

BILL ANALYSIS

Senate Research Center
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H.B. 3785
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Transportation & Homeland Security
5/21/2009
Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There are two problems facing port authorities and navigation districts. First, many of their employees do not have financial assistance to help them recover from catastrophic events. Second, many of the contract and procurement regulations during an emergency lack clarity and effectiveness.

Current law requires local officials to follow contract and purchasing procurement procedures that are vague. Also, employees who work for port authorities and navigation districts can accrue sick leave and vacation time but they cannot receive assistance following catastrophic events.

H.B. 3785 amends current law relating to the powers and duties of a navigation district or port authority.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 60, Water Code, by adding Subchapter B-1, as follows:

SUBCHAPTER B-1. EMPLOYEE CATASTROPHIC ASSISTANCE PROGRAM

Sec. 60.021. DEFINITIONS. Defines "administrator," "assistance fund" and "employee."

Sec. 60.022. ESTABLISHMENT OF EMPLOYEE CATASTROPHIC ASSISTANCE PROGRAM. (a) Authorizes the Navigation and Canal Commission (commission) or executive director of a district to establish a program in the district to allow an employee to voluntarily transfer time earned by the employee as sick leave or vacation leave to a district employee catastrophic assistance fund.

(b) Requires the commission or executive director of a district to designate a person to administer the district assistance fund.

(c) Requires the commission or executive director of a district to identify natural or man-made events classified as catastrophic for purposes of this subchapter.

(d) Authorizes the commission or executive director of a district to adopt rules and prescribe procedures and forms relating to the operation of the district assistance fund.

Sec. 60.023. EMPLOYEE CONTRIBUTION TO DISTRICT ASSISTANCE FUND. (a) Requires an employee, to contribute to the district assistance fund, to submit an application to the administrator in the prescribed form.

(b) Authorizes the employee, on approval by the administrator, in a fiscal year to contribute to the district assistance fund not less than one day or more than 10 days of the employee's combined accrued sick leave and vacation leave time.

Requires the administrator to credit the fund with a dollar amount equivalent to the hourly salary of the employee multiplied by the number of hours contributed by the employee and to deduct the same number of hours from the accrued sick leave or vacation leave time, as applicable, to which the employee was entitled before the contribution as if the employee had used the time for personal purposes.

(c) Authorizes an employee who is terminated or who resigns or retires to make a contribution of not more than 10 days of the combined accrued sick leave or vacation leave time earned by the employee, to take effect immediately before the effective date of the termination, resignation, or retirement.

Sec. 60.024. TRANSFERS FROM DISTRICT ASSISTANCE FUND TO EMPLOYEES. (a) Authorizes an employee to be eligible for a transfer of money from the district assistance fund if, because of a catastrophic event, the employee has suffered unreimbursed losses or expenses.

(b) Requires an eligible employee to apply to the administrator for a transfer of money from the district assistance fund. Requires the administrator, if the administrator determines that the employee is eligible, to approve the transfer of money from the fund to the employee.

(c) Prohibits an eligible employee from receiving from the district assistance fund more than \$5,000 for any catastrophic event. Requires the administrator to determine the amount of money that is transferred to the eligible employee.

SECTION 2. Amends Section 60.153, Water Code, as follows:

Sec. 60.153. EXECUTION OF CONTRACTS. Requires that a contract entered into by a district under this subchapter be approved by resolution of the commission and executed by the presiding officer of the commission, the executive director of the district, or an authorized representative of the executive director. Deletes existing text requiring that the contract be duly attested by the corporate seal of the district. Makes a nonsubstantive change.

SECTION 3. Amends Section 60.4035, Water Code, as follows:

Sec. 60.4035. CONTRACTS: EMERGENCY PURCHASES. (a) Authorizes the executive director of a district, rather than port commission, or an officer of a district, rather than port commission, authorized in writing by the port commission, rather than the executive director of the port commission, to make emergency purchases or contracts or emergency amendments to existing purchase orders or contracts in an amount that exceeds the amount authorized under Section 60.403(a) (relating to routine purchases or contracts in an amount not to exceed \$25,000) for routine purchases or contracts, rather than \$25,000, for certain reasons if necessary, notwithstanding the competitive bidding requirements and proposal procedures of this subchapter and Subchapter O (Purchase Contracts) and the requirements of Sections 60.408(a), (b), (c), (d), and (e), rather than Sections 60.404 and 60.406,

(b) Requires the executive director of a district or the authorized officer of the district, rather than the port commission, to notify the port commissioners of any purchase made under Subsection (a) not later than 48 hours after the purchase is made.

