility for all such debts.

PURCHASING AND ACQUISITION

CH
(LOCAL)

PURCHASE
COMMITMENTS

All purchase commitments shall be made by the Superintendent or designee in accordance with administrative procedures, including the District's purchasing procedures.

PERSONAL
PURCHASES

District employees shall not be permitted to make purchases for personal use through the District's business office.

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BOARD AUTHORITY	A board may adopt rules and procedures for the acquisition of goods and services. <i>Education Code 44.031(d)</i>
DELEGATION OF AUTHORITY	<p>A board may delegate its authority regarding an action authorized or required to be taken by a district by Education Code Chapter 44, Subchapter B, to a designated person, representative, or committee.</p> <p>A board may not delegate the authority to act regarding an action authorized or required to be taken by the board by Education Code Chapter 44, Subchapter B.</p>
DISASTER EXCEPTION	<p>Notwithstanding any other provision of the Education Code, in the event of a catastrophe, emergency, or natural disaster affecting a district, the board may delegate to the superintendent or designated person the authority to contract for the replacement or repair of school equipment under Education Code Chapter 44, Subchapter B if emergency replacement or repair is necessary for the health and safety of district students and staff.</p> <p><i>Education Code 44.0312</i></p>
PURCHASES VALUED AT OR ABOVE \$50,000	<p>All district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period, shall be made by the method that provides the best value for a district:</p> <ol style="list-style-type: none">1. Competitive bidding for services other than construction services.2. Competitive sealed proposals for services other than construction services.3. A request for proposals for services other than construction services.4. An interlocal contract.5. The reverse auction procedure as defined by Government Code 2155.062(d).6. The formation of a political subdivision corporation under Local Government Code 304.001. <p><i>Education Code 44.031(a)</i></p>

Note: Regarding construction of school facilities, see CV generally; CVA for competitive bidding; CVB for competitive sealed proposals; CVC and CVD for contracts using a construction manager; CVE for design/build contracts; and CVF for job order contracts for minor repairs/alterations.

FACTORS

In awarding a contract, a district shall consider:

1. Purchase price.
2. The reputation of the vendor and of the vendor's goods and services.
3. The quality of the vendor's goods or services.
4. The extent to which the goods or services meet the district's needs.
5. The vendor's past relationship with the district.
6. The impact on the ability of the district to comply with laws relating to historically underutilized businesses.
7. The total long-term cost to the district to acquire the goods or services.
8. For a contract that is not for goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner has its principal place of business in this state or employs at least 500 persons in this state.
9. Any other relevant factor specifically listed in the request for bids or proposals.

Education Code 44.031(b)

In awarding a contract by competitive sealed bid under Education Code 44.031, a district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Local Government Code 271.9051. This section does not apply to the purchase of telecommunications services or information services, as those terms are defined by 47 U.S.C. Section 153. *Education Code 44.031(b-1)*

The factors listed above are the only criteria that may be considered by a district in its decision to award a contract. R.G.V. Vend-

*ing v. Weslaco Indep. Sch. Dist., 995 S.W.2d 897 (Tex. App.—
Corpus Christi 1999, no pet.).*

OUT-OF-STATE
BIDDERS

A board shall not award a contract for services or for purchase of supplies, materials, or equipment to a bidder whose principal place of business is not in this state, unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of the amount by which a resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident's principal place of business is located, or a state in which a majority of the manufacturing relating to the contract will be performed. *Gov't Code 2252.001-.002*

This requirement shall not apply to a contract involving federal funds. A district shall rely on information published by the comptroller in evaluating the bids of a nonresident bidder. *Gov't Code 2252.003-.004*

DISCLOSURE OF
INTERESTED PARTIES

A district may not enter into a contract that requires an action or vote of the board before the contract may be signed, or has a value of at least \$1 million, with a business entity unless the business entity submits a disclosure of interested parties to the district at the time the business entity submits the signed contract to the district. [See BBFA]

"Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership, or corporation.

"Interested party" means a person who has a controlling interest in a business entity with whom a district contracts or who actively participates in facilitating the contract or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity.

The disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission that includes a list of each interested party for the contract of which the contracting business entity is aware; and the signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

Not later than the 30th day after the date the district receives a required disclosure of interested parties the district shall submit a copy of the disclosure to the Texas Ethics Commission.

Gov't Code 2252.908

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CONTRACT WITH
PERSON INDEBTED
TO DISTRICT

A board may, by resolution, establish regulations permitting a school district to refuse to enter into a contract or other transaction with a person indebted to the school district. A district may refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the district.

The term "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that seeks to enter into a contract or other transaction with a district requiring board approval.

Education Code 44.044

NOTICE
PUBLICATION

Notice of when and where bids or proposals or the responses to a request for qualifications will be received and opened shall be published in the county where a district's central administrative office is located, once a week for at least two weeks prior to the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is no newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which a district's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately. *Education Code 44.031(g)*

ELECTRONIC BIDS OR
PROPOSALS

A district may receive bids or proposals through electronic transmission if the board adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

An electronic bid or proposal is not required to be sealed. A provision of Education Code Chapter 44 that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted by the board.

Education Code 44.0313

PROFESSIONAL
SERVICES

The purchasing requirements of Education Code 44.031 do not apply to a contract for professional services rendered, including the services of an architect, attorney, certified public accountant, engineer, or fiscal agent.

A district may contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Government Code 2254.003, in lieu of the methods provided by Education Code 44.031.

Education Code 44.031(f)

Competitive bids shall not be solicited for professional services of any licensed or registered certified public accountant, architect, landscape architect, land surveyor, physician, optometrist, professional engineer, state-certified or state-licensed real estate appraiser, or registered nurse. Contracts for these professional services shall be made on the basis of demonstrated competence and qualifications to perform the services and for a fair and reasonable price. *Gov't Code 2254.002, .003(a)*

An interlocal contract between a district and a purchasing cooperative may not be used to purchase engineering or architectural services. *Gov't Code 791.011(h)*

[See also CV]

EMERGENCY DAMAGE
OR DESTRUCTION

If school equipment, a school facility, or a part of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and a board determines that the delay posed by the methods provided for in Education Code 44.031 would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or the part of the school facility may be made by methods other than those required by Education Code 44.031. *Education Code 44.031(h)*

COMPUTERS

A district may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources (DIR) under contracts with the DIR in accordance with Government Code Chapter 2054 or 2157. *Education Code 44.031(i)*

AUTOMATED
INFORMATION
SYSTEM

A district may purchase an automated information system using the purchasing method described by Government Code 2157.068 for commodity items or a purchasing method designated by the comptroller to obtain the best value for the state, including a request for offers method. A district that purchases an item using a method listed above satisfies any state law requiring the district to seek competitive bids for the purchase of the item. *Gov't Code 2157.006; 34 TAC 20.391*

AUTOMATED
EXTERNAL
DEFIBRILLATORS

A school that purchases or leases an automated external defibrillator, as defined by Health and Safety Code 779.001, shall ensure that the defibrillator meets standards established by the federal Food and Drug Administration. *Education Code 44.047*

SOLE SOURCE

Compliance with Education Code 44.031 is not required for purchases that are available from only one source, including:

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1. An item for which competition is precluded because of a patent, copyright, secret process, or monopoly.
2. A film, manuscript, or book.
3. A utility service, including electricity, gas, or water.
4. A captive replacement part or component for equipment.

The sole source exception shall not apply to mainframe data processing equipment and peripheral attachments with a single-item purchase price in excess of \$15,000.

Education Code 44.031(j)–(k)

INSURANCE

A contract for the purchase of insurance is a contract for the purchase of personal property and shall be made in accordance with Education Code 44.031. *Education Code 44.031; Atty. Gen. Op. DM-347 (1995)*

MULTIYEAR
CONTRACTS

A district may execute an insurance contract for a period longer than 12 months, if the contract contains either or both of the provisions described at COMMITMENT OF CURRENT REVENUE, below. If a district executes a multiyear insurance contract, it need not advertise for insurance vendors until the 12-month period during which the district will be executing a new insurance contract. *Atty. Gen. Op. DM-418 (1996)*

COMPETITIVE
BIDDING

Except to the extent prohibited by other law and to the extent consistent with Education Code Chapter 44, Subchapter B, a school district may use competitive bidding to select a vendor as authorized by Education Code 44.031(a)(1).

