

BILL ANALYSIS

C.S.S.B. 1879
By: Wentworth
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The 70th Legislature, Regular Session, 1987 enacted what is now Chapter 372, as the Public Improvement District Assessment Act, applicable only to municipalities. In 2001, the 77th Legislature amended the chapter, expanding its applicability to counties.

CSSB 1879 authorizes certain counties to create public improvement districts under the provisions of Chapter 372 (Improvement Districts in Municipalities and Counties), Local Government Code, to engage in economic development activities. Eligible counties may provide for the imposition of certain taxes in the public improvement districts they elect to create, may appoint the board of directors, and may authorize expenditures of public funds for certain projects, including roads.

CSSB 1879 amends Chapter 372 by adding a new Subchapter C entitled "Improvement Districts in Certain Counties." The bill is intended to enhance the ability of urban counties to incentivize economic development for the benefit of the land within a public improvement district and the entire county.

The bill authorizes county public improvement districts in an eligible county, with permission of the county creating the public improvement district, to have the powers and duties of a county development district under Chapter 383 (County Development and Growth), Local Government Code, and of a road district under Article III (Loan or Grant of Public money for Economic Development), Section 52, Texas Constitution. In addition, the bill authorizes a public improvement district established under this subchapter to have the powers granted under Chapters 380 (Miscellaneous Provisions Relating to Municipal Planning and Development) and 381 (County Development and Growth), Local Government Code.

CSSB 1879 authorizes a district created under the Subchapter to secure approval from the County Commissioner's Court to enter into development agreements with owners of land within the district, to make grants and loans, to impose assessments, and to obtain voter approval to impose ad valorem taxes, sales taxes, and hotel occupancy taxes. The county must approve all tax rates. If a district is annexed by a municipality, the municipality shall succeed to the district's assets, but is not liable for the district's debt or other obligations. A district may exist for up to two years after annexation to satisfy preexisting district debt.

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.

ANALYSIS

SECTION 1. Amends Chapter 372, Local Government Code, by adding Subchapter C, as follows:

SUBCHAPTER C. IMPROVEMENT DISTRICTS IN CERTAIN COUNTIES

Sec. 372.101. DEFINITIONS. Defines "board," "commissioners court," "county," "district," "hotel," and "municipality."

Sec. 372.102. PURPOSE. Provides that by enacting this subchapter, the legislature has created a program for economic development as provided in Section 52a (Loan or Grant of Public Money for Economic Development), Article III, Texas Constitution. Provides that an improvement district created under this subchapter (district) is created to serve a public use and benefit.

Sec. 372.103. NATURE OF DISTRICT. Provides that a district created under this subchapter is a political subdivision of this state.

Sec. 372.104. APPLICABILITY; CONFLICT OF LAWS. Provides that in the event of a conflict between this subchapter and Subchapter A, this subchapter controls.

Sec. 372.105. CREATION OF DISTRICT. (a) Authorizes the commissioners court of a county with a population of one million or more and within 200 miles of an international border, after the county receives a petition satisfying the requirements of Section 372.005, Local Government Code to by order create a district located in the extraterritorial jurisdiction of a municipality in that county.

(b) Sets forth the requirements for the order.

Sec. 372.106. GOVERNING BODY; TERMS. Provides that a district is governed by a board of seven directors (board) who serve staggered terms of two years, however, the initial directors' terms expire June 1 of odd and even years following district creation. The county does not have to appoint an advisory board for the district.

Sec. 372.107. ELIGIBILITY. (a) Requires a director to be at least 18 years old.

(b) Requires a director to be 18 years old, a resident of the district, and meet certain requirements, if the population of the district is at least 1,000 residents.

Sec. 372.108. APPOINTMENT OF DIRECTORS. Provides that directors are appointed by the commissioner's court.

Sec. 372.109. VACANCIES; QUORUM. (a) Provide that a board vacancy is filled in the same manner as the original appointment.

(b) Provides that a vacant board position is not counted for the purposes of establishing a quorum of the board.

Sec. 372.110. CONFLICTS OF INTEREST. (a) Provides that Chapter 171, Local Government Code governs conflicts of interest for directors.

Sec. 372.111. COMPENSATION. (a) Defines "performs the duties of a director" for this section.

