

BILL ANALYSIS

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S.B. 1879
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

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.

As proposed S.B. 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 boards of directors, and may authorize expenditures of public funds for certain projects, including roads.

S.B. 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 eligible counties, 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 and Chapter 257 (Road Districts), Transportation Code. 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. A district also may impose fees for the sale rental or other use of district facilities or other property or for services of improvement projects.

SB 1879 authorizes a district created under the Subchapter to enter into development agreements with owners of land within the district, to make grants and loans, to impose assessments, and to hold an election on any date to obtain voter approval to impose ad valorem taxes, sales taxes, and hotel occupancy taxes. The county must approve all tax rates. The county must be given a service plan by a district. A district will not have eminent domain power. A district will have power to promulgate rules. A district may issue debt backed by such taxes as the county authorizes or any type of district revenue. A district may reimburse costs related to establishment, administration, and operation for the district.

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

Rulemaking authority is expressly granted to the board of directors of an improvement district in SECTION 1 (Section 372.118 and 372.121, Local Government Code) of this bill.

SECTION BY SECTION 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, after the county receives a petition satisfying the requirements of Section 372.005 (Petition), 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 five directors (board) who serve staggered terms of two years, with two or three directors' terms expiring June 1 of each year.

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

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

Sec. 372.108. APPOINTMENT OF DIRECTORS. Provides that directors are appointed by certain persons.

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; ONE-TIME AFFIDAVIT. (a) Authorizes a director, except as provided by this section, to participate in all board votes and decisions and provides that Chapter 171 (Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments) governs conflicts of interest for directors.

(b) Provides that Section 171.004 (Affidavit and Abstention From Voting) does not apply to the district. Requires a director who has a substantial interest in a business or charitable entity that will receive a pecuniary benefit from a board action to file a one-time affidavit declaring the interest. Provides that an additional affidavit is not required if the director's interest changes. Authorizes the director, after the affidavit is filed with the board secretary, to participate in a discussion or vote on that action if certain requirements are met.

(c) Provides that for purposes of this section, a director has a substantial interest in a charitable entity in the same manner that a person would have a substantial interest in a business entity under Section 171.002 (Substantial Interest in Business).

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; BUSINESS. Requires a board member, as soon as practicable, to give the bond and take the oath of office prescribed by Section 375.067 (Director's Bond and Oath). Requires the board, as soon as practicable, to elect officers and conduct business in accordance with Subchapter D (Administrative Provisions; Board of Directors), Chapter 375.

Sec. 372.113. POWERS AND DUTIES. (a) Provides that a district has the powers and duties of certain governmental entities.

(b) Prohibits a district from exercising the powers and duties of a road district under this section unless the municipality consents by resolution.

Sec. 372.114. DEVELOPMENT AGREEMENTS. Authorizes a district to enter into a development agreement with owners of land in the district. Authorizes the agreement to be amended by the parties.

Sec. 372.115. ECONOMIC DEVELOPMENT AGREEMENT; ELECTION; TAXES. (a) Authorizes a district to enter into an agreement, on terms and conditions the board considers 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 Chapter 380 (Miscellaneous Provisions Relating to Municipal Planning and Development) or 381 (County Development and Growth).

(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.

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 meet certain board goals.

(b) Authorizes a state agency, municipality, county, other political subdivision, corporation, or other person to contract with the district to carry out the purposes of this subchapter without further authorization.

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. Authorizes a district to hold an election on any date.

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.

(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.

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 (Service Plan), 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.

(b) Authorizes a district to issue a negotiable promissory note or notes.

(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) Authorizes a district to accomplish its purposes and pay the cost of services and improvements by certain methods.

(b) Authorizes a district, 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. Authorizes a tax imposed under this subchapter to be used to accomplish any improvement project or provide any service authorized by certain chapters of the Occupations and Transportation Codes.

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 (County Development Districts), Local Government Code, and Section 352.107 (Exemption), 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.

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.

(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 (County Sales and Use Tax Act), 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 (Road Districts), 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, including for 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).

(b) Authorizes a district to continue to impose a tax in an area that the municipality annexes for limited purposes and in which the municipality does not impose taxes, including a tax that the municipality does not impose if the municipality imposes other taxes in the area.

SECTION 2. Effective date: upon passage or September 1, 2005.