

BILL ANALYSIS

C.S.S.B. 1205

By: Madla

Local Government Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas law currently provides for the establishment of library districts in order to facilitate the creation and financing of public libraries in rural and suburban areas of the state. Large municipal public library systems such as the one operated by the City of San Antonio face significant challenges in adequately serving the public's needs. Currently the City of San Antonio and its taxpayers bear about 90 percent of the cost of operating and maintaining its public library system. The city also bears the cost of new facilities as it seeks to meet evergrowing demands on the system.

In a few instances, other municipalities in Bexar County have sought to improve accessibility to services by developing their own library facilities, but for the most part the San Antonio public library system is called upon to serve the needs of the entire Bexar County region. New legislation is needed to provide the statutory authority necessary to enable the development of a library system that can better serve the needs of the entire county, distribute the costs of such a system that can better serve the needs of the entire county, and distribute the costs of such a system more equitably and provide adequate funding for the system.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the board of directors of a multi-jurisdictional library district in SECTION 2 (Section 336.152, Local Government Code) of this bill.

ANALYSIS

CHAPTER 336. MULTI-JURISDICTIONAL LIBRARY DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 336.001. DEFINITIONS. Defines "board," "district," "executive director," and "lead governmental entity."

Sec. 336.002. NATURE OF DISTRICT. Provides that a district created under this chapter is a special district and a political subdivision of this state.

Sec. 336.003. MULTI-JURISDICTIONAL PUBLIC LIBRARY OR HISTORICAL INFORMATION FACILITY. (a) Requires a district created under this chapter to establish, equip, support, operate, and maintain one or more public libraries or other historical information facilities (facility) for the dissemination of general information relating to the arts, sciences, history, literature, and other subject areas of interest to the public.

(b) Requires a library or facility created under this chapter to be open free of charge to all members of the public under identical conditions.

[Reserves Sections 336.004-336.020 for expansion.]

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 336.021. **ROLE OF LEAD GOVERNMENTAL ENTITY.** (a) Authorizes a district to be created by a county or municipality that assumes the role of a lead governmental entity under this chapter and proposes the creation of a district in a specific described territory by resolution.

(b) Authorizes the governing body of a county or municipality to adopt a resolution under Subsection (a) on its own motion or after a hearing held on a petition requesting the creation of a district.

(c) Requires the lead governmental entity to provide over 50 percent of the initial assets to the district.

Sec. 336.022. **TERRITORY INCLUDED IN A DISTRICT.** (a) Requires the lead governmental entity to describe the district territory, which must include all territory in each municipality or county that agrees to have its territory in the district.

(b) Authorizes the district to include incorporated or unincorporated territory in one or more counties' territory in the district.

(c) Requires the governing body of a municipality to consent by resolution to allow the inclusion of that municipal territory in the proposed district, if the boundaries of the proposed district include any territory that, on the date on which an election is ordered on the question of creating the district, is part of a municipality that operates a municipal public library or other historical information facility.

Sec. 336.023. **CONFIRMATION ELECTION.** Authorizes a district proposed under this chapter to be created only if confirmed at an election held for the purpose of confirming the creation of the district and approving a sales tax or an ad valorem tax on property in the district.

Sec. 336.024. **PAYMENT OF CONFIRMATION ELECTION COSTS.** Prohibits the lead governmental entity from ordering the confirmation election until the entity deposits with the county clerk an amount of money equal to the cost of conducting the confirmation election, as computed by the county clerk.

Sec. 336.025. **ORDERING CONFIRMATION ELECTION.** (a) Requires the governing body to determine whether the district will be supported by a sales tax or by an ad valorem tax on property located in the proposed district at a regular or special meeting of the governing body of the lead governmental entity held to discuss the creation of a district.

(b) Authorizes the governing body to order a confirmation election to confirm the district's creation and to confirm the imposition of a sales tax or of an ad valorem tax on property located in the proposed district.

(c) Requires the election ordered to be held on the first authorized uniform election date under Chapter 41 (Election Dates and Hours for Voting), Election Code, that occurs on or after the 45th day after the date the election is ordered.

(d) Requires the election order to state certain information in addition to the elements required to be included by the Election Code.

Sec. 336.026. **NOTICE OF CONFIRMATION ELECTION.** (a) Requires the lead governmental entity to give notice of the election by publishing a substantial copy of the election order once a week for two consecutive weeks in a newspaper with general circulation in the county in which the proposed district is located.

(b) Requires the notice to be published not earlier than the 30th day and not later than the 10th day before election day.

