

1-1 By: Creighton, Kolthorst S.B. No. 1395
 1-2 (In the Senate - Filed March 7, 2017; March 16, 2017, read
 1-3 first time and referred to Committee on Transportation;
 1-4 April 24, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; April 24, 2017,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 Nichols	X			
1-9 Hall	X			
1-10 Creighton	X			
1-11 Garcia	X			
1-12 Hancock	X			
1-13 Hinojosa	X			
1-14 Kolthorst			X	
1-15 Perry	X			
1-16 Rodríguez	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1395 By: Creighton

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the powers and duties of navigation districts and port
 1-22 authorities.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. The heading to Section 60.035, Water Code, is
 1-25 amended to read as follows:

1-26 Sec. 60.035. NOTICE OF CERTAIN OIL, GAS, AND MINERAL LEASES
 1-27 ~~[LEASE]~~.

1-28 SECTION 2. Section 60.035(a), Water Code, is amended to
 1-29 read as follows:

1-30 (a) Before a district may enter into a lease ~~[may be~~
 1-31 ~~executed by the commission]~~ under Section 60.034 ~~[of this code]~~,
 1-32 the district ~~[commission]~~ shall have a notice requesting bids on
 1-33 the lease published in a newspaper of general circulation in the
 1-34 district. The notice shall be published at least once a week for
 1-35 two consecutive weeks before the final date for the receipt of bids.
 1-36 Chapter 71, Natural Resources Code, does not apply to a lease made
 1-37 under this section if the lease is made in accordance with this
 1-38 section and Sections 60.036 and 60.037 of this chapter.

1-39 SECTION 3. Section 60.039, Water Code, is amended to read as
 1-40 follows:

1-41 Sec. 60.039. CERTAIN SURFACE LEASES AND EASEMENTS ~~[LEASE]~~.

1-42 (a) A district ~~[The commission]~~ may lease, as lessor, and grant
 1-43 easements over the surface estate of real property ~~[land]~~ for not
 1-44 more than 50 years by the adoption ~~[entry]~~ of a resolution or an
 1-45 order ~~[on the minutes of the commission]~~ and the execution of a
 1-46 lease or easement in the manner provided by the ~~[original]~~
 1-47 resolution or order. The lease or easement may not be extended
 1-48 beyond the 50-year period by renewal, extension, or otherwise until
 1-49 the term of the lease or easement has expired.

1-50 (b) The ~~[commission or the]~~ executive director of the
 1-51 district, or a person authorized by the commission or the executive
 1-52 director, may enter into a lease on behalf of the district, as
 1-53 lessor, for the surface estate of real property for not more than
 1-54 one year without the commission's adoption of a resolution or ~~[a~~
 1-55 ~~monthly tenancy or a tenancy from month to month. The lease term~~
 1-56 ~~may only exceed one year if:~~

1-57 ~~[(1) the commission enters]~~ an order approving ~~[on the~~
 1-58 ~~minutes, and~~

1-59 ~~[(2) the execution of the lease is in the manner~~
 1-60 ~~provided by the original order for]~~ the lease.

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

2-7 SECTION 4. Section 60.040, Water Code, is amended to read as
2-8 follows:

2-9 Sec. 60.040. PUBLICATION OF NOTICE FOR SALES, EASEMENTS,
2-10 AND LEASES IN EXCESS OF 50 YEARS. (a) Before making a sale,
2-11 easement, or lease of real property [~~land~~] for more than 50 years,
2-12 the district [~~commission~~] shall publish a notice in the manner
2-13 provided in Section 60.035.

2-14 (b) A district may enter into negotiations with one or more
2-15 potential buyers, easement grantees, or lessees before the
2-16 publication of the notice without affecting the validity of the
2-17 sale, easement, or lease.

