

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1894
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Natural Resources & Economic Development
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 1894 clarifies, updates, and improves certain statutes related to navigation districts, port authorities, and municipal port facilities. Most of the changes involve tweaks to oil, gas, and mineral leases, the lease or sale of real property, or the procurement process. C.S.S.B. 1894 is not intended to address the rights of navigation districts, port authorities, or municipal port facilities to grant oyster leases on submerged lands.

Specifically, C.S.S.B. 1894 updates inaccurate language to reflect that the navigation district, not the navigation and canal commission, is the appropriate party to a lease. The bill also clarifies language regarding certain existing procurement requirements and provides more flexibility in the procurement process. Additionally, it makes several changes related to the extension of leases in order to facilitate the financing of capital improvements. Finally, C.S.S.B. 1894 makes several changes to the Water Code pertaining to the relevant entities.

C.S.S.B. 1894 amends current law relating to the powers and duties of navigation districts, port authorities, and boards of trustees of municipal port facilities.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to a port commission is transferred to a navigation district in SECTION 14 (Section 60.405, Water Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 551.0415, Government Code, to read as follows:

Sec. 551.0415. BOARD OF TRUSTEES OR GOVERNING BODY OF MUNICIPALITY, COUNTY, OR NAVIGATION DISTRICT: REPORTS ABOUT ITEMS OF COMMUNITY INTEREST REGARDING WHICH NO ACTION WILL BE TAKEN.

SECTION 2. Amends Section 551.0415(a), Government Code, to authorize a quorum of the governing body of a municipality, county, navigation district, or board of trustees established under Chapter 54 (Harbor and Port Facilities in Certain Municipalities), Transportation Code, notwithstanding Sections 551.041 (Notice and Meeting Required) and 551.042 (Inquiry Made at Meeting), to receive from staff of the political subdivision and a member of the governing body may make a report about items of community interest during a meeting of the governing body without having given notice of the subject of the report as required by this subchapter if no action is taken and, except as provided by Section 551.042, possible action is not discussed regarding the information provided in the report. Makes a nonsubstantive change.

SECTION 3. Amends Section 60.034, Water Code, as follows:

Sec. 60.034. OIL, GAS, AND MINERAL LEASES. Authorizes a navigation district (district), rather than a navigation and canal commission (commission) to lease for oil, gas, and minerals rights-of-way, spoil grounds, spoil basins, or any other land owned by the navigation district, except for lands or flats purchased from this state under Article

8225, Revised Statutes, if it does not interfere with use of or obstruct any natural or artificial waterway of the district used for navigation purposes.

SECTION 4. Amends the heading to Section 60.035, Water Code, to read as follows:

Sec. 60.035. NOTICE OF CERTAIN OIL, GAS, AND MINERAL LEASES.

SECTION 5. Amends Section 60.035(a), Water Code, as follows:

(a) Requires a district, before the district may enter into a lease under Section 60.034 (Oil, Gas, and Mineral Leases), to have a notice requesting bids on the lease published in a newspaper of general circulation in the district. Requires that the notice be published at least once a week for two consecutive weeks before the final date for the receipt of bids. Provides that Chapter 71 (Lease for Mineral Development), Natural Resources Code, does not apply to a lease made under this section if the lease is made in accordance with this section and Sections 60.036 (Security for Bid on Oil, Gas, or Mineral Leases) and 60.037 (Award and Execution of Oil, Gas, and Mineral Leases) of this chapter.

Deletes existing text requiring the commission, before a lease may be executed by the commission under Section 60.034 of this code, to have a notice requesting bids on the lease published in a newspaper of general circulation in the district.

SECTION 6. Amends Section 60.038, Water Code, as follows:

Sec. 60.038. New heading: DISPOSITION OF INTERESTS IN REAL PROPERTY. (a) Authorizes a district to sell, exchange, or lease real property or any interest in real property, rather than all or any part of land, owned by it, whether the real property was acquired by gift or purchase, in settlement of any litigation, controversy, or claim in behalf of the district, or in any other manner, except that lands or flats heretofore purchased from the State of Texas under Article 8225, Revised Statutes, or granted by the State of Texas in any general or special act, may be sold only to the State of Texas or exchanged with the State of Texas for other lands or exchanged for adjacent littoral land as authorized by Section 61.117 (Limitations on Sales and Use of State Lands and Flats) of this code. Authorizes the district to impose restrictions on the development, use, and transfer of any real property or interest in real property in connection with its sale or exchange under this section, except for lands or flats purchased from this state under Article 8225, Revised Statutes. Deletes a reference to Revised Civil Statutes of Texas, 1925, and makes a conforming change.

(b) Requires the commission to determine by resolution that the land is no longer needed for use by the district in connection with the development of a navigation project before a district may sell or exchange real property, rather than land.

(c) Requires a sale or exchange of real property to be made as provided by Sections 60.040-60.042 (Publication of Notice for Sales and Leases in Excess of 30 Years) (Security for Bids on Land to be Sold or Leased for More than 30 Years) (Award and Execution of Deed or Lease in Excess of 30 Years). Makes a nonsubstantive change.