(b) Entitles a director to compensation of \$50 a day for each day that the director actually performs the duties of a director.

Sec. 372.112. OATH AND BOND; OFFICER ELECTIONS. Requires a board member, as soon as practicable, to give the bond and take the oath of office prescribed by Section 375.067, Local Government Code. Requires the board, as soon as practicable, to elect officers in accordance with Section 375.068, Local Government Code.

Sec. 372.113. POWERS AND DUTIES. (a) Provides that a district has the powers of a county development district, road district, and powers granted under Chapters 380 and 381, Local Government Code, including the power to make water, wastewater, or drainage improvements.

(b) Prohibits a district from exercising the powers and duties of a road district or providing water, wastewater, or drainage facilities under this section, unless the county and municipality consent by resolution.

Sec. 372.114. DEVELOPMENT AGREEMENTS. Authorizes a district to enter into a development agreement with owners of land in the district for up to 30 years, and provides for the agreement to be amended by the parties.

Sec. 372.115. ECONOMIC DEVELOPMENT AGREEMENT; ELECTION; TAXES.

(a) Authorizes a district, after receiving county approval, to enter into an agreement, on terms and conditions the board and county commissioners consider advisable, to make a grant or loan of public money to promote state or local economic development and to stimulate business and commercial activity in the district, including a grant or loan to induce the construction of a tourist destination or attraction in accordance with Chapters 380 or 381, Local Government Code.

(b) Authorizes the grant or loan, if the grant or loan agreement has been approved by the voters of the district at an election held in the district for that purpose, to be payable over a term of years and be binding and enforceable on the district in accordance with the terms of the agreement and the conditions of the election, which may include the irrevocable obligation to impose an ad valorem tax, sales and use tax, or hotel occupancy tax over a term of years not to exceed 30 years. Authorizes the district, if authorized at the election, to contract and covenant to pay the taxes to the recipient of the grant or loan in accordance with the agreement.

(c) Provides that if the property owners petitioning for creation of the district propose that the district be created only to provide economic development grants or loans and road improvements and not authorized to impose taxes, then the district does not need to prepare a feasibility report, service plan, assessment plan, or assessment roll.

Sec. 372.116. CONTRACTS; GENERAL. (a) Authorizes a district to contract with any person, including the municipality or county, on the terms and conditions and for a period of time the board determines, to accomplish any district purpose and perform the district's duties and obligations.

(b) Authorizes a state agency, municipality, county, other political subdivision, corporation, or other person to contract with the district to carry out the purposes authorized by this Act.

Sec. 372.117. PROCUREMENT CONTRACTS. Authorizes a district to contract for materials, supplies, and construction under certain procedures.

Sec. 372.118. RULES; ENFORCEMENT. Authorizes the board to adopt rules: to administer and operate the district; for the use, enjoyment, availability, protection, security, and maintenance of the district's property and facilities; or to provide for public safety and security in the district.

Sec. 372.119. FEES. Authorizes a district to establish, revise, repeal, enforce, collect, and apply the proceeds from user fees or charges for the enjoyment, sale, rental, or other use of the district's facilities or other property, or for services or improvement projects.

Sec. 372.120. ELECTIONS. Provides for posting notice of elections. Uniform election dates are required.

Sec. 372.121. RULES; REGULATION OF ROADS AND OTHER PUBLIC AREAS.

(a) Authorizes a board to adopt rules to regulate the private use of public roadways, open spaces, parks, sidewalks, and similar public areas in the area of the district to serve a public purpose.

(b) Provides that to the extent rules adopted under this section conflict with a rule, order, ordinance, or regulation of the county or municipality, the county or municipality rule, order, ordinance, or regulation controls.

(c) Authorizes a rule adopted under this section to provide for the safe and orderly use of public roadways, open spaces, parks, sidewalks, and similar public areas in the area of the district.

(d) Specifies that the district does not have right-of-way management authority over public utilities and must reimburse costs to a utility in the event of utility relocation or extension.

Sec. 372.122. SERVICE PLAN REQUIRED. Requires a district to annually prepare and present to the commissioners court a service plan, as provided for by Section 372.013, Local Government Code for the commissioners court's review and approval.

Sec. 372.123. NO EMINENT DOMAIN. Provides that a district does not have the power of eminent domain.