2-18 SECTION 5. Section 60.041, Water Code, is amended to read as
2-19 follows:

2-20 Sec. 60.041. SECURITY FOR BIDS ON REAL PROPERTY [~~LAND~~] TO BE
2-21 SOLD OR LEASED FOR MORE THAN 50 YEARS. Each bid submitted on real
2-22 property [~~land~~] to be sold or leased for more than 50 years under
2-23 Section 60.040 shall be accompanied by a certified check, cashier's
2-24 check, or bidder's bond with a responsible corporate surety
2-25 authorized to do business in Texas. The check or bond shall be in
2-26 an amount equal to five percent of the bid price for the real
2-27 property [~~land~~] or 100 percent of [~~for~~] the first rental payment
2-28 under the lease and shall guarantee that the bidder will perform the
2-29 terms of the bid if it is accepted by the district [~~commission~~].

2-30 SECTION 6. Section 60.042, Water Code, is amended to read as
2-31 follows:

2-32 Sec. 60.042. AWARD AND EXECUTION OF DEED OR LEASE IN EXCESS
2-33 OF 50 YEARS. (a) After notice is published under Section 60.040
2-34 [~~of this code~~], the district [~~commission~~] may sell or lease in
2-35 accordance with that section all or any part of the real property
2-36 [~~land~~] to the highest and best bidder for an amount which is not
2-37 less than the reasonable market value in the locality at the time
2-38 and place of the sale or lease.

2-39 (b) The commission shall adopt a resolution or [~~enter an~~]
2-40 order [~~in its minutes~~] confirming the sale or lease. The resolution
2-41 or order shall include or incorporate by reference the terms of the
2-42 sale or lease and the consideration and shall provide that the
2-43 executive director of the district, or a person authorized by the
2-44 executive director of the district, is authorized to [~~commission~~
2-45 will] execute the [~~a~~] deed or lease as soon as the successful bidder
2-46 complies with the terms of the [~~his~~] bid.

2-47 SECTION 7. Section 60.101(c), Water Code, is amended to
2-48 read as follows:

2-49 (c) An installment sale or a lease under this section is not
2-50 a loan of the district's credit or a grant of public money. The
2-51 acquisition and leasing of land and facilities for the purposes
2-52 included in this section and the operation and industrial and
2-53 business development of ports and waterways are a public purpose
2-54 and a matter of public necessity.

2-55 SECTION 8. Section 60.124, Water Code, is amended to read as
2-56 follows:

2-57 Sec. 60.124. GIFTS, GRANTS, AND DONATIONS. A district may
2-58 accept a gift, grant, donation, or bequest of money, services,
2-59 equipment, goods, or other tangible or intangible property from any
2-60 source for any district purpose.

2-61 SECTION 9. Section 60.401(b), Water Code, is amended to
2-62 read as follows:

2-63 (b) A district may adopt this subchapter for a particular
2-64 purchase or period or for all purchases and contracts, subject to
2-65 the commission's right to authorize particular procurements under
2-66 Subchapter O.

2-67 SECTION 10. Sections 60.404(b) and (d), Water Code, are
2-68 amended to read as follows:

2-69 (b) A notice of proposed purchase and the time and place the

3-1 bids will be received and opened must be published once a week for
 3-2 two consecutive weeks before the deadline for receiving the bids in
 3-3 a newspaper with general circulation in each county in which the
 3-4 district [or port authority] is located. [The first notice must be
 3-5 published not later than the 14th day before the date the bids are
 3-6 to be opened.] If there is no newspaper of general circulation in a
 3-7 county in which the district [or port authority] is located, the
 3-8 notice shall be published in a newspaper of general circulation in
 3-9 the county nearest the county seat of the county in which the
 3-10 district is located or the county in which the greatest amount of
 3-11 the district's territory is located [for that county must be given
 3-12 by posting the notice in a prominent place in the courthouse of that
 3-13 county for not less than 14 days before the date the bids are to be
 3-14 opened].