A district shall award a competitively bid contract at the bid amount to the bidder offering the best value for the district. In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria. The selection criteria may include the factors listed in Education Code 44.031(b) [see FACTORS, above].

Except as provided below, Local Government Code Chapter 271, Subchapter B does not apply to a competitive bidding process under this policy.

Education Code 44.0351

OPENING BIDS

Bids may be opened only by a board at a public meeting or by an officer or employee of a district at or in an office of the district. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. *Local Gov't Code 271.026*

A board shall have the right to reject any and all bids. *Local Gov't Code 271.027(a)*

SAFETY RECORD

In determining who is a responsible bidder, a board may take into account the safety record of the bidder; of the firm, corporation, partnership, or institution represented by the bidder; or of anyone acting for such firm, corporation, partnership, or institution, provided that:

1. The board has adopted a written definition and criteria for accurately determining the safety record of the bidder.
2. The board has given notice in the bid specifications that the safety record of a bidder may be considered in determining the bidder's responsibility.
3. The determinations are not arbitrary and capricious.

Local Gov't Code 271.0275

IDENTICAL BIDS

If a district receives two or more bids from responsible bidders that are identical, in nature and amount, as the lowest and best bids, it shall select only one bidder from the identical bids.

If only one of the bidders submitting identical bids is a resident of a district, that bidder shall be selected. If two or more such bidders are residents of a district, one shall be selected by the casting of lots. In all other cases, one of the identical bids shall be selected by the casting of lots.

A board shall prescribe the manner of casting lots and shall be present when the lots are cast. All qualified bidders or their representatives may be present at the casting of lots.

Local Gov't Code 271.901

COMPETITIVE SEALED PROPOSALS

In selecting a vendor through competitive sealed proposals as authorized by Education Code 44.031(a)(2), a school district shall follow the procedures prescribed below.

REQUEST FOR PROPOSALS

The district shall prepare a request for competitive sealed proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

OPENING PROPOSALS

The district shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date on which the proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria.

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SELECTION	<p>The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.</p>
BEST VALUE DETERMINATION	<p>In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria.</p> <p><i>Education Code 44.0352</i></p>
INTERLOCAL AGREEMENTS	<p>To increase efficiency and effectiveness, a district may contract or agree with other local governments and with state agencies, including the comptroller, to perform some of its purchasing functions.</p> <p><i>Gov't Code 791.001, .011, .025</i></p> <p>An interlocal contract must be authorized by a board and the governing body of each contracting party; must state the purpose, terms, rights, and duties of the contracting parties; and must specify that each party paying for the performance of governmental functions or services shall make those payments from current revenues available to the paying party.</p> <p>An interlocal contractual payment must be in an amount that fairly compensates the performing party for the services or functions performed under the contract. The contract may be renewed and may have a specified term of years.</p> <p><i>Gov't Code 791.011(d)–(f), (i)</i></p> <p>A district may agree with another local government, including a nonprofit corporation that is created and operated to provide one or more governmental functions and services, or with the state or a state agency, including the comptroller, to purchase goods and services reasonably required for the installation, operation, or maintenance of the goods. Such an agreement may not, however, apply to services provided by firefighters, police officers, or emergency medical personnel.</p> <p>A district that purchases goods and services by agreement with another local government or with the state or state agency satisfies the requirement to seek competitive bids for the purchase of goods and services.</p> <p><i>Gov't Code 791.025(b)–(c); Atty. Gen. Op. JC-37 (1999)</i></p>

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A district may not enter into a contract to purchase construction-related goods or services through a purchasing cooperative in an amount greater than \$50,000 unless a person designated by the district certifies in writing that:

1. The project for which the construction-related goods or services are being procured does not require the preparation of plans and specifications under Chapter 1001 or 1051, Occupations Code; or
2. The plans and specifications required under Chapters 1001 and 1051, Occupations Code, have been prepared.

“Purchasing cooperative” means a group purchasing organization that governmental entities join as members and the managing entity of which receives fees from members or vendors.

Gov't Code 791.011(j)

STATE PURCHASING
PROGRAM

Purchasing services performed for a district by the comptroller shall include:

1. The extension of state contract prices to a district when the comptroller considers it feasible.
2. Solicitation of bids on items desired by a district if the solicitation is considered feasible by the comptroller and is desired by the district.
3. Provision of information and technical assistance to a district about the purchasing program.

The comptroller may charge a district its actual costs in providing purchasing services.

Local Gov't Code 271.082

DISTRICT
REQUIREMENTS

A district may participate in the purchasing program, including participation in purchases that use the reverse auction procedure, by filing with the comptroller a resolution adopted by the board requesting that the district be allowed to participate on a voluntary basis, to the extent the comptroller deems feasible, and stating that the board shall:

1. Designate an official to act for the district in all matters relating to the program, including the purchase of items from the vendor under any contract.
2. Direct the decisions of its representative.
3. Be responsible for:
 - a. Submitting requisitions to the commission under contract(s) and for payment directly to the vendor; and

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- b. Electronically sending purchase orders directly to vendors, or complying with procedures governing a reverse auction purchase, and electronically sending the comptroller reports on actual purchases.
4. Be responsible for the vendor's compliance with all conditions of delivery and quality of the purchased item.

A purchase made through participation in this program meets any state requirement to seek competitive bids for the purchase of the item.

Local Gov't Code 271.083

MULTIPLE AWARD
CONTRACT
SCHEDULE

The comptroller shall develop a schedule of multiple award contracts that have been previously awarded using a competitive process by the federal government or any other governmental entity in any state.

A district may purchase goods or services directly from a vendor under a contract listed on a schedule. An authorized purchase satisfies any requirement of state law relating to competitive bids or proposals and satisfies any applicable requirements of Government Code 2157.

The price listed for a good or service under a multiple award contract is a maximum price. A district may negotiate a lower price for goods or services under a contract listed on a schedule.

Gov't Code 2155, Subch. I

COOPERATIVE
PURCHASING
PROGRAM

A district may participate in a cooperative purchasing program with another local government of this state or another state or with a local cooperative organization of this state or another state. If a district does so, it may sign an agreement with another participating local government or a local cooperative stating that the district will:

1. Designate a person to act on behalf of the district in all matters relating to the program.
2. Make payments to another participating local government or local cooperative organization or directly under a contract, as provided in the agreement.
3. Be responsible for the vendor's compliance.

If a district participates in a cooperative purchasing program, it satisfies any law requiring it to seek competitive bids.

Local Gov't Code 271.102; Atty. Gen. Op. JC-37 (1999)

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CONTRACT-RELATED FEE A school district that enters into a purchasing contract valued at \$25,000 or more under Education Code 44.031(a)(5) (interlocal contract), under Local Government Code Chapter 271, Subchapter F (cooperative purchasing program), or under any other cooperative purchasing program authorized for school districts by law shall document any contract-related fee, including any management fee, and the purpose of each fee under the contract.

The amount, purpose, and disposition of any fee described above must be presented in a written report and submitted annually in an open meeting of the board. The written report must appear as an agenda item. The Commissioner may audit the written report.

Education Code 44.0331

STATE COUNCIL ON COMPETITIVE GOVERNMENT As approved by the State Council on Competitive Government, a district may voluntarily participate in a contract awarded by the council or a state agency under Government Code 2162. A district that purchases goods or services under this type of contract is considered to have satisfied any state law requiring competitive purchasing. *Gov't Code 2162.102(d)*

REVERSE AUCTION A district that uses the reverse auction procedure must include in the procedure a notice provision and other provisions necessary to produce a method of purchasing that is advantageous to the district and fair to vendors. *Local Gov't Code 271.906(b)*

Reverse auction procedure means:

1. A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or
2. A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.

Gov't Code 2155.062(d)

COMMITMENT OF CURRENT REVENUE A contract for the acquisition, including lease, of real or personal property is a commitment of a district's current revenue only, provided the contract contains either or both of the following provisions:

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1. Retains to the board the continuing right to terminate the contract at the expiration of each budget period during the term of the contract.
2. Is conditioned on a best efforts attempt by the board to obtain and appropriate funds for payment of the contract.