Sec. 336.027. **BALLOT PROPOSITION.** (a) Requires the ballot for the election to be printed to permit voting for or against the proposition if the governing body of the lead governmental entity determines under Section 336.025 that the district should be supported by a sales tax. Sets forth the specific language of the proposition.

(b) Requires the ballot for the election to be printed to permit voting for or against the proposition if the governing body of the lead governmental entity determines under Section 336.025 that the district should be supported by an ad valorem tax. Sets forth the specific language of the proposition.

Sec. 336.028. RESULTS OF CONFIRMATION ELECTION. (a) Requires the lead governmental entity, by resolution or order, to declare that the district is created and to declare the rate of the sales tax or amount of the ad valorem tax adopted and enter the result in its minutes if a majority of the voters voting in the election favor the creation of the district and the adoption of a sales tax or of an ad valorem tax.

(b) Requires the lead governmental entity to declare the measure defeated and enter the result in its minutes if a majority of the voters voting in the election are against the creation of the district.

(c) Sets forth certain requirements for an order under Subsection (a).

(d) Requires the lead governmental entity to file an order issued under Subsection (a) in the deed records of the county in which the district is located.

Sec. 336.029. INITIAL BOARD AND PRESIDING OFFICER. (a) Provides that appointments to the initial board are made as provided by Subchapter C, except that the initial trustees are required to agree to stagger their terms, with four members' terms expiring in two years and three members' terms expiring in one year. Requires the trustees to draw lots to determine the staggering if the trustees cannot agree on the initial staggering.

(b) Requires the lead governmental entity to appoint the board's initial presiding officer to serve a two-year term in that capacity. Provides that the requirement of Section 336.056 that the board elect the presiding officer does not apply to the presiding officer appointed under this subsection.

Sec. 336.030. REPAYMENT OF ORGANIZATIONAL EXPENSES. (a) Authorizes the district to pay certain costs, expenses, and reimbursements.

(b) Authorizes payments under this section to be made from money obtained from taxes or other district revenue.

[Reserves Sections 336.031-336.050 for expansion.]

SUBCHAPTER C. BOARD OF TRUSTEES

Sec. 336.051. GOVERNING BODY. Provides that a district is governed by a seven-member board of trustees (board) that has control over and is required to manage the affairs of the district.

Sec. 336.052. APPOINTMENT. (a) Requires the lead governmental entity to appoint four trustees to the board.

(b) Requires a county in which the district is located to appoint three trustees to the board, unless the county is the lead governmental entity. Requires the largest municipality in the county to appoint three trustees if the county is the lead governmental entity.

Sec. 336.053. ELIGIBILITY FOR APPOINTMENT. Provides that a person is eligible for appointment to the board if the person meets certain requirements.

Sec. 336.054. TERMS. Sets forth terms and term limitations for trustees.

Sec. 336.055. VACANCY. Requires a vacancy on the board to be filled by appointment by the governmental entity that appointed the vacating member.

Sec. 336.056. OFFICERS. (a) Requires the board to elect a trustee to serve as the board's presiding officer. Provides that the presiding officer presides at all board meetings and is the chief executive officer of the district.

(b) Requires the board to elect from among its members a vice presiding officer, secretary, and any other officers the board considers necessary.

(c) Provides that the vice presiding officer acts as the presiding officer if the presiding officer is incapacitated or absent from a meeting.

(d) Provides that the secretary acts as the presiding officer if both the presiding officer and vice presiding officer are incapacitated or absent from a meeting.

Sec. 336.057. MEETINGS AND NOTICE. (a) Authorizes the board to establish regular meetings to conduct district business and to hold special meetings at other times as the business of the district requires.

(b) Requires the board to hold its meetings at a designated meeting place.

Sec. 336.058. CONFLICT OF INTEREST IN CONTRACT. (a) Provides that, for the purposes of this section, a trustee who is an employee of, or a trustee related in a certain manner, to a person who is financially interested in a contract is considered to be financially interested in the contract.

(b) Prohibits a trustee who is financially interested in a contract from voting on the acceptance of the contract or participating in the discussion on the contract.

(c) Requires a trustee who is financially interested in a contract with the district to disclose that fact to the other trustees. Requires the disclosure to be entered into the minutes of the meeting.

(d) Provides that the failure of a trustee to disclose the trustee's financial interest in a contract and to have the disclosure entered in the minutes invalidates the contract.

[Reserves Sections 336.059-336.100 for expansion.]

SUBCHAPTER D. OTHER ADMINISTRATIVE PROVISIONS

Sec. 336.101. BYLAWS. Authorizes the board to adopt certain bylaws.

