

BILL ANALYSIS

S.B. 1726
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Urban Affairs
Committee Report (Amended)

BACKGROUND AND PURPOSE

Senate Bill 1726 creates the Cy-Fair Community Improvement District to raise money for a transportation and mobility plan; develop additional office, retail, and hotel space; strengthen its workforce; enhance the aesthetics of the area; and provide additional public safety measures for its residents.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

SECTION BY SECTION ANALYSIS

SECTION 1. CREATION OF DISTRICT. Subsection (a) provides that a special district to be known as the "Cy-Fair Community Improvement District" is a governmental agency and a political subdivision of the state. Subsection (b) authorizes the name of the district to be changed by resolution of the board. Subsection (c) provides that the creation of the district is essential to accomplish the purposes of Section 52, Article III; Section 59, Article XVI; and Section 52-a, Article III, Texas Constitution, and other public purposes stated in this Act.

SECTION 2. DECLARATION OF INTENT. Subsection (a) provides that the creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, arts, entertainment, economic development, safety, and the public welfare in the Cy-Fair community of Harris County. Subsection (b) provides that the creation of the district and this legislation are not to be interpreted to relieve the county from providing the level of services, as of the effective date of this Act, to the area in the district or to release the county from the obligations the county has to provide services to that area. Provides that the district is created to supplement and not supplant the county services provided in the area in the district. Subsection (c) provides that by creating the district and in authorizing the municipality, county, and other political subdivisions to contract with the district, the legislature has established a program to accomplish the public purposes set out in Section 52-a, Article III, Texas Constitution.

SECTION 3. DEFINITIONS. Defines "board," "county," "district," and "municipality".

SECTION 4. BOUNDARIES. Provides that the district includes all the territory contained in a certain area.

SECTION 5. FINDINGS RELATING TO BOUNDARIES. Provides that the boundaries and field notes of the district form a closure. Provides that if a mistake is made in the field notes or in copying the field notes in the legislative process, the mistake does not in any way affect certain entities or plans and policies.

SECTION 6. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. Subsection (a) provides that all the land and other property included in the district will be benefitted by the improvements and services to be provided by the district under powers conferred by Section 52, Article III; Section 59, Article XVI;

and Section 52-a, Article III, Texas Constitution, and other powers granted under this Act, and the district is created to serve a public use and benefit. Subsection (b) provides that the creation of the district is in the public interest and is essential to certain purposes. Subsection (c) provides that the district will provide certain services. Subsection (d) provides that pedestrian ways along or across a street, whether at grade or above or below the surface, and street lighting, street landscaping, and street art objects are parts of and necessary components of a street and are considered to be a street or road improvement. Subsection (e) provides that the district will not act as the agent or instrumentality of any private interest even though many private interests will be benefitted by the district, as will the general public.

SECTION 7. APPLICATION OF OTHER LAW. Subsection (a) provides that except as otherwise provided by this Act, Chapter 375, Local Government Code, applies to the district and its governing body and employees. Subsection (b) provides that Chapter 311, Government Code, applies to this Act.

SECTION 8. CONSTRUCTION OF ACT. Requires this Act to be liberally construed in conformity with the findings and purposes stated in this Act.

SECTION 9. BOARD OF DIRECTORS. Subsection (a) provides that the district is governed by a board of 11 directors who serve staggered terms of four years, with six members' terms expiring May 1 of an odd-numbered year and five members' terms expiring May 1 of the following odd-numbered year. Authorizes the board to increase or decrease the number of directors on the board by resolution, provided that it is in the best interest of the district to do so and that the board consists of not fewer than nine and not more than 30 directors. Provides that a decrease in the number of directors of the board does not affect the term of a member on the board serving at the time of the decrease. Subsection (b) provides that the imposition of a tax, assessment, or impact fee requires a vote of a majority of the directors serving.