Local Gov't Code 271.903

CHANGE ORDERS

If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes. The district may grant general authority to an administrative official to approve the change orders.

The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

A contract with an original contract price of \$1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price.

Education Code 44.0411

ENERGY OR WATER
CONSERVATION
MEASURES

A district may contract for energy or water conservation measures. Such a contract shall be let according to the procedures established for professional services by Government Code 2254.004.

A board shall establish a long-range energy plan to reduce a district's annual electric consumption by five percent beginning with the 2008 state fiscal year and consume electricity in subsequent fiscal years in accordance with the district's energy plan.

Education Code 44.901–.902 [See policy CL for legal requirements pertaining to such contracts and plans.]

RECYCLED
PRODUCTS

A district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. A district shall regularly review and revise its purchasing procedures and specifications for purchase of goods, supplies, equipment, and materials in order to:

1. Eliminate procedures and specifications that explicitly discriminate against products made of recycled materials.

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2. Encourage the use of products made of recycled materials.
3. Ensure to the maximum extent economically feasible that the district purchase products that may be recycled when they have served their intended use.

A district may seek an exemption from compliance if it has a population of less than 5,000 within its geographic boundaries and demonstrates to the Water Commission that compliance would work a hardship on the district.

Health and Safety Code 361.426

AGRICULTURAL
PRODUCTS

If the cost and quality are equal, a district shall give preference in purchasing to agricultural products, including textiles and other similar products, that are produced, processed, or grown in Texas. "Processed" means canning, freezing, drying, juicing, preserving, or any other act that changes the form of a good from its natural state to another form. If Texas agricultural products are not equal in cost and quality to other agricultural products, a district shall give preference in purchasing to agricultural products produced, processed, or grown in the United States, if the cost and quality of the U.S. and foreign products are equal.

A district may not adopt product purchasing specifications that unnecessarily exclude agricultural products produced, processed, or grown in Texas.

VEGETATION FOR
LANDSCAPING

If cost is equal and the quality is not inferior, a district shall give preference to Texas vegetation when it purchases vegetation for landscaping purposes.

Education Code 44.042

BUS PURCHASE OR
LEASE

Each contract proposed for the purchase or lease of one or more school buses, including a lease with an option to purchase, shall be submitted to competitive bidding when the contract is valued at \$20,000 or more. *Education Code 44.031(l)* [See CNB]

RIGHT TO WORK

While engaged in procuring goods and services or awarding a contract, a district:

1. May not consider whether a vendor is a member of or has another relationship with any organization; and
2. Shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

Education Code 44.043

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LOBBYING
RESTRICTION:
TOBACCO EDUCATION
GRANT FUNDS

A district may not spend grant funds it receives from the Permanent Fund for Tobacco Education and Enforcement to pay:

1. Lobbying expenses incurred by the district;
2. A person or entity that is required under Government Code Chapter 305 to register as a lobbyist with the Texas Ethics Commission;
3. Any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity of a registered lobbyist (as described in item 2); or
4. A person or entity who has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, ordinances, or other government policies.

Gov't Code 403.1067

CRIMINAL HISTORY

For provisions pertaining to criminal history record information on contractors, see CJA(LEGAL).

IMPERMISSIBLE
PRACTICES

A board member, employee, or agent shall not, with criminal negligence, make or authorize separate, sequential, or component purchases to avoid the purchasing requirements set out in Education Code 44.031. An officer or employee shall not knowingly violate Education Code 44.031 in any other manner.

“Component purchases” means purchases of the component parts of an item that in normal purchasing practices would be made in one purchase. “Separate purchases” means purchases, made separately, of items that in normal purchasing practices would be made in one purchase. “Sequential purchases” means purchases, over a period, of items that in normal purchasing practices would be made in one purchase.

Violation of this provision is a Class B misdemeanor and an offense involving moral turpitude, conviction of which shall result in removal from office or dismissal from employment. A board member who is convicted of a violation of this provision is considered to have committed official misconduct and for four years after the date of final conviction, the removed person is ineligible to be appointed or elected to public office in Texas, is ineligible to be employed by or act as an agent for the state or a political subdivision, and is ineligible to receive any compensation through a contract with the state or a political subdivision. [See BBC]

Education Code 44.032

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(LEGAL)

INJUNCTION

A court may enjoin performance of a contract made in violation of Education Code Chapter 44, Subchapter B. A county attorney, district attorney, criminal district attorney, citizen of the county in which a district is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this subsection is entitled to reasonable attorney's fees as approved by the court. *Education Code 44.032(f)*

EDUCATION CODE

TITLE 2. PUBLIC EDUCATION

SUBTITLE I. SCHOOL FINANCE AND FISCAL MANAGEMENT

CHAPTER 44. FISCAL MANAGEMENT

SUBCHAPTER A. SCHOOL DISTRICT FISCAL MANAGEMENT

Sec. 44.001. FISCAL GUIDELINES. (a) The commissioner shall establish advisory guidelines relating to the fiscal management of a school district.

(b) The commissioner shall report annually to the State Board of Education the status of school district fiscal management as reflected by the advisory guidelines and by statutory requirements.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.0011. FISCAL YEAR. The fiscal year of a school district begins on July 1 or September 1 of each year, as determined by the board of trustees of the district. The commissioner may adopt rules concerning the submission of information by a district under Chapter 39 or 42 based on the fiscal year of the district.

Added by Acts 1999, 76th Leg., ch. 643, Sec. 1, eff. Sept. 1, 2001.

Sec. 44.002. PREPARATION OF BUDGET. (a) On or before a date set by the State Board of Education, the superintendent shall prepare, or cause to be prepared, a proposed budget covering all estimated revenue and proposed expenditures of the district for the following fiscal year.

(b) The budget must be prepared according to generally accepted accounting principles, rules adopted by the State Board of Education, and adopted policies of the board of trustees.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.003. RECORDS AND REPORTS. The superintendent shall ensure that records are kept and that copies of all budgets, all forms, and all other reports are filed on behalf of the school district at the proper times and in the proper offices as required by this code.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.004. NOTICE OF BUDGET AND TAX RATE MEETING; BUDGET ADOPTION. (a) When the budget has been prepared under Section 44.002, the president shall call a meeting of the board of trustees for the purpose of adopting a budget for the succeeding fiscal year.

(b) The president shall provide for the publication of notice of the budget and proposed tax rate meeting in a daily, weekly, or biweekly newspaper published in the district. If no daily, weekly, or biweekly newspaper is published in the district, the president shall provide for the publication of notice in at least one newspaper of general circulation in the county in which the district's central administrative office is located. Notice under this subsection shall be published not earlier than the 30th day or later than the 10th day before the date of the hearing.

(c) The notice of public meeting to discuss and adopt the budget and the proposed tax rate may not be smaller than one-quarter page of a standard-size or a tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type. Subject to Subsection (d), the notice must:

(1) contain a statement in the following form:

"NOTICE OF PUBLIC MEETING TO DISCUSS BUDGET AND PROPOSED TAX RATE

"The (name of school district) will hold a public meeting at (time, date, year) in (name of room, building, physical location, city, state). The purpose of this meeting is to discuss the school district's budget that will determine the tax rate that will be adopted. Public participation in the discussion is invited." The statement of the purpose of the meeting must be in bold type. In reduced type, the notice must state: "The tax rate that is ultimately adopted at this meeting or at a separate meeting at a later date may not exceed the proposed rate shown below unless the

district publishes a revised notice containing the same information and comparisons set out below and holds another public meeting to discuss the revised notice.";

(2) contain a section entitled "Comparison of Proposed Budget with Last Year's Budget," which must show the difference, expressed as a percent increase or decrease, as applicable, in the amounts budgeted for the preceding fiscal year and the amount budgeted for the fiscal year that begins in the current tax year for each of the following:

- (A) maintenance and operations;
- (B) debt service; and
- (C) total expenditures;

