

By: Perez

H.B. No. 1528

Substitute the following for H.B. No. 1528:

By: Morrison

C.S.H.B. No. 1528

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of navigation districts and port authorities.

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

SECTION 1. The heading to Section 60.035, Water Code, is amended to read as follows:

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

SECTION 2. Section 60.035(a), Water Code, is amended to read as follows:

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

SECTION 3. Section 60.039, Water Code, is amended to read as follows:

Sec. 60.039. CERTAIN SURFACE LEASES AND EASEMENTS [~~LEASE~~].

(a) A district [~~The commission~~] may lease, as lessor, and grant easements over the surface estate of real property [~~land~~] for not

1 more than 50 years by the adoption ~~[entry]~~ of a resolution or an
2 order ~~[on the minutes of the commission]~~ and the execution of a
3 lease or easement in the manner provided by the ~~[original]~~
4 resolution or order. The lease or easement may not be extended
5 beyond the 50-year period by renewal, extension, or otherwise until
6 the term of the lease or easement has expired.

7 (b) The ~~[commission or the]~~ executive director of the
8 district, or a person authorized by the commission or the executive
9 director, may enter into a lease on behalf of the district, as
10 lessor, for the surface estate of real property for not more than
11 one year without the commission's adoption of a resolution or [a
12 ~~monthly tenancy or a tenancy from month to month. The lease term~~
13 ~~may only exceed one year if:~~

14 ~~[(1) the commission enters]~~ an order approving ~~[on the~~
15 ~~minutes, and~~

16 ~~[(2) the execution of the lease is in the manner~~
17 ~~provided by the original order for]~~ the lease.

18 (c) The executive director of the district, or a person
19 authorized by the commission or the executive director, may enter
20 into an easement on behalf of the district, as grantor, on the
21 surface of real property for not more than one year without the
22 commission's adoption of a resolution or an order approving the
23 easement.

24 SECTION 4. Section 60.040, Water Code, is amended to read as
25 follows:

26 Sec. 60.040. PUBLICATION OF NOTICE FOR SALES, EASEMENTS,
27 AND LEASES IN EXCESS OF 50 YEARS. (a) Before making a sale,

1 easement, or lease of real property [~~land~~] for more than 50 years,
2 the district [~~commission~~] shall publish a notice in the manner
3 provided in Section 60.035.

4 (b) A district may enter into negotiations with one or more
5 potential buyers, easement grantees, or lessees before the
6 publication of the notice without affecting the validity of the
7 sale, easement, or lease.

8 SECTION 5. Section 60.041, Water Code, is amended to read as
9 follows:

10 Sec. 60.041. SECURITY FOR BIDS ON REAL PROPERTY [~~LAND~~] TO BE
11 SOLD OR LEASED FOR MORE THAN 50 YEARS. Each bid submitted on real
12 property [~~land~~] to be sold or leased for more than 50 years under
13 Section 60.040 shall be accompanied by a certified check, cashier's
14 check, or bidder's bond with a responsible corporate surety
15 authorized to do business in Texas. The check or bond shall be in
16 an amount equal to five percent of the bid price for the real
17 property [~~land~~] or 100 percent of [~~for~~] the first rental payment
18 under the lease and shall guarantee that the bidder will perform the
19 terms of the bid if it is accepted by the district [~~commission~~].

20 SECTION 6. Section 60.042, Water Code, is amended to read as
21 follows:

22 Sec. 60.042. AWARD AND EXECUTION OF DEED OR LEASE IN EXCESS
23 OF 50 YEARS. (a) After notice is published under Section 60.040
24 [~~of this code~~], the district [~~commission~~] may sell or lease in
25 accordance with that section all or any part of the real property
26 [~~land~~] to the highest and best bidder for an amount which is not
27 less than the reasonable market value in the locality at the time

1 and place of the sale or lease.

2 (b) The commission shall adopt a resolution or ~~[enter an]~~
3 order ~~[in its minutes]~~ confirming the sale or lease. The resolution
4 or order shall include or incorporate by reference the terms of the
5 sale or lease and the consideration and shall provide that the
6 executive director of the district, or a person authorized by the
7 executive director of the district, is authorized to ~~[commission~~
8 ~~will]~~ execute the ~~[a]~~ deed or lease as soon as the successful bidder
9 complies with the terms of the ~~[his]~~ bid.