SECTION 10. APPOINTMENT OF DIRECTORS; VACANCY. Requires the county judge and members of the governing body of the county to appoint directors from persons recommended by the board who meet the qualifications of Chapter 375D, Local Government Code. Requires a vacancy in the office of director because of the death, resignation, or removal of a director to be filled by the remaining members of the board by appointing a qualified person for the unexpired term.

SECTION 11. POWERS OF DISTRICT. Provides that the district has certain powers.

SECTION 12. EMINENT DOMAIN. Prohibits the district from exercising the power of eminent domain.

SECTION 13. RELATION TO OTHER LAW. Provides that if any provision of general law, including a law referenced in this Act, is in conflict with or is inconsistent with this Act, this Act prevails. Provides that any law referenced in this Act that is not in conflict or inconsistent with this Act is adopted and incorporated by reference.

SECTION 14. REQUIREMENTS FOR FINANCING SERVICES AND IMPROVEMENTS. Prohibits the district from financing services and improvement projects using special assessments unless a written petition requesting those improvements or services has been filed with the board. Requires the petition to be signed by certain persons.

SECTION 15. NONPROFIT CORPORATION. Subsection (a) authorizes the board by resolution to authorize the creation of a nonprofit corporation to assist and act on behalf of the district in implementing a project or providing a service authorized by this Act. Subsection (b) requires the board to appoint the board of directors of a nonprofit corporation created under this section. Requires the board of directors of the nonprofit corporation to serve in the same manner as, for the same term as, and on the same conditions as the board of directors of a local government corporation created under Chapter 431, Transportation Code. Subsection (c) provides that a nonprofit corporation created under this section has the powers of and is considered for purposes of this Act to be a local government corporation created under Chapter 431, Transportation Code. Subsection (d) authorizes a nonprofit corporation created under

this section to implement any project and provide any services authorized by this Act.

SECTION 16. DISBURSEMENTS OR TRANSFERS OF MONEY. Requires the board by resolution to establish the number of directors' signatures and the procedure required for a disbursement or transfer of the district's money.

SECTION 17. SALES AND USE TAX; EXCISE TAX. Subsection (a) defines "taxable items" and "use" for purposes of this section. Subsection (b) authorizes the district to impose a sales and use tax for the benefit of the district if authorized by a majority of the qualified voters of the district voting at an election called for that purpose. Subsection (c) provides for certain sales and use taxes. Subsection (d) provides that the rate of the excise tax is the same as the rate of the sales tax portion of the tax applied to the sales price of the taxable items and is included in the sales tax.

SECTION 18. SALES AND USE TAX ELECTION PROCEDURES. Subsection (a) authorizes the board by order to call an election to adopt, change the rate of, or abolish a sales and use tax. Authorizes the election to be held at the same time and in conjunction with a confirmation or directors election. Subsection (b) requires the election to be held on the next uniform election date that falls on or after the 45th day after the date the order calling the election is adopted. Subsection (c) requires notice of the election to be given and the election to be held and conducted in the manner prescribed for bond elections under Chapter 49D, Water Code. Subsection (d) requires the ballot, in an election to adopt a tax, to be prepared to permit voting for or against the proposition: "The adoption of a local sales and use tax in the Cy-Fair Community Improvement District at the rate of (proposed tax rate)." Subsection (e) requires the ballot, in an election to change the rate of the tax, to be prepared to permit voting for or against the proposition: "The (increase or decrease, as applicable) in the rate of the local sales and use tax imposed in the Cy-Fair Community Improvement District from (tax rate on election date) percent to (proposed tax rate) percent." Subsection (f) requires the ballot, in an election to abolish the tax, to be prepared to permit voting for or against the proposition: "The abolition of the local sales and use tax in the Cy-Fair Community Improvement District."

