

SUBJECT: Changes to governance and other revisions to Port of Houston Authority

COMMITTEE: Special Purpose Districts — committee substitute recommended

VOTE: 8 ayes — D. Bonnen, D. Miller, Alvarado, Clardy, Goldman, Krause, Stickland, E. Thompson

0 nays

1 absent — Lucio

WITNESSES: For — Ned Holmes

Against — Michel Bechtel, City of Morgan's Point; Steve Cote, City of Pasadena; Stephen DonCarlos, City of Baytown; Brenda Hellyer, Economic Alliance Houston Port Region; Jack Morman, Harris County, Precinct 2; Darrell Morrison, City of Pasadena; Wayne Riddle, City of Deer Park; Terry Sain, Harris County Mayors' and Councils' Association; David Stall, City of Shoreacres; (*Registered, but did not testify:* Chad Burke, Economic Alliance; Jimmy Burke, Port of Houston Authority; Tim Culp, Deer Park Chamber of Commerce; Rene Lara, Texas AFL-CIO; James Martin, City of La Porte Texas; Mario Martinez, City of Houston; Steve Phelps, Port of Houston Authority; Cathy Sisk, Harris County)

On — Hillary Corgey; Patricia Gonzales, Texas organizing projects; Janiece Longoria, Port of Houston Authority; Adrian Shelley, Air Alliance Houston; Bel St. John, Air Alliance Houston; Katharine Teleki, Sunset Commission staff; Leonard Waterwort, Port of Houston Authority; Theodore “Tod” Wickersham, Public Citizen Texas office

BACKGROUND: The Port of Houston Authority, originally formed in 1911, is a governmental agency organized through powers set forth in the Texas Constitution, Texas Water Code, and various general and special laws of Texas. The authority supports the 52-mile Houston Ship Channel, which includes more than 150 public and privately owned terminals and industrial facilities, and owns and operates a handful of the facilities itself.

Economic activity along the channel contributed to more than 1 million

jobs and \$178 billion in economic activity in the state, according to the Sunset Advisory Commission. Much of the activity is driven by the petrochemical industry. The channel ranked first among U.S. ports in 2011 in total foreign trade and imports and second in total trade, exports, and total domestic trade.

The authority:

- acts as the federally designated local sponsor of the channel, partnering with the U.S. Army Corps of Engineers to oversee development and maintenance of the federal waterway;
- owns and operates two container terminals and five public-use general cargo facilities;
- markets and develops trade opportunities for authority facilities and the channel;
- maintains police and fire departments, partners with industry and governmental entities on security issues, and complies with U.S. Coast Guard regulations;
- acts as the regulatory body for the Houston port pilots;
- ensures compliance with environmental regulations for activities on authority property and participates in environmental stewardship activities along the channel; and
- participates in community development activities.

The authority is overseen by a seven-member commission, with the chair jointly appointed by the City of Houston and Harris County. The other six members include two appointed by Harris County, two by the City of Houston, one by the Harris County Mayors' and Councils' Association, and one by the City of Pasadena. Members serve two-year terms.

The agency is not subject to abolishment under the Texas Sunset Act.

DIGEST:

CSHB 1642 would make adjustments to the governance, management, and operating structure of the Port of Houston Authority. It would:

- require term limits, appointment of new commissioners to replace those who had served for 12 years, and procedures to encourage timely appointments;
- require best practices and ethics standards, strategic and capital plans, internal audit procedures, and policies for and reporting of expenditures from its Promotion and Development Fund;

- transfer the authority's un-codified session law into the Special Districts Local Laws Code and repeal several obsolete provisions; and
- require the authority undergo another Sunset review in four years with the cost of the review paid by the authority.

Governance. CSHB 1642 would maintain the existing, locally appointed, seven-member commission but add staggered, two-year terms limited to 12 years. Current terms would expire on October 1, 2013, and anyone who had previously served for 12 years would be ineligible for reappointment.

CSHB 1642 would specify the date, location, and voting procedures for the joint appointment of the commission chair by the City of Houston and Harris County. If appointments of the chair were not made according to the new procedures and time lines, the power to make appointments would rotate to the governor. For all other appointments, the appointment power would first rotate to another local appointing entity and then, if not made in a timely manner, to the governor.