Deletes existing text requiring sale or lease of land to be made as provided by Sections 60.039 (Surface Lease) -60.042 of this code.

SECTION 7. Amends Section 60.039, Water Code, as follows:

Sec. 60.039. New heading: CERTAIN SURFACE LEASES. (a) Authorizes a district to lease, as lessor, the surface of real property for not more than 50 years by the entry of an order on the minutes of the commission and the execution of a lease in the manner provided by the original order. Prohibits the lease from being extended beyond the 50-year period by renewal, extension, or otherwise.

(b) Authorizes the commission or the executive director of the district, or a person authorized by the commission or the executive director, to enter into a lease, as lessor, for the surface of real property for not more than one year without entering an order on the minutes or executing the lease in the manner provided by the original order for the lease. Makes nonsubstantive changes.

Deletes existing text authorizing the commission to lease the surface of land for not more than 30 years by the entry of an order on the minutes of the commission and the execution of a lease in the manner provided by the original order and prohibits the lease from being extended beyond the 30-year period by renewal, extension, or otherwise. Deletes existing text authorizing the commission or the executive director of the district, or a person authorized by the commission or the executive director, to enter into a lease for a monthly tenancy or a tenancy from month to month and authorizing the lease term to exceed one year only if the commission enters an order on the minutes and the execution of the lease is in the manner provided by the original order for the lease.

SECTION 8. Amends Section 60.040, Water Code, as follows:

Sec. 60.040. New heading: PUBLICATION OF NOTICE FOR SALES AND LEASES IN EXCESS OF 50 YEARS. Requires the district, before making a sale of real property or a lease of real property for more than 50 years, to publish a notice in the manner provided in Section 60.035. Authorizes a district, before publication of the notice, to enter into negotiations with one or more potential buyers or lessees without affecting the validity of the sale or lease.

Deletes existing text requiring the commission, before making a sale or lease of land for more than 30 years, to publish a notice in the manner provided in Section 60.035 of this subchapter.

SECTION 9. Amends Section 60.041, Water Code, as follows:

Sec. 60.041. New heading: SECURITY FOR BIDS ON REAL PROPERTY TO BE SOLD OR LEASED FOR MORE THAN 50 YEARS. Requires that each bid submitted on real property to be sold or leased for more than 50 years under Section 60.040 to be accompanied by a certified check, cashier's check, or bidder's bond with a responsible corporate surety authorized to do business in Texas. Requires that the check or bond be in an amount equal to five percent of the bid price for the real property or 100 percent of the first rental payment under the lease and to guarantee that the bidder will perform the terms of his bid if it is accepted by the district.

Deletes existing text requiring each bid submitted on land to be sold or leased for more than 30 years to be accompanied by a certified check, cashier's check, or bidder's bond with a responsible corporate surety authorized to do business in Texas and requiring the check or bond to be in an amount equal to the bid for the land or for the first rental payment under the lease and to guarantee that the bidder will perform the terms of his bid if it is accepted by the commission.

SECTION 10. Amends Section 60.042(a), Water Code, to authorize the district, rather than commission, to sell or lease in accordance with Section 60.040 all or any part of the real property, rather than land, to the highest and best bidder for an amount which is not less than the reasonable market value in the locality at the time and place of the sale or lease after notice is published under Section 60.040 and make a nonsubstantive change.

SECTION 11. Amends Section 60.071, Water Code, as follows:

Sec. 60.071. GENERAL RULE-MAKING AUTHORITY. Authorizes the commission of a district which owns, operates, and maintains wharves, docks, piers, sheds, warehouses, and other similar terminal facilities which are not located inside the boundaries of any incorporated city, town, or village to pass, amend, and repeal any

ordinance, rule, or police regulation which is not contrary to the constitution or laws of this state and which is necessary to protect the property and to promote the health, safety, and general welfare of persons using the property or living or working near the property.

SECTION 12. Amends Section 60.124, Water Code, as follows:

Sec. 60.124. GIFTS, GRANTS, AND DONATIONS. Authorizes a district to accept a gift, grant, donation, or bequest of money, services, equipment, goods, or other tangible or intangible property from any source for any district purpose.

SECTION 13. Amends Sections 60.404(b) and (d), Water Code, as follows:

(b) Requires that a notice of proposed purchase be published once a week for two consecutive weeks in a newspaper with general circulation in each county in which the district is located. Requires that the notice be published in a newspaper of general circulation in the county nearest the county seat of the county in which the district is located or the county in which the greatest amount of the district's territory is located if there is no newspaper of general circulation in a county in which the district is located.

(d) Requires that the specifications:

(1)-(3) makes no change to these subdivisions; and

(4) indicate whether a small business development program, local preference program, or other contracting program adopted by the district, rather than port commission of the port authority or district, applies to the purchase and, if so, where a copy of the program requirements may be obtained.