(3) contain a section entitled "Total Appraised Value and Total Taxable Value," which must show the total appraised value and the total taxable value of all property and the total appraised value and the total taxable value of new property taxable by the district in the preceding tax year and the current tax year as calculated under Section 26.04, Tax Code;

(4) contain a statement of the total amount of the outstanding and unpaid bonded indebtedness of the school district;

(5) contain a section entitled "Comparison of Proposed Rates with Last Year's Rates," which must:

(A) show in rows the tax rates described by Subparagraphs (i)-(iii), expressed as amounts per \$100 valuation of property, for columns entitled "Maintenance & Operations," "Interest & Sinking Fund," and "Total," which is the sum of "Maintenance & Operations" and "Interest & Sinking Fund":

- (i) the school district's "Last Year's Rate";
- (ii) the "Rate to Maintain Same Level of

Maintenance & Operations Revenue & Pay Debt Service," which:

(a) in the case of "Maintenance & Operations," is the tax rate that, when applied to the current taxable value for the district, as certified by the chief appraiser under Section 26.01, Tax Code, and as adjusted to reflect changes made by the chief appraiser as of the time the notice is prepared, would impose taxes in an amount that, when added to state funds to be distributed to the district under Chapter 42, would provide the same amount of maintenance and operations taxes and state funds distributed under

Chapter 42 per student in average daily attendance for the applicable school year that was available to the district in the preceding school year; and

(b) in the case of "Interest & Sinking Fund," is the tax rate that, when applied to the current taxable value for the district, as certified by the chief appraiser under Section 26.01, Tax Code, and as adjusted to reflect changes made by the chief appraiser as of the time the notice is prepared, and when multiplied by the district's anticipated collection rate, would impose taxes in an amount that, when added to state funds to be distributed to the district under Chapter 46 and any excess taxes collected to service the district's debt during the preceding tax year but not used for that purpose during that year, would provide the amount required to service the district's debt; and

(iii) the "Proposed Rate";

(B) contain fourth and fifth columns aligned with the columns required by Paragraph (A) that show, for each row required by Paragraph (A):

(i) the "Local Revenue per Student," which is computed by multiplying the district's total taxable value of property, as certified by the chief appraiser for the applicable school year under Section 26.01, Tax Code, and as adjusted to reflect changes made by the chief appraiser as of the time the notice is prepared, by the total tax rate, and dividing the product by the number of students in average daily attendance in the district for the applicable school year; and

(ii) the "State Revenue per Student," which is computed by determining the amount of state aid received or to be received by the district under Chapters 42, 43, and 46 and dividing that amount by the number of students in average daily attendance in the district for the applicable school year; and

(C) contain an asterisk after each calculation for "Interest & Sinking Fund" and a footnote to the section that, in reduced type, states "The Interest & Sinking Fund tax revenue is used to pay for bonded indebtedness on construction, equipment, or both. The bonds, and the tax rate necessary to pay those bonds, were approved by the voters of this district.";

(6) contain a section entitled "Comparison of Proposed Levy with Last Year's Levy on Average Residence," which must:

(A) show in rows the information described by Subparagraphs (i)-(iv), rounded to the nearest dollar, for columns entitled "Last Year" and "This Year":

(i) "Average Market Value of Residences," determined using the same group of residences for each year;

(ii) "Average Taxable Value of Residences," determined after taking into account the limitation on the appraised value of residences under Section 23.23, Tax Code, and after subtracting all homestead exemptions applicable in each year, other than exemptions available only to disabled persons or persons 65 years of age or older or their surviving spouses, and using the same group of residences for each year;

(iii) "Last Year's Rate Versus Proposed Rate per \$100 Value"; and

(iv) "Taxes Due on Average Residence," determined using the same group of residences for each year; and

(B) contain the following information: "Increase (Decrease) in Taxes" expressed in dollars and cents, which is computed by subtracting the "Taxes Due on Average Residence" for the preceding tax year from the "Taxes Due on Average Residence" for the current tax year;

(7) contain the following statement in bold print: "Under state law, the dollar amount of school taxes imposed on the residence of a person 65 years of age or older or of the surviving spouse of such a person, if the surviving spouse was 55 years of age or older when the person died, may not be increased above the amount paid in the first year after the person turned 65, regardless of changes in tax rate or property value.";

(8) contain the following statement in bold print: "Notice of Rollback Rate: The highest tax rate the district can adopt before requiring voter approval at an election is (the school district rollback rate determined under Section 26.08, Tax Code). This election will be automatically held if the district adopts a rate in excess of the rollback rate of (the school district rollback rate)."; and

(9) contain a section entitled "Fund Balances," which must include the estimated amount of interest and sinking fund balances and the estimated amount of maintenance and operation or general fund balances remaining at the end of the current fiscal year that are not encumbered with or by corresponding debt obligation, less estimated funds necessary for the operation of the district before the receipt of the first payment under Chapter 42 in the succeeding school year.

(c-1) The notice described by Subsection (c) must state in a distinct row or on a separate or individual line for each of the following taxes:

(1) the proposed rate of the school district's maintenance tax described by Section 45.003, under the heading "Maintenance Tax"; and

(2) if the school district has issued ad valorem tax bonds under Section 45.001, the proposed rate of the tax to pay for the bonds, under the heading "School Debt Service Tax Approved by Local Voters."

(d) The comptroller shall prescribe the language and format to be used in the part of the notice required by Subsection (c). A notice under Subsection (c) is not valid if it does not substantially conform to the language and format prescribed by the comptroller under this subsection.

(e) A person who owns taxable property in a school district is entitled to an injunction restraining the collection of taxes by the district if the district has not complied with the requirements of Subsections (b), (c), and (d), and, if applicable, Subsection (i), and the failure to comply was not in good faith. An action to enjoin the collection of taxes must be filed before the date the school district delivers substantially all of its tax bills.

(f) The board of trustees, at the meeting called for that purpose, shall adopt a budget to cover all expenditures for the school district for the next succeeding fiscal year. Any taxpayer of the district may be present and participate in the meeting.

(g) The budget must be adopted before the adoption of the tax rate for the tax year in which the fiscal year covered by the budget begins.

(g-1) If the rate calculated under Subsection (c)(5)(A)(ii)(b) decreases after the publication of the notice required by this

section, the president is not required to publish another notice or call another meeting to discuss and adopt the budget and the proposed lower tax rate.

(h) Notwithstanding any other provision of this section, a school district with a fiscal year beginning July 1 may use the certified estimate of the taxable value of district property required by Section 26.01(e), Tax Code, in preparing the notice required by this section if the district does not receive on or before June 7 the certified appraisal roll for the district required by Section 26.01 (a), Tax Code.

(i) A school district that uses a certified estimate, as authorized by Subsection (h), may adopt a budget at the public meeting designated in the notice prepared using the estimate, but the district may not adopt a tax rate before the district receives the certified appraisal roll for the district required by Section 26.01 (a), Tax Code. After receipt of the certified appraisal roll, the district must publish a revised notice and hold another public meeting before the district may adopt a tax rate that exceeds:

(1) the rate proposed in the notice prepared using the estimate; or

(2) the district's rollback rate determined under Section 26.08, Tax Code, using the certified appraisal roll.

(j) Notwithstanding Subsections (g), (h), and (i), a school district may adopt a budget after the district adopts a tax rate for the tax year in which the fiscal year covered by the budget begins if the district elects to adopt a tax rate before receiving the certified appraisal roll for the district as provided by Section 26.05(g), Tax Code. If a school district elects to adopt a tax rate before adopting a budget, the district must publish notice and hold a meeting for the purpose of discussing the proposed tax rate as provided by this section. Following adoption of the tax rate, the district must publish notice and hold another public meeting before the district may adopt a budget. The comptroller shall prescribe the language and format to be used in the notices. The school district may use the certified estimate of taxable value in preparing a notice under this subsection.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by Acts 1999, 76th Leg., ch. 398, Sec. 1, eff. Aug. 30, 1999;
Acts 2001, 77th Leg., ch. 898, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 807 (S.B. 567), Sec. 2, eff. June 17, 2005.

Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 1.11, eff. May 31, 2006.

Acts 2009, 81st Leg., R.S., Ch. 1328 (H.B. 3646), Sec. 66, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 57.27, eff. September 28, 2011.