Best practices and ethics. CSHB 1642 would provide best practices and ethics provisions for the commission and commissioners, including:

- conflicts of interest requirements;
- filing of financial statements with the authority and the Texas Ethics Commission;
- training requirements;
- grounds for the removal from office;
- adoption of policies documenting commission governance;
- requiring the appointment of an executive director of the authority every two years;
- standards of conduct and ethics and establishment of an abuse hotline;
- a requirement for complaints policy and public involvement;
- adoption of an expense policy; and
- adoption of a whistleblower policy.

Promotion and Development Fund. The authority would adopt policies and provide public reports about its Promotion and Development Fund expenditures.

Strategic and capital plans. The authority would develop strategic plans,

including a long-range plan adopted by the commission, and an annual capital plan adopted by the commission, and would provide public access to budget and planning information.

Internal audits. The commission would establish an internal audit procedure and create an internal audit task force consisting of commissioners. The Harris County auditor could conduct a financial audit of the authority as part of an annual, countywide risk assessment and audit plan.

Codification and repealers. CSHB 1642 would transfer the authority's un-codified session law into the Special Districts Local Laws Code and repeal several outdated and obsolete provisions, including validation clauses, and outdated language regarding bonds that have been paid.

Effective date. This bill would take September 1, 2013.

SUPPORTERS
SAY:

CSHB 1642 would improve the management and operating structure of the Port of Houston Authority and provide accountability for the commission that oversees it.

Governance. During the last few years, the Port of Houston Authority has endured public criticism, including allegations of misconduct by top officials, that have contributed to public skepticism about its governance. Ongoing problems with the authority have not been dealt with adequately at the local level.

A lack of clear statutory parameters for commissioner terms has led to haphazard appointment dates and a trend of continually reappointed members. Current requirements are that the terms should be two years or until a successor is qualified. The start and end dates of each commissioner's term are not described and are left to each appointing entity to determine. The result is a confusing scheme in which reappointment dates can slip and service time can be stretched indefinitely without the member having to go through the appointment process. This practice limits accountability for members and appointing entities. By contrast, most state agency boards have staggered terms that clearly expire on a date specified in statute in order to encourage the orderly transition of members.

CSHB 1642 would reset current commissioners' terms and limit terms to

12 years, preventing anyone who had previously served for 12 years from being eligible for reappointment. This would make four of the seven current members ineligible for reappointment. The Port of Corpus Christi, the most comparable Texas port with multiple appointing entities, has term limits of 12 years.

The bill also would add requirements to encourage timely appointments while maintaining local control. Clear direction on member terms and appointments would allow the authority to start new, foster accountability, and prevent the development of a potentially detrimental power base. The authority may be a local entity by name and organization, but its impact extends beyond the boundaries of the population whose trust and support it needs to succeed.

Best practices and ethics. CSHB 1642 would require standard best practices to promote ethics and good governance for the commission and authority staff. The combination of best practices, general state laws, and standard Sunset provisions would promote accountability and trust in the commission and the organization. The authority would benefit from clear, specific guidelines, such as standard financial disclosure and conflict-of-interest provisions to promote accountability and transparency. This would help protect against potential misuse of public office for personal gain. While general statutes contain similar concepts, applying specific provisions to the authority would clarify their application to the commission and promote greater public trust.

The authority has suffered some public mistrust and was rated poorly in a survey regarding openness and responsiveness to the public. CSHB 1642 would promote public involvement and outreach with the authority's stakeholders and the community and require the authority to adopt a policy for handling complaints. This would help promote understanding of how stakeholders could engage with the authority and what to expect from these interactions. By making this effort more comprehensive and proactive, the authority could consider ways to develop regular and more meaningful public interactions through all of its activities and programs.

Promotion and Development Fund. CSHB 1642 would require the authority to adopt policies and provide public reports about Promotion and Development Fund expenditures. Use of this fund requires additional controls and transparency to avoid future controversy and distraction.

