

By: Creighton

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

Sec. 60.034. OIL, GAS, AND MINERAL LEASES. Except for lands or flats purchased from this state under Section 61.115, 61.116, or 61.117, or their predecessor statute, Article 8225, Revised Statutes, a district ~~[The commission]~~ may lease for oil, gas, and minerals rights-of-way, spoil grounds, spoil basins, or any other land owned by the ~~[a navigation]~~ district if the lease ~~[it]~~ does not interfere with use of or obstruct any natural or artificial waterway of the district used for navigation purposes.

SECTION 2. 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 3. 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

1 district. The notice shall be published at least once a week for  
2 two consecutive weeks before the final date for the receipt of bids.  
3 Chapter 71, Natural Resources Code, does not apply to a lease made  
4 under this section if the lease is made in accordance with this  
5 section and Sections 60.036 and 60.037 of this chapter.

6 SECTION 4. Section 60.039, Water Code, is amended to read as  
7 follows:

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

9 (a) A district [The commission] may lease, as lessor, and grant  
10 easements over the surface estate of real property [land] for not  
11 more than 50 years by the adoption [entry] of a resolution or an  
12 order [on the minutes of the commission] and the execution of a  
13 lease or easement in the manner provided by the [original]  
14 resolution or order. The lease or easement may not be extended  
15 beyond the 50-year period by renewal, extension, or otherwise until  
16 the term of the lease or easement has expired.

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 on behalf of the district, as  
20 lessor, for the surface estate of real property for not more than  
21 one year without the commission's adoption of a resolution or [a  
22 monthly tenancy or a tenancy from month to month. The lease term  
23 may only exceed one year if:

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

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

1        (c) The executive director of the district, or a person  
2 authorized by the commission or the executive director, may enter  
3 into an easement on behalf of the district, as grantor, on the  
4 surface of real property for not more than one year without the  
5 commission's adoption of a resolution or an order approving the  
6 easement.

7        SECTION 5. Section 60.040, Water Code, is amended to read as  
8 follows:

9        Sec. 60.040. PUBLICATION OF NOTICE FOR SALES, EASEMENTS,  
10 AND LEASES IN EXCESS OF 50 YEARS. (a) Before making a sale,  
11 easement, or lease of real property [~~land~~] for more than 50 years,  
12 the district [~~commission~~] shall publish a notice in the manner  
13 provided in Section 60.035.

14        (b) A district may enter into negotiations with one or more  
15 potential buyers, easement grantees, or lessees before the  
16 publication of the notice without affecting the validity of the  
17 sale, easement, or lease.

18        SECTION 6. Section 60.041, Water Code, is amended to read as  
19 follows:

20        Sec. 60.041. SECURITY FOR BIDS ON REAL PROPERTY [~~LAND~~] TO BE  
21 SOLD OR LEASED FOR MORE THAN 50 YEARS. Each bid submitted on real  
22 property [~~land~~] to be sold or leased for more than 50 years under  
23 Section 60.040 shall be accompanied by a certified check, cashier's  
24 check, or bidder's bond with a responsible corporate surety  
25 authorized to do business in Texas. The check or bond shall be in  
26 an amount equal to five percent of the bid price for the real  
27 property [~~land~~] or 100 percent of [~~for~~] the first rental payment

1 under the lease and shall guarantee that the bidder will perform the  
2 terms of the bid if it is accepted by the district [~~commission~~].

3 SECTION 7. Section 60.042, Water Code, is amended to read as  
4 follows:

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

12 (b) The commission shall adopt a resolution or [~~enter an~~]  
13 order [~~in its minutes~~] confirming the sale or lease. The resolution  
14 or order shall include or incorporate by reference the terms of the  
15 sale or lease and the consideration and shall provide that the  
16 executive director of the district, or a person authorized by the  
17 executive director of the district, is authorized to [~~commission~~  
18 ~~will~~] execute the [~~a~~] deed or lease as soon as the successful bidder  
19 complies with the terms of the [~~his~~] bid.

20 SECTION 8. Section 60.101(c), Water Code, is amended to  
21 read as follows:

22 (c) An installment sale or a lease under this section is not  
23 a loan of the district's credit or a grant of public money. The  
24 acquisition and leasing of land and facilities for the purposes  
25 included in this section and the operation and industrial and  
26 business development of ports and waterways are a public purpose  
27 and a matter of public necessity.