3-15 (d) The specifications must:

3-16 (1) describe in detail the item to be acquired;

3-17 (2) require that bids be sealed;

3-18 (3) require the attachment to the bid of a certified
 3-19 check, cashier's check, or bidders bond, if security is required in
 3-20 connection with the bid; and

3-21 (4) indicate whether a small business development
 3-22 program, local preference program, or other contracting program
 3-23 adopted by the [port commission of the port authority or] district
 3-24 applies to the purchase and, if so, where a copy of the program
 3-25 requirements may be obtained.

3-26 SECTION 11. Section 60.405, Water Code, is amended to read
 3-27 as follows:

3-28 Sec. 60.405. COMPETITIVE SEALED PROPOSALS [PROPOSAL
 3-29 PROCEDURES]. (a) Notwithstanding Section 60.404, items other
 3-30 than construction services valued at more than the amount
 3-31 authorized by Section 60.403(a) for routine purchases or contracts
 3-32 [Insurance or high technology items] may be purchased under the
 3-33 procedure provided by this section.

3-34 (b) Quotations shall be solicited by the district or the
 3-35 district's broker through a request for proposals from as many
 3-36 sources as are reasonably available. The request for proposals
 3-37 must specify the relative importance of price and all other factors
 3-38 of evaluation.

3-39 (c) Public notice of the request for proposals [proposal]
 3-40 must be made in the same manner as provided by Section 60.404 [of
 3-41 this code].

3-42 (d) The award of the contract shall be made by the
 3-43 commission in open session to the responsible offerer whose
 3-44 proposal is determined to provide the best value to the district [~~be~~
 3-45 ~~the lowest evaluated offer resulting from negotiation]~~ giving
 3-46 consideration to evaluation factors set forth in the request for
 3-47 proposals.

3-48 (e) If so provided in the request for proposals, information
 3-49 in proposals may not be disclosed to the public [~~competing~~
 3-50 ~~offerers]~~ until the contract is awarded. After a contract is
 3-51 awarded, proposals shall be open for public inspection, except that
 3-52 information contained in a proposal identified as a trade secret or
 3-53 as confidential shall be kept confidential.

3-54 (f) A district [~~port commission]~~ may adopt rules relating to
 3-55 negotiations to be conducted with responsible offerers submitting
 3-56 proposals. Offerers must be accorded fair and equal treatment with
 3-57 respect to any opportunity for negotiation and revision of
 3-58 proposals. Revisions to proposal and contract terms may be
 3-59 permitted after submission of a proposal and before award of the
 3-60 contract.

3-61 SECTION 12. Section 60.407, Water Code, is amended to read
 3-62 as follows:

3-63 Sec. 60.407. OPENING SEALED PROPOSALS AND BIDS. (a) An
 3-64 official of the district [or port authority] shall open the bids and
 3-65 competitive sealed proposals on the date specified in the notice.
 3-66 If an error is discovered in the original specifications or the
 3-67 nature of the item to be purchased requires an extension, the date
 3-68 may be extended.

3-69 (b) Opened bids and sealed proposals shall be kept on file

4-1 and made available for public inspection.

4-2 SECTION 13. Section 60.409(b), Water Code, is amended to
4-3 read as follows:

4-4 (b) If a district [~~or port authority~~] uses unit pricing in
4-5 its notice, the information furnished proposers or bidders shall
4-6 specify the approximate quantities estimated on the best available
4-7 information or other quantities reasonably specified to permit
4-8 comparison of proposals or bids, and the total contract amount may
4-9 be based on estimated maximum quantities, but the compensation paid
4-10 the bidder must be based on the actual quantities purchased.