SECTION 19. IMPOSITION, COMPUTATION, ADMINISTRATION, AND GOVERNANCE OF SALES AND USE TAX. Subsection (a) provides that Chapter 323, Tax Code, to the extent not inconsistent with this Act, governs the imposition, application, collection, and administration of a sales and use tax under this Act, except that Sections 323.401-323.406 and 323.505, Tax Code, do not apply. Provides that Titles A and B, and Chapter 151, Tax Code, govern the administration and enforcement of the taxes under this Act. Subsection (b) provides that the provisions of Sections 323.101(d) and (e), Tax Code, apply to a sales and use tax authorized by this Act. Subsection (c) provides that Chapter 323, Tax Code, does not apply to the use and allocation of revenues under this Act. Subsection (d) requires the district's name, in applying Chapter 323, Tax Code, to be substituted for references in that chapter to "the county" and the board to be substituted for references in that chapter to "commissioners court." Subsection (e) provides that the adoption of a tax rate or change in the tax rate takes effect after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the results of the election. Subsection (f) authorizes the district to impose the sales and use tax under this Act in increments of one-eighth of one percent, with a minimum tax of one-half percent and a maximum tax of one percent. Subsection (g) authorizes the board by order to abolish the local sales and use tax without an election.

SECTION 20. USE OF SALES AND USE TAX. Authorizes revenue from a sales and use tax imposed under this Act to be used only for the purposes for which the district was created.

SECTION 21. SUBMISSION OF ANNEXATION INFORMATION. Requires the board to send to the comptroller a certified copy of any resolution, order, or ordinance relating to the annexation or exclusion, not later than the 10th day after the date on which the district annexes or excludes territory.

SECTION 22. BONDS. Subsection (a) authorizes the district to issue bonds or other obligations secured by or payable in whole or in part from ad valorem taxes, assessments, impact fees, sales and use taxes,

revenues, grants, or other money of the district, or any combination of those sources of money, to pay for any authorized purpose of the district. Subsection (b) authorizes the district, in exercising the district's borrowing power, to issue a bond or other obligation in the form of a bond, note, certificate of participation, or other instrument evidencing a proportionate interest in payments to be made by the district, or other type of obligation. Subsection (c) requires the district, except as provided by Subsection (d) of this section, to obtain the approval of the applicable municipality prior to the issuance of bonds for an improvement within the applicable municipality's extraterritorial jurisdiction. Subsection (d) authorizes the district to finance the capital improvements and issue bonds specified in the budget without further municipal approval, if the district obtains the applicable municipality's approval of a capital improvements budget.

SECTION 23. ASSESSMENTS. Subsection (a) authorizes the board to impose and collect an assessment for any purpose authorized by this Act. Subsection (b) provides that assessments, reassessments, or assessments resulting from an addition to or correction of the assessment roll by the district, penalties and interest on an assessment or reassessment, expenses of collection, and reasonable attorney's fees incurred by the district follow certain criteria. Subsection (c) provides that the lien is effective from the date of the resolution of the board imposing the assessment until the date the assessment is paid. Authorizes the board to enforce the lien in the same manner, including penalties and interest, that the board may enforce an ad valorem tax lien against real property.

SECTION 24. PROPERTY EXEMPTED FROM TAX, FEE, OR ASSESSMENT. Subsection (a) prohibits the district from imposing a tax, impact fee, or assessment on a residential property, multi-unit residential property, or condominium. Subsection (b) prohibits the district from imposing an impact fee or assessment on the property, equipment, or facilities of electric utilities, gas utilities, telecommunications providers or cable providers.

SECTION 25. ELECTIONS. Subsection (a) requires the district, in addition to the elections the district must hold under Chapter 375L, Local Government Code, to hold an election in the manner provided by that subchapter to obtain voter approval before the district imposes a maintenance tax or issues bonds payable from ad valorem taxes or assessments. Subsection (b) prohibits the board from submit multiple purposes in a single proposition at an election.

SECTION 26. MAINTENANCE TAX. Subsection (a) authorizes the district, if authorized at an election held in accordance with Section 25 of this Act, to impose and collect an annual ad valorem tax on taxable property in the district for the maintenance and operation of the district, for the construction and acquisition of improvements, or for the provision of services. Subsection (b) requires the board to determine the tax rate.

