

SENATE AMENDMENTS

2nd Printing

By: Smith of Harris, Callegari

H.B. No. 2770

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the powers and duties of navigation districts, port
3 authorities, and certain municipalities.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subchapter D, Chapter 551, Government Code, is
6 amended by adding Section 551.090 to read as follows:

7 Sec. 551.090. DELIBERATION REGARDING CERTAIN NEGOTIATIONS
8 AND PROPOSED CHANGES TO FACILITIES OR SERVICES; CLOSED MEETING.
9 This chapter does not require a navigation district, port
10 authority, or board of trustees under Chapter 54, Transportation
11 Code, to conduct an open meeting to deliberate about information
12 relating to:

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

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

21 SECTION 2. Sections 271.181(2) and (6), Local Government
22 Code, are amended to read as follows:

23 (2) "Civil works project" means:

24 (A) roads, streets, bridges, utilities, water

1 supply projects, water plants, wastewater plants, water
2 distribution and wastewater conveyance facilities, desalination
3 projects, wharves, docks, navigation channels, dredge material
4 placement areas, airport runways and taxiways, storm drainage and
5 flood control projects, or transit projects;

6 (B) types of projects or facilities related to
7 those described by Paragraph (A) and associated with civil
8 engineering construction; and

9 (C) buildings or structures that are incidental
10 to projects or facilities that are described by Paragraphs (A) and
11 (B) and that are primarily civil engineering construction projects.

12 (6) "Local governmental entity" means a municipality,
13 a county, a river authority, a defense base development authority
14 established under Chapter 379B, a board of trustees under Chapter
15 54, Transportation Code, a municipally owned water utility with a
16 separate governing board appointed by the governing body of a
17 municipality, or any other special district or authority authorized
18 by law to enter into a public works contract for a civil works
19 project. The term does not include a regional tollway authority
20 created under Chapter 366, Transportation Code, a regional mobility
21 authority created under Chapter 370, Transportation Code, or a
22 water district or authority created under Section 52, Article III,
23 or Section 59, Article XVI, Texas Constitution, with a population
24 of less than 50,000.

25 SECTION 3. Section 271.182, Local Government Code, as
26 amended by Chapters 135 (S.B. 1047) and 725 (S.B. 229), Acts of the
27 81st Legislature, Regular Session, 2009, is reenacted and amended

1 to read as follows:

2 Sec. 271.182. APPLICABILITY. (a) This subchapter applies
3 to:

4 (1) a local governmental entity with a population of
5 more than 100,000 within its geographic boundaries or service area;

6 (2) a board of trustees under Chapter 54,
7 Transportation Code; and

8 (3) [~~.(c) This subchapter applies to~~] a municipally
9 owned combined electric, water, and wastewater utility situated in
10 an economically distressed area and located within 30 miles of the
11 Lower Texas Gulf Coast.

12 (b) For purposes of Subsection (a), [~~For this subchapter,~~]
13 "combined" means that the utilities are managed and controlled by
14 one board whose members are appointed by the governing body of the
15 municipality and that the financing of capital improvements is
16 secured from the revenue [~~revenues~~] of all three utilities.

17 SECTION 4. Sections 271.186(a) and (b), Local Government
18 Code, are amended to read as follows:

19 (a) During the first four years that this subchapter applies
20 to a local governmental entity under Section 271.182:

21 (1) a local governmental entity with a population of
22 500,000 or more may, under this subchapter, enter into contracts
23 for not more than three projects in any fiscal year;

24 (2) a local governmental entity with a population of
25 100,000 or more but less than 500,000 or a board of trustees under
26 Chapter 54, Transportation Code, may, under this subchapter, enter
27 into contracts for not more than two projects in any fiscal year;

1 and

2 (3) a municipally owned water utility with a separate
3 governing board appointed by the governing body of a municipality
4 with a population of 500,000 or more may:

5 (A) independently enter into a contract for not
6 more than one civil works project in any fiscal year; and

7 (B) enter into contracts for additional civil
8 works projects in any fiscal year, but not more than the number of
9 civil works projects prescribed by the limit in Subdivision (1) for
10 the municipality, provided that:

11 (i) the additional contracts for the civil
12 works projects entered into by the utility under this paragraph are
13 allocated to the number of contracts the municipality that appoints
14 the utility's governing board may enter under Subdivision (1); and

15 (ii) the governing body of the municipality
16 must approve the contracts.

17 (b) After the period described by Subsection (a):

18 (1) a local governmental entity with a population of
19 500,000 or more may, under this subchapter, enter into contracts
20 for not more than six projects in any fiscal year;

21 (2) a local governmental entity with a population of
22 100,000 or more but less than 500,000 or a board of trustees under
23 Chapter 54, Transportation Code, may, under this subchapter, enter
24 into contracts for not more than four projects in any fiscal year;
25 and

26 (3) a municipally owned water utility with a separate
27 governing board appointed by the governing body of a municipality

1 with a population of 500,000 or more may:

2 (A) independently enter into contracts for not
3 more than two civil works projects in any fiscal year; and

4 (B) enter into contracts for additional civil
5 works projects in any fiscal year, but not more than the number of
6 civil works projects prescribed by the limit in Subdivision (1) for
7 the municipality, provided that:

8 (i) the additional contracts for the civil
9 works projects entered into by the utility under this paragraph are
10 allocated to the number of contracts the municipality that appoints
11 the utility's governing board may enter under Subdivision (1); and

12 (ii) the governing body of the municipality
13 must approve the contracts.