4-11 SECTION 14. Section 60.458, Water Code, is amended to read
4-12 as follows:

4-13 Sec. 60.458. PURCHASE CONTRACT AWARD CRITERIA. Except as
4-14 provided by this subchapter, in determining to whom to award a
4-15 contract, the district may consider:

4-16 (1) the purchase price;

4-17 (2) the reputation of the vendor and of the vendor's
4-18 goods or services;

4-19 (3) the quality of the vendor's goods or services;

4-20 (4) the extent to which the goods or services meet the
4-21 district's needs;

4-22 (5) the vendor's past relationship with the district;

4-23 (6) the impact on the ability of the district to comply
4-24 with laws and rules relating to historically underutilized
4-25 businesses and on ~~the~~ the district's small business development
4-26 program, local preference program, or other ~~another~~ contracting
4-27 program adopted [approved] by the district, if any;

4-28 (7) the total long-term cost to the district to
4-29 acquire the vendor's goods or services; and

4-30 (8) any other relevant factor specifically listed in
4-31 the request for bids or proposals.

4-32 SECTION 15. Section 60.463, Water Code, is amended by
4-33 amending Subsections (d) and (e) and adding Subsection (d-1) to
4-34 read as follows:

4-35 (d) The district shall select a contractor through
4-36 competitive sealed proposals in either a one-step or two-step
4-37 process. The district shall prepare a request for competitive
4-38 sealed proposals, in the case of a one-step process, or a request
4-39 for qualifications, in the case of a two-step process, that
4-40 includes construction documents, selection criteria, project
4-41 scope, schedule, the time and place for receipt of proposals or
4-42 qualifications, as applicable, a statement as to whether the
4-43 selection process is a one-step or two-step process, and other
4-44 information that contractors may require to respond to the request.
4-45 The district shall state in the request for proposals or
4-46 qualifications, as applicable, the selection criteria that will be
4-47 used in selecting the successful offeror. If a one-step process is
4-48 used, the district may request, as part of the offeror's proposal,
4-49 proposed prices.

4-50 (d-1) If a two-step process is used, the district may not
4-51 request prices in the first step. In the second step, the district
4-52 may request that five or fewer offerors, selected solely on the
4-53 basis of qualifications, provide additional information, including
4-54 proposed prices.

4-55 (e) At each step, the [The] district shall receive, publicly
4-56 open, and read aloud the names of the offerors [and, if any lump-sum
4-57 prices are required to be stated, all such lump-sum prices stated in
4-58 each proposal]. At the appropriate step, the district shall read
4-59 aloud the prices, if any, stated in each proposal as the proposal is
4-60 opened. Not later than the 45th day after the date of opening the
4-61 proposals, the district shall evaluate and rank each proposal
4-62 submitted in relation to the published selection criteria.

4-63 SECTION 16. Section 62.107, Water Code, is amended to read
4-64 as follows:

4-65 Sec. 62.107. ACQUISITION AND CONVEYANCE OF LAND. (a) Any
4-66 district created under this chapter may acquire by gift, purchase,
4-67 or condemnation and may own land adjacent or accessible by road,
4-68 rail, or water to the navigable water and ports developed by it
4-69 which may be necessary or required for any and all purposes incident

5-1 to or necessary for the development and operation of the navigable
5-2 water or ports within the district, or may be necessary or required
5-3 for or in aid of the development of industries and businesses on the
5-4 land.

5-5 (b) The district may lease and grant easements on any part
5-6 of the acquired land to any person [individual or corporation] and
5-7 may charge for the lease or easement reasonable tolls, rents, fees,
5-8 or other charges. The lease or easement may be on terms and
5-9 conditions considered appropriate or advantageous to the district.
5-10 The district may use the proceeds both for the maintenance and
5-11 operation of the business of the district and for the purpose of
5-12 making the district self-supporting and financially solvent and
5-13 returning the construction costs of the improvements within a
5-14 reasonable period.

5-15 (c) The acquisition and leasing of land for the purposes
5-16 included in this section and the operation and industrial and
5-17 business development of ports and waterways are a public purpose
5-18 and a matter of public necessity.

5-19 SECTION 17. Subchapter D, Chapter 62, Water Code, is
5-20 amended by adding Section 62.123 to read as follows:

5-21 Sec. 62.123. FRANCHISES. (a) A district may grant
5-22 franchises for purposes consistent with this chapter to any person
5-23 on property owned or controlled by the district by restrictive
5-24 covenant or otherwise.