SECTION 4. Amends Sections 60.404(a) and (d), Water Code, as follows:

(a) Requires that notice, if the materials, supplies, machinery, equipment, or other items to be purchased or contracted for are valued at an amount greater than the amount authorized under Section 60.403(a) for routine purchases or contracts, rather than exceed \$25,000, be published as provided by this section.

(d) Requires that the specifications describe in detail the item to be acquired; require that bids be sealed; require the attachment to the bid of a certified check, cashier's check, or bidders bond, if security is required in connection with the bid; and indicate whether a small business development program adopted by 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 5. Amends Section 60.406, Water Code, as follows:

Sec. 60.406. COMPETITIVE BIDDING AND PROPOSAL PROCEDURES REQUIRED FOR CERTAIN CONTRACTS. (a) Requires the port commission of that district or port authority, except as otherwise provided by Section 60.4035 or 60.412, before a district or port authority is authorized to purchase one or more items under a contract that will require an expenditure of more than the amount authorized under Section 60.403(a) for routine purchases or contracts, to comply with the competitive bidding requirements or proposal procedures provided by this subchapter or Subchapter O, rather than Sections 60.404 and 60.405 of this code. Makes a nonsubstantive and conforming change.

(b)-(c) Makes a conforming change.

SECTION 6. Amends Sections 60.408(e), (f), (g), (h), and (i), Water Code, as follows:

(e) Requires that a contract valued at more than the amount authorized under Section 60.403(a) for routine purchases or contracts be awarded at a regularly scheduled or specially called meeting of the port commission.

(f) Requires that a contract valued at more than the amount authorized under Section 60.403(a) for routine purchases or contracts be in writing, executed for the district or port authority by the district's or port authority's executive or designated officer or by an authorized designated employee of the district or port authority, and filed with the proper officer of the district or port authority. Makes nonsubstantive changes.

(g) Requires the appropriate financial officer of the district or port authority, before a contract valued at more than the amount authorized under Section 60.403(a) for routine purchases or contracts takes effect or is binding on a district or port authority, to certify that funds are or will be available to meet the contract when due.

(h) Requires that a contract, requisition, or purchase order valued at more than the amount authorized under Section 60.403(a) for routine purchases or contracts be issued in duplicate with one copy delivered to the contractor and one copy remaining on file with the district or port authority.

(i) Provides that a purchase or contract valued at more than the amount authorized under Section 60.403(a) for routine purchases or contracts that is not in compliance with this subchapter is void and unenforceable.

SECTION 7. Amends Section 60.411(b), Water Code, to require the bidder or proposal offerer, not later than the 10th day after the date of the signing of a contract or issuance of a contract or purchase order, rather than if required by a district or port authority, to furnish a performance bond to the district or port authority, if required by a district or port authority, for the full amount of the contract if the contract exceeds \$50,000.

SECTION 8. Amends Section 60.412(a), Water Code, to provide that a contract for a purchase is exempt from the competitive bidding requirements and proposal procedures of this subchapter and Subchapter O, rather than Sections 60.404 and 60.405, if a contract is for the purchase of certain items.

SECTION 9. Amends Section 60.463(e), Water Code, to require the district to receive, publicly open, and read aloud the names of the offerors and, if any lump-sum prices are required to be stated, all such lump-sum prices stated in each proposal. Requires the district, not later than the

45th day after the date of opening the proposals, to evaluate and rank each proposal submitted in relation to the published selection criteria.

SECTION 10. Repealer: Section 60.012 (Investment of Funds), Water Code.

SECTION 11. Provides that the changes in law made by this Act affecting contracts, purchases, or amendments to existing purchase orders or contracts made by a navigation district or port authority under Subchapter N (Competitive Bidding Requirements) or O, Chapter 60, Water Code, apply only to a contract, purchase, or amendment made on or after the effective date of this Act. Provides that a contract, purchase, or amendment made before the effective date of this Act is governed by the law in effect on the date the contract, purchase, or amendment was made, and that law is continued in effect for that purpose.

SECTION 12. Effective date: upon passage or September 1, 2009.

SUMMARY OF COMMITTEE CHANGES

(1) Amends the recital to SECTION 8 of the bill (page 7, line 20), by striking "60.412(a)" and substituting "60.412".

(2) Amends the recital to SECTION 8 of the bill, between "amended" and "to" (page 7, line 20) by inserting "by amending Subsection (a) and adding Subsection (c)".

(3) Amends SECTION 8 of the bill, immediately following amended Section 60.412(a), Water Code (page 9, between lines 7 and 8) by inserting Subsection (c) to require a district or port authority to comply with Chapter 2254 (Professional and Consulting Services), Government Code, in procuring professional services.