

BILL ANALYSIS

C.S.H.B. 3011
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County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

After meetings with officials from the Department of Homeland Security, Harris County, and the Port of Houston Authority, the private petrochemical, chemical and refinery facilities near the Houston Ship Channel recognized that the best security for the region was not a facility-by-facility security implementation, but rather a layered system-wide security approach. A public-private group was started to address these concerns called the Port Strategic Security Council (PSSC). The PSSC, working with experts in port security, developed a list of projects to systematically improve security in the Houston Ship Channel area. Harris County sponsored the PSSC's Homeland Security Department Port Security Grants over the past two rounds netting the County \$26 million in federal grants for projects to increase maritime domain awareness and reduce risk of a terror attack.

The PSSC soon recognized that a mechanism was needed to allow the county, the facilities, and others to equitably pay for the local share of the grants and the operation and maintenance of these new security projects. Two other ports that have attempted such system-wide layered security programs failed because of the lack of a mechanism to equitably share the ongoing cost of operations and maintenance. The public-private partners of the PSSC decided the means to collect these funds could be modeled after management districts.

A Ship Channel Security District (District) would be a public-private partnership to help improve security within a Ship Channel area, by assisting with the operations and maintenance of security infrastructure. If successful, this district could be the model for port security nationwide as the federal government moves to port-wide solutions to port security.

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

The bill creates chapter 68 in the Texas Water Code concerning Ship Channel Security Districts. The bill establishes that a district is a special district and political subdivision of this state. A district is created under Section 59, Article XVI, Texas Constitution, and is essential to accomplish the purposes of that section and Sections 52 and 52-a, Article III, Texas Constitution. Establishes that a security project is owned, used, and held for public purposes by the district. States that this new chapter shall be liberally construed in conformity with the findings and purposes stated in this chapter. The bill states that Chapter 49 of the Water Code does not apply to these districts. Applicability, of the bill is described and facilities are described. After the district is created, the commissioners court that created the district may by petition of the district provide for this chapter to apply to any other facility. Certain facilities are exempted such as a residential property, including a single-family or multifamily residence; retail or service business that is not a facility as defined by 46 U.S.C. Section 70101; or public access facility as defined by 33 C.F.R. Section 101.105. A facility's owner may designate a person to act for the owner in connection with a district or bind the owner under this chapter.

A district may be created only by the commissioners court of a county with a population of 3.3 million or more that has a ship channel in the county. The district may be created only if the commissioners court of the county in which the district is proposed to be created receives a petition requesting the district's creation signed by the owners of a majority of facilities in the proposed district and the owners of a majority of the assessed value of facilities in the proposed

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district according to the most recent certified property tax rolls of the county. The petition must propose a name for the district, generally describe the location of the district, state the general nature of the security projects and security services to be provided by the district; and describe the proposed district territory and the boundaries of not fewer than four security zones inside the proposed district. The commissioners court of the county in which a district is proposed to be created shall set a date, time, and place for a hearing to consider the petition received by the commissioners court, and issue public notice of the hearing. The commissioners court shall publish the notice in a newspaper 30 days prior to the hearing. At the hearing, any interested person may appear in person or by attorney, present evidence, and offer testimony for or against the creation of the proposed district. After the hearing, the commissioners court shall consider whether to create the proposed district. The commissioners court must make the following findings before approving a petition requesting creation of a district, the district will serve a public use and benefit, facilities in the district will benefit from the security projects and security services proposed to be provided by the district, the creation of the district is in the public interest and useful for the protection of facilities in the district against the threat posed by terrorism and the creation of the district is necessary to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this chapter.