SECTION 27. ANNEXATION OF CERTAIN TERRITORY BY GOVERNING BODY OF MUNICIPALITY. Subsection (a) authorizes the governing body of a municipality that annexes for any purpose all or part of the territory of the district to adopt an ordinance excluding that territory from the district. Subsection (b) requires the district, on adoption of an ordinance under Subsection (a) of this section, to continue to levy and collect taxes and assessments each year on the excluded territory at the same rate or amount levied on territory in the district to meet its debt service obligations with respect to the excluded territory's pro rata share of the indebtedness of the district at the time the territory was excluded. Requires the taxes and assessments collected under this subsection to be applied exclusively to the payment of the excluded territory's pro rata share of the indebtedness; provided, however, that the district's sales taxes shall no longer be levied within the excluded territory if the municipality undertakes in writing to remit to the district monthly the excluded territory's pro rata share of the indebtedness of the district to which sales taxes of the district are pledged at the time the territory was excluded, so long as such payment is timely made.

SECTION 28. LAW ENFORCEMENT. Authorizes the district, to protect the public interest, to contract with the municipality or the county for the provision of law enforcement services in the district for a fee.

SECTION 29. CONTRACTS. Subsection (a) authorizes the municipality, the county, or another political

subdivision of the state, without further authorization, to contract with the district to implement a project of the district or assist the district in providing the services authorized under this Act. Authorizes a contract under this subsection to follow certain plans and policies. Subsection (b) authorizes the district to enter into a contract, lease, or other agreement with or make or accept grants and loans to or from certain entities or persons. Subsection (c) prohibits the district from entering into or renewing a contract with a business entity in which a director of the board has a substantial interest. Subsection (d) provides for a criminal offense if a director authorizes or allows an employee of the district to authorize, enter into, or renew a contract with a business entity in which a director of the board has a substantial interest. Such an offense is a Class A misdemeanor.

SECTION 30. GENERAL AUTHORITY. Authorizes the district to perform all acts necessary for the full exercise of the powers vested in the district on terms and for the period the board determines advisable.

SECTION 31. INITIAL DIRECTORS. Subsection (a) provides that the initial board consists of certain persons. Subsection (b) provides that of the initial directors, the terms of certain directors expire on May 1, 2005, and the terms of certain directors expire on May 1, 2007. Subsection (c) Provides that this section expires May 2, 2007.

SECTION 32. Provides that the legislature finds that proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and laws of this state, including the governor, who has submitted the notice and Act to the Texas Commission on Environmental Quality; the Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time; the general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with; and 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 have been fulfilled and accomplished.

SECTION 33. Effective date.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003.

EXPLANATION OF AMENDMENTS

Committee Amendment No. 1 to S.B. 1726 amends SECTION 4, BOUNDARIES, by specifically excepting from the boundaries of the district any property owned by electric utilities, gas utilities, telecommunications providers or cable providers. Committee Amendment No. 1 also amends SECTION 24, PROPERTY EXEMPTED FROM TAX, FEE, OR ASSESSMENT, by specifically prohibiting the district from imposing an impact fee or assessment on electric utilities, gas utilities, telecommunications providers or cable providers.

Committee Amendment No. 2 to S.B. 1726 adds a new SECTION 14, DISTRICT CONFIRMATION ELECTION, and renumbers remaining sections to require the district to hold a confirmation election as soon as practicable after all initial directors have qualified for office. Committee Amendment No. 2 also amends SECTION 25, ELECTIONS, to prohibit the district from submitting multiple purposes in a single proposition at an election. In addition, Committee Amendment No. 2 amends SECTION 29, CONTRACTS, by adding new subsections to prohibit the district from entering into or renewing a contract with a business entity in which a director of the board has a substantial interest, and to provide for a criminal offense if a director authorizes or allows an employee of the district to authorize, enter into, or renew a contract with a business entity in which a director of the board has a substantial interest. Such an offense is a Class A misdemeanor.

