

By: Vasut, Thompson of Brazoria

H.B. No. 5336

Substitute the following for H.B. No. 5336:

By: Canales

C.S.H.B. No. 5336

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the powers and duties of Port Freeport; limiting the  
3 authority of certain municipalities to regulate land use by Port  
4 Freeport; and the creation of a reinvestment zone containing  
5 property owned by Port Freeport.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Chapter 5002, Special District Local Laws Code,  
8 is amended by adding Subchapters D and E to read as follows:

9 SUBCHAPTER D. POWERS AND DUTIES

10 Sec. 5002.151. DEFINITIONS. In this subchapter:

11 (1) "Port use" means any use permitted or allowed,  
12 with or without a special use permit, in the following zoning  
13 districts under the zoning ordinance, or any additional use  
14 subsequently permitted or allowed in the following zoning districts  
15 under an amendment to the zoning ordinance:

16 (A) a zoning district designated as DT, C-1, C-2,  
17 C-3, or W-1; or

18 (B) a zoning district designated as "IN," other  
19 than heavy industrial or other heavy industrial uses as defined in  
20 the zoning ordinance.

21 (2) "Port zone" means:

22 (A) the lands within the protected zone that are  
23 located both south of West Eighth Street and east of Cherry Street;  
24 and

1           (B) all lands east of Farm-to-Market Road 1495  
2 that are included within the Plat and Dedication of the Freeport  
3 Townsite recorded in Volume 2, at Page 95 of the Brazoria County  
4 Real Property Records.

5           (3) "Protected zone" means the portion of the  
6 corporate limits of the City of Freeport as they exist on September  
7 1, 2023, that lies:

8           (A) within the enclosed space bounded by  
9 beginning at the intersection of State Highway 36 and the center of  
10 the Brazos River, then north along the center of the Brazos River to  
11 the intersection of the center of the Brazos River and the center of  
12 the DOW fresh water canal, then north and east along the center of  
13 the DOW fresh water canal to the intersection of the center of the  
14 DOW fresh water canal and Farm-to-Market Road 1495, then south  
15 along Farm-to-Market Road 1495 to the intersection of  
16 Farm-to-Market Road 1495 and State Highway 36, and then west along  
17 State Highway 36 to the intersection of State Highway 36 and the  
18 center of the Brazos River;

19           (B) within Brazoria County 2020 United States  
20 Census tract 664501 blocks 2027, 2032, and 2034;

21           (C) within the enclosed space bounded by  
22 beginning at the intersection of Farm-to-Market Road 1495 and the  
23 Intracoastal Waterway, then west along the Intracoastal Waterway to  
24 the intersection of the Intracoastal Waterway and the Brazos River,  
25 then south along the Brazos River to the Gulf of Mexico, then east  
26 along the Gulf of Mexico to the intersection of a line extending  
27 from the southern terminus of Farm-to-Market Road 1495 due south to

1 the intersection with the Gulf of Mexico, and then due north to the  
2 intersection of Farm-to-Market Road 1495 and the Intracoastal  
3 Waterway;

4 (D) adjacent to the old Brazos River channel and  
5 inside the floodgate, which is zoned as a W-1 District under the  
6 zoning ordinance, and bounded by Farm-to-Market Road 1495 on the  
7 west;

8 (E) within the portion of Brazoria County 2020  
9 United States Census tract 664200 blocks 2059, 2060, and 2061 that  
10 lies within 3,500 feet of the centerline of State Highway 332;

11 (F) within the 13.316 acre tract of land  
12 described in that certain Deed recorded in Volume 11199, at Page 471  
13 of the Brazoria County Real Property Records; or

14 (G) within the 56.751 acre tract of land  
15 described in that certain Deed of Exchange recorded in Volume  
16 86286, at Page 927 of the Brazoria County Real Property Records.

