

By: Wentworth

S.B. No. 1879

Substitute the following for S.B. No. 1879:

By: Puente

C.S.S.B. No. 1879

A BILL TO BE ENTITLED

AN ACT

relating to the creation of special districts for improvements in certain counties, including authority to acquire, construct, and improve water, wastewater, and drainage improvements; providing authority to impose a tax and issue bonds.

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

SECTION 1. Chapter 372, Local Government Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. IMPROVEMENT DISTRICTS IN CERTAIN COUNTIES

Sec. 372.101. DEFINITIONS. In this subchapter:

(1) "Board" means the board of directors of a district.

(2) "Commissioners court" means the governing body of the county in which a district is located.

(3) "County" means the county in which the district is located.

(4) "District" means a public improvement district created under this subchapter.

(5) "Hotel" has the meaning assigned by Section 156.001, Tax Code, and includes a timeshare, overnight lodging unit, or condominium during the time the timeshare, overnight lodging unit, or condominium is rented by a person who is not the owner of the timeshare, overnight lodging unit, or condominium.

(6) "Municipality" means a municipality in whose

1 extraterritorial Jurisdiction the district is located.

2 Sec. 372.102. PURPOSE. By enacting this subchapter, the
3 legislature has created a program for economic development as
4 provided in Section 52a, Article III, Texas Constitution. A
5 district created under this subchapter is created to serve a public
6 use and benefit.

7 Sec. 372.103. NATURE OF DISTRICT. A district created under
8 this subchapter is a political subdivision of this state.

9 Sec. 372.104. APPLICABILITY; CONFLICT OF LAWS. In the
10 event of a conflict between this subchapter and Subchapter A, this
11 subchapter controls.

12 Sec. 372.105. CREATION OF DISTRICT. (a) After a county
13 with a population of one million or more, within 200 miles of an
14 international border, receives a petition satisfying the
15 requirements of Section 372.005, the commissioners court of that
16 county may by order create a district located in the
17 extraterritorial jurisdiction of a municipality in that county.

18 (b) The order must:

19 (1) describe the district's territory;

20 (2) specifically authorize the district to exercise
21 the powers of this subchapter; and

22 (3) state whether the petition provides for
23 improvements to be financed and paid for with taxes authorized by
24 this subchapter instead of or in addition to assessments.

25 Sec. 372.106. GOVERNING BODY; TERMS. A district is
26 governed by a board of seven directors who serve staggered terms of
27 two years, except that the first three initial directors' terms

1 shall expire June 1 of the first odd-numbered year following the
2 creation of the district and the remaining four initial directors'
3 terms shall expire June 1 of the first even numbered year following
4 the creation of the district. There is no requirement for the
5 County to appoint an advisory board for a district created under the
6 provisions of the subchapter.

7 Sec. 372.107. ELIGIBILITY. (a) A director must be at least
8 18 years old.

9 (b) If the population of the district is more than 1,000
10 residents, a director must be 18 years old, a resident of the
11 district and meet the qualifications of Chapter 375.063 Local
12 Government Code.

13 Sec. 372.108. APPOINTMENT OF DIRECTORS. Directors are
14 appointed by position as follows:

15 (1) the commissioners court shall appoint the
16 directors.

17 Sec. 372.109. VACANCIES; QUORUM. (a) A board vacancy is
18 filled in the same manner as the original appointment. Subsequent
19 directors are appointed in the same manner as the original
20 directors.

21 (b) A vacant board position is not counted for the purposes
22 of establishing a quorum of the board.

23 Sec. 372.110. CONFLICTS OF INTEREST. Chapter 171 governs
24 conflicts of interest for directors.

25 Sec. 372.111. COMPENSATION. (a) In this section,
26 "performs the duties of a director" means substantial performance
27 of the management of the district's business, including

1 participation in board and committee meetings and other activities
2 involving the substantive deliberation of district business and in
3 pertinent educational programs, but does not include routine or
4 ministerial activities such as the execution of documents or
5 self-preparation for meetings.

6 (b) A director is entitled to compensation of \$50 a day for
7 each day that the director actually performs the duties of a
8 director.

9 Sec. 372.112. OATH AND BOND; OFFICER ELECTIONS. As soon as
10 practicable, a board member shall give the bond and take the oath of
11 office in accordance with Chapter 375.067, Local Government Code,
12 and the board shall elect officers in accordance with Chapter
13 375.068, Local Government Code.