1 SECTION 9. Section 60.124, Water Code, is amended to read as  
2 follows:

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

7 SECTION 10. Section 60.401(b), Water Code, is amended to  
8 read as follows:

9 (b) A district may adopt this subchapter for a particular  
10 purchase or period or for all purchases and contracts, subject to  
11 the commission's right to authorize particular procurements under  
12 Subchapter O.

13 SECTION 11. Sections 60.404(b) and (d), Water Code, are  
14 amended to read as follows:

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

1 ~~county for not less than 14 days before the date the bids are to be~~  
2 ~~opened~~].

3 (d) The specifications must:

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

5 (2) require that bids be sealed;

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

9 (4) indicate whether a small business development  
10 program, local preference program, or other contracting program  
11 adopted by the [~~port commission of the port authority or~~] district  
12 applies to the purchase and, if so, where a copy of the program  
13 requirements may be obtained.

14 SECTION 12. Section 60.405, Water Code, is amended to read  
15 as follows:

16 Sec. 60.405. COMPETITIVE SEALED PROPOSALS [~~PROPOSAL~~  
17 ~~PROCEDURES~~]. (a) Notwithstanding Section 60.404, items other than  
18 construction services valued at more than the amount authorized by  
19 Section 60.403(a) for routine purchases or contracts [~~Insurance or~~  
20 ~~high technology items~~] may be purchased under the procedure  
21 provided by this section.

22 (b) Quotations shall be solicited by the district or the  
23 district's broker through a request for proposals from as many  
24 sources as are reasonably available. The request for proposals  
25 must specify the relative importance of price and all other factors  
26 of evaluation.

27 (c) Public notice of the request for proposals [~~proposal~~]

1 must be made in the same manner as provided by Section 60.404 [~~of~~  
2 ~~this code~~].

3 (d) The award of the contract shall be made by the  
4 commission in open session to the responsible offerer whose  
5 proposal is determined to provide the best value to the district [~~be~~  
6 ~~the lowest evaluated offer resulting from negotiation~~] giving  
7 consideration to evaluation factors set forth in the request for  
8 proposals.

9 (e) If so provided in the request for proposals, information  
10 in proposals may not be disclosed to the public [~~competing~~  
11 ~~offerers~~] until the contract is awarded. After a contract is  
12 awarded, proposals shall be open for public inspection, except that  
13 information contained in a proposal identified as a trade secret or  
14 as confidential shall be kept confidential.

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

22 SECTION 13. Section 60.407, Water Code, is amended to read  
23 as follows:

24 Sec. 60.407. OPENING SEALED PROPOSALS AND BIDS. (a) An  
25 official of the district [~~or port authority~~] shall open the bids and  
26 competitive sealed proposals on the date specified in the notice.  
27 If an error is discovered in the original specifications or the

1 nature of the item to be purchased requires an extension, the date  
2 may be extended.

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

5 SECTION 14. Section 60.409(b), Water Code, is amended to  
6 read as follows:

7 (b) If a district [~~or port authority~~] uses unit pricing in  
8 its notice, the information furnished proposers or bidders shall  
9 specify the approximate quantities estimated on the best available  
10 information or other quantities reasonably specified to permit  
11 comparison of proposals or bids, and the total contract amount may  
12 be based on estimated maximum quantities, but the compensation paid  
13 the bidder must be based on the actual quantities purchased.

14 SECTION 15. Section 60.458, Water Code, is amended to read  
15 as follows:

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

- 19 (1) the purchase price;
- 20 (2) the reputation of the vendor and of the vendor's  
21 goods or services;
- 22 (3) the quality of the vendor's goods or services;
- 23 (4) the extent to which the goods or services meet the  
24 district's needs;
- 25 (5) the vendor's past relationship with the district;
- 26 (6) the impact on the ability of the district to comply  
27 with laws and rules relating to historically underutilized



1 businesses and on~~[7]~~ the district's small business development  
2 program, local preference program, or other ~~[another]~~ contracting  
3 program adopted ~~[approved]~~ by the district, if any;

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

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

8 SECTION 16. Section 60.463, Water Code, is amended by  
9 amending Subsections (d) and (e) and adding Subsection (d-1) to  
10 read as follows:

11 (d) The district shall select a contractor through  
12 competitive sealed proposals in either a one-step or two-step  
13 process. The district shall prepare a request for competitive  
14 sealed proposals, in the case of a one-step process, or a request  
15 for qualifications, in the case of a two-step process, that  
16 includes construction documents, selection criteria, project  
17 scope, schedule, the time and place for receipt of proposals or  
18 qualifications, as applicable, a statement as to whether the  
19 selection process is a one-step or two-step process, and other  
20 information that contractors may require to respond to the request.  
21 The district shall state in the request for proposals or  
22 qualifications, as applicable, the selection criteria that will be  
23 used in selecting the successful offeror. If a one-step process is  
24 used, the district may request, as part of the offeror's proposal,  
25 proposed prices.

