

By: Perez

H.B. No. 1395

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of navigation districts, port authorities, and boards of trustees of municipal port facilities.

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

SECTION 1. The heading to Section 551.0415, Government Code, is amended to read as follows:

Sec. 551.0415. BOARD OF TRUSTEES OR GOVERNING BODY OF MUNICIPALITY, [OR] COUNTY, OR NAVIGATION DISTRICT: REPORTS ABOUT ITEMS OF COMMUNITY INTEREST REGARDING WHICH NO ACTION WILL BE TAKEN.

SECTION 2. Section 551.0415(a), Government Code, is amended to read as follows:

(a) Notwithstanding Sections 551.041 and 551.042, a quorum of the governing body of a municipality, ~~or~~ county, navigation district, or board of trustees established under Chapter 54, Transportation Code, may receive from staff of the political subdivision and a member of the governing body may make a report about items of community interest during a meeting of the governing body without having given notice of the subject of the report as required by this subchapter if no action is taken and, except as provided by Section 551.042, possible action is not discussed regarding the information provided in the report.

SECTION 3. Section 60.034, Water Code, is amended to read as follows:

1 Sec. 60.034. OIL, GAS, AND MINERAL LEASES. Except for lands
2 or flats purchased from this state under Article 8225, Revised
3 Statutes, a district [~~The commission~~] may lease for oil, gas, and
4 minerals rights-of-way, spoil grounds, spoil basins, or any other
5 land owned by the [~~a navigation~~] district if it does not interfere
6 with use of or obstruct any natural or artificial waterway of the
7 district used for navigation purposes.

8 SECTION 4. The heading to Section 60.035, Water Code, is
9 amended to read as follows:

10 Sec. 60.035. NOTICE OF CERTAIN OIL, GAS, AND MINERAL LEASES
11 [~~LEASE~~].

12 SECTION 5. Section 60.035(a), Water Code, is amended to
13 read as follows:

14 (a) Before a district may enter into a lease [~~may be~~
15 ~~executed by the commission~~] under Section 60.034 [~~of this code~~],
16 the district [~~commission~~] shall have a notice requesting bids on
17 the lease published in a newspaper of general circulation in the
18 district. The notice shall be published at least once a week for
19 two consecutive weeks before the final date for the receipt of bids.
20 Chapter 71, Natural Resources Code, does not apply to a lease made
21 under this section if the lease is made in accordance with this
22 section and Sections 60.036 and 60.037 of this code.

23 SECTION 6. Section 60.038, Water Code, is amended to read as
24 follows:

25 Sec. 60.038. DISPOSITION [~~SALE OR LEASE~~] OF INTERESTS IN
26 REAL PROPERTY [~~LAND~~]. (a) A district may sell, exchange, or lease
27 real property or any interest in real property [~~all or any part of~~

1 ~~land~~] owned by it, whether the real property was [~~land is~~] acquired
2 by gift or purchase, in settlement of any litigation, controversy,
3 or claim in behalf of the district, or in any other manner, except
4 that lands or flats heretofore purchased from the State of Texas
5 under Article 8225, Revised [~~Civil~~] Statutes [~~of Texas, 1925~~], or
6 granted by the State of Texas in any general or special act, may be
7 sold only to the State of Texas or exchanged with the State of Texas
8 for other lands or exchanged for adjacent littoral land as
9 authorized by Section 61.117 of this code. Except for lands or
10 flats purchased from this state under Article 8225, Revised
11 Statutes, the district may impose restrictions on the development,
12 use, and transfer of any real property or interest in real property
13 in connection with its sale or exchange under this section.

14 (b) Before a district may sell or exchange real property
15 [~~land~~], the commission shall determine by resolution that the land
16 is no longer needed for use by the district in connection with the
17 development of a navigation project.

18 (c) A sale [~~sale~~] or exchange [~~lease~~] of real property
19 [~~land~~] shall be made as provided by Sections 60.040-60.042
20 [~~60.039-60.042 of this code~~].

