

BILL ANALYSIS

Senate Research Center
85R16150 SLB-F

C.S.S.B. 1395
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Transportation
4/19/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1395 clarifies, updates, and improves certain statutes related to navigation districts (and port authorities). Most of the changes involve the lease or sale of real property, or the procurement process.

Specifically, S.B. 1395 makes clarifications of leasing and easement authorities, and clarifies the negotiation authority for sale and lease of real property. It would add additional specificity to the authority of districts to accept gifts, grants, and donations. It would modernize competitive sealed proposal provisions and authorize a two-step competitive sealed proposal process. S.B. 1395 also permits 50-year franchises, clarifies certain district treasurers' authority, and permits investment into desalinization facilities. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1395 amends current law relating to the powers and duties of navigation districts and port authorities.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to a port commission is transferred to navigation districts in SECTION 11 (Section 60.405, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 60.035, Water Code, to read as follows:

Sec. 60.035. NOTICE OF CERTAIN OIL, GAS, AND MINERAL LEASES.

SECTION 2. Amends Section 60.035(a), Water Code, as follows:

(a) Requires the navigation district (district), rather than the navigation and canal commission (commission), before a district, rather than the commission, is authorized to enter into a lease under Section 60.034, to have a notice requesting bids on the lease published in a certain newspaper. Provides that Chapter 71 (Lease for Mineral Development), Natural Resources Code, does not apply to a lease made under this section if the lease is made in accordance with this section and Sections 60.036 (Security for Bid on Oil, Gas, or Mineral Leases) and 60.037 (Award and Execution of Oil, Gas, and Mineral Leases), of this chapter. Makes a nonsubstantive change.

SECTION 3. Amends Section 60.039, Water Code, as follows:

Sec. 60.039. New heading: CERTAIN SURFACE LEASES AND EASEMENTS. (a) Authorizes a district, rather than the commission, to lease, as lessor, and grant easements over the surface estate of real property, rather than land, for not more than 50 years by the adoption of a resolution or an order and the execution of a lease or easement in the manner provided by the resolution or order, rather than by entry of an order on the minutes of the commission and the execution of a lease in the manner provided by the original order. Prohibits the lease or easement from being extended beyond the 50-year period by renewal, extension, or otherwise until the term of the lease or easement has expired.

(b) Authorizes the executive director of the district (executive director), rather than also including the commission, or a person authorized by the commission or the executive director, to enter into a lease on behalf of the district, as lessor, for the surface estate of real property for not more than one year without the commission's adoption of a resolution or an order approving the lease. Deletes existing text referencing a monthly tenancy or a tenancy from month to month and authorizing the lease to exceed one year under certain conditions. Makes nonsubstantive changes.

(c) Authorizes the executive director, or a person authorized by the commission or the executive director, to enter into an easement on behalf of the district, as grantor, on the surface of real property for not more than one year without the commission's adoption of a resolution or an order approving the easement.

SECTION 4. Amends Section 60.040, Water Code, as follows:

Sec. 60.040. New heading: PUBLICATION OF NOTICE FOR SALES, EASEMENTS, AND LEASES IN EXCESS OF 50 YEARS. (a) Requires the district, rather than the commission, before making a sale, easement, or lease of real property for more than 50 years, to publish a notice in the manner provided in Section 60.035. Creates this subsection from existing text and makes conforming changes.

(b) Authorizes a district to enter into negotiations with certain persons before the publication of the notice without affecting the validity of the sale, easement, or lease.

SECTION 5. Amends Section 60.041, Water Code, as follows:

Sec. 60.041. New heading: SECURITY FOR BIDS ON REAL PROPERTY TO BE SOLD OR LEASED FOR MORE THAN 50 YEARS. Requires each bid submitted on real property, rather than land, to be sold or leased for more than 50 years under Section 60.040 to be accompanied by a certified check, cashier's check, or bidder's bond with a responsible corporate surety authorized to do business in Texas. Requires the check or bond to be in a certain amount. Makes conforming and nonsubstantive changes.