14 Sec. 372.113. POWERS AND DUTIES. (a) A district has the
15 powers and duties of:

16 (1) a county development district under Chapter 383,
17 Local Government Code, excluding Sec. 383.066;

18 (2) a road district created by a county under Section
19 52, Article III, Texas Constitution; and

20 (3) Chapters 380 and 381, Local Government Code,
21 including the acquisition, construction, or improvement of water,
22 wastewater, or drainage facilities or improvements under Section
23 372.003(b)(9).

24 (b) A district may not exercise the powers and duties of a
25 road district or provide water, wastewater, or drainage facilities
26 under this section unless the municipality and county both consent
27 by resolution.

1 Sec. 372.114. DEVELOPMENT AGREEMENTS. A district may enter
2 into a development agreement with owners of land in the district on
3 such terms and conditions and for such a term, not to exceed 30
4 years as the board of directors deem advisable. The agreement may
5 be amended by the parties.

6 Sec. 372.115. ECONOMIC DEVELOPMENT AGREEMENT; ELECTION;
7 TAXES. (a) With the approval of county, a district may enter into
8 an agreement, on terms and conditions the board and commissioners
9 court considers advisable, to make a grant or loan of public money
10 to promote state or local economic development and to stimulate
11 business and commercial activity in the district, including a grant
12 or loan to induce the construction of a tourist destination or
13 attraction in accordance with Chapter 380 or 381.

14 (b) If the grant or loan agreement has been approved by the
15 voters of the district at an election held in the district for that
16 purpose, the grant or loan may be payable over a term of years and be
17 binding and enforceable on the district in accordance with the
18 terms of the agreement and the conditions of the election, which may
19 subject to the requirements of Section 372.125(c) and Section
20 372.129(b), include the irrevocable obligation to impose an ad
21 valorem tax, sales and use tax, or hotel occupancy tax over a term
22 of years not to exceed 30 years, and if authorized at the election,
23 the district may contract and covenant to pay the taxes to the
24 recipient of the grant or loan in accordance with the agreement.

25 (c) If the property owners petitioning a county to create a
26 district under this subchapter propose that the district be created
27 only to provide economic development grants or loans and road

1 improvements and not be authorized to impose assessments, than the
2 district does not need to prepare a feasibility report as otherwise
3 required by Sec. 372.007 nor prepare a service plan or assessment
4 plan as otherwise required by Sec. 372.013 and Sec. 372.014,
5 respectively or prepare an assessment roll as required by Sec.
6 372.016.

7 Sec. 372.116. CONTRACTS; GENERAL. (a) A district may
8 contract with any person, including the municipality or county, on
9 the terms and conditions and for a period of time the board
10 determines, to:

11 (1) accomplish any district purpose authorized or
12 limited by this act, including a contract to pay, repay, or
13 reimburse from tax proceeds or another specified source of money
14 any costs, including reasonable interest, incurred by a person on
15 the district's behalf, including all or part of the costs of an
16 improvement project; and

17 (2) receive, administer, and perform the district's
18 duties and obligations under a gift, grant, loan, conveyance, or
19 other financial assistance arrangement relating to the
20 investigation, planning, analysis, study, design, acquisition,
21 construction, improvement, completion, implementation, or
22 operation by the district or another person of an improvement
23 project or proposed improvement project.

24 (b) A state agency, municipality, county, other political
25 subdivision, corporation, or other person may contract with the
26 district to carry out the purposes of this subchapter.

27 Sec. 372.117. PROCUREMENT CONTRACTS. A district may

1 contract for materials, supplies, and construction:

2 (1) in accordance with the laws applicable to
3 counties; or

4 (2) in the same manner that a county local government
5 corporation created pursuant to Chapter 431, Transportation Code,
6 is authorized to contract.

7 Sec. 372.118. RULES; ENFORCEMENT. The board may adopt
8 rules:

9 (1) to administer and operate the district;

10 (2) for the use, enjoyment, availability, protection,
11 security, and maintenance of the district's property and
12 facilities; or

13 (3) to provide for public safety and security in the
14 district.

15 Sec. 372.119. FEES. A district may establish, revise,
16 repeal, enforce, collect, and apply the proceeds from user fees or
17 charges for the enjoyment, sale, rental, or other use of the
18 district's facilities or other property, or for services or
19 improvement projects.