14 SECTION 5. Section 60.031, Water Code, is amended to read as
15 follows:

16 Sec. 60.031. APPLICATION OF SUBCHAPTER. (a) The
17 provisions of this subchapter shall apply to:

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

20 (2) a district participating with the United States in
21 a navigation project if the commission by resolution adopts:

22 (A) this subchapter; or

23 (B) sections of this subchapter under which the
24 district will operate.

25 (b) For the purposes of Subsection (a)(2), a district that
26 contracts with the United States for a navigation project under
27 Subchapter F is considered to be participating with the United

1 States in a navigation project while the contract is in effect.

2 SECTION 6. Section 60.038(b), Water Code, is amended to
3 read as follows:

4 (b) Before a district may sell land, the commission shall
5 determine by resolution that the land is no longer [~~Land which is~~
6 ~~sold or leased shall be declared surplus land and shall not be~~
7 needed for use by the district in connection with the development of
8 a navigation project.

9 SECTION 7. Section 60.039, Water Code, is amended to read as
10 follows:

11 Sec. 60.039. SURFACE LEASE [~~FOR NOT MORE THAN 30 YEARS~~].

12 (a) The commission may lease the surface of land for not more than
13 30 years by the entry of an order on the minutes of the commission
14 and the execution of a lease in the manner provided by the original
15 order. The lease may not be extended beyond the 30-year period by
16 renewal, extension, or otherwise.

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

- 21 (1) the commission enters an order on the minutes; and
22 (2) the execution of the lease is in the manner
23 provided by the original order for the lease.

24 SECTION 8. Subchapter D, Chapter 60, Water Code, is amended
25 by adding Section 60.0725 to read as follows:

26 Sec. 60.0725. NUISANCES; POLLUTION. The commission may
27 suppress and prevent nuisances, pollution, and improper disposal of

1 materials on any district property to:

- 2 (1) accomplish the purposes stated in Section 60.071;
3 (2) protect other district property; or
4 (3) promote the health, safety, and general welfare of
5 persons using other district property.

6 SECTION 9. Section 60.101, Water Code, is amended by
7 amending Subsection (b) and adding Subsections (c) and (d) to read
8 as follows:

9 (b) To the extent that the district incurs indebtedness,
10 [~~+~~bonded or otherwise,~~+~~] for purposes of financing the above
11 facilities which in turn are sold by installment sale or otherwise,
12 the [~~said~~] indebtedness, principal and interest, may be paid only
13 from the loan [~~+~~or bond sale~~+~~] proceeds and from revenues
14 generated from the project financed by the indebtedness, and
15 security for payment of the principal of and interest on [~~said~~]
16 indebtedness shall be limited to a pledge of the project's revenues
17 and the project's facilities including enlargements and additions
18 [~~thereafter made~~].

19 (c) An installment sale under this section is not a loan of
20 the district's credit or a grant of public money.

21 (d) A district may contract with a broker to sell a tract of
22 land in the same manner as the commissioners court of a county under
23 Section 263.008, Local Government Code.

24 SECTION 10. Section 60.120(a), Water Code, is amended to
25 read as follows:

26 (a) A district acting under [~~the provisions of~~] this
27 subchapter may enter into any contract, lease, or agreement

1 necessary or convenient to carry out any of the powers granted in
2 this subchapter, including a contract for purchase, lease for
3 purchase, or other agreement for the use or acquisition of real
4 property, or improvements to real property or the use or
5 acquisition of personal property. The contract, lease, or
6 agreement may be entered into with any person and any government or
7 governmental agency including the United States, ~~and~~ the State of
8 Texas, and a public facility corporation organized under Chapter
9 303, Local Government Code.

10 SECTION 11. Subchapter E, Chapter 60, Water Code, is
11 amended by adding Sections 60.1201, 60.1202, and 60.1203 to read as
12 follows:

13 Sec. 60.1201. METHOD FOR CONTRACTS TO CONSTRUCT OR ACQUIRE
14 PROPERTY. The district may use any method provided by Section
15 60.454 for a contract under this subchapter related to construction
16 or the acquisition of real property and related personal property,
17 if the commission determines the method provides the best value for
18 the district.

19 Sec. 60.1202. CERTAIN CONTRACT PROCEDURES; ELECTION. (a)
20 A contract may provide that a district will make payment under the
21 contract from proceeds from the sale of bonds or notes, from taxes,
22 or from any other district income, including revenue borrowed or
23 pledged under Section 60.171, or any combination of these.