Sec. 44.0041. PUBLICATION OF SUMMARY OF PROPOSED BUDGET. (a) Concurrently with the publication of notice of the budget under Section 44.004, a school district shall post a summary of the proposed budget:

- (1) on the school district's Internet website; or
- (2) if the district has no Internet website, in the district's central administrative office.

(b) The budget summary must include:

(1) information relating to per student and aggregate spending on:

- (A) instruction;
- (B) instructional support;
- (C) central administration;
- (D) district operations;
- (E) debt service; and
- (F) any other category designated by the commissioner;

and

- (2) a comparison to the previous year's actual spending.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 2.06, eff. May 31, 2006.

Sec. 44.005. FILING OF ADOPTED BUDGET. On or before a date set by the State Board of Education, the budget must be filed with the

agency according to the rules established by the State Board of Education.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.0051. POSTING OF ADOPTED BUDGET. (a) On final approval of the budget by the board of trustees, the school district shall post on the district's Internet website a copy of the budget adopted by the board of trustees. The district's Internet website must prominently display the electronic link to the adopted budget.

(b) The district shall maintain the adopted budget on the district's Internet website until the third anniversary of the date the budget was adopted.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 59, eff. June 19, 2009.

Transferred and redesignated from Education Code, Section 39.084 by Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(12), eff. September 1, 2015.

Sec. 44.006. EFFECT OF ADOPTED BUDGET; AMENDMENTS. (a) Public funds of the school district may not be spent in any manner other than as provided for in the budget adopted by the board of trustees, but the board may amend a budget or adopt a supplementary emergency budget to cover necessary unforeseen expenses.

(b) Any amendment or supplementary budget must be prepared and filed according to rules adopted by the State Board of Education.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.007. ACCOUNTING SYSTEM; REPORT. (a) A standard school fiscal accounting system must be adopted and installed by the board of trustees of each school district. The accounting system must conform with generally accepted accounting principles.

(b) The accounting system must meet at least the minimum requirements prescribed by the commissioner, subject to review and comment by the state auditor.

(c) A record must be kept of all revenues realized and of all expenditures made during the fiscal year for which a budget is adopted. A report of the revenues and expenditures for the preceding fiscal year shall be filed with the agency on or before the date set by the State Board of Education.

(d) The State Board of Education shall require each district, as part of the report required by this section, to include management, cost accounting, and financial information in a format prescribed by the board and in a manner sufficient to enable the board to monitor the funding process and determine educational system costs by district, campus, and program.

(e) Expired.

(f) Expired.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 5 (H.B. 1), Sec. 2.08, eff. May 31, 2006.

Sec. 44.0071. COMPUTATION OF INSTRUCTIONAL EXPENDITURES RATIO AND INSTRUCTIONAL EMPLOYEES RATIO. (a) Each fiscal year, a school district shall compute and report to the commissioner:

(1) the percentage of the district's total expenditures for the preceding fiscal year that were used to fund direct instructional activities; and

(2) the percentage of the district's full-time equivalent employees during the preceding fiscal year whose job function was to directly provide classroom instruction to students, determined by dividing the number of hours spent by employees in providing direct classroom instruction by the total number of hours worked by all district employees.

(b) At least annually a school district shall provide educators employed by the district with a list of district employees determined by the district for purposes of this section to be engaged in directly providing classroom instruction to students. The list must include the percentage of time spent by each employee in directly providing classroom instruction to students.

(c) For purposes of this section, the computation of a district's expenditures used to fund direct instructional activities shall include the salary, including any associated employment taxes, and value of any benefits provided to any district employee who directly provided classroom instruction to students, but only in proportion to the percentage of time spent by the employee in directly providing classroom instruction to students.

(d) The commissioner shall adopt rules as necessary to implement this section. To the extent possible, the rules must provide for development of the information required by this section using information otherwise compiled by school districts for reporting through the Public Education Information Management System (PEIMS).

Added by Acts 2003, 78th Leg., ch. 1269, Sec. 1, eff. Sept. 1, 2003.

Sec. 44.008. ANNUAL AUDIT; REPORT. (a) The board of school trustees of each school district shall have its school district fiscal accounts audited annually at district expense by a certified or public accountant holding a permit from the Texas State Board of Public Accountancy. The audit must be completed following the close of each fiscal year.

(b) The independent audit must meet at least the minimum requirements and be in the format prescribed by the State Board of Education, subject to review and comment by the state auditor. The audit shall include an audit of the accuracy of the fiscal information provided by the district through the Public Education Information Management System (PEIMS).

(c) Each treasurer receiving or having control of any school fund of any school district shall keep a full and separate itemized account with each of the different classes of its school funds coming into the treasurer's hands. The treasurer's records of the district's itemized accounts and records shall be made available to audit.

(d) A copy of the annual audit report, approved by the board of trustees, shall be filed by the district with the agency not later than the 150th day after the end of the fiscal year for which the audit was made. If the board of trustees declines or refuses to

approve its auditor's report, it shall nevertheless file with the agency a copy of the audit report with its statement detailing reasons for failure to approve the report.

(e) The audit reports shall be reviewed by the agency, and the commissioner shall notify the board of trustees of objections, violations of sound accounting practices or law and regulation requirements, or of recommendations concerning the audit reports that the commissioner wants to make. If the audit report reflects that penal laws have been violated, the commissioner shall notify the appropriate county or district attorney and the attorney general. The commissioner shall have access to all vouchers, receipts, district fiscal and financial records, and other school records as the commissioner considers necessary and appropriate for the review, analysis, and passing on audit reports.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by Acts 2001, 77th Leg., ch. 914, Sec. 2, eff. Sept. 1, 2001.

Sec. 44.009. FINANCIAL REPORTS TO COMMISSIONER OR AGENCY; FORMS. (a) All financial reports made by or for school districts or by their officers, agents, or employees, to the commissioner or to the agency, shall be made on forms prescribed by the agency, subject to review and comment by the state auditor.

(b) The agency shall combine as many forms as possible to avoid multiplicity of reports. The forms shall provide for entry of all information required by law or by the commissioner and information considered necessary by the state auditor.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.010. REVIEW BY AGENCY. The budgets, fiscal reports, and audit reports filed with the agency shall be reviewed and analyzed by the staff of the agency to determine whether all legal requirements have been met and to collect fiscal data needed in preparing school fiscal reports for the governor and the legislature.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.011. FINANCIAL EXIGENCY. (a) The board of trustees of a school district may adopt a resolution declaring a financial exigency for the district. The declaration expires at the end of the fiscal year during which the declaration is made unless the board adopts a resolution before the end of the fiscal year declaring continuation of the financial exigency for the following fiscal year.

(b) The board is not limited in the number of times the board may adopt a resolution declaring continuation of the financial exigency.

(c) A board may terminate a financial exigency declaration at any time if the board considers it appropriate.

(d) Each time the board adopts a resolution under this section, the board must notify the commissioner. The commissioner by rule shall prescribe the time and manner in which notice must be given to the commissioner under this subsection.

(e) The commissioner by rule shall adopt minimum standards concerning school district financial conditions that must exist for declaration of a financial exigency by the board of trustees of the district.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 8 (S.B. 8), Sec. 19, eff. September 28, 2011.

SUBCHAPTER B. PURCHASES; CONTRACTS

Sec. 44.031. PURCHASING CONTRACTS.

(a) Except as provided by this subchapter, all school district contracts for the purchase of goods and services, except contracts for the purchase of produce or vehicle fuel, valued at \$50,000 or more in the aggregate for each 12-month period shall be made by the method, of the following methods, that provides the best value for the district:

(1) competitive bidding for services other than construction services;

(2) competitive sealed proposals for services other than construction services;

(3) a request for proposals, for services other than construction services;

- (4) an interlocal contract;
- (5) a method provided by Chapter 2269, Government Code, for construction services;
- (6) the reverse auction procedure as defined by Section 2155.062(d), Government Code; or
- (7) the formation of a political subdivision corporation under Section 304.001, Local Government Code.