20 Sec. 372.120. ELECTIONS. Notice of all elections shall be
21 provided in accordance with the Election Code. For any election
22 ordered before December 31, 2005, the uniform election dates in
23 effect on January 1, 2005 apply. For any election ordered after
24 December 31, 2005, the election date must comply with the uniform
25 election dates in effect as of the date of such order.

26 Sec. 372.121. RULES; REGULATION OF ROADS AND OTHER PUBLIC
27 AREAS. (a) A board may adopt rules to regulate the private use of

1 public roadways, open spaces, parks, sidewalks, and similar public
2 areas in the area of the district, provided such use serves a public
3 purpose.

4 (b) To the extent rules adopted under this section conflict
5 with a rule, order, ordinance, or regulation of the county or
6 municipality, the county or municipality rule, order, ordinance, or
7 regulation controls.

8 (c) A rule adopted under this section may provide for the
9 safe and orderly use of public roadways, open spaces, parks,
10 sidewalks, and similar public areas in the area of the district.

11 (d) Notwithstanding the foregoing, this subchapter does not
12 grant a district any right-of-way management authority over public
13 utilities. To the extent the construction, maintenance, or
14 operation of any district project requires the relocation or
15 extension of public utility facilities, the district shall
16 reimburse the public utility for all costs associated with the
17 relocation, removal, extension, or other adjustment of the
18 facilities from district taxes, grants, or revenues.

19 Sec. 372.122. SERVICE PLAN REQUIRED. A district must
20 annually prepare and present to the commissioners court a service
21 plan, as provided for by Section 372.013, for the commissioners
22 court's review and approval.

23 Sec. 372.123. NO EMINENT DOMAIN. Notwithstanding Section
24 383.063, Local Government Code, a district does not have the power
25 of eminent domain.

26 Sec. 372.124. BONDS; NOTES. (a) A district may, subject to
27 the commissioners court prior approval, issue bonds. If the

1 population of the district is more than 1,000 residents, a bond
2 issuance must be approved by a majority of those voting in an
3 election held for that purpose. Such a bond election does not
4 affect prior issuances and is not required for refunding bond
5 issuances.

6 (b) A district may, subject to the commissioners court prior
7 approval, issue a negotiable promissory note or notes.

8 (c) Bonds, notes, and other district obligations may be
9 secured by district revenue or any type of district taxes or
10 assessments.

11 Sec. 372.125. AUTHORITY TO IMPOSE ASSESSMENTS AND AD
12 VALOREM, SALES AND USE, AND HOTEL OCCUPANCY TAXES; ELECTION. (a) A
13 district may accomplish its purposes and pay the cost of services
14 and improvements by:

- 15 (1) imposing an assessment;
16 (2) levying an ad valorem tax;
17 (3) imposing a sales and use tax; or
18 (4) imposing a hotel occupancy tax.

19 (b) If approved at an election called by the board, and in
20 accordance with Section 372.129(b), a district may impose an ad
21 valorem tax, hotel occupancy tax, and sales and use tax to
22 accomplish the economic development purposes prescribed by Section
23 52a, Article III, Texas Constitution.

24 (c) The rate at which the district imposes a hotel occupancy
25 tax, sales and use tax, or ad valorem tax must first be approved by
26 the commissioners court. A tax rate approved by the commissioners
27 court and pledged to secure bonds, notes, grant agreements, or

1 development agreements may not be reduced until the obligations of
2 those instruments have been satisfied.

3 Sec. 372.126. USE OF REVENUE FROM TAXES. (a) A tax imposed
4 under this subchapter may be used

5 (i) to accomplish any improvement project or provide any
6 service authorized by:

7 (1) this chapter;

8 (2) Chapter 380, Local Government Code;

9 (3) Chapter 381, Local Government Code;

10 (4) Chapter 383, Local Government Code; or

11 (ii) for a road project. To the extent authorized by
12 Section 52, Article III, Texas Constitution, the district may
13 construct, acquire, improve, maintain, or operate macadamized,
14 graveled, or paved roads or turnpikes, or improvements in aid of
15 those roads or turnpikes, inside the district.

16 (b) A road project must meet or exceed all applicable
17 construction standards, zoning and subdivision requirements, and
18 regulatory ordinances of each municipality in whose corporate
19 limits or extraterritorial jurisdiction the district is located.
20 If the district is located outside the extraterritorial
21 jurisdiction of a municipality, a road project must meet all
22 applicable construction standards, zoning and subdivision
23 requirements, and regulatory ordinances of each county in which the
24 district is located.