Strategic and capital plans. The commission currently does not formally adopt the organization's strategic plan or capital plan, instead focusing on approval of individual projects as they are ready for procurement. CSHB 1642 would require the commission to approve strategic and capital plans developed by the authority. This would solidify the authority's progress toward improved planning and create a documented, justified approach to assist in explaining and measuring its goals and ultimately achieving its mission.

Internal audits. Unlike many public and private sector organizations, the authority has never had a standard internal audit function. Internal auditing allows for regular, independent evaluation and scrutiny of an organization's financial, managerial, and compliance risks and provides management and governing bodies with accurate and consistent information to evaluate operations and identify potential risks before they result in more serious problems. CSHB 1642 would require the commission to establish an internal audit procedure and create an internal audit task force consisting of commissioners. This would help achieve accountability and integrity, improve operations, and instill confidence among stakeholders and the public.

OPPONENTS
SAY:

While CSHB 1642 would make many improvements to the management and operating structure of the Port Authority, it would damage the current composition of the commission and limit the discretion of the local appointing entities. The bill also would fail to make certain improvements that could strengthen the commission.

CSHB 1642 would require commissioners who had already served 12 years be swept from office as of October 1, 2013. This would make four of the seven commission members ineligible for the appointments, leaving a void of institutional knowledge and expertise. Educating more than half of the commission would take time and could disrupt working relationships. Further, the 12-year term limit would usurp local control because appointing entities currently have the opportunity to limit terms by appointing new members, depending on the performance of current members. The bill would take that discretion from the local appointing entity and would force out valuable members by imposing an arbitrary time line.

Also, while CSHB 1642 would maintain the joint appointment of the commission chair by Harris County Commissioners Court and the City of

Houston, it would be more appropriate and enhance trust if the members of the commission elected the chair.

CSHB 1642 also would maintain the current two-year term for the commissioners. Given the complex nature of the authority's \$292 million annual budget, two years is simply not enough time for a person to learn the organization and make a meaningful contribution, and it further encourages ongoing reappointments. Commissioner terms should be lengthened from two to four years, as recommended by the Sunset Advisory Commission and included in the introduced version of the bill.

OTHER
OPPONENTS
SAY:

While CSHB 1642 would make some valuable changes, the bill would do little to ensure that the commission members had an appropriate level of expertise and that they maintained a connection to the citizens that the authority impacts and the state as a whole.

A wholly governor-appointed commission with the governor designating the chair, as provided in the introduced version of the bill, would be a more appropriate way to govern the authority. By leaving exclusive appointment power in the hands of local entities, the authority lacks a more direct link to state-level policymaking and oversight. Members of the commission are not required to have any specific qualifications beyond being property owners living in Harris County. Governance would improve by having representatives with state interests and expertise directly related to overseeing complex business operations similar to the authority's. If it were deemed appropriate to maintain a locally appointed commission, adding one member appointed by the governor would provide a much-needed link to the state.

While CSHB 1642 would consider the community by promoting public involvement and outreach, it also should require that the commission include a citizen representative from the areas along the Houston Ship Channel. This would ensure that those most affected by the authority would have a voice on the commission. Further, the authority should be required to establish a permanent Port of Houston Citizens Advisory Council consisting of members in the areas along the Houston Ship Channel.

NOTES:

Fiscal note. CSHB 1642 would not have a significant cost to the state. The Sunset Advisory Commission would be required to conduct another review of the authority during the 2016-17 biennium, but the authority

would pay the costs of \$216,084 in fiscal 2016 and \$24,009 in fiscal 2017.

Comparison of original to substitute. CSHB 1642 differs from the introduced bill in that it would:

- maintain a commission that is locally appointed, rather than governor-appointed;
- provide that the commissioners serve staggered two-year terms with a maximum of 12 years on the commission, rather than staggered four-year terms with a maximum of three terms;
- add requirements regarding appointments and specify that if appointments were not made according to the new procedures and time lines the appointing authority would rotate to another entity; and
- make many minor, technical changes, such as repealing obsolete language.

Companion bill. The companion bill, SB 203 by Whitmire, was referred to the Senate Committee on Transportation on February 25.