10 SECTION 7. Section 60.101(c), Water Code, is amended to
11 read as follows:

12 (c) An installment sale or a lease under this section is not
13 a loan of the district's credit or a grant of public money. The
14 acquisition and leasing of land and facilities for the purposes
15 included in this section and the operation and industrial and
16 business development of ports and waterways are a public purpose
17 and a matter of public necessity.

18 SECTION 8. Section 60.124, Water Code, is amended to read as
19 follows:

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

24 SECTION 9. Section 60.401(b), Water Code, is amended to
25 read as follows:

26 (b) A district may adopt this subchapter for a particular
27 purchase or period or for all purchases and contracts, subject to

1 the commission's right to authorize particular procurements under
2 Subchapter O.

3 SECTION 10. Sections 60.404(b) and (d), Water Code, are
4 amended to read as follows:

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

20 (d) The specifications must:

- 21 (1) describe in detail the item to be acquired;
22 (2) require that bids be sealed;
23 (3) require the attachment to the bid of a certified
24 check, cashier's check, or bidders bond, if security is required in
25 connection with the bid; and
26 (4) indicate whether a small business development
27 program, local preference program, or other contracting program

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

4 SECTION 11. Section 60.405, Water Code, is amended to read
5 as follows:

6 Sec. 60.405. COMPETITIVE SEALED PROPOSALS ~~[PROPOSAL~~
7 ~~PROCEDURES]~~. (a) Notwithstanding Section 60.404, 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 the
13 district's broker through a request for proposals from as many
14 sources as are reasonably available. The request for proposals
15 must specify the relative importance of price and all other factors
16 of evaluation.

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

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

26 (e) If so provided in the request for proposals, information
27 in proposals may not be disclosed to the public ~~[competing~~

offerers] until the contract is awarded. After a contract is awarded, proposals shall be open for public inspection, except that information contained in a proposal identified as a trade secret or as confidential shall be kept confidential.

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

SECTION 12. Section 60.407, Water Code, is amended to read as follows:

Sec. 60.407. OPENING SEALED PROPOSALS AND BIDS. (a) An official of the district [~~or port authority~~] shall open the bids and competitive sealed proposals on the date specified in the notice. If an error is discovered in the original specifications or the nature of the item to be purchased requires an extension, the date may be extended.

(b) Opened bids and sealed proposals shall be kept on file and made available for public inspection.

SECTION 13. Section 60.409(b), Water Code, is amended to read as follows:

(b) If a district [~~or port authority~~] uses unit pricing in its notice, the information furnished proposers or bidders shall specify the approximate quantities estimated on the best available information or other quantities reasonably specified to permit

1 comparison of proposals or bids, and the total contract amount may
2 be based on estimated maximum quantities, but the compensation paid
3 the bidder must be based on the actual quantities purchased.

4 SECTION 14. Section 60.458, Water Code, is amended to read
5 as follows:

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

- 9 (1) the purchase price;
- 10 (2) the reputation of the vendor and of the vendor's
11 goods or services;
- 12 (3) the quality of the vendor's goods or services;
- 13 (4) the extent to which the goods or services meet the
14 district's needs;
- 15 (5) the vendor's past relationship with the district;
- 16 (6) the impact on the ability of the district to comply
17 with laws and rules relating to historically underutilized
18 businesses and on~~[7]~~ the district's small business development
19 program, local preference program, or other ~~[another]~~ contracting
20 program adopted ~~[approved]~~ by the district, if any;
- 21 (7) the total long-term cost to the district to
22 acquire the vendor's goods or services; and
- 23 (8) any other relevant factor specifically listed in
24 the request for bids or proposals.

25 SECTION 15. Section 60.463, Water Code, is amended by
26 amending Subsections (d) and (e) and adding Subsection (d-1) to
27 read as follows:

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

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

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

submitted in relation to the published selection criteria.