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

1 (c) A contract election may be held alone or at the same time
2 and in conjunction with an election to authorize bonds.

3 (d) The procedure for calling the election, giving notice,
4 conducting the election, and canvassing the returns is the same as
5 the procedure for a bond election. If the contract is approved at
6 the election, it is an obligation against the taxing power of the
7 district to the extent provided in the contract.

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

12 (b) If the attorney general finds that the contract, lease,
13 or agreement has been entered into in accordance with the law, the
14 attorney general shall approve the contract, lease, or agreement
15 and the comptroller shall register it.

16 (c) When the contract, lease, or agreement has been approved
17 by the attorney general and registered by the comptroller, it is
18 incontestable except for forgery or fraud.

19 SECTION 12. Subchapter E, Chapter 60, Water Code, is
20 amended by adding Section 60.124 to read as follows:

21 Sec. 60.124. GIFTS, GRANTS, AND DONATIONS. A district may
22 accept a gift, grant, donation, or bequest of money or property from
23 any source for any district purpose.

24 SECTION 13. Section 60.271(f), Water Code, is amended to
25 read as follows:

26 (f) The district shall adopt payment procedures consistent
27 with Section 105.074(g), Local Government Code. The designated

1 officer of a district may draw a check on a depository only on a
2 warrant signed by the presiding officer [~~chairman~~] and attested by
3 the secretary of the district, or by a procedure adopted under this
4 section.

5 SECTION 14. Section 60.403, Water Code, is amended by
6 amending Subsection (c) and adding Subsection (e) to read as
7 follows:

8 (c) One original, photocopy, or electronic copy of the
9 purchase order shall be [~~A purchase order must be executed in~~
10 ~~duplicate with one copy~~] delivered to the person from whom the
11 purchase is made and one original, photocopy, or electronic copy
12 shall be retained [~~remaining~~] on file in the district or port
13 authority in accordance with Subtitle C, Title 6, Local Government
14 Code.

15 (e) A district may establish an electronic requisition
16 system to perform some or all of the functions required by
17 Subsections (b), (c), and (d). An electronic requisition system
18 established under this subsection must electronically transmit
19 data to and receive data from the financial system of the district
20 in a manner that meets professional, regulatory, and statutory
21 requirements and standards, including those relating to
22 purchasing, auditing, and accounting.

23 SECTION 15. Section 60.408(h), Water Code, is amended to
24 read as follows:

25 (h) One original, photocopy, or electronic copy of a [A]
26 contract, requisition, or purchase order valued at more than the
27 amount authorized under Section 60.403(a) for routine purchases or

1 contracts must be [~~issued in duplicate with one copy~~] delivered to
2 the contractor and one original, photocopy, or electronic copy
3 shall be retained [~~remaining~~] on file with the district or port
4 authority in accordance with Subtitle C, Title 6, Local Government
5 Code.

6 SECTION 16. Chapter 60, Water Code, is amended by adding
7 Subchapter R to read as follows:

8 SUBCHAPTER R. CHARITABLE CONTRIBUTIONS

9 Sec. 60.551. DEFINITIONS. In this subchapter:

10 (1) "Charitable organization" means an organization
11 that:

12 (A) is organized for charitable purposes under
13 Chapter 22, Business Organizations Code, or holds a certificate of
14 authority issued under that chapter;

15 (B) is exempt from taxation under Section 501(a)
16 of the Internal Revenue Code of 1986 as an organization described in
17 Section 501(c)(3) of that code and to which contributions are
18 deductible for income tax purposes under Section 170 of that code;

19 (C) complies with all applicable federal
20 nondiscrimination law, including Chapter 21, Title 42, United
21 States Code;

22 (D) complies with all state statutes and rules
23 relating to charitable organizations;

24 (E) is not a private foundation; and

25 (F) provides funds or programs for eligible
26 services that directly or indirectly benefit the recipients.

27 (2) "District employee charitable campaign" means a

1 campaign conducted in communities or areas in which district
2 employees solicit contributions to an eligible charitable
3 organization.

4 (3) "Eligible charitable organization" means a
5 charitable organization eligible to participate in the district
6 employee charitable campaign as provided by Section 60.561.

7 (4) "Eligible services" means services provided by a
8 charitable organization that:

9 (A) benefit residents of this state, including
10 children, youth, adults, elderly individuals, ill or infirm
11 individuals, or individuals with a mental or physical disability,
12 and consist of:

13 (i) human care, medical or other research
14 in the field of human health, education, social adjustment, or
15 rehabilitation;

16 (ii) relief for victims of natural disaster
17 or other emergencies; or

18 (iii) assistance to impoverished
19 individuals in need of food, shelter, clothing, or other basic
20 needs; or

21 (B) benefit this state, and consist of activities
22 to:

23 (i) safeguard public health and the
24 environment; or

25 (ii) help solve environmental problems.

