

- SUBJECT:** Raising the competitive bid threshold amounts for certain water districts
- COMMITTEE:** Natural Resources — committee substitute recommended
- VOTE:** 6 ayes — Puente, Hamilton, Creighton, Guillen, Laubenberg, O’Day
0 nays
3 absent — Gattis, Gallego, Hilderbran
- WITNESSES:** For — Wayne Halbert, Texas Irrigation Council/Harlingen Irrigation District; Ken Petersen, Texas Rural Water Association; Dean Robbins, Texas Water Conservation Association; (*Registered, but did not testify*: John Burke, Aqua Water Supply Corporation; Phil Kelley, Jefferson County Drainage District Number 7; Mel McKey, Velasco Drainage District Brazoria County Texas; Walt Sears, Jr., Northeast Texas Municipal Water District)

Against — (*Registered, but did not testify*: Ken Whalen, Texas Daily Newspaper Association/Texas Press Association)
- BACKGROUND:** Water Code, ch. 49 governs any contract made by the following types of water districts:
- a district created under Texas Constitution, Article 3, sec. 52(b)(1) or (2) for the improvement, navigation, or irrigation of rivers, creeks, and streams, or for the construction and maintenance of pools, lakes, reservoirs, dams, canals, and waterways for irrigation, drainage, or navigation;
 - a water conservation and reclamation district created under Texas Constitution, Article 16, sec. 59; and
 - a special law district whose special law specifies that ch. 49 applies to the district.
- Under subsec. 49.271(c), such a district must require a person bidding for a construction project that is more than \$25,000 to submit a deposit worth at least 2 percent of the total amount of the bid to ensure execution of the contract. If the bidder fails to furnish the required payment and performance bonds, the bidder forfeits the deposit.

Under subsec. 49.273(d), for a contract of more than \$25,000, a district must advertise the letting of the contract, including the conditions, time, and place of opening sealed bids. Notice must be published in at least one newspaper in each county in which the district is located once a week for at least three consecutive weeks before opening the bid. Under subsec. 49.273(e), for a contract that is at least \$15,000 but less than \$25,000, a district must solicit written competitive bids from a least three bidders. Under subsec. 49.273(f), for a contract under \$15,000, a district is not required to advertise or seek competitive bids.

DIGEST:

CSHB 1033 would raise from \$25,000 to \$50,000 the size of a contract with a water district that would require a person to submit a deposit to ensure execution of the contract.

The bill also would raise from more than \$25,000 to more than \$50,000 the threshold requiring advertising for competitive bids for a contract with a water district. For a contract of this size, notice would have to be published once a week for two weeks, rather than three.

For contracts more than \$25,000 but less than \$50,000, a district would have to solicit written competitive bids from at least three bidders. For contracts up to \$25,000, a district would not have to advertise or seek competitive bids.

The bill also would allow a special law district to contract in the same manner spelled out in the bill for other districts for the construction, repair, and renovation of district facilities. A special law district also could contract for the purchase of equipment, materials, machinery, and all things that would constitute the plant, works, facilities, or improvements in the district. This authorization would supersede any conflicting provision in the district's special law. An election by a special law district to enter into a contract in accordance with the bill would have to be done by a resolution of the board.

The bill would take effect September 1, 2007, and would apply only to a contract entered into on or after that date.

**SUPPORTERS
SAY:**

By raising the competitive bid thresholds for contracts entered into by water districts, CSHB 1033 would update amounts unchanged for at least 20 years. In this time, project costs for water districts have increased significantly, moving many projects into the range that requires extensive

publication and solicitation actions mandated under the competitive bid requirements. These requirements can raise project costs and lead to delays, so it is important that competitive bid mandates apply only to projects of the size meriting such requirements.

Special law districts are governed by the law in their enabling statutes. This includes the competitive bid requirements to which a district is subject. CSHB 1033 would allow all special law districts to operate under the same reasonable standards governing competitive bid contracts under which other districts operate. Without this change, many special law districts would have to continue to operate under out-of-date competitive bid provisions that often have not been updated since the districts were created.

A two-week time period for advertising bids would be reasonable and has precedent in other areas of law. Special utility districts and municipal utility districts abide by a two-week publication requirement when making notice of the promulgation of rules, as do certain retail public utilities when providing notice of subdivision service policies. CSHB 1033 would align competitive bid publication requirements with these other areas of law.

**OPPONENTS
SAY:**

Under CSHB 1033, citizens would receive less information about the activities of their local water district. The bill would mean that fewer contracts were opened up to the competitive bidding process and that the public would have less knowledge about the types of contracts a district was pursuing. In addition, by reducing by one week the amount of time a bid would have to be advertised in a newspaper, the public and potential bidders would have less opportunity to learn of an open bid.

NOTES:

The committee substitute changed from three weeks to two the amount of time a contract of more than \$50,000 would have to be published in a newspaper.

The companion bill, SB 657 by Seliger, passed the Senate on the Local and Uncontested Calendar on April 12 and was reported favorably, without amendment, by the House Natural Resources Committee on April 18 and recommended for the Local and Consent Calendars Committee, making it eligible to be considered in lieu of HB 1033.