If the commissioners court makes the findings under Section 68.106, the commissioners court by order shall create the proposed district. The commissioners court may include in the order any changes or modifications to the proposed district as the court determines are appropriate. A district is governed by a board of at least 10 directors, appointed or serving as follows, two directors for each security zone appointed by the commissioners court of the county, one director appointed for the district at large by the commissioners court of the county, one director appointed under Section 68.153; and any director serving under Section 68.154. The commissioners court of the county shall appoint two directors for each security zone from a list of two persons employed by facilities in the security zone nominated by a majority vote of the facility owners in each security zone. After reviewing the list, the commissioners court shall approve or disapprove the nominations for each security zone. If the commissioners court is not satisfied with the list provided for a security zone, the facility owners in the security zone shall provide to the court a new list. If there is a countywide association of mayors and city councils of municipalities in a county that creates a district, the association shall appoint one director. If there is not an association the municipalities in the district shall appoint a director. If there is more than one municipality in the district, the governing body of each municipality by resolution may vote in favor of a nominated person and a person who receives the votes of a majority of governing bodies is appointed director. The director appointed under this section must reside in a municipality adjacent to the largest ship channel in the district. If a port authority is located in the district, the executive director, or a person designated by the executive director, serves as a director. If more than one port authority is located in the district, the executive director, or a person designated by the executive director, of the port authority with the largest territory inside the district serves as a director. The directors shall serve staggered two-year terms. The initial directors shall stagger their terms, with a majority of the directors serving two years, and a minority of directors serving one year. If the initial board has an even number of directors, the terms are staggered equally. If the initial directors cannot agree on the staggering, the directors shall draw lots to determine the directors who serve one-year terms. A vacancy in the board is filled by the remaining directors by appointing a person who meets the qualifications for the position, who shall serve for the unexpired term. For purposes of determining whether a quorum of the board is present, a vacant board position is not counted. The board shall elect from its directors a presiding officer, a secretary, and any other officers the board considers necessary or appropriate. A director is not entitled to compensation for service on the board, but is entitled to reimbursement for necessary and reasonable expenses incurred in carrying out the duties of a director. The board shall determine the frequency of its meetings and may hold meetings at any time the board determines. The board shall conduct its meetings in the district. The board may remove an appointed director for misconduct or failure to carry out the director's duties on receiving a written petition signed by a majority of the remaining directors.

A district has all powers necessary or required to accomplish the purposes for which it was created. A district may do anything necessary, convenient, or desirable to carry out the powers expressly granted or implied by this chapter. Except as provided by this chapter, a district has the powers of a district created under Chapter 375, Local Government Code. The district may adopt

rules to govern the operation of the district. A board by resolution may change a district's name. A district may contract with any person for any district purpose. The board shall determine what security projects or security services the district will perform. A security project may include a project eligible for funding under a port security grant program of the United States Department of Homeland Security. A district may own, operate, and maintain a security project or provide a security service as reasonably necessary to carry out a district power under this chapter. A district may acquire, construct, complete, develop, own, operate, maintain, and lease a security project or part of a security project or provide a security service inside and outside its boundaries. A district may contract with any person to plan, establish, develop, construct, renovate, maintain, repair, replace, or operate a security project or to provide a security service. A district may lease to any person a security project or any part of a security project. A district may contract with any person for the use or operation of a security project or any part of a security project. A district may contract with any person, public or private, for the joint use of a security project. This state, a municipality, a county, another political subdivision of this state, or any other person, without further authorization, may contract with the district to accomplish any district purpose. A district may acquire by grant, purchase, gift, devise, lease, or otherwise, and may hold, use, sell, lease, or dispose of any property, and licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of any of its powers under this chapter. A district may sue and be sued. The competitive bidding laws of this state do not apply to a district. A district may not exercise the power of eminent domain. A district may apply for and accept a grant or loan from any person, including, the United States, this state and a political subdivision of this state. A district may provide for payment of all expenses incurred in its establishment, administration, and operation. A district may not impose any tax, including a property tax or a sales and use tax. A district may not issue bonds. The board may impose an assessment against facilities for any district purpose. A security project or security service may be financed under this chapter after a hearing notice given as required by this subchapter and a public hearing by the board on the advisability of the security project or security service and the proposed assessments. Not later than the 30th day before the date of the hearing, the district shall provide notice of the hearing by certified mail, return receipt requested, to each facility owner at the current address of each facility according to the appraisal record maintained by the appraisal district for that facility under Section 25.02, Tax Code. The notice must include the time and place of the hearing the general nature of the proposed security project or security service the estimated cost of the security project or security service and the proposed method of assessment. A hearing on a proposed security project or security service, whether conducted by the board or a hearing examiner, may be adjourned from time to time. At the conclusion of the hearing, the board by resolution shall make findings relating to the advisability of the security project or security service the nature of the security project or security service the estimated cost the facilities benefited the method of assessment and the method and time for payment of the assessment. If a hearing examiner is appointed to conduct the hearing, after conclusion of the hearing, the hearing examiner shall file with the board a report stating the examiner's findings and conclusions for the board's consideration. In accordance with the findings, the board may impose an assessment against all the facilities in the district or any portion of the facilities in the district, and may impose an assessment against fewer facilities than those proposed for assessment in the hearing notice. The facilities to be assessed may not include a facility that is not in the district at the time of the hearing unless there is an additional hearing preceded by the required notice. The owner of a facility may waive the right to notice and an assessment hearing and may agree to the imposition and payment of assessments at an agreed rate for the facility. After a hearing, the board by majority vote may increase or decrease the rate of assessment. The board must provide notice of the hearing. At a hearing on proposed assessments, at any adjournment of the hearing, or after consideration of the hearing examiner's report, the board shall hear and rule on all objections to each proposed assessment. The board may amend proposed assessments for any facility. After all objections have been heard and action has been taken with regard to those objections, the board by resolution shall impose the assessments on the facilities and shall specify the method of payment of the assessments and may provide that those assessments be paid in periodic installments. Periodic installments must be in amounts sufficient to meet annual costs for security projects or security services provided by this chapter and continue for the number of years required to pay for the security projects and security services to be rendered. If assessments are imposed for more than one security project or security service, the board may provide that assessments collected for one security project or security service may be used for another security project or security service. The board shall establish a procedure for the use or refund of any assessments in excess of those necessary to finance a