26 (5) "Federation or fund" means a fund-raising entity
27 that:

1 (A) is a charitable organization;
2 (B) acts as an agent for at least five charitable
3 organizations;
4 (C) is not organized exclusively to solicit
5 contributions from district employees; and
6 (D) is supported by voluntary contributions by
7 the public and is:

8 (i) incorporated in this state and has an
9 established physical presence in this state in the form of an office
10 or service facility that is staffed at least 20 hours a week; or
11 (ii) incorporated outside this state,
12 includes at least 10 affiliated charitable organizations, and has
13 existed at least three years.

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

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

21 Sec. 60.553. DEDUCTION AUTHORIZED. (a) A district
22 employee may authorize a deduction each pay period from the
23 employee's salary or wage payment for a charitable contribution as
24 provided by this subchapter.

25 (b) An authorization must direct the district to distribute
26 the deducted funds to a participating federation or fund.

27 (c) A deduction under this subchapter must be in the form

1 prescribed by the district.

2 Sec. 60.554. VOLUNTARY PARTICIPATION. (a) Participation
3 by a district employee in a state employee charitable campaign is
4 voluntary. The district shall inform district employees that
5 deductions are voluntary.

6 (b) The district shall adopt rules establishing a process
7 for hearing employee complaints regarding coercive activity in a
8 district employee charitable campaign.

9 Sec. 60.555. DESIGNATION OF AN ELIGIBLE CHARITABLE
10 ORGANIZATION. (a) A district employee may designate in the
11 authorization an eligible charitable organization to receive the
12 deductions.

13 (b) If a district employee does not designate an eligible
14 charitable organization, the employee's deductions shall be
15 distributed to each participating federation or fund and eligible
16 local charitable organization in the proportion that the deductions
17 designated for that charitable organization bear to the total of
18 designated deductions in the district employee charitable
19 campaign.

20 Sec. 60.556. CONFIDENTIALITY. (a) Except as necessary to
21 administer this subchapter or on written authorization of the
22 employee, the following information is confidential:

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

25 (2) the amount of the deduction; and

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

1 contributions.

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

7 (c) The district shall provide notice to district employees
8 of the confidentiality provisions described by this section.

9 Sec. 60.557. REVOCATION OR CHANGE OF AUTHORIZATION. (a) A
10 district employee may revoke or change an authorization by giving
11 notice to the district.

12 (b) The notice must be in the form and manner prescribed by
13 the district.

14 (c) A revocation or change takes effect on the date
15 designated by the district, but not later than the 45th day after
16 the date the district employee gives notice.

17 Sec. 60.558. DURATION OF DEDUCTION. (a) A deduction under
18 this subchapter begins on the date designated by the district
19 employee.

20 (b) A deduction under this subchapter, unless revoked or
21 changed under Section 60.557, ends on the date designated by the
22 district.

23 Sec. 60.559. FAIR AND EQUITABLE MANAGEMENT OF CAMPAIGN. A
24 district employee charitable campaign must be managed fairly and
25 equitably in accordance with this subchapter and the rules,
26 policies, and procedures established by the district.

27 Sec. 60.560. CAMPAIGN POLICY AND MANAGEMENT. (a) The

1 executive director of the district shall oversee the district
2 employee charitable campaign and the district's employees who
3 conduct the campaign.

4 (b) The executive director of the district and employees
5 designated by the executive director of the district shall:

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

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

11 (3) coordinate and facilitate the campaign;

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

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

17 Sec. 60.561. ELIGIBILITY OF CHARITABLE ORGANIZATIONS,
18 FEDERATIONS, AND FUNDS FOR PARTICIPATION. (a) To be eligible to
19 participate in a district employee charitable campaign, a
20 charitable organization must:

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

24 (2) if the organization's annual budget:

25 (A) does not exceed \$100,000, provide a completed
26 Internal Revenue Service Form 990 and an accountant's review that
27 offers full and open disclosure of the organization's internal

1 operations; or

2 (B) exceeds \$100,000, be audited annually in
3 accordance with generally accepted auditing standards of the
4 American Institute of Certified Public Accountants; and

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

7 (b) A federation or fund that seeks participation in a
8 district employee charitable campaign must apply on behalf of
9 itself and its affiliated agencies to the district during the
10 eligibility determination period specified by the district. The
11 district shall review each application and may approve a federation
12 or fund for statewide participation only if the federation or fund
13 qualifies as a charitable organization. The district may approve
14 an affiliated charitable organization for participation only if the
15 organization qualifies as a charitable organization.

16 (c) The district may use outside expertise and resources
17 available to it, and rely on a certification of a charitable
18 organization, or determination of qualification by a statewide
19 employee charitable campaign under Section 659.146, Government
20 Code, to assess the eligibility of a charitable organization that
21 seeks to participate in a district employee charitable campaign.

22 (d) An appeal from a decision of the district shall be
23 conducted in the manner prescribed by the commission. The appeals
24 process must permit a charitable organization that is not approved
25 for participation to apply for participation in a district employee
26 charitable campaign.