Deletes existing text requiring that a notice of proposed purchase be published once a week for two consecutive weeks in a newspaper with general circulation in each county in which the district or port authority is located and requires that the first notice be published not later than the 14th day before the date the bids are to be opened. Deletes existing text requiring that the notice for that county be given by posting the notice in a prominent place in the courthouse of that county for not less than 14 days before the date the bids are to be opened if there is no newspaper of general circulation in a county in which the district or port authority is located.

SECTION 14. Amends Section 60.405, Water Code, as follows:

Sec. 60.405. PROPOSAL PROCEDURES. (a) Authorizes items other than construction services valued at more than the amount authorized by Section 60.403(a) for routine purchases or contracts to be purchased under the procedure provided by this section, rather than authorizes insurance or high technology items to be purchased under the procedure provided by this section.

(b) Requires that quotations be solicited by the district or its broker through a request for proposals from as many sources as are reasonably available. Makes no further change to this subsection.

(c) Makes a nonsubstantive change to this subsection.

(d) Requires that the award of the contract be made by the port commission in open session to the responsible offerer whose proposal is determined to provide the best value to the district, rather than is determined to be the lowest evaluated offer resulting from negotiation, giving consideration to evaluation factors set forth in the request for proposals.

(e) Prohibits information in proposals from being disclosed to the public, rather than to competing offerers, until the contract is awarded, if so provided in the request for proposals. Makes no further change to this subsection.

(f) Authorizes a district, rather than port commission, to adopt rules relating to negotiations to be conducted with responsible offerers submitting proposals. Makes no further change to this subsection.

SECTION 15. Amends the heading to Section 60.407, Water Code, to read as follows:

Sec. 60.407. OPENING SEALED PROPOSALS AND BIDS.

SECTION 16. Amends Section 60.407(a), Water Code, to require an official of the district, rather than the district or port authority, to open the bids and competitive sealed proposals on the date specified in the notice. Makes no further change to this subsection.

SECTION 17. Amends Section 60.409(b), Water Code, to require that the information furnished proposers or bidders, if a district, rather than a district or port authority, uses unit pricing in its notice, specify the approximate quantities estimated on the best available information, or other quantities reasonably specified to permit comparison of proposals or bids, and the total contract amount may be based on estimated maximum quantities, but the compensation paid the bidder must be based on the actual quantities purchased.

SECTION 18. Amends Section 60.458, Water Code, as follows:

Sec. 60.458. PURCHASE CONTRACT AWARD CRITERIA. Authorizes the district, except as provided by this subchapter, in determining to whom to award a contract, to consider certain criteria, including to consider the impact on the ability of the district to comply with laws and rules relating to historically underutilized businesses and on the district's small business development program, local preference program, or other contracting program adopted by the district, rather than approved by the district, if any. Makes nonsubstantive changes and makes no further change to this section.

SECTION 19. Amends Section 60.463, Water Code, by amending Subsections (d) and (e) and adding Subsection (d-1), as follows:

(d) Requires the district to select a contractor through competitive sealed proposals in either a one-step or two-step process. Requires the district to prepare a request for competitive sealed proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes construction documents, selection criteria, project scope, schedule, the time and place for receipt of proposals or qualifications, as applicable, a statement as to whether the selection process is a one-step or two-step process, and other information that contractors may require to respond to the request. Requires the district to state in the request for proposals or qualifications, as applicable, the selection criteria that will be used in selecting the successful offeror. Authorizes the district to request, as part of the offeror's proposal, proposed prices if a one-step process is used.

(d-1) Prohibits the district from requesting prices in step one if a two-step process is used. Authorizes the district in step two to request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including proposed prices.

(e) Requires the district, at each step, to receive, publicly open, and read aloud the names of the offerors. Requires the district to read aloud the prices, if any, stated in each proposal as the proposal is opened at the appropriate step. Requires the district to evaluate and rank each proposal submitted in relation to the published selection criteria not later than the 45th day after the date of opening the proposals.

Deletes existing text requiring the district to receive, publicly open, and read aloud the names of the offerors and, if any lump-sum prices are required to be stated, all such lump-sum prices stated in each proposal.

SECTION 20. Amends Section 61.164(b), Water Code, to provide that no franchise shall be granted for longer than 50, rather than 30, years nor shall a franchise be granted except on the affirmative vote of a majority of the commissioners at three separate meetings of the commission which meetings may not be closer together than one week.

SECTION 21. Amends Section 62.153, Water Code, as follows:

Sec. 62.153. DUTIES OF DISTRICT TREASURER. Provides that the district treasurer shall not be required to sign a check drawn on a depository selected under Section 62.156 (Selection of Depository), unless the district treasurer is the designated officer of the district, as defined by Section 60.271(g) (defining "designated officer").

SECTION 22. Amends Section 63.178(b), Water Code, to authorize a franchise to be granted for a period of not more than 50, rather than 30, years.

SECTION 23. Effective date: upon passage or September 1, 2015.