(b) Except as provided by this subchapter, in determining to whom to award a contract, the district shall consider:

- (1) the purchase price;
- (2) the reputation of the vendor and of the vendor's goods or services;
- (3) the quality of the vendor's goods or services;
- (4) the extent to which the goods or services meet the district's needs;
- (5) the vendor's past relationship with the district;
- (6) the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses;
- (7) the total long-term cost to the district to acquire the vendor's goods or services;
- (8) for a contract for goods and services, other than goods and services related to telecommunications and information services, building construction and maintenance, or instructional materials, whether the vendor or the vendor's ultimate parent company or majority owner:
 - (A) has its principal place of business in this state;or
 - (B) employs at least 500 persons in this state; and
- (9) any other relevant factor specifically listed in the request for bids or proposals.

(b-1) In awarding a contract by competitive sealed bid under this section, a school district that has its central administrative office located in a municipality with a population of less than 250,000 may consider a bidder's principal place of business in the manner provided by Section 271.9051, Local Government Code. This subsection does not apply to the purchase of telecommunications

services or information services, as those terms are defined by 47 U.S.C. Section 153.

(c) The state auditor may audit purchases of goods or services by the district.

(d) The board of trustees of the district may adopt rules and procedures for the acquisition of goods or services.

(e) To the extent of any conflict, this subchapter prevails over any other law relating to the purchasing of goods and services except a law relating to contracting with historically underutilized businesses.

(f) This section does not apply to a contract for professional services rendered, including services of an architect, attorney, certified public accountant, engineer, or fiscal agent. A school district may, at its option, contract for professional services rendered by a financial consultant or a technology consultant in the manner provided by Section 2254.003, Government Code, in lieu of the methods provided by this section.

(g) Notice of the time by when and place where the bids or proposals, or the responses to a request for qualifications, will be received and opened shall be published in the county in which the district's central administrative office is located, once a week for at least two weeks before the deadline for receiving bids, proposals, or responses to a request for qualifications. If there is not a newspaper in that county, the advertising shall be published in a newspaper in the county nearest the county seat of the county in which the district's central administrative office is located. In a two-step procurement process, the time and place where the second-step bids, proposals, or responses will be received are not required to be published separately.

Text of subsec. (h) as amended by Acts 1999, 76th Leg., ch. 922, Sec.

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(h) If school equipment, a school facility, or a portion of a school facility is destroyed, severely damaged, or experiences a major unforeseen operational or structural failure, and the board of trustees determines that the delay posed by the contract methods

required by this section would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment, school facility, or portion of the school facility may be made by a method other than the methods required by this section.

Text of subsec. (h) as amended by Acts 1999, 76th Leg., ch. 1225,
Sec. 1

(h) If school equipment or a part of a school facility or personal property is destroyed or severely damaged or, as a result of an unforeseen catastrophe or emergency, undergoes major operational or structural failure, and the board of trustees determines that the delay posed by the methods provided for in this section would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of the equipment or the part of the school facility may be made by methods other than those required by this section.

(i) A school district may acquire computers and computer-related equipment, including computer software, through the Department of Information Resources under contracts entered into in accordance with Chapter 2054 or 2157, Government Code. Before issuing an invitation for bids, the department shall consult with the agency concerning the computer and computer-related equipment needs of school districts. To the extent possible the resulting contract shall provide for such needs.

(j) Without complying with Subsection (a), a school district may purchase an item that is available from only one source, including:

- (1) an item for which competition is precluded because of the existence of a patent, copyright, secret process, or monopoly;
- (2) a film, manuscript, or book;
- (3) a utility service, including electricity, gas, or water; and
- (4) a captive replacement part or component for equipment.

(k) The exceptions provided by Subsection (j) do not apply to mainframe data-processing equipment and peripheral attachments with a single-item purchase price in excess of \$15,000.

(l) Each contract proposed to be made by a school district for the purchase or lease of one or more school buses, including a lease with an option to purchase, must be submitted to competitive bidding when the contract is valued at \$20,000 or more.

(m) If a purchase is made at the campus level in a school district with a student enrollment of 180,000 or more that has formally adopted a site-based decision-making plan under Subchapter F, Chapter 11, that delegates purchasing decisions to the campus level, this section applies only to the campus and does not require the district to aggregate and jointly award purchasing contracts. A district that adopts site-based purchasing under this subsection shall adopt a policy to ensure that campus purchases achieve the best value to the district and are not intended or used to avoid the requirement that a district aggregate purchases under Subsection (a).

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by Acts 1997, 75th Leg., ch. 1179, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 881, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 922, Sec. 1, eff. June 18, 1999; Acts 1999, 76th Leg., ch. 1225, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 436, Sec. 7, eff. May 28, 2001; Acts 2001, 77th Leg., ch. 1409, Sec. 9, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 201, Sec. 38, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 680, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1205 (H.B. 664), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 325 (H.B. 2626), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 449 (H.B. 273), Sec. 4, eff. June 16, 2007.

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 2.02, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1081 (H.B. 2918), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 1, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.02, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(5), eff. September 1, 2013.

Sec. 44.0311. APPLICABILITY TO JUNIOR COLLEGE DISTRICTS. (a) Except as provided by Subsection (c), this subchapter applies to junior college districts.

(b) For purposes of this subchapter, "board of trustees" includes the governing board of a junior college district.

(c) This subchapter does not apply to a purchase, acquisition, or license of library goods and services for a library operated as a part of a junior college district. In this subsection, "library goods and services" has the meaning assigned by Section 130.0101(a).

Added by Acts 1999, 76th Leg., ch. 1225, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 336 (H.B. 962), Sec. 1, eff. June 19, 2009.

Sec. 44.0312. DELEGATION. (a) The board of trustees of the district may, as appropriate, delegate its authority under this subchapter regarding an action authorized or required by this subchapter to be taken by a school district to a designated person, representative, or committee. In procuring construction services, the district shall provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications or in an addendum to the request. If the district fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the board of trustees in an open public meeting is advisory only.

(b) The board may not delegate the authority to act regarding an action authorized or required by this subchapter to be taken by the board of trustees of a school district.

(c) Notwithstanding any other provision of this code, in the event of a catastrophe, emergency, or natural disaster affecting a

school district, the board of trustees of the district may delegate to the superintendent or designated person the authority to contract for the replacement, construction, or repair of school equipment or facilities under this subchapter if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff.

Added by Acts 1999, 76th Leg., ch. 1225, Sec. 2, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1006 (H.B. 4102), Sec. 6, eff. June 19, 2009.

Sec. 44.0313. PROCEDURES FOR ELECTRONIC BIDS OR PROPOSALS. (a) A school district may receive bids or proposals under this chapter through electronic transmission if the board of trustees of the school district adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

(b) Notwithstanding any other provision of this chapter, an electronic bid or proposal is not required to be sealed. A provision of this chapter that applies to a sealed bid or proposal applies to a bid or proposal received through electronic transmission in accordance with the rules adopted under Subsection (a).

Added by Acts 2009, 81st Leg., R.S., Ch. 1266 (H.B. 987), Sec. 2, eff. June 19, 2009.

Sec. 44.032. ENFORCEMENT OF PURCHASE PROCEDURES: CRIMINAL PENALTIES; REMOVAL; INELIGIBILITY. (a) In this section:

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

(2) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

(3) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

(b) An officer, employee, or agent of a school district commits an offense if the person with criminal negligence makes or authorizes separate, sequential, or component purchases to avoid the requirements of Section 44.031(a) or (b). An offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude.

(c) An officer, employee, or agent of a school district commits an offense if the person with criminal negligence violates Section 44.031(a) or (b) other than by conduct described by Subsection (b). An offense under this subsection is a Class B misdemeanor and is an offense involving moral turpitude.

(d) An officer or employee of a school district commits an offense if the officer or employee knowingly violates Section 44.031, other than by conduct described by Subsection (b) or (c). An offense under this subsection is a Class C misdemeanor.