25 Sec. 372.127. HOTEL OCCUPANCY TAX. (a) A district may
26 impose a hotel occupancy tax on a person who pays for the use or
27 possession of or for the right to the use or possession of a room

1 that is ordinarily used for sleeping in a hotel in the district.

2 (b) The district shall impose a hotel occupancy tax as
3 provided by Chapter 383, Local Government Code, and Section
4 352.107, Tax Code, except that a hotel occupancy tax:

5 (1) may be used for any district purpose; and

6 (2) is imposed by the district.

7 (c) The hotel occupancy tax rate is the greater of nine
8 percent or the rate imposed by the municipality.

9 (d) A hotel occupancy tax may not be imposed on the
10 occupants of a hotel unless the owner of the hotel agrees to the
11 imposition of the hotel occupancy tax. After the owner of the hotel
12 agrees to the imposition of the hotel occupancy tax, the agreement
13 is irrevocable by the owner of the hotel and any subsequent owner of
14 the hotel and the district may impose hotel occupancy taxes as
15 provided in this subchapter.

16 Sec. 372.128. SALES AND USE TAX. (a) A district may
17 subject to commissioners court prior approval, impose a sales and
18 use tax in increments of 1/8 of one percent up to a rate of two
19 percent.

20 (b) Except as otherwise provided in this subchapter, a sales
21 and use tax must be imposed in accordance with Chapter 383, Local
22 Government Code, and Chapter 323, Tax Code.

23 Sec. 372.129. AD VALOREM TAX. (a) A district may impose an
24 ad valorem tax on property in the district in accordance with
25 Chapter 257, Transportation Code.

26 (b) Before imposing an ad valorem tax for district
27 operations, or to pay bonds, notes, or other obligations, the

1 district must obtain the approval of the commissioners court.

2 Sec. 372.130. BORROWING. A district may, subject to the
3 commissioners court prior approval, borrow money for any district
4 purpose, including for a development agreement that authorizes the
5 district to borrow money.

6 Sec. 372.131. REPAYMENT OF COSTS. A district may, by a
7 lease, lease-purchase agreement, installment purchase contract, or
8 other agreement, or by the imposition or assessment of a tax, user
9 fee, concession, rental, or other revenue or resource of the
10 district, provide for or secure the payment or repayment of:

11 (1) the costs and expenses of the establishment,
12 administration, and operation of the district;

13 (2) the district's costs or share of costs of an
14 improvement project; or

15 (3) the district's contractual obligations or
16 indebtedness.

17 Sec. 372.132. LIABILITIES; ASSUMPTION OF ASSETS AFTER
18 COMPLETE ANNEXATION. (a) If the municipality annexes the entire
19 district territory, the municipality shall succeed to the
20 district's assets, but is not liable for the district's debt or
21 other obligations.

22 (b) If the district has debt or other obligations, the
23 district remains in existence after the territory is annexed by the
24 municipality for the purpose of collecting any taxes or assessments
25 levied by the district prior to the annexation which shall be used
26 by the district solely for the purpose of satisfying any
27 preexisting district debt or other obligations. After the debt or

1 other obligations have been discharged, or two years have expired
2 since the date of the annexation, the district is dissolved and any
3 outstanding debt or obligations are extinguished.

4 Sec. 372.133. AUTHORITY TO IMPOSE TAXES OR ASSESSMENTS
5 AFTER PARTIAL OR COMPLETE ANNEXATION. (a) After a district has
6 been annexed by a municipality wholly or partly for general
7 purposes, the district may not impose an ad valorem tax, hotel
8 occupancy tax, or sales and use tax, or collect an assessment in the
9 area that the municipality overlaps the district, except as
10 provided by Section 372.132(b) or 372.133(b).

11 (b) A district may continue to impose a tax in an area that
12 the municipality annexes for limited purposes and in which the
13 municipality does not impose taxes. If the municipality annexes an
14 area for limited purposes and only imposes some of the taxes which
15 the district is levying but not all of them, the district may
16 continue to levy taxes only to the extent that the level of taxation
17 of the municipality and the district combined (as to each of the
18 hotel tax, the sales tax and the ad valorem tax calculated
19 independently) is equal to or less than the tax level of the
20 municipality as to fully annexed areas. It is the intent of the
21 Legislature that the level of taxation of areas of
22 district/municipality overlap be no greater than the level of
23 taxation of fully annexed areas.

24 SECTION 2. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2005.