

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1642
By: Creighton et al.
Ports, Select
4/13/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1642 authorizes a port authority to acquire and operate firefighting equipment—the Port of Houston has identical language in its enabling statute. S.B. 1642 provides that a port authority may contract with a broker to lease a tract of land. S.B. 1642 provides that a third-party lessee that constructs improvements on district land under the terms of a lease is not a public works contract under the Texas Government Code. S.B. 1642 clarifies these port fees and charges in statute. S.B. 1642 updates the public notice requirements and the proposal procedures. S.B. 1642 updates language on implied contracts and how ports can grant franchise.

(Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1642 amends current law relating to the administration of navigation districts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 60, Water Code, by adding Section 60.0726, as follows:

Sec. 60.0726. FIRES, EXPLOSIONS, AND HAZARDOUS MATERIALS INCIDENTS. Authorizes a navigation district (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 the corporate limits of a municipality.

SECTION 2. Amends Section 60.101, Water Code, by adding Subsections (a-1) and (e) and amending Subsection (d), as follows:

(a-1) Authorizes a district 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 fires, explosions, and hazardous materials incidents described by Section 60.0726.

(d) Authorizes a district to contract with a broker to sell or lease, rather than to sell, a tract of land in the same manner as the commissioners court of a county under Section 263.008 (Broker Agreements and Fees for the Sale of Real Property), Local Government Code.

(e) Provides that a lease that requires the lessee to construct improvements on land owned by the district is not a public work contract for purposes of Chapter 2253 (Public Work Performance and Payment Bonds), Government Code.

SECTION 3. Amends Section 60.103, Water Code, as follows:

Sec. 60.103. **PRESCRIBING FEES AND CHARGES.** Requires the district, rather than the navigation and canal commission (commission), to prescribe fees and charges to be collected for the use of the land, improvements, and facilities of the district and for the use of any land, improvements, or facilities acquired under the provisions of Subchapter E (Powers of Districts for Improvement of Port Facilities). Requires that the fees and charges be reasonable, equitable, and sufficient to produce revenue necessary to exercise the powers described by Section 60.101 (Acquisition and Maintenance of Port Facilities) and adequate to pay the expenses described by Section 60.105 (Expenses to be Paid from Current Revenues), rather than to produce revenue adequate to pay the expenses mentioned in Section 60.105 of this code.

SECTION 4. Amends Sections 60.172(b), (c), and (d), Water Code, as follows:

(b) Requires that the date of the public hearing concerning the commission's proposed indebtedness be not less than seven days, rather than 15 days, nor more than 30 days from the date of the resolution of the commission giving notice of the hearing date. Makes nonsubstantive changes.

(c) Requires that the notice published by the commission under Section 60.172 (Notice of Hearing on Indebtedness):

(1) and (2) makes no changes to these subdivisions; and

(3) inform all persons of their right to express their views at the hearing, orally or in writing, rather than their right to appear at the hearing, and contend for or protest the creation of the indebtedness.

(d) Requires the secretary of the commission to publish the notice not earlier than the seventh day before the date of the hearing, rather than to post copies of the notice for 10 days before the day of the hearing:

(1) once in a newspaper of general circulation in the district's territory that is available to residents of the district; and

(2) on the district's Internet website, if the district maintains a website, in an area of that website used to inform district residents about events such as public meetings.

Deletes existing text requiring the secretary of the commission to post copies of the notice in three public places in the district and at the door of each county courthouse located in the district.

SECTION 5. Amends the heading to Section 60.405, Water Code, to read as follows:

Sec. 60.405. **PROPOSAL PROCEDURES.**

SECTION 6. Amends Subchapter Q, Chapter 60, Water Code, by adding Section 60.502, as follows:

Sec. 60.502. **IMPLIED CONTRACTS.** Provides that a schedule of rates, fees, charges, rules, and ordinances that have been adopted in accordance with applicable law or the district's 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 Internet 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.

SECTION 7. Amends Sections 62.123(b) and (d), Water Code, as follows:

(b) Provides that no franchise shall be granted for longer than 50 years nor shall a franchise be granted except on the affirmative vote of a majority of the commissioners present at a meeting of the commission, rather than present at three separate meetings of the commission which meetings may not be closer together than one week.

(d) Requires that the franchise require the grantee to file the grantee's written acceptance of the franchise within 30 days after the franchise is granted by the commission, rather than after the franchise is finally approved by the commission.

SECTION 8. Repealer: Section 60.172(e) (relating to the requirement that the notice be published once in a certain newspaper not less than five days before the day of the hearing), Water Code.

SECTION 9. Effective date: upon passage or September 1, 2021.