(e) The final conviction of a person other than a trustee of a school district for an offense under Subsection (b) or (c) results in the immediate removal from office or employment of that person. A trustee who is convicted of an offense under this section is considered to have committed official misconduct for purposes of Chapter 87, Local Government Code, and is subject to removal as provided by that chapter and Section 24, Article V, Texas Constitution. For four years after the date of the final conviction, the removed person is ineligible to be a candidate for or to be appointed or elected to a public office in this state, is ineligible to be employed by or act as an agent for the state or a political subdivision of the state, and is ineligible to receive any compensation through a contract with the state or a political subdivision of the state. This subsection does not prohibit the payment of retirement benefits to the removed person or the payment of workers' compensation benefits to the removed person for an injury that occurred before the commission of the offense for which the person was removed. This subsection does not make a person ineligible for an office for which the federal or state constitution prescribes exclusive eligibility requirements.

(f) A court may enjoin performance of a contract made in violation of this subchapter. A county attorney, a district attorney, a criminal district attorney, a citizen of the county in which the school district is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this subsection is entitled to reasonable attorney's fees as approved by the court.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.
Amended by Acts 1999, 76th Leg., ch. 1225, Sec. 3, eff. Sept. 1, 1999.

Sec. 44.0331. MANAGEMENT FEES UNDER CERTAIN COOPERATIVE PURCHASING CONTRACTS. (a) A school district that enters into a purchasing contract valued at \$25,000 or more under Section 44.031(a) (5), under Subchapter F, Chapter 271, Local Government Code, or under any other cooperative purchasing program authorized for school districts by law shall document any contract-related fee, including any management fee, and the purpose of each fee under the contract.

(b) The amount, purpose, and disposition of any fee described by Subsection (a) must be presented in a written report and submitted annually in an open meeting of the board of trustees of the school district. The written report must appear as an agenda item.

(c) The commissioner may audit the written report described by Subsection (b).

Added by Acts 2007, 80th Leg., R.S., Ch. 449 (H.B. 273), Sec. 5, eff. June 16, 2007.

Sec. 44.034. NOTIFICATION OF CRIMINAL HISTORY OF CONTRACTOR.

(a) A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.

(b) A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a)

or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract.

(c) This section does not apply to a publicly held corporation.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.0351. COMPETITIVE BIDDING. (a) Except to the extent prohibited by other law and to the extent consistent with this subchapter, a school district may use competitive bidding to select a vendor as authorized by Section [44.031\(a\)\(1\)](#).

(b) Except as provided by this subsection, Subchapter B, Chapter [271](#), Local Government Code, does not apply to a competitive bidding process under this subchapter. Sections [271.026](#), [271.027\(a\)](#), and [271.0275](#), Local Government Code, apply to a competitive bidding process under this subchapter.

(c) A school district shall award a competitively bid contract at the bid amount to the bidder offering the best value for the district. In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria. The selection criteria may include the factors listed in Section [44.031](#) (b).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. [628](#)), Sec. 2.03, eff. September 1, 2011.

Sec. 44.0352. COMPETITIVE SEALED PROPOSALS. (a) In selecting a vendor through competitive sealed proposals as authorized by Section [44.031\(a\)\(2\)](#), a school district shall follow the procedures prescribed by this section.

(b) The district shall prepare a request for competitive sealed proposals that includes information that vendors may require to respond to the request. The district shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

(c) The district shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all

prices stated in each proposal. Not later than the 45th day after the date on which the proposals are opened, the district shall evaluate and rank each proposal submitted in relation to the published selection criteria.

(d) The district shall select the offeror that offers the best value for the district based on the published selection criteria and on its ranking evaluation. The district shall first attempt to negotiate a contract with the selected offeror. The district may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the district is unable to negotiate a satisfactory contract with the selected offeror, the district shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

(e) In determining the best value for the district, the district is not restricted to considering price alone but may consider any other factors stated in the selection criteria.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.03, eff. September 1, 2011.

Sec. 44.0411. CHANGE ORDERS. (a) If a change in plans or specifications is necessary after the performance of a contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the district may approve change orders making the changes.

(b) The total contract price may not be increased because of the changes unless additional money for increased costs is approved for that purpose from available money or is provided for by the authorization of the issuance of time warrants.

(c) The district may grant general authority to an administrative official to approve the change orders.

(d) A contract with an original contract price of \$1 million or more may not be increased under this section by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, the total of the subsequent change orders may not increase the

revised contract amount by more than 25 percent of the original contract price.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 2.04, eff. September 1, 2011.

Sec. 44.042. PREFERENCE TO TEXAS AND UNITED STATES PRODUCTS.

(a) A school district that purchases agricultural products shall give preference to those produced, processed, or grown in this state if the cost to the school district is equal and the quality is equal.

(b) If agricultural products produced, processed, or grown in this state are not equal in cost and quality to other products, the school district shall give preference to agricultural products produced, processed, or grown in other states of the United States over foreign products if the cost to the school district is equal and the quality is equal.

(c) A school district that purchases vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation if the cost to the school district is equal and the quality is not inferior.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25 (11), eff. June 17, 2011.

(e) In the implementation of this section, a school district may receive assistance from and use the resources of the Texas Department of Agriculture, including information on availability of agricultural products.

(f) A school district may not adopt product purchasing specifications that unnecessarily exclude agricultural products produced, processed, or grown in this state.

(g) In this section:

(1) "Agricultural products" includes textiles and other similar products.

(2) "Processed" means canning, freezing, drying, juicing, preserving, or any other act that changes the form of a good from its natural state to another form.

Added by Acts 1999, 76th Leg., ch. 1342, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(11), eff. June 17, 2011.

Sec. 44.043. RIGHT TO WORK. (a) This section applies to a school district while the school district is engaged in:

- (1) procuring goods or services;
- (2) awarding a contract; or
- (3) overseeing procurement or construction for a public work or public improvement.

(b) Notwithstanding any other provision of this chapter, a school district:

- (1) may not consider whether a vendor is a member of or has another relationship with any organization; and
- (2) shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

Added by Acts 2001, 77th Leg., ch. 1409, Sec. 13, eff. Sept. 1, 2001.

Sec. 44.044. CONTRACT WITH PERSON INDEBTED TO SCHOOL DISTRICT.

(a) The board of trustees of a school district by resolution may establish regulations permitting the school district to refuse to enter into a contract or other transaction with a person indebted to the school district.

(b) It is not a violation of this subchapter for a school district, under regulations adopted under Subsection (a), to refuse to award a contract to or enter into a transaction with an apparent low bidder or successful proposer that is indebted to the school district.

(c) In this section, "person" includes an individual, sole proprietorship, corporation, nonprofit corporation, partnership, joint venture, limited liability company, and any other entity that proposes or otherwise seeks to enter into a contract or other transaction with the school district requiring approval by the board.

Added by Acts 2003, 78th Leg., ch. 156, Sec. 3, eff. Sept. 1, 2003.

Sec. 44.047. PURCHASE OR LEASE OF AUTOMATED EXTERNAL DEFIBRILLATOR. (a) A school district or private school that purchases or leases an automated external defibrillator, as defined by Section 779.001, Health and Safety Code, shall ensure that the automated external defibrillator meets standards established by the federal Food and Drug Administration.

(b) A private school that purchases or leases an automated external defibrillator is required to comply with the requirements of this section only if the school receives funding from the agency to purchase or lease the automated external defibrillator.

Added by Acts 2007, 80th Leg., R.S., Ch. 1371 (S.B. 7), Sec. 7, eff. June 15, 2007.

SUBCHAPTER C. PENAL PROVISIONS

Sec. 44.051. INTERFERENCE WITH OPERATION OF FOUNDATION SCHOOL PROGRAM. An offense under Section 37.10, Penal Code, is a felony of the third degree if it is shown on trial of the offense that the governmental record was a record, form, report, or budget required under Chapter 42 or rules adopted under that chapter. If the actor's intent is to defraud the state or the public school system, the offense is a felony of the second degree.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.052. FAILURE TO COMPLY WITH BUDGET REQUIREMENTS; PENALTY. (a) Any county superintendent approving any expenditure of school funds in excess of the item or items appropriated in the adopted budget or a supplementary or amended budget commits an offense. An offense under this subsection is a Class C misdemeanor.

(b) A person who fails to comply with the person's duties with regard to the preparation or the following of a county school budget or a budget of a school district or who violates any provision of Section 44.002 commits an offense. An offense under this subsection is a Class C misdemeanor.