Sec. 336.102. EMPLOYEES. (a) Authorizes the board to employ any person the board considers necessary for conducting the district's affairs.

(b) Authorizes the board to remove any employee.

Sec. 336.103. EXECUTIVE DIRECTOR. Authorizes the board to employ an executive director to administer the affairs of the district under policies and requirements established by the board.

(b) Provides that the qualification requirements for a county librarian under Section 441.007 (Certification of County Librarians), Government Code, and under any rules adopted by the Texas State Library and Archives Commission under that section, apply to the executive director.

(c) Requires the board to set the compensation of the district director.

(d) Authorizes the board to delegate to the executive director the board's authority to hire, establish the compensation of, review the performance of, discipline, or remove a district employee.

Sec. 336.104. QUALIFICATIONS OF EXECUTIVE DIRECTOR OR LIBRARY DIRECTOR. Sets out the qualifications for an executive director or a subordinate library director.

Sec. 336.105. BOND. Authorizes the board to require an officer or employee to execute a bond payable to the district and conditioned on the faithful performance of the person's duties.

Sec. 336.106. EMPLOYEE PLANS. (a) Authorizes the board to provide for and administer a workers' compensation, health benefit, retirement, disability, or death compensation plan for district employees.

(b) Authorizes the board to adopt a plan to accomplish the purpose of this section.

(c) Authorizes the board to change any plan or rule adopted under this section after notice and a hearing.

Sec. 336.107. RECORDS; SECRETARY. (a) Provides that the secretary is responsible for ensuring that all district books and other records are properly maintained.

(b) Authorizes the board to appoint the executive director or an employee as assistant or deputy secretary to assist the secretary in performing the secretary's duties under this section. Authorizes the assistant or deputy secretary to certify the authenticity of any district record.

[Reserves Sections 336.107-336.150 for expansion.]

SUBCHAPTER E. POWERS AND DUTIES

Sec. 336.151. GENERAL POWERS OF DISTRICT. Provides that a district has all authority necessary to accomplish district purposes.

Sec. 336.152. RULES; VIOLATION OF RULES. (a) Authorizes the board to adopt reasonable rules to accomplish district purposes.

(b) Authorizes the board to set monetary charges in reasonable amounts for the violation of a district rule.

(c) Authorizes the board to exclude from the use of a public library facility a person who intentionally violates a rule adopted by the board under this section.

Sec. 336.153. LOCATION OF PUBLIC LIBRARY FACILITIES. Authorizes a district to locate a public library facility at any place in the district, including the territory of a political subdivision within the district.

Sec. 336.154. CONTRACTS. Authorizes a district to contract with any person for any district purpose.

Sec. 336.155. AGREEMENTS WITH OTHER POLITICAL SUBDIVISIONS. (a) Authorizes a district to contract with a municipality, county, or other political subdivision for the district to provide public library facility services outside the district.

(b) Authorizes a district to enter into one or more agreements with any municipality included in the area of the district for the acquisition or operation of the municipality's library or other historical information facilities.

Sec. 336.156. PROPERTY AND EQUIPMENT. (a) Authorizes a district to construct, acquire, own, lease, operate, maintain, repair, or improve any land, works, materials, supplies, improvements, facilities, equipment, vehicles, machinery, appliances, or other property as necessary.

(b) Authorizes the district to assume the contracts and obligations of the previous owner if a district acquires property of any kind related to the operation of a public library or other historical information facility.

(c) Authorizes a district to hold, use, sell, lease, dispose of, and acquire, by any means, property and licenses, patents, rights, and other interests necessary, convenient, or useful to the exercise of any district power.

Sec. 336.157. SURPLUS PROPERTY. Authorizes a district to sell, lease or dispose of certain items in any other manner at any time.

Sec. 336.158. SUITS. (a) Authorizes a district to sue and be sued in any court of this state in the name of the district.

(b) Requires a court of this state to take judicial notice of the establishment of a district.

(c) Provides that a district is not required to give security for costs in a suit or to give a supersedeas or cost bond in an appeal of a judgment.

Sec. 336.159. EXPANSION OF DISTRICT. (a) Authorizes the district to expand to include additional territory if the commissioners court of the county in which the district is located holds an election for that purpose in the territory to be added to the district.

(b) Provides that if a majority of the voters voting at the expansion election approve the expansion of the district, the territory of the district is expanded.

[Reserves Sections 336.160-336.200 for expansion.]

SUBCHAPTER F. GENERAL FINANCIAL PROVISIONS

Sec. 336.201. BORROWING. Authorizes a district to borrow money.