21 SECTION 7. Section 60.039, Water Code, is amended to read as
22 follows:

23 Sec. 60.039. CERTAIN SURFACE LEASES [~~LEASE~~]. (a) A
24 district [~~The commission~~] may lease, as lessor, the surface of
25 real property [~~land~~] for not more than 50 years by the entry of an
26 order on the minutes of the commission and the execution of a lease
27 in the manner provided by the original order. The lease may not be

1 extended beyond the 50-year period by renewal, extension, or
2 otherwise.

3 (b) The commission or the executive director of the
4 district, or a person authorized by the commission or the executive
5 director, may enter into a lease, as lessor, for the surface of real
6 property for not more than one year without ~~[a monthly tenancy or a~~
7 ~~tenancy from month to month. The lease term may only exceed one~~
8 ~~year if]~~:

9 (1) entering ~~[the commission enters]~~ an order on the
10 minutes; or ~~[and]~~

11 (2) executing ~~[the execution of]~~ the lease ~~[is]~~ in the
12 manner provided by the original order for the lease.

13 SECTION 8. Section 60.040, Water Code, is amended to read as
14 follows:

15 Sec. 60.040. PUBLICATION OF NOTICE FOR SALES AND LEASES IN
16 EXCESS OF 50 YEARS. Before making a sale of real property or lease
17 of real property ~~[land]~~ for more than 50 years, the district
18 ~~[commission]~~ shall publish a notice in the manner provided in
19 Section 60.035. Before publication of the notice, a district may
20 enter into negotiations with one or more potential buyers or
21 lessees without affecting the validity of the sale or lease.

22 SECTION 9. Section 60.041, Water Code, is amended to read as
23 follows:

24 Sec. 60.041. SECURITY FOR BIDS ON REAL PROPERTY ~~[LAND]~~ TO BE
25 SOLD OR LEASED FOR MORE THAN 50 YEARS. Each bid submitted on real
26 property ~~[land]~~ to be sold or leased for more than 50 years under
27 Section 60.040 shall be accompanied by a certified check, cashier's

1 check, or bidder's bond with a responsible corporate surety
2 authorized to do business in Texas. The check or bond shall be in
3 an amount equal to five percent of the bid price for the real
4 property [~~land~~] or 100 percent of [~~for~~] the first rental payment
5 under the lease and shall guarantee that the bidder will perform the
6 terms of the bid if it is accepted by the district [~~commission~~].

7 SECTION 10. Section 60.042(a), Water Code, is amended to
8 read as follows:

9 (a) After notice is published under Section 60.040 [~~of this~~
10 ~~code~~], the district [~~commission~~] may sell or lease in accordance
11 with Section 60.040 all or any part of the real property [~~land~~] to
12 the highest and best bidder for an amount which is not less than the
13 reasonable market value in the locality at the time and place of the
14 sale or lease.

15 SECTION 11. Section 60.071, Water Code, is amended to read
16 as follows:

17 Sec. 60.071. GENERAL RULE-MAKING AUTHORITY. The commission
18 of a district which owns, operates, and maintains wharves, docks,
19 piers, sheds, warehouses, and other similar terminal facilities
20 which are not located inside the boundaries of any incorporated
21 city, town, or village may pass, amend, and repeal any ordinance,
22 rule, or police regulation which is not contrary to the
23 constitution or laws of this state and which is necessary to protect
24 the property and to promote the health, safety, and general welfare
25 of persons using the property or living or working near the
26 property.

27 SECTION 12. Section 60.124, Water Code, is amended to read

1 as follows:

2 Sec. 60.124. GIFTS, GRANTS, AND DONATIONS. A district may
3 accept a gift, grant, donation, or bequest of money, services,
4 equipment, goods, or other tangible or intangible property from any
5 source for any district purpose.

