

1-1 By: Callegari (Senate Sponsor - Ellis) H.B. No. 3785
1-2 (In the Senate - Received from the House May 1, 2009;
1-3 May 6, 2009, read first time and referred to Committee on
1-4 Transportation and Homeland Security; May 23, 2009, reported
1-5 favorably, as amended, by the following vote: Yeas 9, Nays 0;
1-6 May 23, 2009, sent to printer.)

1-7 COMMITTEE AMENDMENT NO. 1 By: Wentworth

1-8 Amend H.B. No. 3785 (engrossed version) as follows:

1-9 (1) In the recital to SECTION 8 of the bill (page 3, line
1-10 67), strike "60.412(a)" and substitute "60.412".

1-11 (2) In the recital to SECTION 8 of the bill, between
1-12 "amended" and "to" (page 3, line 67), insert "by amending
1-13 Subsection (a) and adding Subsection (c)".

1-14 (3) In SECTION 8 of the bill, immediately following amended
1-15 Section 60.412(a), Water Code (page 4, between lines 39 and 40),
1-16 insert the following:

1-17 (c) A district or port authority shall comply with Chapter
1-18 2254, Government Code, in procuring professional services.

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to the powers and duties of a navigation district or port
1-22 authority.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Chapter 60, Water Code, is amended by adding
1-25 Subchapter B-1 to read as follows:

1-26 SUBCHAPTER B-1. EMPLOYEE CATASTROPHIC ASSISTANCE PROGRAM

1-27 Sec. 60.021. DEFINITIONS. In this subchapter:

1-28 (1) "Administrator" means the person designated by the
1-29 commission or executive director of a district to administer the
1-30 district's employee catastrophic assistance fund.

1-31 (2) "Assistance fund" means an employee catastrophic
1-32 assistance fund established by a district under this subchapter.

1-33 (3) "Employee" means a district employee with 12 or
1-34 more months of continuous employment with the district who is paid
1-35 from the general fund of the district, from a special fund of the
1-36 district, or from special grants paid through the district.

1-37 Sec. 60.022. ESTABLISHMENT OF EMPLOYEE CATASTROPHIC
1-38 ASSISTANCE PROGRAM. (a) The commission or executive director of a
1-39 district may establish a program in the district to allow an
1-40 employee to voluntarily transfer time earned by the employee as
1-41 sick leave or vacation leave to a district employee catastrophic
1-42 assistance fund.

1-43 (b) The commission or executive director of a district shall
1-44 designate a person to administer the district assistance fund.

1-45 (c) The commission or executive director of a district shall
1-46 identify natural or man-made events classified as catastrophic for
1-47 purposes of this subchapter.

1-48 (d) The commission or executive director of a district may
1-49 adopt rules and prescribe procedures and forms relating to the
1-50 operation of the district assistance fund.

1-51 Sec. 60.023. EMPLOYEE CONTRIBUTION TO DISTRICT ASSISTANCE
1-52 FUND. (a) To contribute to the district assistance fund, an
1-53 employee must submit an application to the administrator in the
1-54 prescribed form.

1-55 (b) On approval by the administrator, in a fiscal year the
1-56 employee may contribute to the district assistance fund not less
1-57 than one day or more than 10 days of the employee's combined accrued
1-58 sick leave and vacation leave time. The administrator shall credit
1-59 the fund with a dollar amount equivalent to the hourly salary of the
1-60 employee multiplied by the number of hours contributed by the
1-61 employee and shall deduct the same number of hours from the accrued
1-62 sick leave or vacation leave time, as applicable, to which the

2-1 employee was entitled before the contribution as if the employee
 2-2 had used the time for personal purposes.

2-3 (c) An employee who is terminated or who resigns or retires
 2-4 may make a contribution of not more than 10 days of the combined
 2-5 accrued sick leave or vacation leave time earned by the employee, to
 2-6 take effect immediately before the effective date of the
 2-7 termination, resignation, or retirement.

2-8 Sec. 60.024. TRANSFERS FROM DISTRICT ASSISTANCE FUND TO
 2-9 EMPLOYEES. (a) An employee may be eligible for a transfer of money
 2-10 from the district assistance fund if, because of a catastrophic
 2-11 event, the employee has suffered unreimbursed losses or expenses.

2-12 (b) An eligible employee must apply to the administrator for
 2-13 a transfer of money from the district assistance fund. If the
 2-14 administrator determines that the employee is eligible, the
 2-15 administrator shall approve the transfer of money from the fund to
 2-16 the employee.

2-17 (c) An eligible employee may not receive from the district
 2-18 assistance fund more than \$5,000 for any catastrophic event. The
 2-19 administrator shall determine the amount of money that is
 2-20 transferred to the eligible employee.

2-21 SECTION 2. Section 60.153, Water Code, is amended to read as
 2-22 follows:

2-23 Sec. 60.153. EXECUTION OF CONTRACTS. A contract entered
 2-24 into by a district under this subchapter shall be approved by
 2-25 resolution of the commission and~~[r]~~ executed by the presiding
 2-26 officer of the commission, the executive director of the district,
 2-27 or an authorized representative of the executive director~~[, and~~
 2-28 duly attested by the corporate seal of the district].