SECTION 16. Section 62.107, Water Code, is amended to read as follows:

Sec. 62.107. ACQUISITION AND CONVEYANCE OF LAND. (a) Any district created under this chapter may acquire by gift, purchase, or condemnation and may own land adjacent or accessible by road, rail, or water 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.

(b) The district may lease and grant easements on any part of the acquired land to any person [~~individual or corporation~~] and may charge for the lease or easement reasonable tolls, rents, fees, or other charges. The lease or easement may be on terms and conditions considered appropriate or advantageous to the district. The district may use the proceeds both for the maintenance and operation of the business of the district and for the purpose of making the district self-supporting and financially solvent and returning the construction costs of the improvements within a reasonable period.

(c) The acquisition and leasing of land or granting easements on land for the purposes included in this section and the operation and industrial and business development of ports and waterways are a public purpose and a matter of public necessity.

SECTION 17. Subchapter D, Chapter 62, Water Code, is

1 amended by adding Section 62.123 to read as follows:

2 Sec. 62.123. FRANCHISES. (a) A district may grant
3 franchises for purposes consistent with this chapter to any person
4 on property owned or controlled by the district by restrictive
5 covenant or otherwise.

6 (b) No franchise shall be granted for longer than 50 years
7 nor shall a franchise be granted except on the affirmative vote of a
8 majority of the commissioners present at three separate meetings of
9 the commission which meetings may not be closer together than one
10 week.

11 (c) No franchise shall be granted until notice of the
12 franchise is published, at the expense of the applicant, once a week
13 for three consecutive weeks in a daily newspaper of general
14 circulation in the district. For the purposes of this subsection,
15 notice consists of:

16 (1) the text of the franchise in final form in all
17 material respects; or

18 (2) a descriptive caption stating the purpose of the
19 franchise and the location at which a complete copy of the franchise
20 in all material respects may be obtained.

21 (d) The franchise shall require the grantee to file the
22 grantee's written acceptance within 30 days after the franchise is
23 finally approved by the commission. The franchise is effective on
24 the date the grantee files the acceptance, unless the district and
25 the grantee agree on a later date.

26 (e) Nothing in this section shall be construed as preventing
27 the district from granting revocable licenses or permits for the

1 use of limited portions of waterfront or facilities for purposes
2 consistent with this chapter.

3 SECTION 18. Section 62.153, Water Code, is amended to read
4 as follows:

5 Sec. 62.153. DUTIES OF DISTRICT TREASURER. The district
6 treasurer shall:

7 (1) open an account for all funds received by the
8 district treasurer ~~[him]~~ for the district and all district funds
9 which the treasurer ~~[he]~~ pays out;

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

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

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

23 (5) not be required to sign a check drawn on a
24 depository selected under Section 62.156, unless the district
25 treasurer is the designated officer of the district, as defined by
26 Section 60.271(g).

27 SECTION 19. Section 62.208(a), Water Code, is amended to

1 read as follows:

2 (a) A district may issue revenue bonds on the terms and
3 under the provisions of Chapter 111, Acts of the 43rd Legislature,
4 1st Called Session, 1933, or Chapter 38, Acts of the 47th
5 Legislature, Regular Session, 1941:

6 (1) to purchase, construct, improve, enlarge, extend,
7 and repair dams, reservoirs, water rights, water wells,
8 desalinization facilities, canals, pipelines, pumps, pump
9 stations, land, easements, rights-of-way, and other property and
10 facilities necessary to provide a water supply for the irrigation
11 of land and for industrial, commercial, domestic, municipal, and
12 other beneficial uses;

13 (2) to accomplish any of the purposes designated in
14 the previously mentioned two acts; and

15 (3) for general improvement purposes without
16 designating the improvement.

17 SECTION 20. Section 63.178(b), Water Code, is amended to
18 read as follows:

19 (b) A franchise may be granted for a period of not more than
20 50 ~~30~~ years.

21 SECTION 21. This Act takes effect immediately if it
22 receives a vote of two-thirds of all the members elected to each
23 house, as provided by Section 39, Article III, Texas Constitution.
24 If this Act does not receive the vote necessary for immediate
25 effect, this Act takes effect September 1, 2017.