

BILL ANALYSIS

Senate Research Center
87R7595 JXC-D

S.B. 1160
By: Taylor
Water, Agriculture & Rural Affairs
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1160 will create an entity to manage the projects identified in the Coastal Texas and Sabine Pass to Galveston Bay studies. These studies, led by the United States Army Corps of Engineers (USACE) in partnership with its state partner, the Texas General Land Office, offer solutions for the increasing frequency and intensity of storm surge flooding on the Texas Gulf Coast.

Currently, there is no entity in Texas that has authority to sign a project partnership agreement (PPA) for projects listed in the Coastal Texas Study. In order to sign a PPA with USACE an entity must have the following: the ability to tax, eminent domain, and authority to sign a PPA. A local sponsor is required in order for the state to receive federal funding for these improvements. S.B. 1160 creates an entity that meets USACE requirements to be eligible for federal funds.

As proposed, S.B. 1160 amends current law relating to the creation of the Gulf Coast Protection District; provides authority to issue bonds; provides authority to impose fees; provides authority to impose a tax; and grants the power of eminent domain.

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 Subtitle K, Title 6, Special District Local Laws Code, by adding Chapter 9502, as follows:

CHAPTER 9502. GULF COAST PROTECTION DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9502.0101. DEFINITIONS. Defines "board," "director," "district," "ecosystem restoration report," and "protection and restoration study."

Sec. 9502.0102. NATURE OF DISTRICT. Provides that the Gulf Coast Protection District (district) is a special district created under Section 59, Article XVI (General Provisions), Texas Constitution.

Sec. 9502.0103. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) Provides that the creation of the district is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution, and other public purposes stated in this chapter.

(b) Provides that the creation of the district is necessary to establish an instrumentality for protecting the coast in Brazoria, Chambers, Galveston, Harris, Jefferson, and Orange Counties in the manner provided by this chapter.

(c) Provides that the district is created to serve a public use and benefit.

(d) Provides that all land and other property included in the boundaries of the district will benefit from the works and projects accomplished by the district.

Sec. 9502.0104. DISTRICT TERRITORY. (a) Provides that the district is composed of the territory in Brazoria, Chambers, Galveston, Harris, Jefferson, and Orange Counties and territory annexed to the district as described by Subsection (b).

(b) Requires the governing body of the district by order to annex to the district the territory of a county included in the protection and restoration study at the request of the commissioners court of that county.

Sec. 9502.0105. APPLICATION OF SUNSET ACT. (a) Provides that the district is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is prohibited from being abolished under that chapter. Requires that the review be conducted under Section 325.025 (River Authorities Subject to Review), Government Code, as if the authority were a state agency scheduled to be abolished September 1, 2033, and every 12th year after that year.

(b) Requires that the limited review under this section assess the district's governance, management, operating structure, and compliance with legislative requirements.

(c) Requires that the district pay the cost incurred by the Texas Sunset Advisory Commission (Sunset) in performing the review. Requires Sunset to determine the cost, and the district to pay the amount promptly on receipt of a statement from Sunset detailing the cost.

(d) Prohibits the district from being required to conduct a management audit under Chapter 292, Title 30, Texas Administrative Code.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 9502.0151. GOVERNING BODY; TERMS. (a) Provides that the district is governed by a board of 11 directors appointed by the governor. Requires the governor to consult with the commissioners courts of Brazoria County, Chambers County, Galveston County, Harris County, Jefferson County, and Orange County before appointing the board members.

(b) Provides that directors serve staggered four-year terms.

(c) Requires the governor, when a director's term expires, to appoint a successor.

(d) Requires the governor, if a director's office becomes vacant by death, resignation, or removal, to appoint a director to serve for the remainder of the unexpired term.

(e) Requires the governor, notwithstanding Subsection (b), to designate five initial directors to serve a first term of two years. Provides that this subsection expires September 1, 2025.

Sec. 9502.0152. REMOVAL. Authorizes the governor to remove a director at any time and appoint a replacement director to serve the remainder of the unexpired term.

Sec. 9502.0153. QUALIFICATION. Requires a director, to qualify for office, to be a registered voter who resides in the district.

Sec. 9502.0154. CERTAIN CONFLICTS PROHIBITED. (a) Provides that an individual is not eligible to serve as a director if, in the preceding 24 months, the individual had an interest in or was employed by or affiliated with a person who has submitted a bid or entered into a contract for a district project.

(b) Prohibits the board from employing or appointing an individual described by Subsection (a) to work for the district.

(c) Prohibits a director from being employed professionally for remuneration in a profession related to the operation of the district during the director's term of office.