27 Sec. 60.562. FUND-RAISING PRACTICES. The fund-raising

1 practices of a participating charitable organization must:

2 (1) be truthful and consumer-oriented; and

3 (2) protect against:

4 (A) unauthorized use of a list of contributors to
5 the organization;

6 (B) payment of commissions, kickbacks, finder
7 fees, percentages, bonuses, or overrides for fund-raising;

8 (C) mailing of unordered merchandise or tickets
9 with a request for money in return; and

10 (D) general phone solicitation of the public.

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

15 (b) A participating charitable organization may not use
16 contributions under this subchapter to:

17 (1) directly or indirectly fund litigation; or

18 (2) make expenditures that would require the
19 organization to register under Chapter 305, Government Code, if the
20 organization were not an entity exempt from registration under that
21 chapter.

22 Sec. 60.564. MISAPPLICATION OF CONTRIBUTIONS; AUDIT. (a)
23 The district may obtain an audit of any participating charitable
24 organization that the district reasonably believes has misapplied
25 contributions under this subchapter.

26 (b) If an audit under this section reveals gross negligence
27 or intentional misconduct on the part of a participating charitable

1 organization, the district shall remove the charitable
2 organization from the campaign. A charitable organization removed
3 under this subsection is not eligible to participate in a district
4 employee charitable campaign before the fifth anniversary of the
5 date the charitable organization was removed.

6 (c) If an audit under this section reveals intentional
7 misconduct on the part of a charitable organization, the district
8 shall forward its findings to the appropriate law enforcement
9 agency.

10 (d) The district may bring an action to recover misapplied
11 contributions.

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

16 SECTION 17. Section 61.164(c), Water Code, is amended to
17 read as follows:

18 (c) No franchise shall be granted until notice [~~after the~~
19 ~~franchise in its final form~~] is published [~~in full~~] at the expense
20 of the applicant, once a week for three consecutive weeks in a daily
21 newspaper of general circulation published inside the district.
22 For the purposes of this subsection, notice consists of:

23 (1) the text of the franchise in full; or
24 (2) a descriptive caption stating the purpose of the
25 franchise and the location at which a complete copy of the franchise
26 may be obtained.

27 SECTION 18. Sections 62.107(a) and (c), Water Code, are

1 amended to read as follows:

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

9 (c) The acquisition of land for the purposes included in
10 this section and the operation and industrial and business
11 development of ports and waterways are a public purpose and a matter
12 of public necessity.

13 SECTION 19. Section 62.122, Water Code, is amended to read
14 as follows:

15 Sec. 62.122. DISPOSITION OF SALVAGE OR SURPLUS PERSONAL
16 PROPERTY. (a) Except as provided by Subsection (b), the [~~The~~]
17 commission may periodically dispose of surplus or salvage personal
18 property in the same manner as the commissioners court of a county
19 under Subchapter D, Chapter 263, Local Government Code.

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

26 SECTION 20. Section 63.178(c), Water Code, is amended to
27 read as follows:

1 (c) Before the franchise is granted, the commission must
2 approve the franchise by a majority vote at three separate meetings
3 held at least one week apart and must publish notice. For the
4 purposes of this subsection, notice must be published [~~the~~
5 ~~franchise in full,~~] at the expense of the applicant, once a week for
6 three consecutive weeks in a newspaper published in the district.
7 The notice must consist of:

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

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

12 SECTION 21. This Act applies only to a contract entered into
13 on or after the effective date of this Act. A contract entered into
14 before the effective date of this Act is covered by the law in
15 effect when the contract was entered into, and the former law is
16 continued in effect for that purpose.

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

21 SECTION 23. Section 60.465, Water Code, is repealed.

22 SECTION 24. This Act takes effect immediately if it
23 receives a vote of two-thirds of all the members elected to each
24 house, as provided by Section 39, Article III, Texas Constitution.
25 If this Act does not receive the vote necessary for immediate
26 effect, this Act takes effect September 1, 2011.

FLOOR AMENDMENT NO. 1

BY: *Willie*

1 Amend H.B. 2770 (senate committee printing) by striking
2 SECTION 1 of the bill (page 1, lines 13-28) and renumbering
3 subsequent SECTIONS accordingly.

ADOPTED

MAY 24 2011

Letty Sew
Secretary of the Senate

ADOPTED

MAY 24 2011

Atty. Gen.
Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY: *Willie*

- 1 Amend H.B. 2770 (senate committee printing) on page 4, lines
- 2 2-37, by striking SECTION 11 of the bill and renumbering subsequent
- 3 SECTIONS accordingly.

ADOPTED

MAY 24 2011

FLOOR AMENDMENT NO. 3

Antony Spaw
Secretary of the Senate

BY:

William G. ...

1 Amend C.S.H.B. 2770 (senate committee printing) by adding the
2 following appropriately numbered SECTION to the bill and
3 renumbering subsequent SECTIONS of the bill accordingly:
4 SECTION _____. Subchapter H, Chapter 60, Water Code, is
5 amended by adding Section 60.207 to read as follows:
6 Sec. 60.207. AUDIT OF FUND. (a) A promotion and
7 development fund established under this subchapter is subject to
8 audit by the state auditor.
9 (b) The district shall reimburse the state auditor for all
10 costs incurred by the state auditor associated with an audit under
11 this section.

