

BILL ANALYSIS

C.S.H.B. 2194
By: Perez
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The state's port industry is responsible for a large portion of the state's economic activity and handles commodities ranging from energy and agricultural exports to imports of steel and consumer goods. While our public ports are governmental entities that are authorized by and operate under state law, they must also function like businesses and have the ability to efficiently respond to market demands and to develop and operate their facilities. C.S.H.B. 2194 seeks to help our ports operate more efficiently by making a number of changes regarding the administration of navigation districts.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2194 amends the Water Code to authorize a navigation district to respond to and fight a fire, explosion, or hazardous material incident that occurs on or adjacent to a waterway, channel, or turning basin that is located in the district's territory, regardless of whether the waterway, channel, or turning basin is located in a municipality's corporate limits, and to acquire, purchase, lease, maintain, repair, and operate facilities and equipment for the purposes of protecting life and property by detecting, responding to, and fighting such a fire, explosion, or incident.

C.S.H.B. 2194 authorizes a district to contract with a broker to lease a tract of land in the same specified manner as the commissioners court of a county. The bill establishes that a lease that requires the lessee to construct improvements on land owned by a district is not a public work contract for purposes of provisions relating to public work performance and payment bonds. The bill subjects a sale or lease of a tract of land by a district to a statutory prohibition against a district conveying or exchanging an interest in real property to an individual or private entity for the purpose of bedding or harvesting oysters.

C.S.H.B. 2194 changes references from a district's navigation and canal commission to the district with respect to the requirement to prescribe fees and charges to be collected for the use of the district's land, improvements, and facilities and for the use of applicable acquired land, improvements, or facilities. The bill expands the requirement that the fees and charges be reasonable, equitable, and sufficient to produce revenue adequate to pay applicable expenses to

also require the fees and charges to be reasonable, equitable, and sufficient to produce revenue necessary to exercise powers relating to the acquisition and maintenance of port facilities.

C.S.H.B. 2194 revises provisions relating to a hearing on district indebtedness with respect to the hearing date, public participation, and the posting and publication of the hearing notice. The bill changes the earliest date by which such a hearing must occur from 15 days to seven days from the date a commission gives notice of the hearing by resolution. The bill changes the earliest date by which the commission's secretary is to publish the notice from 10 days before the day of the hearing to not earlier than the seventh day before the date of the hearing. The bill establishes that items that may be purchased under applicable competitive bidding proposal procedures for applicable items other than construction services include items required in connection with a navigation project entered into with the United States.

C.S.H.B. 2194 removes the restriction on the number of offerors that a district may request provide additional information in the second step of a two-step process used for the selection of a contractor for construction, rehabilitation, alteration, or repair services for a facility through competitive sealed proposals.

C.S.H.B. 2194 establishes that a schedule of rates, fees, charges, rules, and ordinances that have been adopted in accordance with applicable law or district rules, including a limitation of liability for cargo loss or damage, that relates to receiving, delivering, handling, or storing property at a district facility and that is made available to the public on the district's website is enforceable by an appropriate court as an implied contract between the district and a person using the district's facilities without proof of actual knowledge of the schedule's provisions.

C.S.H.B. 2194 decreases from three separate meetings to just a single meeting the number of meetings of an Article XVI, Section 59, navigation district's navigation and canal commission at which a franchise must be approved.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2194 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions not included in the original that authorize a navigation district to do the following:

- respond to and fight a fire, explosion, or hazardous material incident that occurs on or adjacent to a waterway, channel, or turning basin that is located in the district's territory, regardless of whether the waterway, channel, or turning basin is located in a municipality's corporate limits; and
- acquire, purchase, lease, maintain, repair, and operate facilities and equipment for the purposes of protecting life and property by detecting, responding to, and fighting such a fire, explosion, or incident.

The substitute includes a provision not included in the original subjecting a sale or lease of a tract of land by a district to a statutory prohibition against a district conveying or exchanging an interest in real property to an individual or private entity for the purpose of bedding or harvesting oysters.

The substitute includes language not included in the original that does the following:

- changes from a district's navigation and canal commission to the district the entity required to prescribe fees and charges to be collected for the use of the district's land, improvements, and facilities and for the use of applicable acquired land, improvements, or facilities; and
- expands the requirement that the fees and charges be reasonable, equitable, and sufficient to produce revenue adequate to pay applicable expenses to also require the fees and charges to be reasonable, equitable, and sufficient to produce revenue necessary to exercise powers relating to the acquisition and maintenance of port facilities.

The substitute differs from the original by requiring both newspaper and online publication of a notice of a hearing on district indebtedness and requiring the online publication only if the district maintains a website, whereas the original provided for either newspaper or online publication of the notice. The original repealed a provision relating to newspaper publication of the notice whereas the substitute instead revises that provision to conform to the bill's publication period.

The substitute includes provisions not included in the original to do the following:

- establish that items that may be purchased under applicable competitive bidding proposal procedures for applicable items other than construction services include items required in connection with a navigation project entered into with the United States;
- remove the restriction on the number of offerors that a district may request provide additional information in the second step of a two-step process used for the selection of a contractor for construction, rehabilitation, alteration, or repair services for a facility through competitive sealed proposals;
- establish that a schedule of rates, fees, charges, rules, and ordinances that have been adopted in accordance with applicable law or district rules, including a limitation of liability for cargo loss or damage, that relates to receiving, delivering, handling, or storing property at a district facility and that is made available to the public on the district's website is enforceable by an appropriate court as an implied contract between the district and a person using the district's facilities without proof of actual knowledge of the schedule's provisions; and
- decrease from three separate meetings to just a single meeting the number of meetings of an Article XVI, Section 59, navigation district's navigation and canal commission at which a franchise must be approved.