2-29 SECTION 3. Section 60.4035, Water Code, is amended to read
 2-30 as follows:

2-31 Sec. 60.4035. CONTRACTS: EMERGENCY PURCHASES. (a)
 2-32 Notwithstanding the competitive bidding requirements and proposal
 2-33 procedures of this subchapter and Subchapter O and the requirements
 2-34 of Sections 60.408(a), (b), (c), (d), and (e) ~~[Sections 60.404 and~~
 2-35 ~~60.406]~~, the executive director of a district ~~[port commission]~~ or
 2-36 an officer of a district ~~[port commission]~~ authorized in writing by
 2-37 the ~~[executive director of the]~~ port commission may make emergency
 2-38 purchases or contracts or emergency amendments to existing purchase
 2-39 orders or contracts in an amount that exceeds the amount authorized
 2-40 under Section 60.403(a) for routine purchases or contracts
 2-41 ~~[\$25,000]~~ if necessary:

2-42 (1) to preserve or protect the public health and
 2-43 safety of the residents of the district;

2-44 (2) to preserve the property of the district in the
 2-45 case of a public calamity;

2-46 (3) to repair unforeseen damage to the property of the
 2-47 district; or

2-48 (4) to respond to security directives issued by:

2-49 (A) the federal Department of Homeland Security,
 2-50 including the Transportation Security Administration;

2-51 (B) the United States Coast Guard;

2-52 (C) the federal Department of Transportation,
 2-53 including the Maritime Administration; or

2-54 (D) another federal or state agency responsible
 2-55 for domestic security.

2-56 (b) The executive director of a district ~~[port commission]~~
 2-57 or the authorized officer of the district ~~[port commission]~~ shall
 2-58 notify the port commissioners of any purchase made under Subsection
 2-59 (a) not later than 48 hours after the purchase is made.

2-60 SECTION 4. Sections 60.404(a) and (d), Water Code, are
 2-61 amended to read as follows:

2-62 (a) If the materials, supplies, machinery, equipment, or
 2-63 other items to be purchased or contracted for are valued at an
 2-64 amount greater than the amount authorized under Section 60.403(a)
 2-65 for routine purchases or contracts ~~[exceed \$25,000]~~, notice shall
 2-66 be published as provided by this section.

2-67 (d) The specifications must:

2-68 (1) describe in detail the item to be acquired;

2-69 (2) require that bids be sealed;

3-1 (3) require the attachment to the bid of a certified
 3-2 check, cashier's check, or bidders bond, if security is required in
 3-3 connection with the bid; and

3-4 (4) indicate whether a small business development
 3-5 program adopted by the port commission of the port authority or
 3-6 district applies to the purchase and, if so, where a copy of the
 3-7 program requirements may be obtained.

3-8 SECTION 5. Section 60.406, Water Code, is amended to read as
 3-9 follows:

3-10 Sec. 60.406. COMPETITIVE BIDDING AND PROPOSAL PROCEDURES
 3-11 REQUIRED FOR CERTAIN CONTRACTS. (a) Except as otherwise provided
 3-12 by Section 60.4035 or 60.412, before ~~Before~~ a district or port
 3-13 authority may purchase one or more items under a contract that will
 3-14 require an expenditure of more than the amount authorized under
 3-15 Section 60.403(a) for routine purchases or contracts ~~[\$25,000]~~, the
 3-16 port commission of that district or port authority must comply with
 3-17 the competitive bidding requirements or proposal procedures
 3-18 provided by this subchapter or Subchapter O ~~[Sections 60.404 and~~
 3-19 ~~60.405 of this code]~~. All bids must be sealed.

3-20 (b) The competitive bidding and proposal requirements
 3-21 provided by this subchapter and Subchapter O ~~[Sections 60.404 and~~
 3-22 ~~60.405 of this code]~~ apply only to contracts for which payment will
 3-23 be made from current funds or bond funds.

3-24 (c) In applying the competitive bidding procedures and
 3-25 proposal procedures, all separate, sequential, or component
 3-26 purchases of items ordered or purchased from the same supplier by
 3-27 the same officer, entity, or department, purchased with the intent
 3-28 of avoiding the requirements of this subchapter or Subchapter O
 3-29 ~~[Section 60.404 or 60.405 of this code]~~, shall be treated as if they
 3-30 are part of a single purchase and a single contract.

3-31 SECTION 6. Sections 60.408(e), (f), (g), (h), and (i),
 3-32 Water Code, are amended to read as follows:

3-33 (e) A contract valued at more than the amount authorized
 3-34 under Section 60.403(a) for routine purchases or contracts shall be
 3-35 awarded at a regularly scheduled or specially called meeting of the
 3-36 port commission.

