

BILL ANALYSIS

Senate Research Center
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H.B. 2770
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Transportation & Homeland Security
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Generally, Texas ports are operated by navigation districts, a type of general law district governed by the Water Code. Navigation districts may be created or operated as port authorities but there are exceptions to this for certain districts. H.B. 2770 seeks to clarify and adjust the powers and duties of navigation districts, port authorities, and certain municipalities controlling harbor and port facilities in order for those entities to operate more efficiently and effectively.

H.B. 2770 amends current law relating to the powers and duties of navigation districts, port authorities, and certain municipalities.

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 Subchapter D, Chapter 551, Government Code, by adding Section 551.090, as follows:

Sec. 551.090. DELIBERATION REGARDING CERTAIN NEGOTIATIONS AND PROPOSED CHANGES TO FACILITIES OR SERVICES; CLOSED MEETING. Provides that this chapter does not require a navigation district, port authority, or board of trustees under Chapter 54 (Harbor and Port Facilities in Certain Municipalities), Transportation Code, to conduct an open meeting to deliberate about information relating to:

(1) a bid, proposal, or contract for goods or services under negotiation, if disclosure of the information would have a detrimental effect on the position of the navigation district, port authority, or board of trustees under Chapter 54, Transportation Code, in negotiations with a third person; or

(2) proposed changes to facilities or services of the navigation district, port authority, or board of trustees under Chapter 54, Transportation Code.

SECTION 2. Amends Sections 271.181(2) and (6), Local Government Code, to redefine "civil works project" and "local government entity."

SECTION 3. Reenacts Section 271.182, Local Government Code, as amended by Chapters 135 (S.B. 1047) and 725 (S.B. 229), Acts of the 81st Legislature, Regular Session, 2009, and amends it, as follows:

Sec. 271.182. APPLICABILITY. (a) Creates this subsection from existing text. Provides that this subchapter applies to a local governmental entity with a population of more than 100,000 within its geographic boundaries or service area; a board of trustees under Chapter 54, Transportation Code; and a municipally owned combined electric, water, and wastewater utility situated in economically distressed area and located within 30 miles of the Lower Texas Gulf Coast.

(b) Creates this subsection from existing text. Redefines "combined" for purposes of Subsection (a).

SECTION 4. Amends Sections 271.186(a) and (b), Local Government Code, as follows:

(a) Provides that during the first four years that this subchapter applies to a local government entity under Section 271.182:

(1) a local governmental entity with a population of 500,000 or more may, under this subchapter, enter into contracts for not more than three projects in any fiscal year;

(2) a local governmental entity with a population of 100,000 or more but less than 500,000 or a board of trustees under Chapter 54, Transportation Code, may, under this subchapter, enter into contracts for not more than two projects in any fiscal year; and

(3) Makes no changes to this subdivision.

(b) Provides that after the period described by Subsection (a), among others a local government entity with a population of 100,000 or more but less than 500,00 or a board of trustees under Chapter 54, Transportation Code, may, under this subchapter, enter into contracts for not more than four projects in any fiscal year.

SECTION 5. Amends Section 60.031, Water Code, as follows:

Sec. 60.031. APPLICATION OF SUBCHAPTER. (a) Creates this subsection from existing text. Requires that the provisions of this subchapter to apply to:

(1) any district not participating with the United States in a navigation project; or

(2) a district participating with the United States in a navigation project if the navigation and canal commission (commission) by resolution adopts this subchapter, or sections of this subchapter under which the district will operate.

(b) Provides that for the purposes of Subsection (a)(2), a district that contracts with the United States for a navigation project under Subchapter F (Contracts with the United States) is considered to be participating with the United States in a navigation project while the contract is in effect.

SECTION 6. Amends Section 60.038(b), Water Code, as follows:

(b) Requires the commission, before a district may sell land, to determine by resolution that the land is no longer needed for use by the district in connection with the development of a navigation project. Deletes existing text requiring land which is sold or leased to be declared surplus land and not be needed for use by the district in connection with the development of a navigation project.