Sec. 336.202. FEES; GENERAL. (a) Authorizes a district to impose any necessary charges or fee for providing a district service.

(b) Authorizes a district to discontinue a service to enforce payment of an unpaid charge or fee that is owed to the district.

Sec. 336.203. LIBRARY OR OTHER HISTORICAL INFORMATION FACILITY FEES. Authorizes a library or other facility created under this chapter to charge reasonable fees to remove certain materials from the library or other facility or for other services provided by the library or other facility.

Sec. 336.204. DEPOSITORY. (a) Requires the board to designate one or more banks inside or outside of the district to serve as the depository for district money.

(b) Requires the district to deposit district tax revenue in a depository bank.

Sec. 336.205. EXPENDITURES. Authorizes a district to disburse district money only by check, draft, money order, or another instrument that must be signed by one or more officers or employees of the district as designated by the board.

Sec. 336.206. ACCOUNTS AND RECORDS; AUDITS. (a) Requires a district to keep a complete system of accounts.

(b) Requires the district to have an annual audit of the district affairs performed by an independent certified public accountant.

(c) Requires a signed copy of the audit report to be delivered to each trustee not later than the 120th day after the closing date of each fiscal year.

(d) Requires a copy of the audit report to be kept on file at the district office and to be made available for inspection by any interested person during regular business hours.

Sec. 336.207. FISCAL YEAR. Provides that the fiscal year of the district is from October 1 to September 30, unless the board adopts another fiscal year.

Sec. 336.208. GRANTS AND DONATIONS. Authorizes a district to accept and administer a grant or donation from any source for any district purpose.

[Reserves Sections 336.209-336.250 for expansion.]

SUBCHAPTER G. TAXES

Sec. 336.251. AD VALOREM TAX ASSESSMENT AND COLLECTION. (a) Authorizes the district to impose an ad valorem tax.

(b) Requires the board to cause the taxable property in its district to be assessed for ad valorem taxation and the ad valorem taxes in the district to be collected, in accordance with any one of the methods set forth in this section, and provides that any method adopted remains in effect until changed by the board.

(c) Authorizes the board to have the taxable property in its district assessed or its taxes collected, in whole or in part, by the tax assessors or tax collectors of any county, municipality, taxing district, or other governmental entity in which all or any part of the district is located. Requires the tax assessors or tax collectors of a governmental subdivision, on the request of the board, to assess and collect the taxes of the district in the manner prescribed in the Property Tax Code. Requires tax assessors and tax collectors to receive compensation in an amount agreed on between the appropriate parties, but not to exceed two percent of the ad valorem taxes assessed.

Sec. 336.252. IMPOSITION, COMPUTATION, ADMINISTRATION, AND GOVERNANCE OF SALES TAX. (a) Authorizes a district to impose a sales and use tax.

(b) Provides that Chapter 323 (County Sales and Use Tax), Tax Code, to the extent not inconsistent with this chapter, governs the imposition, computation, administration, and governance of the sales and use tax under this subchapter, except that Sections 323.101 Tax Authorized), 323.105 (Crime Control District Tax), 323.404 (Ballot Wording), and 323.406-323.408 (Frequency of Election, Election Contest: Notice, Election Contest: Delayed Effective Date), Tax Code, do not apply.

(c) Provides that Chapter 323, Tax Code, does not apply to the use and allocation of revenue under this chapter.

(d) Requires the district's name to be substituted for "the county," and "board of trustees" is substituted for "commissioners court" in applying the procedures under Chapter 323, Tax Code, to the district

Sec. 336.253. SALES AND USE TAX RATES. Provides that the permissible rates for a sales and use tax imposed under this chapter are one-eighth of one percent, one-fourth of one percent, three-eighths of one percent, and one-half of one percent.

Sec. 336.254. ABOLITION OF OR CHANGE IN AD VALOREM TAX RATE. (a) Authorizes the board by order to decrease or abolish the ad valorem tax rate or to call an election to increase, decrease, or abolish the ad valorem tax rate.

(b) Requires, at the election, the ballots to be printed to permit voting for or against the proposition, and sets forth the specific language of the proposition. Provides that the increase or decrease in the tax rate, or the abolition of the tax, is effective if it is approved by a majority of the votes cast.

(c) Requires the board to use the procedure for the confirmation and tax election in Subchapter B in calling and holding the election.

Sec. 336.255. USE OF TAX. Authorizes a tax collected under this subchapter to be used only for a district purpose and to be pledged as collateral for borrowing money to further those purposes.

[Reserves Sections 336.256-336.300 for expansion.]