5-25 (b) No franchise shall be granted for longer than 50 years
5-26 nor shall a franchise be granted except on the affirmative vote of a
5-27 majority of the commissioners present at three separate meetings of
5-28 the commission which meetings may not be closer together than one
5-29 week.

5-30 (c) No franchise shall be granted until notice of the
5-31 franchise is published at the expense of the applicant, once a week
5-32 for three consecutive weeks in a daily newspaper of general
5-33 circulation in the district. For the purposes of this subsection,
5-34 notice consists of:

5-35 (1) the text of the franchise in final form in all
5-36 material respects; or

5-37 (2) a descriptive caption stating the purpose of the
5-38 franchise and the location at which a complete copy of the franchise
5-39 in all material respects may be obtained.

5-40 (d) The franchise shall require the grantee to file the
5-41 grantee's written acceptance within 30 days after the franchise is
5-42 finally approved by the commission.

5-43 (e) Nothing in this section shall be construed as preventing
5-44 the district from granting revocable licenses or permits for the
5-45 use of limited portions of waterfront or facilities for purposes
5-46 consistent with this chapter.

5-47 SECTION 18. Section 62.153, Water Code, is amended to read
5-48 as follows:

5-49 Sec. 62.153. DUTIES OF DISTRICT TREASURER. The district
5-50 treasurer shall:

5-51 (1) open an account for all funds received by the
5-52 district treasurer [him] for the district and all district funds
5-53 which the treasurer [he] pays out;

5-54 (2) pay out money on vouchers signed by the chairman of
5-55 the commission, any two members of the commission, or the
5-56 commissioners court, or any two of any number of persons delegated
5-57 by the commission with authority to sign vouchers, provided that
5-58 the commission may, in such delegation, limit the authority of such
5-59 persons and may require that each furnish a fidelity bond in such
5-60 amount as the commission shall specify and subject to commission
5-61 approval;

5-62 (3) carefully preserve all orders for the payment of
5-63 money; [and]

5-64 (4) render a correct account to the commissioners
5-65 court of all matters relating to the financial condition of the
5-66 district as often as required by the commissioners court; and

5-67 (5) not be required to sign a check drawn on a
5-68 depository selected under Section 62.156, unless the district
5-69 treasurer is the designated officer of the district, as defined by

6-1 Section 60.271(g).

6-2 SECTION 19. Section 62.208(a), Water Code, is amended to
6-3 read as follows:

6-4 (a) A district may issue revenue bonds on the terms and
6-5 under the provisions of Chapter 111, Acts of the 43rd Legislature,
6-6 1st Called Session, 1933, or Chapter 38, Acts of the 47th
6-7 Legislature, Regular Session, 1941:

6-8 (1) to purchase, construct, improve, enlarge, extend,
6-9 and repair dams, reservoirs, water rights, water wells,
6-10 desalinization facilities, canals, pipelines, pumps, pump
6-11 stations, land, easements, rights-of-way, and other property and
6-12 facilities necessary to provide a water supply for the irrigation
6-13 of land and for industrial, commercial, domestic, municipal, and
6-14 other beneficial uses;

6-15 (2) to accomplish any of the purposes designated in
6-16 the previously mentioned two acts; and

6-17 (3) for general improvement purposes without
6-18 designating the improvement.

6-19 SECTION 20. Section 63.178(b), Water Code, is amended to
6-20 read as follows:

6-21 (b) A franchise may be granted for a period of not more than
6-22 50 [~~30~~] years.

6-23 SECTION 21. This Act takes effect immediately if it
6-24 receives a vote of two-thirds of all the members elected to each
6-25 house, as provided by Section 39, Article III, Texas Constitution.
6-26 If this Act does not receive the vote necessary for immediate
6-27 effect, this Act takes effect September 1, 2017.

6-28

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