

By: Bettencourt

S.B. No. 2349

A BILL TO BE ENTITLED

AN ACT

relating to consent to the creation of certain political subdivisions.

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

SECTION 1. Sections 42.042(a), (b), (c), and (f), Local Government Code, are amended to read as follows:

(a) A political subdivision, one purpose of which is to supply fresh water for domestic or commercial use or to furnish sanitary sewer services, roadways, or drainage, may not be created in the extraterritorial jurisdiction of a municipality unless the governing body of the municipality gives its written consent by ordinance or resolution in accordance with this subsection and the Water Code upon the written request to the municipality by the persons required by law to seek creation of the political subdivision. In giving its consent, the municipality may not place any conditions or other restrictions on the creation of the political subdivision other than those expressly permitted by Sections 54.016(i) and 54.0167 [~~54.016(e) and (i)~~], Water Code. A request for municipal consent to create a political subdivision and the provision of related documents does not constitute an event that triggers or deems consent to municipal annexation of the land pursuant to an agreement under Subchapter G, Chapter 212, or Section 43.016.

(b) If the governing body fails or refuses to give its

1 consent for the creation of the political subdivision, including a  
2 water district previously created by an act of the legislature, on  
3 mutually agreeable terms within 30 [~~90~~] days after the date the  
4 governing body receives a written request for the consent, [~~a~~  
5 ~~majority of the qualified voters of the area of the proposed~~  
6 ~~political subdivision and the owners of at least 50 percent of the~~  
7 ~~land in the proposed political subdivision may petition the~~  
8 ~~governing body to make available to the area the water, sanitary~~  
9 ~~sewer services, or both that would be provided by the political~~  
10 ~~subdivision.~~

11 [~~(c) If, within 120 days after the date the governing body~~  
12 ~~receives the petition, the governing body fails to make a contract~~  
13 ~~with a majority of the qualified voters of the area of the proposed~~  
14 ~~political subdivision and the owners of at least 50 percent of the~~  
15 ~~land in the proposed political subdivision to provide the~~  
16 ~~services,~~] that failure or refusal constitutes the governing body's  
17 consent to the creation of the proposed political subdivision.

18 (f) The persons who requested city consent, or their  
19 successors and assigns, [~~If the municipality fails or refuses to~~  
20 ~~give its consent to the creation of the political subdivision,~~  
21 ~~including a water district previously created by an act of the~~  
22 ~~legislature, or fails or refuses to execute a contract providing~~  
23 ~~for the water or sanitary sewer services requested within the time~~  
24 ~~limits prescribed by this section, the applicant] may petition the  
25 Texas Commission on Environmental Quality for the creation of the  
26 political subdivision or the inclusion of the land in a political  
27 subdivision. The commission shall allow creation or confirmation~~

1 of the creation of the political subdivision or inclusion of the  
2 land in a proposed political subdivision on finding that the  
3 municipality [~~either does not have the reasonable ability to serve~~  
4 ~~or~~] has failed or refused to give consent [~~to make a legally binding~~  
5 ~~commitment with sufficient funds available to provide water and~~  
6 ~~wastewater service adequate to serve the proposed development at a~~  
7 ~~reasonable cost to the landowner. The commitment must provide that~~  
8 ~~construction of the facilities necessary to serve the land will~~  
9 ~~begin within two years and will be substantially completed within~~  
10 ~~4-1/2 years after the date the petition was filed with the~~  
11 ~~municipality~~].

12 SECTION 2. Section 42.0425(a), Local Government Code, is  
13 amended to read as follows:

14 (a) A political subdivision, one purpose of which is to  
15 supply fresh water for domestic or commercial use or to furnish  
16 sanitary sewer services, roadways, or drainage, may not add land  
17 that is located in the extraterritorial jurisdiction of a  
18 municipality unless the governing body of the municipality gives  
19 its written consent by ordinance or resolution in accordance with  
20 Section 42.042 [~~this section~~] and the Water Code. In giving its  
21 consent, the municipality may not place any conditions or other  
22 restrictions on [~~the expansion of~~] the political subdivision other  
23 than those expressly permitted by Section 54.0167 [~~54.016(e)~~],  
24 Water Code.