SECTION 6. Amends Section 60.042, Water Code, as follows:

Sec. 60.042. AWARD AND EXECUTION OF DEED OR LEASE IN EXCESS OF 50 YEARS. (a) Authorizes the district, rather than the commission, after notice is published under Section 60.040, to sell or lease in accordance with that section all or any part of the real property, rather than land, to the highest and best bidder for a certain amount. Makes a nonsubstantive change.

(b) Requires the commission to adopt a resolution or order, rather than enter an order in its minutes, confirming the sale or lease. Requires the resolution or order to include or incorporate by reference the terms of the sale or lease and the consideration and to provide that the executive director, or a person authorized by the executive director, rather than the commission, is authorized to execute the deed or lease as soon as the successful bidder complies with the terms of the bid. Makes nonsubstantive changes.

SECTION 7. Amends Section 60.101(c), Water Code, as follows:

(c) Provides that an installment sale or a lease under this section is not a loan of the district's credit or a grant of public money. Provides that the acquisition and leasing of land and facilities for the purposes included in this section and the operation and industrial and business development of ports and waterways are a public purpose and a matter of public necessity.

SECTION 8. Amends Section 60.124, Water Code, to authorize a district to accept a gift, grant, donation, or bequest of money, services, equipment, goods, or other tangible or intangible property from any source for any district purpose.

SECTION 9. Amends Section 60.401(b), Water Code, to authorize a district to adopt this subchapter (Powers of Districts for Improvement of Port Facilities) for a particular purchase or period or for all purchases and contracts, subject to the commission's right to authorize particular procurements under Subchapter O (Purchase Contracts).

SECTION 10. Amends Sections 60.404(b) and (d), Water Code, as follows:

(b) Requires a notice of proposed purchase and the time and place the bids will be received and opened to be published once a week for two consecutive weeks before the deadline for receiving the bids in a newspaper with general circulation in each county in which the district, rather than the district or port authority, is located. Requires the notice, if there is no newspaper of general circulation in a county in which the district is located, to be published in a newspaper of general circulation in the county nearest the county seat of the county in which the district is located or the county in which the greatest amount of the district's territory is located. Deletes existing text requiring the first notice to be published not later than the 14th day before the date the bids are to be opened, requiring the notice for the county to be given by posting the notice in a prominent place in the courthouse of that county for not less than 14 days before the date the bids are to be opened. Makes a conforming change.

(d) Requires the specifications to indicate whether a small business development program, local preference program, or other contracting program adopted by the district, rather than the port commission of the port authority or district, applies to the purchase and, if so, where a copy of the program requirements may be obtained.

SECTION 11. Amends Section 60.405, Water Code, as follows:

Sec. 60.405. New heading: **COMPETITIVE SEALED PROPOSALS**. (a) Authorizes items other than construction services valued at more than the amount authorized by Section 60.403(a) (relating to the authority of certain entities to make routine purchases or contracts in an amount not to exceed \$50,000) for routine purchases or contracts, rather than insurance or high technology items, notwithstanding Section 60.404, to be purchased under the procedure provided by this section.

(b) Requires quotations to be solicited by the district or the district's broker through a request for proposals from as many sources as are reasonably available.

(c) Makes nonsubstantive changes.

(d) Requires the award of the contract to be made by the commission in open session to the responsible offerer whose proposal is determined to provide the best value to the district, rather than be the lowest evaluated offer resulting from negotiation, giving consideration to evaluation factors set forth in the request for proposals.

(e) Provides that, if so provided in the request for proposals, information in proposals may not be disclosed to the public, rather than to competing offerers, until the contract is awarded. Makes a nonsubstantive change.

(f) Authorizes a district, rather than port commission, to adopt rules relating to negotiations to be conducted with responsible offerers submitting proposals. Authorizes revisions to proposal and contract terms to be permitted after submission of a proposal and before award of the contract.

SECTION 12. Amends Section 60.407, Water Code, as follows:

Sec. 60.407. New heading: OPENING SEALED PROPOSALS AND BIDS. (a) Requires an official of the district, rather than of the district or port authority, to open the bids and competitive sealed proposals on the date specified in the notice.

(b) Requires opened bids and sealed proposals to be kept on file and made available for public inspection.

