

## **BILL ANALYSIS**

C.S.H.B. 2770  
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Transportation  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

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. C.S.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 these to operate more efficiently and effectively.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2770 amends the Government Code to establish that the state's open meetings law does not require a navigation district, port authority, or board of trustees managing harbor and port facilities in certain municipalities to conduct an open meeting to deliberate about information relating to 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 in negotiations with a third person, or information relating to proposed changes to facilities or services of the navigation district, port authority, or board of trustees.

C.S.H.B. 2770 reenacts and amends 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, to make provisions relating to design-build procedures for certain civil works projects apply to a board of trustees managing harbor and port facilities in certain municipalities.

C.S.H.B. 2770 amends the Local Government Code, in provisions relating to design-build procedures for certain civil works projects, to make limitations on the number of civil works projects for which a local governmental entity with a population of 100,000 or more but less than 500,000 may enter into contracts apply to the board of trustees managing harbor and port facilities in certain municipalities. The bill redefines "civil works project" to include wharves, docks, navigation channels, and dredge materials placement areas and redefines "local governmental entity" to include a board of trustees managing harbor and port facilities in certain municipalities.

C.S.H.B. 2770 amends the Water Code to make provisions granting additional powers and duties to a navigation district organized under Section 52, Article III, or Section 59, Article XVI, of the Texas Constitution, applicable to a navigation district participating with the United States in a navigation project if the navigation and canal commission by resolution adopts such provisions, in whole or in part. The bill establishes that a district that contracts with the United States for a navigation project is considered to be participating with the United States in a navigation project while the contract is in effect. The bill requires the navigation and canal 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. The bill removes a provision requiring land which is sold or leased to be declared surplus land and establishing that such land is no longer needed by the district for such purpose. The bill authorizes the commission or the executive director of a district, or a person authorized by the commission or the executive director, to enter into a surface lease for a monthly tenancy or a tenancy from month to month. The bill authorizes the lease term to only exceed one year if the commission enters an order on the minutes and the execution of the lease is in the manner provided by the original order for the lease. The bill authorizes the commission to suppress and prevent nuisances, pollution, and improper disposal of materials on any district property to protect the property or other district property or promote the health, safety, and general welfare of persons using the property or other district property.

C.S.H.B. 2770 establishes that an installment sale in connection with the acquisition and maintenance of port facilities is not a loan of the navigation district's credit or a grant of public money and authorizes a navigation district to contract with a broker to sell a tract of land in the same manner as the commissioners court of a county under Local Government Code provisions relating to broker agreements and fees for the sale of real property. The bill specifies that a district's authority to enter into any contract, lease, or agreement in connection with the improvement of a port facility includes 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. The bill authorizes the contract, lease, or agreement to be entered into with a public facility corporation organized under the Public Facility Corporation Act.

C.S.H.B. 2770 authorizes a navigation district to use any authorized purchasing contract method for a contract related to construction or the acquisition of real property and related personal property if the navigation and canal commission determines the method provides the best value for the district. The bill 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 to provide certain improvements, or any combination of these. The bill 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. The bill authorizes a contract election to be held alone or at the same time and in conjunction with an election to authorize bonds and establishes 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. The bill establishes that it is an obligation against the taxing power of the district to the extent provided in the contract if the contract is approved at the election.

C.S.H.B. 2770 requires the navigation district to submit to the attorney general for approval any contract, lease, or agreement secured by tax revenue other than revenue from maintenance taxes. The bill requires the attorney general to approve the contract, lease, or agreement and the comptroller of public accounts to register it if the attorney general finds that the contract, lease, or agreement has been entered into in accordance with the law and establishes 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.

C.S.H.B. 2770 authorizes a navigation district to accept a gift, grant, donation, or bequest of money or property from any source for any district purpose. The bill, in provisions relating to the selection of a district depository, requires a district to adopt payment procedures consistent with Local Government Code provisions relating to municipal payment of funds and requires a check drawn on a depository to be governed by the procedures or to be on a warrant signed by the presiding officer of the district, rather than the chairman, and attested by the secretary of the district. The bill, in provisions relating to contracts for purchases and contract awards, requires one original, photocopy, or electronic copy of a purchase order, requisition, or contract, as

applicable, to be delivered and one copy to be retained in accordance with the Local Government Records Act. The bill authorizes a district to establish an electronic requisition system to perform some or all of the functions relating to contracts for purchases. The bill requires an electronic requisition system to 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.