Sec. 372.124. BONDS; NOTES. (a) Authorizes a district to issue bonds, subject to commissioners court approval. If the district has over 1,000 residents, the issuance of bonds must be approved by a majority of voters voting in an election held for that purpose. An election is not required for the issuance of refunding bonds.

(b) Authorizes a district to issue negotiable promissory note or notes, subject to prior approval by the county commissioners court.

(c) Authorizes bonds, notes, and other district obligations to be secured by district revenue or any type of district taxes or assessments.

Sec. 372.125. AUTHORITY TO IMPOSE ASSESSMENTS AND AD VALOREM, SALES AND USE, AND HOTEL OCCUPANCY TAXES; ELECTION. (a) A district may accomplish its purposes and pay the cost of services and improvements by imposing an assessment, ad valorem tax, sales and use tax, or a hotel occupancy tax.

(b) A district is authorized, if approved at an election called by the board, to impose an ad valorem tax, hotel occupancy tax, and sales and use tax to accomplish the economic development purposes prescribed by Section 52a, Article III, Texas Constitution.

(c) Requires the rate at which the district imposes a hotel occupancy tax, sales and use tax, or ad valorem tax to be approved by the commissioners court. Prohibits a tax rate approved by the commissioners court and pledged to secure bonds, notes, grant agreements, or development agreements from being reduced until the obligations of those instruments have been satisfied.

Sec. 372.126. USE OF REVENUE FROM TAXES. (a) Authorizes a tax imposed by the district to be used to accomplish any improvement project or provide any service authorized by the bill or Chapters 380, 381, or 383, Local Government Code or for a road project.

(b) Provides for road projects to meet applicable municipal or county standards.

Sec. 372.127. HOTEL OCCUPANCY TAX. (a) Authorizes a district to impose a hotel occupancy tax on a person who pays for the use or possession of or for the right to the use or possession of a room that is ordinarily used for sleeping in a hotel in the district.

(b) Requires the district to impose a hotel occupancy tax as provided by Chapter 383, Local Government Code, and Section 352.107, Tax Code, except that a hotel occupancy tax may be used for any district purpose and is imposed by the district.

(c) Provides that the hotel occupancy tax rate is the greater of nine percent or the rate imposed by the municipality.

(d) A hotel must consent to the imposition of a hotel tax. Such consent is irrevocable.

Sec. 372.128. SALES AND USE TAX. (a) Authorizes a district to impose a sales and use tax in increments of 1/8 of one percent up to a rate of two percent. A district must receive approval from the County Commissioner's Court prior to the imposition of taxes.

(b) Requires a sales and use tax, except as otherwise provided in this subchapter, to be imposed in accordance with Chapter 383, Local Government Code, and Chapter 323, Tax Code.

Sec. 372.129. AD VALOREM TAX. (a) Authorizes a district to impose an ad valorem tax on property in the district in accordance with Chapter 257, Transportation Code.

(b) Requires the district, before imposing an ad valorem tax for district operations, or to pay bonds, notes, or other obligations, to obtain the approval of the commissioners court.

Sec. 372.130. BORROWING. Authorizes a district to borrow money for any district purpose, after receiving approval from the county commissioners court for such action. A district purpose includes a development agreement that authorizes the district to borrow money.

Sec. 372.131. REPAYMENT OF COSTS. Authorizes a district, by a lease, lease-purchase agreement, installment purchase contract, or other agreement, or by the imposition or assessment of a tax, user fee, concession, rental, or other revenue or resource of the district, to provide for or secure the payment or repayment of certain costs, expenses, and contractual obligations or indebtedness.

Sec. 372.132. LIABILITIES; ASSUMPTION OF ASSETS AFTER COMPLETE ANNEXATION. (a) Requires the municipality, if the municipality annexes the entire district territory, to succeed to the district's assets, but provides that the municipality is not liable for the district's debt or other obligations.

(b) Provides that if the district has debt or other obligations, the district remains in existence after the territory is annexed by the municipality solely for the purpose of satisfying any preexisting district debt or other obligations. Provides that after the debt or other obligations have been discharged, or two years have expired since the date of the annexation, the district is dissolved.