Sec. 9502.0155. REIMBURSEMENT. Provides that a director is not entitled to compensation but is entitled to reimbursement for necessary expenses incurred in carrying out the duties and responsibilities of the board.

Sec. 9502.0156. VOTING. Provides that a concurrence of a majority of the directors is required for transacting any business of the district.

SUBCHAPTER. C. POWERS AND DUTIES

Sec. 9501.0201. GENERAL DISTRICT POWERS. (a) Authorizes the district, except as provided by Subsection (b), to:

(1) establish, construct, extend, maintain, operate, or improve a coastal barrier or storm surge gate in the manner provided by Chapter 571 (Seawalls and Levees in Coastal Municipalities and Counties), Local Government Code, for a county to establish, construct, extend, maintain, or improve a seawall;

(2) exercise the authority granted to counties to conduct any project described by Chapter 571, Local Government Code;

(3) establish, construct, and maintain recreational facilities for public use and environmental mitigation facilities related to a project described by Subdivision (1) or (2); and

(4) establish, construct, maintain, or operate a project recommended in the ecosystem restoration report or the protection and restoration study.

(b) Provides that Sections 571.006 (Tax; Bonds), 571.007 (Prerequisites for Issuing Bonds; Election), 571.008 (Election Results), 571.009 (General Law Applicable to Bonds), and 571.010 (Handling of Bond Proceeds and Taxes), Local Government Code, do not apply to the district.

Sec. 9502.0202. ELECTIONS REGARDING TAXES AND BONDS. (a) Requires the district to hold an election in the manner provided by Chapter 49 (Provisions Applicable to All Districts), Water Code, to obtain voter approval before the district is authorized to impose an ad valorem tax or issue bonds payable from ad valorem taxes.

(b) Authorizes the district, without an election, to issue bonds, notes, or other obligations secured by revenue other than ad valorem taxes.

Sec. 9502.0203. REQUIREMENTS FOR CERTAIN PROJECTS. Provides that, if the district enters into an agreement with another entity to implement a project recommended in the ecosystem restoration report or the protection and restoration study, the district:

(1) is required to develop a maintenance and operation plan for the project;

(2) is authorized to enter into a partnership with a private entity to fund a local share of the cost of the project; and

(3) is authorized to use any available money to provide matching funds to the United States Army Corps of Engineers to implement the project.

Sec. 9502.0204. ACQUISITION AND DISPOSITION OF PROPERTY AND RIGHTS.

(a) Authorizes the district to purchase, lease, acquire by gift, maintain, use, and operate property of any kind appropriate for the exercise of the district's functions.

(b) Authorizes the district to acquire permits, licenses, and rights related to the exercise of the district's functions.

Sec. 9502.0205. AGREEMENTS. (a) Authorizes the district to enter into a cooperative agreement with a political subdivision, state agency, or federal agency for a purpose related to the operation or maintenance of a district project.

(b) Authorizes the district to enter into an interlocal agreement with a political subdivision for a purpose related to the construction, operation, or maintenance of a district project.

Sec. 9502.0206. CONTRACTS GENERALLY. (a) Authorizes the district to enter into contracts and execute instruments that are necessary or convenient to the exercise of the district's powers, rights, duties, and functions. Authorizes a contract to be for any term, including for the life of any facility or structure in the territory of the district.

(b) Authorizes the district and another governmental entity to enter into a contract for the operation or maintenance of an authorized project in the same way that a political subdivision may contract with another governmental entity under Chapter 472 (Miscellaneous Provisions), Transportation Code, to construct or maintain a road or highway.

(c) Provides that a public agency or political subdivision is authorized to:

(1) enter into a contract with the district;

(2) determine, agree, and pledge that all or any part of its payments under a contract with the district are required to be payable from any source, subject only to the authorization by a majority vote of the governing body of such public agency or political subdivision of the contract, pledge, and payments;

(3) use and pledge any available revenues or resources for and to the payment of amounts due under a contract with the district as an additional source of payment or as the sole source of payment and agree with the district to assure the availability of revenue and resources when required; and

(4) fix, charge, and collect impact fees and utility charges, if the public agency or political subdivision is otherwise authorized to impose the fees and charges, and to use and pledge revenue from the fees or charges to make payments to the district required under a contract with the district.

Sec. 9502.0207. CERTAIN CONTRACTS. (a) Provides that this section applies only to a contract for construction or repair, for purchase of material, equipment, or supplies; or for services other than technical, scientific, legal, fiscal, or other professional services.

(b) Requires the district, if a contract will require an estimated expenditure of more than \$25,000, or if a contract is for a term of more than five years, to publish a notice to bidders once each week for three consecutive weeks before the date set for awarding the contract, and to award the contract to the lowest and best bidder.