SECTION 7. Amends Section 60.039, Water Code, as follows:

Sec. 60.039. New heading: SURFACE LEASE. (a) Creates this subsection from existing text. Makes no further changes.

(b) Authorizes the commission or the executive director of the district, or a person authorized by the commission or the executive director, to enter into a lease for a monthly tenancy or a tenancy from month to month. Authorizes the lease term to exceed one year only if:

(1) the commission enters an order on the minutes; and

(2) the execution of the lease is in the manner provided by the original order for the lease.

SECTION 8. Amends Subchapter D, Chapter 60, Water Code, by adding Section 60.0725, as follows:

Sec. 60.725. NUISANCES; POLLUTION. Authorizes the commission to suppress and prevent nuisances, pollution, and improper disposal of materials on any district to:

(1) accomplish the purposes state in Section 60.071;

(2) protect other district property; or

(3) promote the health, safety, and general welfare of persons using other district property.

SECTION 9. Amends Section 60.101, Water Code, by amending Subsection (b) and adding Subsections (c) and (d), as follows:

(b) Authorizes principal interest, to the extent that the district incurs indebtedness, bonded or otherwise, for purposes of financing the above facilities which in turn are sold by installment sale or otherwise, the indebtedness, principal and interest, to be paid only from the loan or bond sale proceeds and from revenues generated from the project financed by the indebtedness, and requires that security for payment of the principal of and interest on indebtedness be limited to a pledge of the project's revenues and the project's facilities including enlargements and additions, rather than enlargements and additions thereafter made. Makes nonsubstantive changes.

(c) Provides that an installment sale under this section is not a loan of the district's credit or a grant of public money.

(d) Authorizes a district to contract with a broker to sell a tract of land in the same manner as the commissioners court of a county under Section 263.008 (Broker Agreements and Fees for the Sale of Real Property), Local Government Code.

SECTION 10. Amends Section 60.120(a), Water Code, as follows:

(a) Authorizes a district acting under this subchapter, rather than under the provisions of this subchapter, to enter in any contract, lease, or agreement necessary or convenient to carry out any of the powers granted in this subchapter, including a contract for purchase, lease for purchase, or other agreement for the use or acquisition of real property, or improvements to real property or the use or acquisition of personal property. Authorizes the contract, lease, or agreement to be entered into with any person and any government or governmental agency including the United States, the State of Teas, and a public facility corporation organized under Chapter 303 (Public Facility Corporations), Local Government Code.

SECTION 11. Amends Subchapter E, Chapter 60, Water Code, by adding Sections 60.1201, 60.1202, and 60.1203, as follow:

Sec. 60.1201. METHOD FOR CONTRACTS TO CONSTRUCT OR ACQUIRE PROPERTY. Authorizes the district to use any method provided by Section 60.454 for a contract under this subchapter related to construction or the acquisition of real property and related personal property, if the commission determines the method provides the best value for the district.

Sec. 60.1202. CERTAIN CONTRACT PROCEDURES; ELECTION. (a) Authorizes a contract to provide that a district will make payment under the contract from proceeds from the sale of bonds or notes, from taxes, or from any other district income, including revenue borrowed or pledged under Section 60.171 (Authority to Borrow Money and Encumber Property and Franchise), or any combination of these.

(b) Authorizes a district to make payments under a contract from taxes other than maintenance taxes, after the provisions of the contract have been approved by a majority of the electors voting at an election held for that purpose.

(c) Authorizes a contract election be held alone or at the same time and in conjunction with an election to authorize bonds.

(d) Provides that the procedure for calling the election, giving notice, conducting the election, and canvassing the returns is the same as the procedure for a bond election. Provides that if the contract is approved at the election, it is an obligation against the taxing power of the district to the extent provided in the contract.

Sec. 60.1203. ATTORNEY GENERAL APPROVAL FOR CONTRACTS SECURED BY TAXES. (a) Requires the district to submit to the attorney general for approval any contract, lease, or agreement secured by tax revenue other than revenue from maintenance taxes.