C.S.H.B. 2770 authorizes the navigation and canal commission or the executive director of a navigation district to establish a program in the district to allow district employees to participate in a charitable campaign and authorizes the commission or executive director of a district to adopt rules relating to the operation of a district employee charitable campaign. The bill authorizes a district employee to authorize a deduction each pay period from the employee's salary or wage payment for a charitable contribution and requires the authorization to direct the district to distribute the deducted funds to a participating federation or fund. The bill requires a deduction to be in the form prescribed by the district. The bill establishes that participation by a district employee in a state employee charitable campaign is voluntary and requires the district to inform district employees that deductions are voluntary. The bill requires the district to adopt rules establishing a process for hearing employee complaints regarding coercive activity in a district employee charitable campaign. The bill authorizes a district employee to designate in the authorization an eligible charitable organization to receive the deductions and requires, if a district employee does not designate an eligible charitable organization, the employee's deductions to 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. The bill makes information about whether a district employee has authorized a deduction, the amount of the deduction, and the name of a federation or fund or charitable organization that a district employee has designated to receive contributions confidential except as necessary to administer the program or on written authorization of the employee. The bill establishes 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. The bill requires the district to provide notice to district employees of the confidentiality provisions described by the bill's provisions. The bill authorizes a district employee to revoke or change an authorization by giving notice to the district in the form and manner prescribed by the district. The bill establishes 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. The bill establishes that a deduction begins on the date designated by the district employee and unless revoked or changed ends on the date designated by the district.

C.S.H.B. 2770 requires a navigation district employee charitable campaign to be managed fairly and equitably in accordance with the bill's provisions and the rules, policies, and procedures established by the district. The bill requires the executive director of the district to oversee the district employee charitable campaign and the district's employees who conduct the campaign. The bill requires the executive director of the district and employees designated by the executive director to determine the eligibility of a federation or fund and its affiliated agencies for participation in the district employee charitable campaign; develop a campaign plan, budget, and materials to be used in the campaign; coordinate and facilitate the campaign; ensure that all district employee charitable campaign activities are conducted fairly and equitably to promote unified solicitation on behalf of all participants; and perform other duties required by rules relating to the district employee charitable campaign.

C.S.H.B. 2770 sets out criteria to determine the eligibility of a charitable organization, federation, and fund to participate in a navigation district employee charitable campaign and establishes requirements for the fund-raising practices of a participating charitable organization. The bill places limitations on the use of contributions by a participating charitable organization and authorizes a district to obtain an audit and take certain required or authorized actions if the

district reasonably believes that a participating charitable organization has misapplied contributions. The bill defines "charitable organization," "district employee charitable campaign," "eligible charitable organization," "eligible services," and "federation or fund."

C.S.H.B. 2770, in provisions relating to franchises granted by a navigation district created under Section 52, Article III, of the Texas Constitution or by a self-liquidating district, prohibits a franchise from being granted until notice of the franchise, rather than the full final franchise or full franchise, as applicable, is published. The bill establishes that notice consists 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.

C.S.H.B. 2770, in provisions relating to the acquisition of land by a navigation district created under Section 59, Article XVI, of the Texas Constitution, authorizes a district to obtain land as may be necessary or required for development of businesses on the land and specifies that the acquisition of land for the purpose of business development of ports and waterways serves a public purpose. The bill authorizes the navigation and canal 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.

C.S.H.B. 2770 establishes that to the extent of any conflict, its provisions prevail over another act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes. The bill makes nonsubstantive and conforming changes.

C.S.H.B. 2770 repeals Section 60.465, Water Code, setting an expiration date for provisions relating to purchase contracts for navigation districts.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2770 contains a specification not included in the original including navigation channels and dredge material placement areas in the definition of "civil works projects."

C.S.H.B. 2770 differs from the original by authorizing a navigation and canal commission to suppress and prevent nuisances, pollution, and improper disposal of materials on any district property, in addition to protecting district property or promoting the health, safety, and general welfare of persons using district property, to protect other district property or promote the health, safety, and general welfare of persons using other district property, whereas the original authorizes such suppression and prevention for protecting district property or promoting the health, safety, and general welfare of persons using district property.

C.S.H.B. 2770, in a provision authorizing a contract to provide that a navigation district will make payment under the contract from proceeds from the sale of bonds or notes, from taxes, or from any other district income, contains a specification not included in the original including in that income revenue borrowed or pledged to provide certain improvements.

C.S.H.B. 2770, in a provision requiring a district to submit to the attorney general any contract, lease, or agreement secured by tax revenue, contains a specification not included in the original excluding from that requirement a contract, lease, or agreement secured with revenue from maintenance taxes.

C.S.H.B. 2770 differs from the original by defining "charitable organization," in part, as an

organization that provides funds or programs for eligible services that directly or indirectly benefit the recipients, whereas the original defines the term, in part, as an organization that provides funds or programs for health and human services that directly or indirectly benefit the recipients.

C.S.H.B. 2770 differs from the original in nonsubstantive ways by conforming to certain bill drafting conventions and making clarifying changes and technical corrections to the law.