ADOPTED

MAY 24 2011

Atty. Gen.
Secretary of the Senate

FLOOR AMENDMENT NO. 4

BY:

Robyn Ellis

1 Amend H.B. 2770 by adding the following appropriately
2 numbered SECTIONS and renumbering subsequent SECTIONS accordingly:

3 SECTION _____. Section 60.4035(a), Water Code, as amended by
4 Chapters 415 (H.B. 1972) and 1191 (H.B. 3785), Acts of the 81st
5 Legislature, Regular Session, 2009, is reenacted to read as
6 follows:

7 (a) Notwithstanding the competitive bidding requirements
8 and proposal procedures of this subchapter and Subchapter O and the
9 requirements of Sections 60.408(a), (b), (c), (d), and (e), the
10 executive director of a district or an officer of a district
11 authorized in writing by the port commission may make emergency
12 purchases or contracts or emergency amendments to existing purchase
13 orders or contracts in an amount that exceeds the amount authorized
14 under Section 60.403(a) for routine purchases or contracts if
15 necessary:

16 (1) to preserve or protect the public health and
17 safety of the residents of the district;

18 (2) to preserve the property of the district in the
19 case of a public calamity;

20 (3) to repair unforeseen damage to the property of the
21 district; or

22 (4) to respond to security directives issued by:

23 (A) the federal Department of Homeland Security,
24 including the Transportation Security Administration;

25 (B) the United States Coast Guard;

26 (C) the federal Department of Transportation,
27 including the Maritime Administration; or

28 (D) another federal or state agency responsible
29 for domestic security.

1 SECTION _____. Sections 60.404(a) and (d), Water Code, as
2 amended by Chapters 415 (H.B. 1972) and 1191 (H.B. 3785), Acts of
3 the 81st Legislature, Regular Session, 2009, are reenacted to read
4 as follows:

5 (a) If the materials, supplies, machinery, equipment, or
6 other items to be purchased or contracted for are valued at an
7 amount greater than the amount authorized under Section 60.403(a)
8 for routine purchases or contracts, notice shall be published as
9 provided by this section.

10 (d) The specifications must:

11 (1) describe in detail the item to be acquired;

12 (2) require that bids be sealed;

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

16 (4) indicate whether a small business development
17 program adopted by the port commission of the port authority or
18 district applies to the purchase and, if so, where a copy of the
19 program requirements may be obtained.

20 SECTION _____. Section 60.406(a), Water Code, as amended by
21 Chapters 415 (H.B. 1972) and 1191 (H.B. 3785), Acts of the 81st
22 Legislature, Regular Session, 2009, is reenacted to read as
23 follows:

24 (a) Except as otherwise provided by Section 60.4035 or
25 60.412, before a district or port authority may purchase one or more
26 items under a contract that will require an expenditure of more than
27 the amount authorized under Section 60.403(a) for routine purchases
28 or contracts, the port commission of that district or port
29 authority must comply with the competitive bidding requirements or
30 proposal procedures provided by this subchapter or Subchapter O.
31 All bids must be sealed.

ADOPTED

MAY 24 2011


Secretary of the Senate

FLOOR AMENDMENT NO. 5

BY: Whitmore

1 Amend H.B. 2770 (senate committee printing) by adding the
2 following SECTION to the bill and renumbering subsequent SECTIONS
3 accordingly:

4 SECTION _____. Chapter 97, Acts of the 40th Legislature, 1st
5 Called Session, 1927, is amended by adding Section 9 to read as
6 follows:

7 Sec. 9. SUNSET REVIEW. (a) The Port of Houston Authority
8 is subject to review under Chapter 325, Government Code (Texas
9 Sunset Act), as if it were a state agency but may not be abolished
10 under that chapter. The review shall be conducted as if the
11 authority were scheduled to be abolished September 1, 2013.
12 Another review shall be conducted as if the authority were
13 scheduled to be abolished September 1, 2019.

14 (b) The reviews must assess the authority's governance,
15 management, and operating structure, and the authority's
16 compliance with legislative requirements.

17 (c) The authority shall pay the cost incurred by the Sunset
18 Advisory Commission in performing a review of the authority under
19 this section. The Sunset Advisory Commission shall determine the
20 cost, and the authority shall pay the amount promptly on receipt of
21 a statement from the Sunset Advisory Commission detailing the cost.

22 (d) This section expires September 1, 2019.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 25, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2770 by Smith, Wayne (Relating to the powers and duties of navigation districts, port authorities, and certain municipalities.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend sections of the Local Government Code and the Water Code relating to the powers and duties of navigation districts, port authorities, and certain municipalities.

The bill would amend the Local Government Code to include wharves, docks, navigation channels, and dredge material placement areas to the definition of civil works projects; and "board of trustees" under Chapter 54 of the Transportation Code to the definition of local governmental entity enabling a board to be considered as a local governmental entity in certain circumstances as defined by the provisions of the bill.