(b) Requires the attorney general, if the attorney general finds that the contract, lease, or agreement has been entered into in accordance with the law, to approve the contract, lease, or agreement and the comptroller is required to register it.

(c) Provides that when the contract, lease, or agreement has been approved by the attorney general and registered by the comptroller, it is incontestable except for forgery or fraud.

SECTION 12. Amends Subchapter E, Chapter 60, Water Code, by adding Section 60.124, as follows:

Sec. 60.124. GIFTS, GRANTS, AND DONATIONS. Authorizes a district to accept a gift, grant, donation, or bequest of money or property from any source for any district purpose.

SECTION 13. Amends Section 60.271(f), Water Code, as follows:

(f) Requires the district to adopt payment procedures consistent with Section 105.074(g) (relating to authorizing a governing body to adopt certain procedures), Local Government Code. Authorizes the designated officer of a district to draw a check on a depository only on a warrant signed by the presiding officer, rather than chairman, and attested by the secretary of the district, or by a procedure adopted under this section.

SECTION 14. Amends Section 60.403, Water Code, by amending Subsection (c) and adding Subsection (e) to read as follows:

(c) Requires that one original, photocopy, or electronic copy of the purchase order be delivered to the person from whom the purchase is made and one original, photocopy, or electronic copy be retained on file in the district or port authority in accordance with Subtitle C (Records Provisions Applying to More Than One Type of Local Government), Title 6 (Records), Local Government Code. Deletes existing text requiring that a purchase order be executed in duplicate with one copy delivered to the person from whom the purchase is made and one remaining on file in the district or port authority.

(e) Authorizes a district to establish an electronic requisition system to perform some or all of the functions required by Subsections (b), (c), and (d). Requires that an electronic

requisition system established under this subsection electronically transmit data to and receive data from the financial system of the district in a manner that meets professional, regulatory, and statutory requirements and standards, including those relating to purchasing, auditing, and accounting.

SECTION 15. Amends Section 60.408(h), Water Code, to make conforming changes.

SECTION 16. Amends Chapter 60, Water Code, by adding Subchapter R, as follows:

SUBCHAPTER R. CHARITABLE CONTRIBUTIONS

Sec. 60.551. DEFINITIONS. Defines, in this subchapter, "charitable organization," "district employee charitable campaign," "eligible charitable organization," "eligible services," and "federation or fund."

Sec. 60.552. AUTHORIZATION OF CAMPAIGN. (a) Authorizes the commission or the executive director of a district to establish a program in the district to allow district employees to participate in a charitable campaign as provided by this subchapter.

(b) Authorizes the commission or executive director of a district to adopt rules relating to the operation of a district employee charitable campaign as described in this subchapter.

Sec. 60.553. DEDUCTION AUTHORIZED. (a) Authorizes a district employee to authorize a deduction each pay period from the employee's salary or wage payment for a charitable contribution as provided by this subchapter.

(b) Requires an authorization to direct the district to distribute the deducted funds to a participating federation or fund.

(c) Requires that a deduction under this subchapter be in the form prescribed by the district.

Sec. 60.554. VOLUNTARY PARTICIPATION. (a) Requires that participation by a district employee in a state employee charitable campaign is voluntary. Requires the district to inform district employees that deductions are voluntary.

(b) Requires the district to adopt rules establishing a process for hearing employee complaints regarding coercive activity in a district employee charitable campaign.

Sec. 60.555. DESIGNATION OF AN ELIGIBLE CHARITABLE ORGANIZATION. (a) Authorizes a district employee to designate in the authorization an eligible charitable organization to receive the deductions.

(b) Requires that if a district employee does not designate an eligible charitable organization, the employee's deductions be distributed to each participating federation or fund and eligible local charitable organization in the proportion that the deductions designated for that charitable organization bear to the total of designated deductions in the district employee charitable campaign.

