

By: Vasut

H.B. No. 5336

A BILL TO BE ENTITLED

AN ACT

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

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

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

SUBCHAPTER D. POWERS AND DUTIES

Sec. 5002.151. DEFINITIONS. As used in this chapter:

(1) "Port use" shall mean any use permitted or allowed (with or without a special use permit) in the following zoning districts under the zoning ordinance, or any additional use subsequently permitted or allowed in the following zoning districts under an amendment to the zoning ordinance:

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

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

(2) "Port zone" means:

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

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

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 within the enclosed space either:

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

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

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

1 Farm-to-Market Road 1495 and the Intercoastal Waterway; or

2 (D) located adjacent to the old Brazos River  
3 channel and inside the floodgate, which is zoned as a W-1 District  
4 under the zoning ordinance, and bounded by F.M. 1495 on the east,  
5 S.H. 36 / S.H. 288 on the south, and the Brazos River diversion  
6 channel on the west.

7 (4) "Zoning ordinance" means Chapter 155, Code of  
8 Ordinances, of the City of Freeport, Texas in effect on January 1,  
9 2023.

10 Sec. 5002.152. POWERS REGARDING PORTS AND FACILITIES.  
11 Except as expressly set forth in section 5002.153 of this  
12 subchapter, the district may:

13 (1) acquire by gift, purchase, or eminent domain and  
14 own land adjacent or accessible by road, rail, or water to navigable  
15 water and ports developed by the district that is necessary for the  
16 development and operation of the navigable water or ports within  
17 the district or necessary for or in aid of the development of  
18 industries and businesses on that land; and

19 (2) construct, extend, improve, repair, maintain, and  
20 reconstruct, cause to be constructed, extended, improved,  
21 repaired, maintained, and reconstructed, and own, rent, lease, use,  
22 and operate any facility of any kind necessary or convenient to the  
23 exercise of the rights, powers, privileges, and functions granted  
24 by this chapter.

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

27 After the effective date of this Act, the district shall not:

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

3           (1) the acquisition is of a residential lot or lots for  
4 which no change in the permitted use will be sought by the district;  
5 or

6           (2) the acquisition is submitted to the qualified  
7 voters of the municipality within which the real property is  
8 located at an election held on a uniform election date and is  
9 approved by a majority of the votes received at the election;

10       (b) use any property now owned or hereafter acquired by the  
11 district in the port zone for anything other than a port use; or

12       (c) use any property now owned or hereafter acquired by the  
13 district in the protected zone that is not in the port zone for  
14 anything other than a use permitted under the zoning ordinance  
15 unless such use is approved by the governing body of the  
16 municipality in which such land is situated.

17       Sec. 5002.154. CALLING ELECTION. The governing body of a  
18 municipality shall call for the election contemplated by Section  
19 5002.153(c) to be held on the next allowable uniform election date  
20 within thirty (30) days of the municipality's receipt from the  
21 district of a written request for the election and the description  
22 of all property subject to the election.

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

27       (b) The municipal authority responsible for approving the

1 plat shall approve a replat requested by the district for the  
2 purposes set forth in this section within 60 days following receipt  
3 of the application for replat.

4 SUBCHAPTER E. RELATIONSHIP WITH MUNICIPALITIES

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

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

8 (2) located in:

9 (A) the district; and

10 (B) the boundaries or extraterritorial  
11 jurisdiction of a municipality with a population of less than  
12 20,000 that is wholly located in the district and whose corporate  
13 limits border the Gulf of Mexico.

14 (b) Except as provided by subsection (c), the district has  
15 exclusive land use jurisdiction over property to which this section  
16 applies.

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

19 (1) applies only to property within the boundaries of  
20 the municipality;

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

24 (3) is commercially reasonable; and

25 (4) does not effectively prohibit development and  
26 operation of industries and businesses on property owned or leased  
27 by the district.

1       (d) Except as provided by Subsection (c), a municipality may  
2 not adopt or enforce an ordinance, rule, or other measure that  
3 prohibits or restricts:

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

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

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

12       Sec. 5002.203. DESIGNATION OF REINVESTMENT ZONE UNDER  
13 CHAPTER 312, TAX CODE. Notwithstanding Subchapter B, Chapter 312,  
14 Tax Code, upon receipt of a written request by the district, the  
15 commissioners court for the county where the property is located  
16 may designate any property owned by the district as a reinvestment  
17 zone or area for purposes of Chapter 312, Tax Code, if the  
18 commissioners court finds the criteria set forth in Section  
19 312.202, Tax Code, is met for the property as if the municipality in  
20 which the property is located were creating the zone.

21       Sec. 5002.204. ENFORCEMENT OF SUBCHAPTER. (a) The  
22 provisions of subchapters D and E may be enforced only through  
23 mandamus or declaratory or injunctive relief. A political  
24 subdivision's immunity from suit is waived in regard to an action  
25 under this chapter.

26       (b) A court may award court costs and reasonable and  
27 necessary attorney's fees to the prevailing party in an action

1 under this subchapter.

2 Sec. 5002.205. EFFECT OF INVALIDITY OF CERTAIN PROVISIONS.

3 (a) This section applies only to a municipality with a population  
4 of more than 5,000 that is wholly located in the district and only  
5 to property:

6 (1) owned or leased by the district;

7 (2) located in the district and within 7 miles of the  
8 Gulf of Mexico; and

9 (3) located in the boundaries or extraterritorial  
10 jurisdiction of a municipality that is subject to this section.

11 (b) If enforcement of any part of section 5002.201 is ever  
12 permanently enjoined or held to be invalid or to violate the  
13 requirements of the Texas Constitution by a final, non-appealable  
14 order or judgment of a court of competent jurisdiction, then:

15 (1) all of section 5002.201 will be automatically  
16 enjoined from enforcement; and

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

22 (c) If enforcement of any part of sections 5002.153 or  
23 5002.154 is ever permanently enjoined or held to be invalid or to  
24 violate the requirements of the Texas Constitution by a final,  
25 non-appealable order or judgment of a court of competent  
26 jurisdiction, then section 5002.201 will be automatically enjoined  
27 from enforcement.

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