The bill would amend the Water Code to change the powers and duties of a navigation district and certain municipalities. Any navigation district could engage in certain activities, including constructing improvements and leasing oil, gas and minerals. The bill would modify the procedures for the sale of land and the ability to lease, including the ability to contract with a broker to sell a tract of land.

The bill would amend Chapter 97, Acts of the 40th Legislature, 1st Called Session, 1927, by adding Section 9 to provide that the Port of Houston Authority is subject to review under Chapter 325, Government Code (Texas Sunset Act), as if it were a state agency but may not be abolished. The review would be required to be conducted as if the authority were to be abolished September 1, 2013, and another review conducted as if the authority were to be abolished September 1, 2019. The authority would be required to promptly pay the costs incurred and determined by the Sunset Advisory Commission (SAC) for the review. This section expires September 1, 2019.

A navigation district would be authorized to enter into a contract with a public facility corporation for the purpose of improvements and to make payments under a contract through the sale of bonds or notes, taxes or any other income.

A district could accept gifts, grants and donations, and would be required to adopt payment procedures consistent with Section 105.074(g) of the Local Government Code.

The bill would provide that a promotion and development fund established under Chapter 60, Subchapter H, Water Code, would be subject to an audit conducted by the State Auditor. The navigation district would be required to reimburse the State Auditor's Office (SAO) for all costs incurred by an audit.

The bill would require a district to hold an electronic copy or photocopy of a purchase and would grant authority to establish an electronic requisition system to perform such functions. The bill would authorize a navigation district to establish an employee charitable contribution campaign and would provide specific guidelines and procedures for the campaign.

The bill would amend the Local Government Code to authorize the board of trustees of a city owned port under Chapter 54 of the Transportation Code to use the design-build method of construction as defined by Chapter 271.

The bill would repeal Section 60.465 of the Water Code to remove the expiration date of September 1, 2013, regarding purchase contracts.

According to the Sunset Advisory Commission, the costs for a review would be an estimated \$204,709 in fiscal year (FY) 2012 and \$74,316 in FY 2013. The costs would include salaries for three additional full-time employees (\$189,459), including benefits (\$41,282) in FY 2012; salary for one additional full-time employee (\$74,316), including benefits (\$16,193) in FY 2013; and travel expenses (\$15,000), and report production costs (\$250) in FY 2012. All costs incurred by SAC would be reimbursed by the Port of Houston Authority.

According to the SAO, any audit conducted under Section 60.07, Water Code, would be subject to the SAO's risk assessment process for inclusion in the SAO's annual audit plan. If conducted, the SAO assumes the office could, but would not be limited to, a financial-related audit of a navigation district's Promotion and Development Fund which could require an estimated 1,200 hours to complete. Based on the SAO's billing rate of \$92 per hour, an audit could cost an estimated \$113,544 which would include travel costs. All costs incurred by the SAO would be reimbursed by a navigation district.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

There would be costs to the Port of Houston Authority for the required reviews conducted in 2013 and 2019 by the SAC. According to the SAC, the costs for a review would be an estimated total of \$204,709 in FY 2012 and \$74,316 in FY 2013. The Port of Houston Authority reported the overall operating budget is \$200.8 million.

There would be costs to a navigation district that establishes a Promotion and Development Fund under Subchapter H that would be subject to audit by the SAO. According to the SAO, the costs for an audit would be an estimated \$113,544. It is assumed that a navigation district would establish a fund only if sufficient resources were available to pay for an audit.

Source Agencies: 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 308 State Auditor's Office, 582 Commission on Environmental Quality

LBB Staff: JOB, KJG, SD, TP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 5, 2011

TO: Honorable Tommy Williams, Chair, Senate Committee on Transportation & Homeland Security

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2770 by Smith, Wayne (Relating to the powers and duties of navigation districts, port authorities, and certain municipalities.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend sections of the Government Code, the Local Government Code and Water Code relating to the powers and duties of navigation districts, port authorities, and certain municipalities.

A navigation district, port authority or board of trustees under Chapter 54 of the Transportation Code would be authorized to conduct a closed meeting to consider proposed changes to facilities or services, or a bid, proposal or contract for goods or services under negotiation, if the release of information would have a detrimental effect on the position of the entity.

The bill would amend the Local Government Code to include wharves, docks, navigation channels, and dredge material placement areas to the definition of civil works projects; and board of trustees under Chapter 54 of the Transportation Code to the definition of local governmental entity enabling a board to be considered as a local governmental entity in certain circumstances as defined by the provisions of the bill.

The bill would amend the Water Code to change the powers and duties of a navigation district and certain municipalities. Any navigation district could engage in certain activities, including constructing improvements and leasing oil, gas and minerals. The bill would modify the procedures for the sale of land and the ability to lease, including the ability to contract with a broker to sell a tract of land.