Sec. 60.556. CONFIDENTIALITY. (a) Requires that except as necessary to administer this subchapter or on written authorization of the employee, the following information is confidential:

(1) whether a district employee has authorized a deduction under this subchapter;

(2) the amount of the deduction; and

(3) the name of a federation or fund or charitable organization that a district employee has designated to receive contributions.

(b) Requires that the designation of a charitable organization by a district employee is not confidential if the employee executes a written pledge card or other document indicating that the employee wishes to receive an acknowledgement from the charitable organization.

(c) Requires the district to provide notice to district employees of the confidentiality provisions described by this section.

Sec. 60.557. REVOCATION OR CHANGE OF AUTHORIZATION. (a) Authorizes a district employee to revoke or change an authorization by giving notice to the district.

(b) Requires that the notice be in the form and manner prescribed by the district.

(c) Requires that a revocation or change takes effect on the date designated by the district, but not later than the 45th day after the date the district employee gives notice.

Sec. 60.558. DURATION OF DEDUCTION. (a) Provides that a deduction under this subchapter begins on the date designated by the district employee.

(b) Provides that a deduction under this subchapter, unless revoked or changed under Section 60.557, ends on the date designated by the district.

Sec. 60.559. FAIR AND EQUITABLE MANAGEMENT OF CAMPAIGN. Requires that a district employee charitable campaign be managed fairly and equitably in accordance with this subchapter and the rules, policies, and procedures established by the district.

Sec. 60.560. CAMPAIGN POLICY AND MANAGEMENT. (a) Requires the executive director of the district to oversee the district employee charitable campaign and the district's employees who conduct the campaign.

(b) Requires the executive director of the district and employees designated by the executive director to:

(1) determine the eligibility of a federation or fund and its affiliated agencies for participation in the district employee charitable campaign;

(2) develop a campaign plan, budget, and materials to be used in the campaign;

(3) coordinate and facilitate the campaign;

(4) ensure that all district employee charitable campaign activities are conducted fairly and equitably to promote unified solicitation on behalf of all participants; and

(5) perform other duties required by rules relating to the district employee charitable campaign.

Sec. 60.561. ELIGIBILITY OF CHARITABLE ORGANIZATIONS, FEDERATIONS, AND FUNDS FOR PARTICIPATION. (a) Requires that to be eligible to participate in a district employee charitable campaign, a charitable organization:

(1) be governed by a voluntary board of citizens that meets at least twice each year to set policy and manage the affairs of the organization;

(2) if the organization's annual budget does not exceed \$100,000, provide a completed Internal Revenue Service Form 990 and an accountant's review that offers full and open disclosure of the organization's internal operations; or exceeds \$100,000, be audited annually in accordance with generally accepted auditing standards of the American Institute of Certified Public Accountants; and

(3) not spend more than 25 percent of its annual revenue for administrative and fund-raising expenses.

(b) Requires a federation or fund that seeks participation in a district employee charitable campaign to apply on behalf of itself and its affiliated agencies to the district during the eligibility determination period specified by the district. Requires the district to review each application and authorizes the district to approve a federation or fund for statewide participation only if the federation or fund qualifies as a charitable organization. Authorizes the district to approve an affiliated charitable organization for participation only if the organization qualifies as a charitable organization.

(c) Authorizes the district to use outside expertise and resources available to it, and rely on a certification of a charitable organization, or determination of qualification by a statewide employee charitable campaign under Section 659.146 (Eligibility of Charitable Organizations in General; Eligibility of Federations and Funds for Statewide Participation), Government Code, to assess the eligibility of a charitable organization that seeks to participate in a district employee charitable campaign.

(d) Requires an appeal from a decision of the district to be conducted in the manner prescribed by the commission. Requires that the appeals process permit a charitable organization that is not approved for participation to apply for participation in a district employee charitable campaign.

Sec. 60.562. FUND-RAISING PRACTICES. Requires that the fund-raising practices of a participating charitable organization:

(1) be truthful and consumer-oriented; and

(2) protect against unauthorized use of a list of contributors to the organization; payment of commissions, kickbacks, finder fees, percentages, bonuses, or overrides for fund-raising; mailing of unordered merchandise or tickets with a request for money in return; and general phone solicitation of the public.

