

- SUBJECT:** Modifying certain purchasing procedures for school districts.
- COMMITTEE:** Public Education — committee substitute recommended
- VOTE:** 7 ayes — Eissler, Branch, Delisi, Hochberg, Mowery, Olivo, Patrick
0 nays
2 absent — Zedler, Dutton
- WITNESSES:** (*on original version:*)
For — David Duty, Texas Association of School Boards. (*Registered, but did not testify:* Amy Beneski, Texas Association of School Administrators)
Against — None

(*on committee substitute:*)
On — Thomas D. Canby Jr., Texas Association of School Business Officials
- BACKGROUND:** Education Code, ch. 43, subch. B regulates purchasing contracts awarded by school districts. Under sec. 44.031(b), school districts *may* consider a number of factors when determining to whom to award a contract, including:
- purchase price and the quality of the vendor’s goods or services;
 - the reputation of the vendor, its goods or services, and its past relationships with the district;
 - the extent to which the goods or services meet the district’s needs;
 - the impact on the district's ability to comply with laws and rules relating to historically underutilized businesses;
 - the long-term costs to the district of acquiring the vendor’s goods or services; and
 - any other relevant factor specifically listed in the request for bids or proposals.
- District purchases of goods and services are subject to audit by the state auditor.

School districts may engage in cooperative purchasing agreements as provided by Education Code, sec. 44.031(a)(5) or Local Government Code, sec. 271.102. Local cooperative programs provide local governments access to contracts with vendors for the purchase of materials, supplies, services, or equipment.

DIGEST:

CSHB 273 would amend Education Code, sec. 44.031(c) to *require* districts to consider the factors listed in statute in awarding contracts.

The bill would add sec. 44.0331 to require districts that entered into a cooperative purchasing program for a contract valued at \$25,000 or more to document the amount and purpose of any contract-related or management fees paid as part of the program. This information would have to be presented in a written report and submitted annually in an open meeting of the district's board of trustees.

The bill also would authorize the commissioner of education to conduct an audit of district purchases of goods and services to assess contract performance. Contracts that failed to meet a sufficient performance level by resulting in comparatively comparable values as determined by the commissioner could not be renewed. [The author intends to accept an amendment to strike this provision from the bill.]

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS
SAY:

CSHB 273 would take small but important steps in improving purchasing procurement processes for school districts. The bill would clarify a district's obligation to consider certain factors when awarding contracts and would add transparency and accountability to cooperative purchasing agreements.

The requirement to consider the listed factors would affirm that each factor listed in sec. 44.031(b) merited consideration. The bill would retain the current flexibility for school districts to weigh factors in proportion to their importance to the particular contract. Requiring districts to consider all factors would not imply that they would have to make decisions resulting from a formula that weighed each factor equally. Ensuring that all factors be considered would add accountability to school district contract award decisions. Districts would be responsible for

demonstrating that they gave due consideration to each factor outlined in the statute. Providing evidence of this consideration would be enough to protect districts from charges of making improper contract decisions.

Districts commonly engage in cooperative and interlocal purchasing agreements and pay related management fees for procurement of goods and services, such as vendor services, computer maintenance, building and grounds, pest control, and others. Membership in these agreements is often long term and can result in unnecessary fees and poor values for goods and services. CSHB 273 would increase the transparency and accountability of districts involved in cooperative purchasing programs.

The bill also would add transparency by requiring districts to submit annual reports on any fees paid as part of the purchasing agreements and to present these at public meetings of the board of trustees. It would promote accountability by opening cooperative purchasing to public scrutiny. Presentations at open meetings would provide an opportunity for the public to learn the specifics of cooperative purchasing programs and offer input. Adding this transparency and accountability would force districts carefully to review fees associated with cooperative agreements and to ensure they were reasonable.

A floor amendment would remove the provision in the committee substitute allowing the commissioner of education to audit school district purchases. Allowing the commissioner to audit district contract performance and requiring district purchasing contracts to meet certain performance levels could encourage a flood of contract-related complaints and diminish the commissioner's ability to deal with each. Districts balance many factors when making decisions regarding contract awards and account for many qualitative factors that cannot necessarily be accounted for systematically. Audits associated with performance standards would have difficulty accounting for specifics of district bid decisions.

**OPPONENTS
SAY:**

School districts currently are permitted to tailor carefully the factors for consideration listed in statute to particular purchasing situations. The bill's requirements would force districts to consider all of these factors regardless of whether they were significant to a particular purchasing contract. This could allow vendors that did not receive a contract to look for omissions in the review process and could effectively be used to induce unnecessary investigations.

OTHER
OPPONENTS
SAY:

The bill should maintain the provision in the committee substitute authorizing the commissioner of education to conduct audits of district contract performance and providing for contracts failing to meet performance standards to be subject to non-renewal. This would provide districts with the ability to use a tool that could act to the advantage of taxpayers in achieving favorable purchasing contracts.

NOTES:

Rep. Hochberg plans to offer a floor amendment that would strike the language in the committee substitute enabling the commissioner of education to conduct an audit of district purchases of goods and services and language that would prohibit renewal of contracts that did not attain sufficient performance levels.

The bill as filed would have required that management fees associated with cooperative purchasing programs not exceed 2 percent of the total contract amount. The committee substitute removed that provision. The committee substitute added performance-level auditing authority for the commissioner of education, limited the applicability of the bill to cooperative agreements exceeding \$25,000, and provided for the documentation of any contract management-related fees associated with these contracts.