security project or security service for which those assessments were collected. The board shall apportion the cost of a security project or security service to be assessed against a facility based on any reasonable assessment plan that results in imposing fair and equitable shares of the cost. Once the estimated total cost of a security project or security service is determined, the board shall impose the assessments against each facility against which an assessment may be imposed in the district. The board may impose an annual assessment that is lower but not higher than the initial assessment. The board shall have an assessment roll prepared showing the assessments against each facility and the board's basis for the assessment. The assessment roll shall be filed with the secretary of the board or other officer who performs the function of secretary and be open for public inspection. After notice and hearing in the manner required for original assessments, the board may make supplemental assessments to correct omissions or mistakes in the assessment relating to the total cost of the security project or security service or covering delinquencies or costs of collection. Not later than the 30th day after the date that an assessment is adopted, a facility owner may file a notice appealing the assessment to the board. The board shall set a date to hear the appeal. Failure to file the notice in the time required by this section results in loss of the right to appeal the assessment. The board may make a reassessment or new assessment of the facility if the assessment against the facility is set aside by a court found excessive by the board or determined invalid by the board. A facility against which an assessment is made by board resolution may appeal the assessment to a district court in the county in the manner provided for the appeal of contested cases under Chapter 2001, Government Code. Review by the district court is by trial de novo. If an assessed facility fails to pay an assessment as provided in a district's assessment plan, the district may impose a lien against the facility assessed. An assessment, a reassessment, or an assessment resulting from an addition to or correction of the assessment roll by the district, penalties on an assessment or reassessment, an expense of collection, and reasonable attorney's fees incurred by the district are a first and prior lien against the property assessed, are superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes and are the personal liability of and a charge against the owners of the property even if the owners are not named in the assessment proceedings. The lien is effective from the date of the board's resolution imposing the assessment until the date the assessment is paid. The board may enforce the lien in the same manner that the board may enforce an ad valorem tax lien against real property. A delinquent assessment incurs interest, penalties, and attorney's fees in the same manner as a delinquent ad valorem tax. The owner of a facility may pay at any time the entire assessment, with interest, penalties, and attorney's fees that have accrued on the assessment. Except as provided by this section, the district may not impose an assessment on a governmental entity, including a municipality, county, or other political subdivision or an organization exempt from taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(3) of that code. An entity or organization described by Subsection (a) may contract with a district to pay assessments under terms the district and the entity or organization consider advisable.

A district is dissolved if the district has not imposed an assessment before the fifth anniversary of the date of the order creating the district under Section 68.107. The county that created the district assumes any district debts or assets. The board by majority vote may dissolve the district at any time. A district may be dissolved as provided by Section 375.262, Local Government Code. The county that created the district assumes any debts or assets of a dissolved district.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds language that states that after the district is created, the commissioners court that created the district may, by petition of the district, provide for Chapter 68 to apply to any other facility by order.

In addition, it is added that the two appointed directors for each security zone must be employed by facilities in the security zone.

It also strikes language that states a district may impose an impact fee to provide for a security project or security service authorized under this chapter.

Also, the substitute adds that the board by majority vote may increase or decrease the rate of assessment only upon notice and a hearing. Also added, the board may only amend proposed assessments for any facility by majority vote. The substitute strikes the requirement that interest must be paid on assessments paid in installments.

Finally, the substitute adds that the board may make a reassessment or new assessment of the facility if the assessment against the facility is set aside by a court and within limits of the court order.