3-37 (f) A ~~The~~ contract valued at more than the amount
 3-38 authorized under Section 60.403(a) for routine purchases or
 3-39 contracts must be in writing, executed for the district or port
 3-40 authority by the district's or port authority's ~~its~~ executive or
 3-41 designated officer or by an authorized designated employee of the
 3-42 district or port authority, and filed with the proper officer of the
 3-43 district or port authority.

3-44 (g) Before a contract valued at more than the amount
 3-45 authorized under Section 60.403(a) for routine purchases or
 3-46 contracts takes effect or is binding on a district or port
 3-47 authority, the appropriate financial officer of the district or
 3-48 port authority must certify that funds are or will be available to
 3-49 meet the contract when due.

3-50 (h) A contract, requisition, or purchase order valued at
 3-51 more than the amount authorized under Section 60.403(a) for routine
 3-52 purchases or contracts must be issued in duplicate with one copy
 3-53 delivered to the contractor and one copy remaining on file with the
 3-54 district or port authority.

3-55 (i) A purchase or contract valued at more than the amount
 3-56 authorized under Section 60.403(a) for routine purchases or
 3-57 contracts that is not in compliance with this subchapter is void and
 3-58 unenforceable.

3-59 SECTION 7. Section 60.411(b), Water Code, is amended to
 3-60 read as follows:

3-61 (b) Not later than the 10th day after the date of the signing
 3-62 of a contract or issuance of a contract or purchase order ~~[if~~
 3-63 ~~required by a district or port authority]~~, the bidder or proposal
 3-64 offerer shall furnish a performance bond to the district or port
 3-65 authority, if required by a district or port authority, for the full
 3-66 amount of the contract if the contract exceeds \$50,000.

3-67 SECTION 8. Section 60.412(a), Water Code, is amended to
 3-68 read as follows:

3-69 (a) A contract for a purchase is exempt from the competitive

4-1 bidding requirements and proposal procedures of this subchapter and
 4-2 Subchapter O [~~Sections 60.404 and 60.405~~] if a contract is for the
 4-3 purchase of:

4-4 (1) an item that must be purchased in a case of public
 4-5 calamity if it is necessary to make the purchase promptly to relieve
 4-6 the necessity of the citizens or to preserve the property of the
 4-7 district or port authority;

4-8 (2) an item necessary to preserve or protect the
 4-9 public health or the safety of the residents of the district or port
 4-10 authority;

4-11 (3) an item made necessary by unforeseen damage to the
 4-12 property of the district or port authority;

4-13 (4) a personal or professional service;

4-14 (5) any work performed and paid for by the day as the
 4-15 work progresses;

4-16 (6) any land or right-of-way;

4-17 (7) an item that can be obtained only from one source,
 4-18 including:

4-19 (A) items for which competition is precluded
 4-20 because of the existence of patents, copyrights, secret processes,
 4-21 or natural monopolies;

4-22 (B) films, manuscripts, or books;

4-23 (C) public utility services; and

4-24 (D) captive replacement parts or components for
 4-25 equipment;

4-26 (8) any item necessary to secure a district or port
 4-27 authority during a period of heightened security as determined by:

4-28 (A) the federal Department of Homeland Security,
 4-29 including the Transportation Security Administration;

4-30 (B) the United States Coast Guard;

4-31 (C) the United States Bureau of Customs and
 4-32 Border Protection;

4-33 (D) the Federal Bureau of Investigation;

4-34 (E) the federal Department of Transportation,
 4-35 including the Maritime Administration; or

4-36 (F) another federal, state, or local agency; or

4-37 (9) an item from the United States, including any
 4-38 agency thereof, or from this state, including an agency of this
 4-39 state.

4-40 SECTION 9. Section 60.463(e), Water Code, is amended to
 4-41 read as follows:

4-42 (e) The district shall receive, publicly open, and read
 4-43 aloud the names of the offerors and, if any lump-sum prices are
 4-44 required to be stated, all such lump-sum prices stated in each
 4-45 proposal. Not later than the 45th day after the date of opening the
 4-46 proposals, the district shall evaluate and rank each proposal
 4-47 submitted in relation to the published selection criteria.

4-48 SECTION 10. Section 60.012, Water Code, is repealed.

4-49 SECTION 11. The changes in law made by this Act affecting
 4-50 contracts, purchases, or amendments to existing purchase orders or
 4-51 contracts made by a navigation district or port authority under
 4-52 Subchapter N or O, Chapter 60, Water Code, apply only to a contract,
 4-53 purchase, or amendment made on or after the effective date of this
 4-54 Act. A contract, purchase, or amendment made before the effective
 4-55 date of this Act is governed by the law in effect on the date the
 4-56 contract, purchase, or amendment was made, and that law is
 4-57 continued in effect for that purpose.

4-58 SECTION 12. This Act takes effect immediately if it
 4-59 receives a vote of two-thirds of all the members elected to each
 4-60 house, as provided by Section 39, Article III, Texas Constitution.
 4-61 If this Act does not receive the vote necessary for immediate
 4-62 effect, this Act takes effect September 1, 2009.

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