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S.B. No. 1395

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 60.040, Water Code, is amended to read as follows:

Sec. 60.040. PUBLICATION OF NOTICE FOR SALES, EASEMENTS, AND LEASES IN EXCESS OF 50 YEARS. (a) Before making a sale, easement, or lease of real property [~~land~~] for more than 50 years,

1 the district [~~commission~~] shall publish a notice in the manner  
2 provided in Section 60.035.

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

7 SECTION 4. Section 60.041, Water Code, is amended to read as  
8 follows:

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

19 SECTION 5. Section 60.042, Water Code, is amended to read as  
20 follows:

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

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

9 SECTION 6. Section 60.101(c), Water Code, is amended to  
10 read as follows:

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

17 SECTION 7. Section 60.124, Water Code, is amended to read as  
18 follows:

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

23 SECTION 8. Section 60.401(b), Water Code, is amended to  
24 read as follows:

25 (b) A district may adopt this subchapter for a particular  
26 purchase or period or for all purchases and contracts, subject to  
27 the commission's right to authorize particular procurements under

1 Subchapter O.

2 SECTION 9. Sections 60.404(b) and (d), Water Code, are  
3 amended to read as follows:

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

19 (d) The specifications must:

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

21 (2) require that bids be sealed;

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

25 (4) indicate whether a small business development  
26 program, local preference program, or other contracting program  
27 adopted by the [~~port commission of the port authority or~~] district

1 applies to the purchase and, if so, where a copy of the program  
2 requirements may be obtained.

3 SECTION 10. Section 60.405, Water Code, is amended to read  
4 as follows:

5 Sec. 60.405. COMPETITIVE SEALED PROPOSALS [~~PROPOSAL~~  
6 ~~PROCEDURES~~]. (a) Notwithstanding Section 60.404, items other  
7 than construction services valued at more than the amount  
8 authorized by Section 60.403(a) for routine purchases or contracts  
9 [Insurance or high technology items] may be purchased under the  
10 procedure provided by this section.

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

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

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

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

1 awarded, proposals shall be open for public inspection, except that  
2 information contained in a proposal identified as a trade secret or  
3 as confidential shall be kept confidential.

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

11 SECTION 11. Section 60.407, Water Code, is amended to read  
12 as follows:

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

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

21 SECTION 12. Section 60.409(b), Water Code, is amended to  
22 read as follows:

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

1 be based on estimated maximum quantities, but the compensation paid  
2 the bidder must be based on the actual quantities purchased.

3 SECTION 13. Section 60.458, Water Code, is amended to read  
4 as follows:

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

8 (1) the purchase price;

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

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

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

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

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

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

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

24 SECTION 14. Section 60.463, Water Code, is amended by  
25 amending Subsections (d) and (e) and adding Subsection (d-1) to  
26 read as follows:

27 (d) The district shall select a contractor through

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

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

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



1 SECTION 15. Section 62.107, Water Code, is amended to read  
2 as follows:

3 Sec. 62.107. ACQUISITION AND CONVEYANCE OF LAND. (a) Any  
4 district created under this chapter may acquire by gift, purchase,  
5 or condemnation and may own land adjacent or accessible by road,  
6 rail, or water to the navigable water and ports developed by it  
7 which may be necessary or required for any and all purposes incident  
8 to or necessary for the development and operation of the navigable  
9 water or ports within the district, or may be necessary or required  
10 for or in aid of the development of industries and businesses on the  
11 land.

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

22 (c) The acquisition and leasing of land for the purposes  
23 included in this section and the operation and industrial and  
24 business development of ports and waterways are a public purpose  
25 and a matter of public necessity.

26 SECTION 16. Subchapter D, Chapter 62, Water Code, is  
27 amended by adding Section 62.123 to read as follows:

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

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

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

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

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

20       (d) The franchise shall require the grantee to file the  
21 grantee's written acceptance within 30 days after the franchise is  
22 finally approved by the commission.

23       (e) Nothing in this section shall be construed as preventing  
24 the district from granting revocable licenses or permits for the  
25 use of limited portions of waterfront or facilities for purposes  
26 consistent with this chapter.

27       SECTION 17. Section 62.153, Water Code, is amended to read

1 as follows:

2           Sec. 62.153. DUTIES OF DISTRICT TREASURER. The district  
3 treasurer shall:

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

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

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

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

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

24           SECTION 18. Section 62.208(a), Water Code, is amended to  
25 read as follows:

26           (a) A district may issue revenue bonds on the terms and  
27 under the provisions of Chapter 111, Acts of the 43rd Legislature,

1 1st Called Session, 1933, or Chapter 38, Acts of the 47th  
2 Legislature, Regular Session, 1941:

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

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

12 (3) for general improvement purposes without  
13 designating the improvement.

14 SECTION 19. Section 63.178(b), Water Code, is amended to  
15 read as follows:

16 (b) A franchise may be granted for a period of not more than  
17 50 [~~30~~] years.

18 SECTION 20. This Act takes effect immediately if it  
19 receives a vote of two-thirds of all the members elected to each  
20 house, as provided by Section 39, Article III, Texas Constitution.  
21 If this Act does not receive the vote necessary for immediate  
22 effect, this Act takes effect September 1, 2017.