(c) A trustee of a school district who votes to approve any expenditure of school funds in excess of the item or items

appropriated in the adopted budget or a supplementary or amended budget commits an offense. An offense under this subsection is a Class C misdemeanor.

(d) Charges of the violation of this section may be instituted by the proper county or district attorney or by the attorney general.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.053. FAILURE OF MUNICIPAL OFFICER TO MAKE TREASURER'S REPORT; PENALTY. Any county or municipal treasurer or treasurer of the school board of each municipality having exclusive control of its schools who fails to make and transmit any report and certified copy thereof, or either, required by law, commits an offense. An offense under this section is a Class C misdemeanor.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Sec. 44.054. FAILURE TO TRANSFER STUDENTS AND FUNDS. A county judge serving as ex officio county superintendent, a county, district, or municipal superintendent, or a school officer who refuses to transfer students and funds as provided by Subchapter B, Chapter 25, commits an offense. An offense under this section is a Class B misdemeanor.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 44.901. ENERGY SAVINGS PERFORMANCE CONTRACTS. (a) In this section, "energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of new or existing school facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term includes a contract for the installation or implementation of:

(1) insulation of a building structure and systems within the building;

(2) storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;

(3) automatic energy control systems, including computer software and technical data licenses;

(4) heating, ventilating, or air-conditioning system modifications or replacements that reduce energy or water consumption;

(5) lighting fixtures that increase energy efficiency;

(6) energy recovery systems;

(7) electric systems improvements;

(8) water-conserving fixtures, appliances, and equipment or the substitution of non-water-using fixtures, appliances, and equipment;

(9) water-conserving landscape irrigation equipment;

(10) landscaping measures that reduce watering demands and capture and hold applied water and rainfall, including:

(A) landscape contouring, including the use of berms, swales, and terraces; and

(B) the use of soil amendments that increase the water-holding capacity of the soil, including compost;

(11) rainwater harvesting equipment and equipment to make use of water collected as part of a storm-water system installed for water quality control;

(12) equipment for recycling or reuse of water originating on the premises or from other sources, including treated municipal effluent;

(13) equipment needed to capture water from nonconventional, alternate sources, including air conditioning condensate or graywater, for nonpotable uses;

(14) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or

(15) other energy or water conservation-related improvements or equipment, including improvements or equipment relating to renewable energy or nonconventional water sources or water reuse.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1347, Sec. 5, eff. June 19, 2009.

(c) Each energy or water conservation measure must comply with current local, state, and federal construction, plumbing, and environmental codes and regulations. Notwithstanding Subsection (a), an energy savings performance contract may not include improvements or equipment that allow or cause water from any condensing, cooling, or industrial process or any system of nonpotable usage over which the public water supply system officials do not have sanitary control, to be returned to the potable water supply.

(d) The board may enter into energy savings performance contracts only with persons who are experienced in the design, implementation, and installation of the energy or water conservation measures addressed by the contract.

(e) Before entering into an energy savings performance contract, the board shall require the provider of the energy or water conservation measures to file with the board a payment and performance bond relating to the installation of the measures in accordance with Chapter 2253, Government Code. The board may also require a separate bond to cover the value of the guaranteed savings on the contract.

(f) An energy savings performance contract may be financed:

(1) under a lease/purchase contract that has a term not to exceed 20 years from the final date of installation and that meets federal tax requirements for tax-free municipal leasing or long-term financing;

(2) with the proceeds of bonds; or

(3) under a contract with the provider of the energy or water conservation measures that has a term not to exceed the lesser of 20 years from the final date of installation or the average useful life of the energy or water conservation or usage measures.

(f-1) Notwithstanding other law, the board may use any available money, other than money borrowed from this state, to pay the provider of the energy or water conservation measures under this section, and the board is not required to pay for such costs solely out of the savings realized by the school district under an energy savings performance contract. The board may contract with the provider to perform work that is related to, connected with, or

otherwise ancillary to the measures identified in the scope of an energy savings performance contract.

(g) An energy savings performance contract shall contain provisions requiring the provider of the energy or water conservation measures to guarantee the amount of the savings to be realized by the school district under the contract. If the term of an energy savings performance contract exceeds one year, the school district's contractual obligations in any one year during the term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures, as determined by the school district in this subsection, divided by the number of years in the contract term.

(h) An energy savings performance contract shall be let according to the procedures established for procuring certain professional services by Section 2254.004, Government Code. Notice of the request for qualifications shall be published in the manner provided for competitive bidding.

(i) Before entering into an energy savings performance contract, the board must require that the cost savings projected by an offeror be reviewed by a licensed professional engineer who has a minimum of three years of experience in energy calculation and review, is not an officer or employee of an offeror for the contract under review, and is not otherwise associated with the contract. In conducting the review, the engineer shall focus primarily on the proposed improvements from an engineering perspective, the methodology and calculations related to cost savings, increases in revenue, and, if applicable, efficiency or accuracy of metering equipment. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Sections 1001.053 and 1001.407, Occupations Code, apply to work performed under the contract.

(j) Chapter 2269, Government Code, does not apply to this section.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.
Amended by Acts 1997, 75th Leg., ch. 1142, Sec. 1, eff. June 19,

1997; Acts 1999, 76th Leg., ch. 361, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 573, Sec. 1, 2, 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1319, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 5, 121(1), eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 262 (S.B. 12), Sec. 3.03, eff. June 8, 2007.

Acts 2007, 80th Leg., R.S., Ch. 527 (S.B. 831), Sec. 1, eff. June 16, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1347 (S.B. 300), Sec. 5, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. 1728), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 3.01, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(6), eff. September 1, 2013.

Sec. 44.902. LONG-RANGE ENERGY PLAN TO REDUCE CONSUMPTION OF ELECTRIC ENERGY. (a) The board of trustees of a school district shall establish a long-range energy plan to reduce the district's annual electric consumption by five percent beginning with the 2008 state fiscal year and consume electricity in subsequent fiscal years in accordance with the district's energy plan.

(b) The plan required under Subsection (a) must include:

(1) strategies for achieving energy efficiency that:

(A) result in net savings for the district; or

(B) can be achieved without financial cost to the

district; and

(2) for each strategy identified under Subdivision (1), the initial, short-term capital costs and lifetime costs and savings that may result from implementation of the strategy.

(b-1) For purposes of Subsection (b), a strategy for achieving energy efficiency includes facility design and construction.

(c) In determining under Subsection (b) whether a strategy may result in financial cost to the district, the board of trustees shall consider the total net costs and savings that may occur over the seven-year period following implementation of the strategy.

(d) The board of trustees may submit the plan required under Subsection (a) to the State Energy Conservation Office for the purposes of determining whether funds available through loan programs administered by the office or tax incentives administered by the state or federal government are available to the district. The board may not disallow any proper allocation of incentives.

Added by Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1347 (S.B. 300), Sec. 4, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 982 (H.B. 1728), Sec. 2, eff. September 1, 2011.

Sec. 44.903. ENERGY-EFFICIENT LIGHT BULBS IN INSTRUCTIONAL FACILITIES. (a) In this section, "instructional facility" has the meaning assigned by Section 46.001.

(b) A school district shall purchase for use in each type of light fixture in an instructional facility the commercially available model of light bulb that:

- (1) uses the fewest watts for the necessary luminous flux or light output;
- (2) is compatible with the light fixture; and
- (3) is the most cost-effective, considering the factors described by Subdivisions (1) and (2).

Added by Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. 3693), Sec. 2, eff. September 1, 2007.

Sec. 44.908. EXPENDITURE OF LOCAL FUNDS. (a) A school district shall adopt a policy governing the expenditure of local funds from vending machines, rentals, gate receipts, or other local sources of revenue over which the district has direct control.

(b) A policy under this section must:

- (1) require discretionary expenditures of local funds to be related to the district's educational purpose and provide a commensurate benefit to the district or its students; and

(2) meet the standards of Section 52, Article III, Texas Constitution, regarding expenditure of public funds.

Added by Acts 2009, 81st Leg., R.S., Ch. 1328 (H.B. 3646), Sec. 67, eff. September 1, 2009.