17 (4) "Zoning ordinance" means Chapter 155, Code of  
18 Ordinances, of the City of Freeport, Texas in effect on January 1,  
19 2023.

20 Sec. 5002.152. POWERS REGARDING PORTS AND FACILITIES.

21 Except as provided by Section 5002.153, the district may:

22 (1) acquire by gift, purchase, or eminent domain and  
23 own land adjacent or accessible by road, rail, or water to navigable  
24 water and ports developed by the district that is necessary for the  
25 development and operation of the navigable water or ports within  
26 the district or necessary for or in aid of the development of  
27 industries and businesses on that land; and

1           (2) construct, extend, improve, repair, maintain, and  
2 reconstruct, cause to be constructed, extended, improved,  
3 repaired, maintained, and reconstructed, and own, rent, lease, use,  
4 and operate any facility of any kind necessary or convenient to the  
5 exercise of the rights, powers, privileges, and functions granted  
6 by this chapter.

7           Sec. 5002.153. LIMITATION ON ACQUISITION AND USE OF REAL  
8 PROPERTY WITHIN THE CORPORATE LIMITS OF CERTAIN MUNICIPALITIES.

9 After the effective date of the Act enacting this section, the  
10 district shall not:

11           (1) acquire by gift, purchase, or condemnation any  
12 real property located within the protected zone unless:

13                   (A) the acquisition is of a residential lot or  
14 lots for which no change in the permitted use will be sought by the  
15 district; or

16                   (B) the acquisition is submitted to the qualified  
17 voters of the municipality within which the real property is  
18 located at an election held on a uniform election date and is  
19 approved by a majority of the votes received at the election;

20           (2) use any property owned or acquired by the district  
21 in the port zone for anything other than a port use; or

22           (3) use any property owned or acquired by the district  
23 in the protected zone that is not in the port zone for anything  
24 other than a use permitted under the zoning ordinance unless the use  
25 is approved by the governing body of the municipality in which the  
26 land is located.

27           Sec. 5002.154. CALLING ELECTION. The governing body of a

1 municipality shall call an election under Section 5002.153(3) to be  
2 held on the next uniform election date within 30 days of the  
3 municipality's receipt from the district of a written request for  
4 the election and the description of all property subject to the  
5 election.

6 Sec. 5002.155. REPLATTING OF LAND. (a) The district may  
7 replat land owned by the district in accordance with Subchapter A,  
8 Chapter 212, Local Government Code, for the purpose of combining  
9 previously platted lots for development.

10 (b) The municipal authority responsible for approving the  
11 plat shall approve a replat requested by the district for the  
12 purposes set forth in this section within 60 days following receipt  
13 of the application for replat.

14 (c) The provisions of Subsection (b) do not apply to the  
15 replatting of land by the district if the replat creates or proposes  
16 municipally owned or municipally maintained public right-of-way or  
17 municipally owned or municipally maintained water, wastewater, or  
18 stormwater infrastructure within the property being platted.

19 SUBCHAPTER E. RELATIONSHIP WITH MUNICIPALITIES

20 Sec. 5002.201. DISTRICT PROPERTY SUBJECT TO MUNICIPAL  
21 JURISDICTION. (a) This section applies only to property:

22 (1) owned or leased by the district; and

23 (2) located in:

24 (A) the district; and

25 (B) the boundaries or extraterritorial  
26 jurisdiction of a municipality with a population of less than  
27 20,000 that is wholly located in the district and whose corporate

1 limits border the Gulf of Mexico.

2 (b) Except as provided by Subsection (c), the district has  
3 exclusive land use jurisdiction over property to which this section  
4 applies.

5 (c) This section does not apply to an ordinance, rule, or  
6 other measure adopted by a municipality that:

7 (1) applies only to property within the boundaries of  
8 the municipality;

9 (2) regulates only the safety of the operations of the  
10 municipality or reasonable aesthetics, including regulations  
11 governing fire and emergency response, traffic, light, or noise;

12 (3) is commercially reasonable; and

13 (4) does not effectively prohibit development and  
14 operation of industries and businesses on property owned or leased  
15 by the district that are built in accordance with building codes  
16 adopted by the district that meet or exceed the building codes  
17 adopted by the local municipality.