SECTION 13. Amends Section 60.409(b), Water Code, to require the information furnished proposers or bidders, if a district, rather than district or port authority, uses unit pricing in its notice, to specify the approximate quantities estimated on the best available information or certain other quantities and the total contract amount is authorized to be based on estimated maximum quantities, but provides that the compensation paid the bidder is required to be based on the actual quantities purchased.

SECTION 14. Amends Section 60.458, Water Code, to authorize the district, except as provided by this subchapter, in determining to whom to award a contract, to consider the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses and on the district's small business development program, local preference program, or other contracting program adopted, rather than another contract program approved, by the district, if any, and to make nonsubstantive changes.

SECTION 15. Amends Section 60.463, Water Code, by amending Subsections (d) and (e) and adding Subsection (d-1), as follows:

(d) Requires the district to select a contractor through competitive sealed proposals in either a one-step or two-step process. Requires the district to prepare a certain request for competitive sealed proposals. Requires the district to state in the request for proposals or qualifications, as applicable, the selection criteria that will be used in selecting the successful offeror. Authorizes the district, if a one-step process is used, to request, as part of the offeror's proposal, proposed prices.

(d-1) Prohibits the district, if a two-step process is used, from requesting prices in the first step. Authorizes the district in the second step to request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including proposed prices.

(e) Requires the district, at each step, to receive, publicly open, and read aloud the names of the offerors. Requires the district, at the appropriate step, to read aloud the prices, if any, stated in each proposal as the proposal is opened. Deletes existing text requiring the district to receive, publicly open, and read aloud all lump-sum prices stated in each proposal, if any lump-sum prices are required to be stated.

SECTION 16. Amends Section 62.107, Water Code, as follows:

Sec. 62.107. New heading: ACQUISITION AND CONVEYANCE OF LAND. (a) Authorizes any district created under this chapter (Article XVI, Section 59, Navigation Districts) to acquire by gift, purchase, or condemnation and to own land adjacent or accessible by road, rail, or water to the navigable water and ports developed by it which may be necessary or required for certain purposes.

(b) Authorizes the district to lease and grant easements on any part of the acquired land to any person, rather than individual or corporation, and to charge for the lease or easement reasonable tolls, rents, fees, or other charges. Authorizes the lease or easement to be on terms and conditions considered appropriate or advantageous to the district.

(c) Provides that the acquisition and leasing of land for the purposes included in this section and the operation and industrial and business development of ports and waterways are a public purpose and a matter of public necessity.

SECTION 17. Amends Subchapter D, Chapter 62, Water Code, by adding Section 62.123, as follows:

Sec. 62.123. FRANCHISES. (a) Authorizes a district to grant franchises for purposes consistent with this chapter to any person on property owned or controlled by the district by restrictive covenant or otherwise.

(b) Prohibits any franchise from being granted for longer than 50 years and prohibits a franchise to be granted except on the affirmative vote of a majority of the commissioners present at certain meetings of the commission.

(c) Prohibits any franchise from being granted until notice of the franchise is published at the expense of the applicant, once a week for three consecutive weeks in a daily newspaper of general circulation in the district. Provides that for the purposes of this subsection, the notice consists of certain information.

(d) Requires the franchise to require the grantee to file the grantee's written acceptance within 30 days after the franchise is finally approved by the commission.

(e) Requires that nothing in this section be construed as preventing the district from granting revocable licenses or permits for the use of limited portions of waterfront or facilities for purposes consistent with this chapter.

SECTION 18. Amends Section 62.153, Water Code, to exempt the district treasurer from being required to sign a check drawn on a depository selected under Section 62.156 (Selection of Depository), unless the district treasurer is the designated officer of the district, as defined by Section 60.271(g) (relating to the definition of "designated officer"), and makes nonsubstantive changes.

SECTION 19. Amends Section 62.208(a), Water Code, to include desalinization facilities in a list of projects a district is authorized to issue revenue bonds on certain terms and under certain provisions in order to purchase, construct, improve, enlarge, extend, and repair those projects.

SECTION 20. Amends Section 63.178(b), Water Code, to authorize a franchise to be granted for a period of not more than 50, rather than 30, years.

SECTION 21. Effective date: upon passage or September 1, 2017.