Sec. 372.133. AUTHORITY TO IMPOSE TAXES OR ASSESSMENTS AFTER PARTIAL OR COMPLETE ANNEXATION. (a) Prohibits the district, after a district has been annexed by a municipality wholly or partly for general purposes, from imposing an ad valorem tax, hotel occupancy tax, or sales and use tax, or collect an assessment in the area that the municipality overlaps the district, except as provided by Section 372.132(b) or 372.133(b).

(b) Authorizes a district to continue to impose a tax in an area annexed by the municipality for limited purposes if the municipality does not impose taxes on the area. If the municipality annexes an area for limited purposes and only imposes some of the taxes which the district is levying but not all of them, the district may continue to levy taxes only to the extent that the level of taxation of the municipality and the district combined is equal to or less than the tax level of the municipality as to fully annexed areas. Provides that it is the Legislature's intent that the tax level of the areas of overlap be no greater than the level of taxation of fully annexed areas.

EFFECTIVE DATE

CSSB 1879 takes effect immediately if it receives a 2/3rds vote in both chambers, otherwise it takes effect Sept. 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Sec. 372.101 is changed in two of the definitions: the word "casita" in the definition of "hotel" is replaced with the term "overnight lodging unit". "Municipality" means the municipality in whose extraterritorial jurisdiction the district is to be located.

Sec. 372.105 is changed and limits the counties to which the bill is applicable.

Sec. 372.106 is changed to expand the number of directors from five to seven, and to provide for the terms of initial directors.

Sec. 372.107 is changed to require residency in the district and extra qualifications to serve as a director after the district residents total at least 1,000.

Sec. 372.108 is changed to require all directors to be appointed by the commissioners court.

Sec. 372.109 is changed to add a provision for the appointment of directors after the initial board.

Sec. 372.110 is changed to specify that conflicts of interest will be governed by Chapter 171, Local Government Code.

Sec. 372.112 is changed in its heading to delete the term "business". The section limits the references to Chapter 375, Local Government Code to apply only to the administrative provisions for oaths and bonds, and officers of the board.

Sec. 372.113 is changed to delete a reference to Chapter 257, Transportation Code. Subsection (3) limits powers to Chapters 380 and 381, Local Government Code. Subsection (b) adds a requirement that a county consent in addition to a city for the district's use of certain powers.

Sec. 372.114 is changed to specify the district may enter into a development agreement for a term of up to 30 years.

Sec. 372.115 (a) is changed to require approval of the county for a district to enter into an economic development agreement. Subsection (b) provides that a district election may be subject to certain other provisions of the bill. Subsection (c) eliminates assessment procedures in the event the district is not authorized to impose assessments.

Sec. 372.116 limits the ability of a district to contract to only those purposes authorized in the bill. In addition, the phrase "carrying costs" was replaced with the word "interest." In subsection (b), the phrase "without further authorization" was deleted.

Sec. 372.120 is changed to provide that election notice must be provided in accordance with the Election Code. Certain uniform dates are required.

Sec. 372.121 requires that regulations authorizing private use of public areas must serve a public purpose. Subsection (d) specifies that the district does not have right-of-way management authority and must reimburse costs to a utility in the event of utility relocation or extension.

Sec. 372.123 is changed to clarify that the district does not have power of eminent domain.

Sec. 372.124 is changed to specify that the county must approve the issuance of bonds. If the district has over 1,000 residents a bond issuance must be approved by a majority of voters voting in an election held for that purpose. Such an election does not affect prior bond issuances and an election is not required for refunding bond issuances. In addition, county approval is required for issuance of notes.

Sec. 372.125 is changed to require county commissioners court approval prior to imposition of any taxes the district is authorized to impose.

Sec. 372.126 adds a reference to Chapter 380, Local Government Code, and provides for use of tax money for a road projects and requires that the project meet applicable municipal or county standards.

Sec. 372.127 is changed to include a provision allowing a hotel to consent to imposition of a hotel tax. Such consent is irrevocable.

Sec. 372.128 is changed to add commissioners court approval before the imposition of taxes.

Sec. 372.130 is changed to add commissioners court approval before the district may borrow money.

Sec. 372.132 is changed to clarify the purposes for which the district remains in existence.

Sec. 372.133 is changed to provide for the ability of the district to impose taxes not levied by the municipality after limited purpose or partial annexation to prohibit double taxation inside the district.