6 SECTION 13. Sections 60.404(b) and (d), Water Code, are
7 amended to read as follows:

8 (b) A notice of proposed purchase must be published once a
9 week for two consecutive weeks in a newspaper with general
10 circulation in each county in which the district [~~or port~~
11 ~~authority~~] is located. [~~The first notice must be published not~~
12 ~~later than the 14th day before the date the bids are to be opened.~~]
13 If there is no newspaper of general circulation in a county in which
14 the district [~~or port authority~~] is located, the notice shall be
15 published in a newspaper of general circulation in the county
16 nearest the county seat of the county in which the district is
17 located or the county in which the greatest amount of the district's
18 territory is located [~~for that county must be given by posting the~~
19 ~~notice in a prominent place in the courthouse of that county for not~~
20 ~~less than 14 days before the date the bids are to be opened~~].

21 (d) The specifications must:

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

23 (2) require that bids be sealed;

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

27 (4) indicate whether a small business development

1 program, local preference program, or other contracting program
2 adopted by the [~~port commission of the port authority or~~] district
3 applies to the purchase and, if so, where a copy of the program
4 requirements may be obtained.

5 SECTION 14. Section 60.405, Water Code, is amended to read
6 as follows:

7 Sec. 60.405. PROPOSAL PROCEDURES. (a) Items other than
8 construction services valued at more than the amount authorized by
9 Section 60.403(a) for routine purchases or contracts [~~Insurance or~~
10 ~~high technology items~~] may be purchased under the procedure
11 provided by this section.

12 (b) Quotations shall be solicited by the district or its
13 broker through a request for proposals from as many sources as are
14 reasonably available. The request for proposals must specify the
15 relative importance of price and all other factors of evaluation.

16 (c) Public notice of the request for proposal must be made
17 in the same manner as provided by Section 60.404 [~~of this code~~].

18 (d) The award of the contract shall be made by the port
19 commission in open session to the responsible offerer whose
20 proposal is determined to provide the best value to the district [~~be~~
21 ~~the lowest evaluated offer resulting from negotiation~~] giving
22 consideration to evaluation factors set forth in the request for
23 proposals.

24 (e) If so provided in the request for proposals, information
25 in proposals may not be disclosed to the public [~~competing~~
26 ~~offerers~~] until the contract is awarded. After a contract is
27 awarded, proposals shall be open for public inspection, except that

1 information contained in a proposal identified as a trade secret or
2 as confidential shall be kept confidential.

3 (f) A district [~~port commission~~] may adopt rules relating to
4 negotiations to be conducted with responsible offerers submitting
5 proposals. Offerers must be accorded fair and equal treatment with
6 respect to any opportunity for negotiation and revision of
7 proposals. Revisions to proposal and contract terms may be
8 permitted after submission of a proposal and before award of the
9 contract.

10 SECTION 15. The heading to Section 60.407, Water Code, is
11 amended to read as follows:

12 Sec. 60.407. OPENING SEALED PROPOSALS AND BIDS.

13 SECTION 16. Section 60.407(a), Water Code, is amended to
14 read as follows:

15 (a) An official of the district [~~or port authority~~] shall
16 open the bids and competitive sealed proposals on the date
17 specified in the notice. If an error is discovered in the original
18 specifications or the nature of the item to be purchased requires an
19 extension, the date may be extended.

20 SECTION 17. Section 60.409(b), Water Code, is amended to
21 read as follows:

22 (b) If a district [~~or port authority~~] uses unit pricing in
23 its notice, the information furnished proposers or bidders shall
24 specify the approximate quantities estimated on the best available
25 information, or other quantities reasonably specified to permit
26 comparison of proposals or bids, and the total contract amount may
27 be based on estimated maximum quantities, but the compensation

1 paid the bidder must be based on the actual quantities purchased.