A navigation district would be authorized to enter into a contract with a public facility corporation for the purpose of improvements and to make payments under a contract through the sale of bonds or notes, taxes or any other income. In order to enter into such a contract, a district would be required to hold an election using the same process as an election to authorize bonds and be subject to approval by the attorney general. Once a contract, lease, or agreement has been approved by the attorney general and registered by the comptroller, it would be incontestable except for forgery or fraud. A district could accept gifts, grants and donations, and would be required to adopt payment procedures consistent with Section 105.074(g) of the Local Government Code.

The bill would require a district to hold an electronic copy or photocopy of a purchase and would grant authority to establish an electronic requisition system to perform such functions. The bill would authorize a navigation district to establish an employee charitable contribution campaign and would provide specific guidelines and procedures for the campaign.

The bill would amend the Local Government Code to authorize the board of trustees of a city owned port under Chapter 54 of the Transportation Code to use the design-build method of construction as defined by Chapter 271.

The bill would repeal Section 60.465 of the Water Code to remove the expiration date of September 1, 2013, regarding purchase contracts.

According to the Office of the Attorney General's (OAG) Public Finance Division, there have only been about twenty Texas navigation districts that have issued public securities since 1987 and the number of districts that would choose to hold an election to vote on agreements secured by tax revenues is unknown. The OAG reported that any costs associated with the provisions of the bill could be reasonably absorbed within the agency's current resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality

LBB Staff: JOB, KJG, TP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 26, 2011

TO: Honorable Larry Phillips, Chair, House Committee on Transportation

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2770 by Smith, Wayne (Relating to the powers and duties of navigation districts, port authorities, and certain municipalities.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend sections of the Government Code, the Local Government Code and Water Code relating to the powers and duties of navigation districts, port authorities, and certain municipalities.

A navigation district, port authority or board of trustees under Chapter 54 of the Transportation Code would be authorized to conduct a closed meeting to consider proposed changes to facilities or services, or a bid, proposal or contract for goods or services under negotiation, if the release of information would have a detrimental effect on the position of the entity.

The bill would amend the Local Government Code to include wharves, docks, navigation channels, and dredge material placement areas to the definition of civil works projects; and board of trustees under Chapter 54 of the Transportation Code to the definition of local governmental entity enabling a board to be considered as a local governmental entity in certain circumstances as defined by the provisions of the bill.

The bill would amend the Water Code to change the powers and duties of a navigation district and certain municipalities. Any navigation district could engage in certain activities, including constructing improvements and leasing oil, gas and minerals. The bill would modify the procedures for the sale of land and the ability to lease, including the ability to contract with a broker to sell a tract of land.

A navigation district would be authorized to enter into a contract with a public facility corporation for the purpose of improvements and to make payments under a contract through the sale of bonds or notes, taxes or any other income. In order to enter into such a contract, a district would be required to hold an election using the same process as an election to authorize bonds and be subject to approval by the attorney general. Once a contract, lease, or agreement has been approved by the attorney general and registered by the comptroller, it would be incontestable except for forgery or fraud. A district could accept gifts, grants and donations, and would be required to adopt payment procedures consistent with Section 105.074(g) of the Local Government Code.

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The bill would amend the Local Government Code to authorize the board of trustees of a city owned port under Chapter 54 of the Transportation Code to use the design-build method of construction as defined by Chapter 271.

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Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality

LBB Staff: JOB, KJG, TP

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 29, 2011

TO: Honorable Larry Phillips, Chair, House Committee on Transportation

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2770 by Smith, Wayne (Relating to the powers and duties of navigation districts, port authorities, and certain municipalities.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend sections of the Government Code, the Local Government Code and Water Code relating to the powers and duties of navigation districts, port authorities, and certain municipalities.

A navigation district, port authority or board of trustees under Chapter 54 of the Transportation Code would be authorized to conduct a closed meeting to consider proposed changes to facilities or services, or a bid, proposal or contract for goods or services under negotiation, if the release of information would have a detrimental effect on the position of the entity.

The bill would amend the Local Government Code to include "wharfs" and "docks" to the definition of civil works projects; and "board of trustees" under Chapter 54 of the Transportation Code to the definition of local governmental entity enabling a board to be considered as a local governmental entity in certain circumstances as defined by the provisions of the bill.

The bill would amend the Water Code to change the powers and duties of a navigation district and certain municipalities. Any navigation district could engage in certain activities, including constructing improvements and leasing oil, gas and minerals. The bill would modify the procedures for the sale of land and the ability to lease, including the ability to contract with a broker to sell a tract of land.

A navigation district would be authorized to enter into a contract with a public facility corporation for the purpose of improvements and to make payments under a contract through the sale of bonds or notes, taxes or any other income. In order to enter into such a contract, a district would be required to hold an election using the same process as an election to authorize bonds and be subject to approval by the attorney general. Once a contract, lease, or agreement has been approved by the attorney general and registered by the comptroller, it would be incontestable except for forgery or fraud. A district could accept gifts, grants and donations, and would be required to adopt payment procedures consistent with Section 105.074(g) of the Local Government Code.

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Local Government Impact

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Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 582 Commission on Environmental Quality

LBB Staff: JOB, KJG, TP