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In addition to reordering existing provisions, the substantive changes include:

- For PURCHASES VALUED AT OR ABOVE \$50,000, the law specifies that the list of purchasing methods applies to *goods and services*. Two of the listed methods—competitive bidding and competitive sealed proposals—specify that they are for services other than construction services.
- In awarding a contract, a district must consider a new FACTOR—whether the vendor has its principal place of business in or employs at least 500 people in Texas. This requirement does not apply to contracts for telecommunications and information services, building construction and maintenance, or instructional materials.
- Certified public accountants and engineers are considered PROFESSIONAL SERVICES to which Education Code Chapter 44 does not apply. See page 4.
- Specific procedures have been added for COMPETITIVE BIDDING and COMPETITIVE SEALED PROPOSALS, on pages 5–7. These new procedures specify that when using competitive bidding, a board may take into account the SAFETY RECORD of the bidder to determine who is a responsible bidder. If so, the board must adopt a written definition and criteria for determining the safety record of the bidder, give notice in the bid specifications that safety records will be considered, and ensure its determinations are not arbitrary and capricious. Unlike construction contracts, for which there is a generally recognized list of safety factors to consider [see CVA(LOCAL), not included in this update], the diversity of non-construction related purchases that can be made pursuant to CH makes identification of safety criteria difficult to establish in advance. For example, on a contract for bus services, a board may wish to consider the number of moving traffic violations or employee reprimands for safety violations, whereas on a contract for maintenance services, a board may wish to consider injury reports. For this reason, we recommend that if the district wishes to consider the safety record of bidders in determining to whom to award a contract, the board adopt a definition of safety record and criteria through a resolution prior to publication of the bid specifications, which will allow customization of the definition for the contract at issue.
- New limitations on district-approved CHANGE ORDERS specify that if a change in plans or specifications is necessary after performance has begun, the district may approve change orders. However, the total contract price may not be increased unless additional money is approved from available money or is provided for through 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 contract originally for less than \$1 million is increased to \$1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent of the original contract price. See page 11.

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CHG (LEGAL)

PURCHASING AND ACQUISITION REAL PROPERTY AND IMPROVEMENTS

Changes to EMINENT DOMAIN, beginning on page 2, are from the addition of existing statutory provisions and include the following changes from SB 18:

- Districts may use eminent domain to construct school buildings or for any other *public use* necessary for the district. Previously the law permitted the use of eminent domain to secure sites on which to construct school buildings or for any other purpose necessary for the district.
- Private property cannot be taken by eminent domain if it is not for a public use.
- Specific PROCEDURES for use of eminent domain are at Government Code Chapter 2206 and Property Code Chapter 21.

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- New provisions on REPURCHASE OF REAL PROPERTY require the district to provide notice to the
 previous property owner so the owner may repurchase the property if the public use for which the
 property was acquired is cancelled, no actual progress is made toward the public use, or the property
 becomes unnecessary for the public use.
- A district will lose the authority to exercise eminent domain if by December 31, 2012, it does not submit a letter to the comptroller stating the district's authority and identifying each provision of the law that grants the district that authority. See NOTICE OF RIGHT.

CHH (LEGAL) PURCHASING AND ACQUISITION FINANCING PERSONAL PROPERTY PURCHASES

We are sending for inclusion in the district's manual this legally referenced policy containing existing statutory provisions that give the board the authority to execute, perform, and make payments under a contract with a person regarding personal property, or the financing of personal property, in accordance with the Public Property Finance Act. Definitions of *contract* and *personal property* are included. SB 1393 clarifies that *personal property* now includes electricity.

CI (LEGAL) SCHOOL PROPERTIES DISPOSAL

A new provision from SB 6 (First Called Session) requires a board to dispose of INSTRUCTIONAL MA-TERIAL AND TECHNOLOGICAL EQUIPMENT in accordance with Education Code 31.105. See CMD(LEGAL) below.

CJA (LEGAL) CONTRACTED SERVICES CRIMINAL HISTORY

At DISQUALIFYING CONVICTION, HB 398 and SB 1042 establish the same standards for acceptable criminal history for a person employed by a contractor with the district as currently apply to a district employee. An employee of the contractor cannot provide services at a district if the individual has been convicted of a Title 5 felony or an offense requiring registration as a sex offender when the victim was a minor or a student at the time of the offense.

CL (LEGAL) BUILDINGS, GROUNDS, AND EQUIPMENT MANAGEMENT

Provisions at REDUCTION OF ENERGY CONSUMPTION are amended by HB 1728, which specifies that the strategies for achieving energy efficiency in a district's long-range energy plan must include facility design and construction. A board may explore with the State Energy Conservation Office whether any state or federal tax incentives are available.

HB 1728 also clarifies that an energy savings performance contract may address *new or existing* facilities. Per HB 628, the new construction procurement provisions in Government Code Chapter 2267 do not apply to energy savings performance contracts. See ENERGY OR WATER CONSERVATION MEASURES beginning on page 1.