25 SECTION 3. The heading to Section 54.016, Water Code, is  
26 amended to read as follows:

27 Sec. 54.016. CONSENT OF CITY TO IN-CITY DISTRICT.

1 SECTION 4. Section 54.016, Water Code, is amended by  
2 amending Subsections (a), (b), (c), and (d) and adding Subsections  
3 (a-1), (a-2), and (a-3) to read as follows:

4 (a) This section applies only to the inclusion of land  
5 within the corporate limits of a city in a district. Section  
6 42.042, Local Government Code, applies to the inclusion of land  
7 within the extraterritorial jurisdiction of a city in a district.

8 (a-1) No land within the corporate limits of a city [~~or~~  
9 ~~within the extraterritorial jurisdiction of a city,~~] shall be  
10 included in a district unless the city grants its written consent,  
11 by resolution or ordinance, to the inclusion of the land within the  
12 district in accordance with [~~Section 42.042, Local Government Code,~~  
13 ~~and~~] this section.

14 (a-2) The request to a city for its written consent to the  
15 creation of a district, shall conform to the requirements of  
16 Section 54.0166 [~~be signed by a majority in value of the holders of~~  
17 ~~title of the land within the proposed district as indicated by the~~  
18 ~~county tax rolls. A petition for the written consent of a city to~~  
19 ~~the inclusion of land within a district shall describe the~~  
20 ~~boundaries of the land to be included in the district by metes and~~  
21 ~~bounds or by lot and block number, if there is a recorded map or plat~~  
22 ~~and survey of the area, and state the general nature of the work~~  
23 ~~proposed to be done, the necessity for the work, and the cost of the~~  
24 ~~project as then estimated by those filing the petition. If, at the~~  
25 ~~time a petition is filed with a city for creation of a district, the~~  
26 ~~district proposes to connect to a city's water or sewer system or~~  
27 ~~proposes to contract with a regional water and wastewater provider~~

1 ~~which has been designated as such by the commission as of the date~~  
2 ~~such petition is filed, to which the city has made a capital~~  
3 ~~contribution for the water and wastewater facilities serving the~~  
4 ~~area, the proposed district shall be designated as a "city service~~  
5 ~~district." If such proposed district does not meet the criteria for~~  
6 ~~a city service district at the time the petition seeking creation is~~  
7 ~~filed, such district shall be designated as a "noncity service~~  
8 ~~district." The city's consent shall not place any restrictions or~~  
9 ~~conditions on the creation of a noncity service district as defined~~  
10 ~~by this chapter other than those expressly provided in Subsection~~  
11 ~~(c) of this section and shall specifically not limit the amounts of~~  
12 ~~the district's bonds. A city may not require annexation as a~~  
13 ~~consent to creation of any district. A city shall not refuse to~~  
14 ~~approve a district bond issue for any reason except that the~~  
15 ~~district is not in compliance with valid consent requirements~~  
16 ~~applicable to the district].~~

17       (a-3) If a city grants its written consent without the  
18 concurrence of the petitioner [~~applicant~~] to the creation of a  
19 [~~noncity service~~] district containing conditions or restrictions  
20 that the petitioning land owner or owners reasonably believe exceed  
21 the city's powers, such land owner or owners, or their successors  
22 and assigns, may petition the commission to create the district and  
23 to modify the conditions and restrictions of the city's consent.  
24 The commission may declare any provision of the consent to be null  
25 and void. The commission may approve the creation of a district  
26 that includes any portion of the land covered by the city's consent  
27 to creation of the district. The legislature may create and may

1 validate the creation of a district that includes any portion of the  
2 land covered by the city's consent to the creation of the district.

3 (b) If the governing body of a city fails or refuses to grant  
4 permission for the inclusion of land [~~within its extraterritorial~~  
5 ~~jurisdiction~~] in a district, including a district created by a  
6 special act of the legislature, within 60 [~~90~~] days after receipt of  
7 a written request, the petitioning land [~~a majority of the electors~~  
8 ~~in the area proposed to be included in the district or the~~] owner or  
9 owners, or their successors and assigns, [~~of 50 percent or more of~~  
10 ~~the land to be included~~] may petition the governing body of the city  
11 and request the city to provide [~~make available to the land~~] the  
12 water or sanitary sewer service on the terms, conditions, cost, and  
13 time frame as contemplated to be provided by the district.