18 (d) A municipality may conduct inspections to verify  
19 compliance with Subsection (c) if the inspections are conducted in  
20 a timely manner, and any differences in interpretation of  
21 applicable codes are determined in favor of the district.

22 (e) Except as provided by Subsection (c), a municipality may  
23 not adopt or enforce an ordinance, rule, or other measure that  
24 prohibits or restricts:

25 (1) the acquisition or leasing of property to which  
26 this section applies for a purpose described by Section 5002.152;

27 or

1           (2) the development of industries and businesses on  
2 property to which this section applies.

3           Sec. 5002.202. MUNICIPAL CONSENT NOT REQUIRED. Municipal  
4 consent is not required for the district to exercise a power or duty  
5 under this chapter.

6           Sec. 5002.203. DESIGNATION OF REINVESTMENT ZONE.  
7 Notwithstanding Subchapter B, Chapter 312, Tax Code, the district  
8 may submit a written request to the commissioners court of a county  
9 in which a property owned by the district is located for the  
10 commissioners court to designate the property as a reinvestment  
11 zone or area for the purposes of Chapter 312, Tax Code. The  
12 commissioners court may designate the property as a reinvestment  
13 zone or area if the commissioners court finds the criteria set forth  
14 in Section 312.202, Tax Code, are met for the property as if a  
15 municipality in which the property is located were creating the  
16 zone.

17           Sec. 5002.204. ENFORCEMENT OF SUBCHAPTERS. (a) The  
18 provisions of Subchapters D and E may be enforced only through  
19 mandamus or declaratory or injunctive relief. A political  
20 subdivision's immunity from suit is waived in regard to an action  
21 under this subchapter.

22           (b) A court may award court costs and reasonable and  
23 necessary attorney's fees to the prevailing party in an action  
24 under this subchapter.

25           Sec. 5002.205. EFFECT OF INVALIDITY OF CERTAIN PROVISIONS.  
26 (a) This section applies only to a municipality with a population  
27 of more than 5,000 that is wholly located in the district and to

1 property:

2 (1) owned or leased by the district;

3 (2) located in the district and within seven miles of  
4 the Gulf of Mexico; and

5 (3) located in the corporate limits or  
6 extraterritorial jurisdiction of a municipality that is subject to  
7 this section.

8 (b) If enforcement of any part of Section 5002.201 is ever  
9 permanently enjoined or held to be invalid or to violate the  
10 requirements of the Texas Constitution by a final, non-appealable  
11 order or judgment of a court of competent jurisdiction, other than  
12 pursuant to an action initiated by the district, then:

13 (1) all of Section 5002.201 will be automatically  
14 enjoined from enforcement; and

15 (2) the authority of a municipality subject to this  
16 section to regulate property subject to this section under Chapter  
17 211 or 212, Local Government Code, or any local code or ordinance  
18 shall be expressly preempted and Chapter 232, Local Government  
19 Code, shall exclusively apply to such property.

20 (c) If enforcement of any part of Section 5002.153 or  
21 5002.154 is ever permanently enjoined or held to be invalid or to  
22 violate the requirements of the Texas Constitution by a final,  
23 non-appealable order or judgment of a court of competent  
24 jurisdiction, other than pursuant to an action initiated by a  
25 municipality, then Section 5002.201 will be automatically enjoined  
26 from enforcement.

27 SECTION 2. This Act takes effect immediately if it receives

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1 a vote of two-thirds of all the members elected to each house, as  
2 provided by Section 39, Article III, Texas Constitution. If this  
3 Act does not receive the vote necessary for immediate effect, this  
4 Act takes effect September 1, 2023.