26 (d-1) If a two-step process is used, the district may not  
27 request prices in the first step. In the second step, the district

1 may request that five or fewer offerors, selected solely on the  
2 basis of qualifications, provide additional information, including  
3 proposed prices.

4 (e) At each step, the [The] district shall receive, publicly  
5 open, and read aloud the names of the offerors [and, if any lump-sum  
6 prices are required to be stated, all such lump-sum prices stated in  
7 each proposal]. At the appropriate step, the district shall read  
8 aloud the prices, if any, stated in each proposal as the proposal is  
9 opened. Not later than the 45th day after the date of opening the  
10 proposals, the district shall evaluate and rank each proposal  
11 submitted in relation to the published selection criteria.

12 SECTION 17. Section 62.107, Water Code, is amended to read  
13 as follows:

14 Sec. 62.107. ACQUISITION AND CONVEYANCE OF LAND. (a) Any  
15 district created under this chapter may acquire by gift, purchase,  
16 or condemnation and may own land adjacent or accessible by road,  
17 rail, or water to the navigable water and ports developed by it  
18 which may be necessary or required for any and all purposes incident  
19 to or necessary for the development and operation of the navigable  
20 water or ports within the district, or may be necessary or required  
21 for or in aid of the development of industries and businesses on the  
22 land.

23 (b) The district may lease and grant easements on any part  
24 of the acquired land to any person [~~individual or corporation~~] and  
25 may charge for the lease or easement reasonable tolls, rents, fees,  
26 or other charges. The lease or easement may be on terms and  
27 conditions considered appropriate or advantageous to the district.

1 The district may use the proceeds both for the maintenance and  
2 operation of the business of the district and for the purpose of  
3 making the district self-supporting and financially solvent and  
4 returning the construction costs of the improvements within a  
5 reasonable period.

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

10 SECTION 18. Subchapter D, Chapter 62, Water Code, is  
11 amended by adding Section 62.123 to read as follows:

12 Sec. 62.123. FRANCHISES. (a) A district may grant  
13 franchises for purposes consistent with this chapter to any person  
14 on property owned or controlled by the district by restrictive  
15 covenant or otherwise.

16 (b) No franchise shall be granted for longer than 50 years  
17 nor shall a franchise be granted except on the affirmative vote of a  
18 majority of the commissioners present at three separate meetings of  
19 the commission which meetings may not be closer together than one  
20 week.

21 (c) No franchise shall be granted until notice of the  
22 franchise is published at the expense of the applicant, once a week  
23 for three consecutive weeks in a daily newspaper of general  
24 circulation in the district. For the purposes of this subsection,  
25 notice consists of:

26 (1) the text of the franchise in final form in all  
27 material respects; or

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

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

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

11           SECTION 19. Section 62.153, Water Code, is amended to read  
12 as follows:

13           Sec. 62.153. DUTIES OF DISTRICT TREASURER. The district  
14 treasurer shall:

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

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

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

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

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

8 SECTION 20. Section 62.208(a), Water Code, is amended to  
9 read as follows:

10 (a) A district may issue revenue bonds on the terms and  
11 under the provisions of Chapter 111, Acts of the 43rd Legislature,  
12 1st Called Session, 1933, or Chapter 38, Acts of the 47th  
13 Legislature, Regular Session, 1941:

14 (1) to purchase, construct, improve, enlarge, extend,  
15 and repair dams, reservoirs, water rights, water wells,  
16 desalinization facilities, canals, pipelines, pumps, pump  
17 stations, land, easements, rights-of-way, and other property and  
18 facilities necessary to provide a water supply for the irrigation  
19 of land and for industrial, commercial, domestic, municipal, and  
20 other beneficial uses;

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

23 (3) for general improvement purposes without  
24 designating the improvement.

25 SECTION 21. Section 63.178(b), Water Code, is amended to  
26 read as follows:

27 (b) A franchise may be granted for a period of not more than

1 50 [~~30~~] years.

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