14 (c) If the governing body of the city and [~~a majority of the~~  
15 ~~electors or~~] the petitioning land owner or owners, or their  
16 successors and assigns, [~~of 50 percent or more of the land to be~~  
17 ~~included~~] in the district fail to execute a mutually agreeable  
18 contract providing for the water or sanitary sewer service  
19 requested within 60 [~~120~~] days after receipt of the petition, the  
20 failure shall constitute authorization for the inclusion of the  
21 land in the district under the provisions of this section.  
22 Authorization for the inclusion of such land within the district  
23 under the provisions of this section shall mean only authorization  
24 to initiate proceedings to include the land within the district as  
25 otherwise provided by this Act.

26 (d) [~~The provisions of this section relating to the method~~  
27 ~~of including land in a district without securing the written~~

1 ~~consent of a city applies only to land within the extraterritorial~~  
2 ~~jurisdiction of a city and does not apply to land within the~~  
3 ~~corporate limits of a city.]~~ If the city fails or refuses to grant  
4 permission for the inclusion of land in a district or to execute a  
5 mutually agreeable contract providing for the water or sanitary  
6 sewer service requested within the time limits contained within  
7 Subsection (b) or (c) of this section, the petitioning land owner or  
8 owners, or their successors or assigns, [applicant] may petition  
9 the commission for creation of the district or inclusion of the land  
10 in a district. The commission shall allow creation or inclusion of  
11 the land in a proposed district upon a finding that the city either  
12 does not have the reasonable ability to serve or has failed to  
13 execute a mutually agreeable contract. ~~[make a legally binding~~  
14 ~~commitment with sufficient funds available to provide water and~~  
15 ~~wastewater service adequate to serve the proposed development at a~~  
16 ~~reasonable cost to the landowner. The commitment shall provide~~  
17 ~~that construction of the facilities necessary to serve the land~~  
18 ~~shall be commenced within two years, and shall be substantially~~  
19 ~~complete within four and one-half years from the date the petition~~  
20 ~~was filed with the city.]~~ Upon any appeal taken to the district  
21 court from the commission ruling, all parties to the commission  
22 hearing shall be made parties to the appeal. The court shall hear  
23 the case within 120 days from the date the appeal is filed. If the  
24 case is continued or appealed to a higher court beyond such 120-day  
25 period, the court shall require the appealing party in the case of  
26 appeal to a higher court or party requesting such continuance to  
27 post a bond or other adequate security in the amount of damages that

1 may be incurred by any party as a result of such appeal or delay from  
2 the commission action. The amount of the bond or other security  
3 shall be determined by the court after notice and hearing. Upon  
4 final disposition, a court may award damages, including any damages  
5 for delays, attorney's fees, and costs of court to the prevailing  
6 party. [~~Under no circumstances shall land within the corporate~~  
7 ~~limits of a city be included in a district without the written~~  
8 ~~consent, by ordinance or resolution, of the city.~~] The provisions  
9 of this section shall apply whether the land is proposed to be  
10 included in the district at the time of creation of a district or to  
11 be included by annexation to a district. A district shall not allow  
12 the owner of a tract to connect to the district's water or  
13 wastewater system unless such tract is a legally subdivided lot  
14 which is part of a recorded subdivision plat or is otherwise legally  
15 exempt from the subdivision requirements of the applicable  
16 governmental authority.

17 SECTION 5. Section 54.0161, Water Code, is amended to read  
18 as follows:

19 Sec. 54.0161. REVIEW OF CREATION BY CITY AND COUNTY. (a) A  
20 petitioner seeking to create a district all or part of which is to  
21 be located in the extraterritorial jurisdiction of a city shall  
22 provide evidence to the commission that the petitioner provided the  
23 city with a copy of the petition requesting creation and the  
24 associated application [~~This section applies only to a proposed~~  
25 ~~district all of which is to be located outside the corporate limits~~  
26 ~~of a municipality].~~

27 (b) A petitioner seeking [~~(a-1) Promptly after a petition~~



1 ~~is filed with the commission]~~ to create a district all of which is  
2 to be located outside the corporate limits of a city shall provide  
3 evidence to the commission that the petitioner provided the county  
4 with a copy of the petition requesting creation and the associated  
5 application [~~to which this section applies, the commission shall~~  
6 ~~notify the commissioners court of any county in which the proposed~~  
7 ~~district is to be located~~].