Sec. 60.563. LIMITATION ON USE OF CONTRIBUTIONS. (a) Authorizes a participating charitable organization to use contributions under this subchapter only to provide eligible services or to fund a charitable organization that provides eligible services.

(b) Prohibits a participating charitable organization from using contributions under this subchapter to directly or indirectly fund litigation; or make expenditures that would require the organization to register under Chapter 305 (Registration of Lobbyists), Government Code, if the organization were not an entity exempt from registration under that chapter.

Sec. 60.564. MISAPPLICATION OF CONTRIBUTIONS; AUDIT. (a) Authorizes the district to obtain an audit of any participating charitable organization that the district reasonably believes has misapplied contributions under this subchapter.

(b) Requires the district, if an audit under this section reveals gross negligence or intentional misconduct on the part of a participating charitable organization, to remove the charitable organization from the campaign. Provides that a charitable

organization removed under this subsection is not eligible to participate in a district employee charitable campaign before the fifth anniversary of the date the charitable organization was removed.

(c) Requires the district, if an audit under this section reveals intentional misconduct on the part of a charitable organization, to forward its findings to the appropriate law enforcement agency.

(d) Authorizes the district to bring an action to recover misapplied contributions.

(e) Require a district, if an investigation or lawsuit results in a recovery of misapplied contributions and there is not a judgment distributing the amounts recovered, to determine the manner of refunding contributions to the appropriate district employees.

SECTION 17. Amends Section 61.164(c), Water Code, as follows:

(c) Requires that no franchise be granted until notice is published, at the expense of the applicant, once a week for three consecutive weeks in a daily newspaper of general circulation published inside the district. Provides that for the purposes of this subsection, notice consists of:

(1) the text of the franchise in full; or

(2) a descriptive caption stating the purpose of the franchise and the location at which a complete copy of the franchise may be obtained.

Deletes existing text requiring that no franchise be granted until after the franchise in its final form is published, in full at the expense of the applicant, once a week for three consecutive weeks in a daily newspaper of general circulation published inside the district.

SECTION 18. Amends Sections 62.107(a) and (c), Water Code, as follows:

(a) Authorizes any district created under this chapter to acquire by gift, purchase, or condemnation and to own land adjacent or accessible to the navigable water and ports developed by it which may be necessary or required for any and all purposes incident to or necessary for the development and operation of the navigable water or ports within the district, or may be necessary or required for or in aid of the development of industries and businesses on the land.

(c) Makes a conforming change

SECTION 19. Amends Section 62.122, Water Code, as follows:

Sec. 62.122. DISPOSITION OF SALVAGE OR SURPLUS PERSONAL PROPERTY.
(a) Creates this subsection from existing text. Authorizes the commission, except as provided by Subsection (b), to periodically dispose of surplus or salvage personal property in the same manner as the commissioners court of a county under Subchapter D (Disposition of Salvage or Surplus Property), Chapter 263 (Sale or Lease of Property by Counties), Local Government Code.

(b) Authorizes the commission to authorize the destruction or disposition of salvage or surplus property as worthless if the property is so worn, damaged, or obsolete that it has no value for the purpose for which it was originally intended, and the expense to the district to attempt to sell the property would be more than the proceeds from the sale.

SECTION 20. Amends Section 63.178(c), Water Code, as follows:

(c) Requires the commission, before the franchise is granted, to approve the franchise by a majority vote at three separate meetings held at least one week apart and to publish notice. Requires that the notice, for the purposes of this subsection, be published at the expense of the applicant, once a week for three consecutive weeks in a newspaper published in the district. Requires that the notice consist of the text of the franchise in full; or a descriptive caption stating the purpose of the franchise and the location at which a complete copy of the franchise may be obtained.

SECTION 21. Makes application of this Act prospective.

SECTION 22. Provides that to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 23. Repealer: Section 60.465 (Expiration), Water Code,

SECTION 24. Effective date: upon passage or September 1, 2011.