2 SECTION 18. Section 60.458, Water Code, is amended to read
3 as follows:

4 Sec. 60.458. PURCHASE CONTRACT AWARD CRITERIA. Except as
5 provided by this subchapter, in determining to whom to award a
6 contract, the district may consider:

7 (1) the purchase price;

8 (2) the reputation of the vendor and of the vendor's
9 goods or services;

10 (3) the quality of the vendor's goods or services;

11 (4) the extent to which the goods or services meet the
12 district's needs;

13 (5) the vendor's past relationship with the district;

14 (6) the impact on the ability of the district to comply
15 with laws and rules relating to historically underutilized
16 businesses~~[7]~~ and on the district's small business development
17 program, local preference program, or other ~~[another]~~ contracting
18 program adopted by the ~~[approved by the]~~ district, if any;

19 (7) the total long-term cost to the district to
20 acquire the vendor's goods or services; and

21 (8) any other relevant factor specifically listed in
22 the request for bids or proposals.

23 SECTION 19. Section 60.463, Water Code, is amended by
24 amending Subsections (d) and (e) and adding Subsection (d-1) to
25 read as follows:

26 (d) The district shall select a contractor through
27 competitive sealed proposals in either a one-step or two-step

1 process. The district shall prepare a request for competitive
2 sealed proposals, in the case of a one-step process, or a request
3 for qualifications, in the case of a two-step process, that
4 includes construction documents, selection criteria, project
5 scope, schedule, the time and place for receipt of proposals or
6 qualifications, as applicable, a statement as to whether the
7 selection process is a one-step or two-step process, and other
8 information that contractors may require to respond to the request.
9 The district shall state in the request for proposals or
10 qualifications, as applicable, the selection criteria that will be
11 used in selecting the successful offeror. If a one-step process is
12 used, the district may request, as part of the offeror's proposal,
13 proposed prices.

14 (d-1) If a two-step process is used, the district may not
15 request prices in step one. In step two, the district may request
16 that five or fewer offerors, selected solely on the basis of
17 qualifications, provide additional information, including proposed
18 prices.

19 (e) At each step, the [The] district shall receive, publicly
20 open, and read aloud the names of the offerors [and, if any lump-sum
21 prices are required to be stated, all such lump-sum prices stated in
22 each proposal]. At the appropriate step, the district shall read
23 aloud the prices, if any, stated in each proposal as the proposal is
24 opened. Not later than the 45th day after the date of opening the
25 proposals, the district shall evaluate and rank each proposal
26 submitted in relation to the published selection criteria.

27 SECTION 20. Section 61.164(b), Water Code, is amended to

1 read as follows:

2 (b) No franchise shall be granted for longer than 50 [~~30~~]
3 years nor shall a franchise be granted except on the affirmative
4 vote of a majority of the commissioners at three separate meetings
5 of the commission which meetings may not be closer together than one
6 week.

7 SECTION 21. Section 62.153, Water Code, is amended to read
8 as follows:

9 Sec. 62.153. DUTIES OF DISTRICT TREASURER. The district
10 treasurer shall:

11 (1) open an account for all funds received by him for
12 the district and all district funds which he pays out;

13 (2) pay out money on vouchers signed by the chairman of
14 the commission, any two members of the commission, or the
15 commissioners court, or any two of any number of persons delegated
16 by the commission with authority to sign vouchers, provided that
17 the commission may, in such delegation, limit the authority of such
18 persons and may require that each furnish a fidelity bond in such
19 amount as the commission shall specify and subject to commission
20 approval;

21 (3) carefully preserve all orders for the payment of
22 money; [~~and~~]

23 (4) render a correct account to the commissioners
24 court of all matters relating to the financial condition of the
25 district as often as required by the commissioners court; and

26 (5) not be required to sign a check drawn on a
27 depository selected under Section 62.156, unless the district

1 treasurer is the designated officer of the district, as defined by
2 Section 60.271(g).

3 SECTION 22. Section 63.178(b), Water Code, is amended to
4 read as follows:

5 (b) A franchise may be granted for a period of not more than
6 50 [~~30~~] years.

7 SECTION 23. This Act takes effect immediately if it
8 receives a vote of two-thirds of all the members elected to each
9 house, as provided by Section 39, Article III, Texas Constitution.
10 If this Act does not receive the vote necessary for immediate
11 effect, this Act takes effect September 1, 2017.