8 (c) As applicable under Subsection (a) or (b), a city or  
9 county may review the petition requesting creation and the  
10 associated application as to whether the project is feasible and  
11 practicable, is necessary, and would be a benefit to the land to be  
12 included in the district under Section 54.021. A city or county may  
13 reasonably request to meet with the petitioner.

14 (d) The governing body of a city or [~~(a-2) The~~  
15 ~~commissioners court of a county in which the district is to be~~  
16 ~~located may review the petition for creation and other evidence and~~  
17 ~~information relating to the proposed district that the~~  
18 ~~commissioners consider necessary. Petitioners for the creation of a~~  
19 ~~district shall submit to the county commissioners court any~~  
20 ~~relevant information requested by the commissioners court.~~

21 [~~(b) In the event the~~] county may vote [~~commissioners court~~  
22 ~~votes]~~ to submit information to the commission. In such instance,  
23 the governing body [~~or to make a recommendation regarding the~~  
24 ~~creation of the proposed district, the commissioners court]~~ shall  
25 submit to the commission, at least 30 [~~10~~] days before the date set  
26 for action on the petition, a written opinion stating:

27 (1) whether the governing body [~~commissioners court]~~

1 recommends the creation of the proposed district; and

2 (2) any findings, conclusions, and other information  
3 that the governing body [~~commissioners court~~] thinks would assist  
4 the commission in making a final determination on the petition  
5 under Section 54.021.

6 (e) [~~e~~] In passing on a petition subject to this section,  
7 the commission shall consider information relevant to the  
8 determination under Section 54.021 [~~the written opinion~~] submitted  
9 by the governing body [~~county commissioners court~~].

10 SECTION 6. Subchapter B, Chapter 54, Water Code, is amended  
11 by adding Sections 54.0166 and 54.0167 to read as follows:

12 Sec. 54.0166. PETITION FOR CITY CONSENT. A petition to a  
13 city for consent for inclusion of land within the corporate limits  
14 of a city in a district must:

15 (1) be signed by a majority in value of the holders of  
16 title of the land within the proposed district, as indicated by the  
17 county tax rolls;

18 (2) describe the boundaries of the land to be included  
19 in the district by metes and bounds or by lot and block number, if  
20 there is a recorded map or plat and survey of the area; and

21 (3) state the general nature of the work proposed to be  
22 done, the necessity for the work, and the cost of the project as  
23 then estimated by those filing the petition.

24 Sec. 54.0167. CITY CONSENT CONDITIONS. (a) A city consent  
25 to the inclusion of land within the corporate limits of the city or  
26 within the extraterritorial jurisdiction of a city in a district  
27 may impose no condition, restriction, or requirement other than the

1 requirements that:

2 (1) the district design and construct all water and  
3 sewer facilities to serve the land in accordance with the  
4 requirements of the commission or, for a district within the  
5 corporate limits of a city, the generally applicable city  
6 requirements;

7 (2) the district design and construct all streets,  
8 roads, and drainage facilities to serve the land in accordance with  
9 subdivision requirements adopted by the county in which the  
10 district is located under Section 232.003, Local Government Code,  
11 or, for a district within the corporate limits of a city, the  
12 generally applicable city requirements;

13 (3) the district engineer certify to the city that all  
14 district facilities are designed and constructed in accordance with  
15 applicable regulatory requirements;

16 (4) the purposes for which the district may issue  
17 bonds are restricted to purposes authorized by law for the  
18 district;

19 (5) bonds issued by the district will expressly  
20 provide that the district reserves the right to redeem the bonds on  
21 any date subsequent to a date not later than the 15th anniversary of  
22 the date of issuance without premium;

23 (6) bonds, other than refunding bonds, be sold by  
24 public sale only after the taking of bids;