SUBCHAPTER H. BONDS

Sec. 336.301. DEFINITION. Defines "bond."

Sec. 336.302. GENERAL POWER TO ISSUE BONDS. (a) Authorizes a district to issue bonds at any time and for any amount it considers necessary or appropriate to acquire, construct, equip, or improve district facilities.

(b) Authorizes the board by resolution to authorize the issuance of bonds payable solely from revenue.

Sec. 336.303. LEAD GOVERNMENTAL ENTITY'S CONSENT REQUIRED. Requires the lead governmental entity to approve of the issuance of bonds by the district.

Sec. 336.304. SHORT-TERM BONDS. (a) Authorizes the board by resolution to issue bonds that are secured by revenue or taxes of the district if the bonds meet certain requirements.

(b) Provides that approval by the attorney general or registration with the comptroller is not required for a bond issued under this section.

(c) Provides that an election is not required to issue bonds under this section.

Sec. 336.305. ELECTION REQUIRED FOR CERTAIN BONDS SECURED BY TAXES. Prohibits bonds payable wholly or partly from taxes from being issued unless authorized by a majority of the votes received in an election held for that purpose except for short-term bonds issued under Section 336.303.

Sec. 336.306. SECURITY PLEDGED. (a) Authorizes the district to secure the payment of a district's bonds by certain means.

(b) Authorizes a district to secure payment of district bonds by encumbering a separate item of the district facilities and to acquire, use, hold, or contract for the property by lease, chattel mortgage, or other conditional sale, subject to the terms of the bond indenture or the resolution authorizing the issuance of the bonds.

(c) Provides that this subchapter does not prohibit a district from encumbering one or more library or other historical information facilities to purchase, construct, or improve one or more library or other district facilities.

Sec. 336.307. LIEN ON REVENUE. Provides that the expense of operation and maintenance of library and other facilities, including salaries, labor, materials, and repairs necessary to provide efficient services, and every other proper item of expense are a first lien and charge against the revenue of a district encumbered under this chapter.

Sec. 336.308. EXCHANGE OF BONDS FOR EXISTING LIBRARY OR OTHER HISTORICAL INFORMATION FACILITIES. Authorizes a district's revenue bonds to be exchanged, in lieu of cash, for the property of all or part of existing library or other historical information facilities to be acquired by the district.

Sec. 336.309. GOVERNMENTAL ENTITIES NOT RESPONSIBLE FOR DISTRICT OBLIGATIONS. States that a governmental entity, other than the district, is not required to pay a bond or other district obligation.

[Sections 336.310 – 336.350 reserved for expansion]

SUBCHAPTER I. DISSOLUTION

Sec. 336.351. NO DISSOLUTION. A district created under this chapter may not be dissolved.

SECTION 3. Effective date: upon passage or September 1, 2005.

EFFECTIVE DATE

Upon passage or September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

- 1) In the definitional section added the definition of “Public Library” and “Governmental entity”
- 2) In Section 336.002 further clarified to the “Nature of District”.
- 3) In Section 336.003 raises the standards for a “Multi-Jurisdictional Public Library”.
- 4) In Section 336.022 added language to say that a district may include any contiguous territory within one or more counties.
- 5) In Section 336.023 requires an election for the imposition of either ad valorem or sales and use tax. Allows for the creation of a district without a confirmation election. Clarifies that the district may have both an ad valorem and a sales tax to support its activities.
- 6) In Section 336.029 clarifies that the terms of the Initial Board shall be staggered and those terms shall be drawn by lots to determine the staggering.
- 7) In Section 336.051 identifies the requirement that a board members selected should have as a requirement for the appointment to the board.
- 8) In Section 336.102 added a new paragraph “d” that allows the District Executive Director to conduct performance review, discipline, and the removal of any employee subordinate to the Executive Director.
- 9) In Section 336.103 paragraph “b” increasesd the qualifications for an Executive Director of this Board and say that the Director shall meet all the requirements of the Texas State Library and Archives Commission.
- 10) In Section 336.151 “General Powers of District” of the bill as filed makes a general reference to the powers of the board, in this Substitute, we identify the specific Powers of the District so as to avoid any confusion.
- 11) In Section 336.207 changed the Fiscal Year from January - December to October – September.
- 12) “SUBCHAPTER G. TAXES” allows for the assessment of an Ad Valorem Tax; and
- 13) In “SUBCHAPTER H. BONDS” allows for the district to issue bonds payable in whole or in part from ad valorem taxes, sales taxes, and other revenues collected by the district. Also added are the Bond Terms, and the necessity of the Approval by the Attorney General of the Bonds.