(c) Requires that the notice under Subsection (b):

(1) state the time and place the bids will be opened;

(2) describe the general nature of the work to be done, the material, equipment, or supplies to be purchased, or the nonprofessional services to be rendered; and

(3) state the terms on which copies of the plans, specifications, or other pertinent information may be obtained.

(d) Requires that the notice be published in a newspaper of general circulation in the county or counties in which the contract is to be performed. Provides that, in addition to publishing notice in a newspaper of general circulation, the notice is authorized to also be published in any other appropriate publication.

(e) Requires a person desiring to bid on the construction of any work advertised as provided by this section to, on written application to the board, be furnished with a copy of the detailed plans and specifications or other detailed engineering and architectural documents showing the work to be done. Authorizes the district to charge a fee to cover the cost of providing the copy.

(f) Requires that all bids be in writing, sealed and delivered to the board, and accompanied by a certified check on a bank located in this state, or a bid bond from a company approved by the board, in an amount equal to at least one percent of the total amount bid.

(g) Requires that the amount of the check or bond be forfeited to the district if the successful bidder fails or refuses to enter into a proper contract, or to furnish bond as required by law.

(h) Authorizes the board to reject any or all bids.

(i) Requires that bids be opened at the time and place specified in the notice and be announced by the board. Requires that the place where the bids are opened and announced be open to the public.

(j) Provides that the contract price of all construction contracts of the district are authorized to be made in partial payment as the work progresses, but the payments are prohibited from exceeding 90 percent of the amount due at the time of each payment. Requires the board, during the progress of the work, to inspect the work or cause the work to be inspected by a district employee. Requires the board, on the completion of any contract in accordance with the contract's terms, to pay the balance due on the contract.

(k) Requires the person to whom a contract is awarded to provide the performance and payment bonds required by law.

(l) Provides that this section does not prohibit the district from purchasing surplus property from the United States by contract and without advertising for bids.

(m) Requires an officer, agent, or employee of the district who has a financial interest in a contract of the types described by Subsection (a) to disclose that fact to the board before the board votes on the acceptance of the contract.

(n) Provides that, notwithstanding any provision of any charter of any municipality, contracts between the authority and a municipality are not required to be approved by the voters of the municipality at an election.

(o) Provides that, in an emergency, the district is not required to comply with the bidding procedures described by this section and is authorized to award a contract necessary to protect and preserve the public health and welfare or the properties of the district.

Sec. 9502.0208. NAVIGATION DISTRICT AUTHORITY. Provides that, except as provided by Section 9502.0209(b), an order or action of a navigation district relating to the operation or maintenance of a district project supersedes an order or action of the district to the extent of any conflict.

Sec. 9502.0209. AUTHORITY TO DEVELOP BARRIER CLOSURE PROCEDURES. (a) Requires the district, if the district implements a project to create a coastal barrier, to develop closure procedures in conjunction with each navigation district affected by the barrier or closure.

(b) Prohibits a navigation district from unilaterally stopping a closure that is proceeding in accordance with procedures developed under this section.

Sec. 9502.0210. ANNUAL REPORT REQUIRED. Requires the district to annually submit a report to the legislature, the Legislative Budget Board, the General Land Office, and the commissioners court of each county in which the district is located. Requires that the report:

(1) describe the district's financial condition and operations during the preceding year;

(2) propose a budget for the following year; and

(3) describe generally the work proposed for the following year.

Sec. 9502.0211. EMINENT DOMAIN. Authorizes the district to exercise the power of eminent domain to acquire a fee simple or other interest in any type of property if the interest is necessary or convenient for the exercise of the district's functions. Requires the district to exercise the power of eminent domain in the manner provided by Chapter 21 (Eminent Domain), Property Code.

SECTION 2. Provides that all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 3. (a) Provides that Section 9502.0211, Special District Local Laws Code, as added by Section 1 of this Act, takes effect only if this Act receives a two-thirds vote of all the members elected to each house.

(b) Provides that, if this Act does not receive a two-thirds vote of all the members elected to each house, Subchapter C, Chapter 9502, Special District Local Laws Code, as added by Section 1 of this Act, is amended by adding Section 9502.0211, as follows:

Sec. 9502.0211. NO EMINENT DOMAIN POWER. Prohibits the district from exercising the power of eminent domain.

(c) Provides that this section is not intended to be an expression of a legislative interpretation of the requirements of Section 17(c) (relating to authorizing the legislature, on or after January 1, 2010, to enact a general, local, or special law granting the power of eminent domain to an entity only on a two-thirds vote of all the members elected to each house), Article I (Bill of Rights), Texas Constitution.

SECTION 4. Effective date: upon passage or September 1, 2021.