25 (7) no bonds, other than refunding bonds, will be sold  
26 by the district for less than 95 percent of par;

27 (8) the net effective interest rate on bonds sold by

1 the district, taking into account any discount or premium as well as  
2 the interest rate borne by the bonds, will not exceed two percent  
3 above the highest average interest rate reported by the Bond Buyer  
4 in its weekly "20-Bond Index" during the one-month period next  
5 preceding the date notice of the sale of the bonds is given, and  
6 that bids for the bonds will be received not more than 45 days after  
7 notice of sale of the bonds is given, unless otherwise approved by  
8 the city or the commission;

9           (9) refunding bonds provide both gross debt service  
10 savings and net present value savings of three percent or more of  
11 the principal amount of the refunded bonds, as determined by the  
12 district financial advisor, unless otherwise approved by the city  
13 or the commission; and

14           (10) the date of the latest scheduled maturity of  
15 refunding bonds be not later than the date of the latest scheduled  
16 maturity of the refunded bonds, unless otherwise approved by the  
17 city or the commission.

18           (b) A city consent to the inclusion of land in a district may  
19 not impose a condition, restriction, or requirement other than the  
20 requirements of Subsection (a). By way of illustration, a city  
21 consent may not include a condition, restriction, or requirement  
22 that:

23           (1) limits the amounts or the timing of issuance of the  
24 bonds of the district;

25           (2) limits the maturities of the bonds of the  
26 district;

27           (3) requires annexation into the city or inclusion in

- 1 the extraterritorial jurisdiction of the city;  
2 (4) requires connection to the water or wastewater  
3 system of the city or requires the city to be the retail or  
4 wholesale water or wastewater provider, except for a district  
5 within the corporate limits of a city;  
6 (5) requires the payment of costs to design and  
7 construct streets, roads, or bridges in excess of the proposed  
8 project's rough proportionate share under Section 212.904, Local  
9 Government Code;  
10 (6) requires the payment of costs to design and  
11 construct water, sewer, or drainage facilities in excess of the  
12 district's pro rata share under the rules of the commission;  
13 (7) requires the design or construction of facilities,  
14 including water, sewer, drainage, and roads, in excess of  
15 facilities otherwise necessary to serve the proposed project;  
16 (8) requires a payment to the city, except for a  
17 reasonable fee not to exceed \$5,000 to cover the costs of processing  
18 the city's review of the creation petition and application;  
19 (9) requires the district or a developer of land  
20 within the district to pay to the city a portion of the proceeds of  
21 bonds issued by the district or any funds used by the district to  
22 reimburse a developer;  
23 (10) imposes any land use controls or zoning;  
24 (11) imposes any ordinances or platting, subdivision,  
25 or development requirements not generally applicable in the  
26 extraterritorial jurisdiction; and  
27 (12) requires a developer of land within the district

1 to enter into a development agreement.

2 (c) If a city grants its written consent to the creation of a  
3 district containing conditions or restrictions that violate this  
4 section, such conditions or restrictions are null, void, and  
5 unenforceable and a landowner may petition the commission to create  
6 the district and to modify the conditions and restrictions of a  
7 city's consent. If a city has previously granted its written  
8 consent to the creation of a district containing conditions or  
9 restrictions that violate this section, such conditions or  
10 restrictions are null, void, and unenforceable and a landowner or  
11 district may petition the commission to modify the conditions and  
12 restrictions of the city's consent. Upon the petition of a  
13 landowner or a district, or upon the commission's own motion, the  
14 commission shall declare any provision of the consent that violates  
15 this section to be null, void, and unenforceable.

16 SECTION 7. The following laws are repealed:

- 17 (1) Section 42.0425(c), Local Government Code;
- 18 (2) Section 42.043, Local Government Code; and
- 19 (3) Sections 54.016(e) and (f), Water Code.

20 SECTION 8. This Act takes effect immediately if it receives  
21 a vote of two-thirds of all the members elected to each house, as  
22 provided by Section 39, Article III, Texas Constitution. If this  
23 Act does not receive the vote necessary for immediate effect, this  
24 Act takes effect September 1, 2023.