

## **BILL ANALYSIS**

Senate Research Center  
80R20929 E

C.S.H.B. 3011  
By: Smith, Wayne et al. (Jackson)  
Natural Resources  
5/17/2007  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Following meetings with officials from the United States Department of Homeland Security, Harris County, and the Port of Houston Authority, the private petrochemical and refinery facilities near the Houston Ship Channel concluded that the best security for the region was a layered, system-wide security approach. A public and private venture, the Port-wide Strategic Security Council (PSSC), was created to address security concerns. The PSSC, while working with experts in port security, developed a list of projects to systematically improve security in the Houston Ship Channel. Harris County sponsored the PSSC's Homeland Security Department security grants over the past two rounds, netting Harris County \$26 million in federal grants for projects to increase maritime domain awareness and reduce risk of a terrorist attack. The PSSC 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 to implement such layered, system-wide security programs have failed because of the lack of such a mechanism. The public and private partners of the PSSC concluded that the means to collect those funds can be modeled after management districts.

C.S.H.B. 3011 creates a ship channel security district that is a public-private partnership to help improve security with a ship channel area by assisting with the operations and maintenance of a security infrastructure.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 4, Water Code, by adding Chapter 68, as follows:

#### CHAPTER 68. SHIP CHANNEL SECURITY DISTRICTS

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 68.001. DEFINITIONS. Defines "board," "district," "security project," and "security service."

Sec. 68.002. NATURE OF DISTRICT; PURPOSE. Provides that a ship channel security district (district) is a special district and political subdivision of this state. Provides that 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.

Sec. 68.003. PUBLIC PURPOSE OF SECURITY PROJECTS. Provides that a security project is owned, used, and held for public purposes by the district.

Sec. 68.004. LIBERAL CONSTRUCTION OF CHAPTER. Requires this chapter to be liberally construed in conformity with the findings and purposes stated in this chapter.

Sec. 68.005. GENERAL WATER DISTRICT LAW NOT APPLICABLE. Provides that Chapter 49 (Provisions Applicable to All Districts) does not apply to a district.

[Reserves Sections 68.006-68.050 for expansion.]

#### SUBCHAPTER B. FACILITIES

Sec. 68.051. APPLICABILITY TO FACILITIES. (a) Defines "chemical manufacturers' association," "chemical manufacturers' association facility," and "mutual aid organization."

(b) Provides that this chapter applies to certain types of facilities in the district.

(c) Authorizes the commissioners court that created the district by order to provide for this chapter to apply to any other facility that the district by petition requests the court to add.

(d) Provides that this chapter does not apply to certain facilities.

Sec. 68.052. DESIGNEES FOR FACILITY OWNERS. Authorizes a facility's owner to designate a person for certain purposes.

[Reserves Sections 68.053-68.100 for expansion.]

#### SUBCHAPTER C. CREATION

Sec. 68.101. DISTRICT CREATION BY CERTAIN POPULOUS COUNTIES WITH SHIP CHANNELS. Authorizes a district to 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.

Sec. 68.102. PETITION FOR CREATION. Authorizes a district to 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. Requires the petition to be signed by the owners of certain facilities.

Sec. 68.103. CONTENTS OF PETITION; DISTRICT TERRITORY. Sets forth certain content requirements of the petition.

Sec. 68.104. NOTICE OF HEARING; CONTENTS OF NOTICE. (a) Requires the commissioners court of the county to set a date, time, and place for a hearing to consider the petition received by the commissioners court.

(b) Requires the commissioners court to issue public notice of the hearing. Requires the notice to state the date, time, and place of the hearing and that any person is authorized to appear, present evidence, and offer testimony for or against the creation of the proposed district.

(c) Requires the commissioners court to publish the notice in a newspaper of general circulation in the county at least one time at least 30 days before the hearing date.

Sec. 68.105. HEARING. Authorizes any interested person to appear in person or by attorney, present evidence, and offer testimony for or against the creation of the proposed district at the hearing.

Sec. 68.106. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. Requires the commissioners court to consider whether to create the proposed district after the hearing. Requires the commissioners court to make certain findings before approving a petition requesting creation of a district.

Sec. 68.107. ORDER CREATING DISTRICT; CHANGES. (a) Authorizes the commissioners court by order to create the proposed district if the commissioners court makes the findings under Section 68.106.

(b) Authorizes the commissioners court to include in the order any changes or modifications to the proposed district as the court determines are appropriate to reflect the intent of the petition requesting creation of the district.

[Reserves Sections 68.108-68.150 for expansion.]

#### SUBCHAPTER D. BOARD OF DIRECTORS

Sec. 68.151. GOVERNING BODY; COMPOSITION. Provides that a district is governed by a board of at least 10 but not more than 13 directors. Sets forth certain requirements of appointed or serving board members.

Sec. 68.152. SECURITY ZONE DIRECTORS. (a) Requires the commissioners court of the county to appoint two directors for each security zone from a list of two persons nominated by a majority vote of the facility owners in each security zone. Requires each nominated person to be employed by a facility owner at a facility in the security zone.

(b) Requires the commissioners court to approve or disapprove the nominations for each security zone after reviewing the list.

(c) Requires the facility owners in the security zone to provide to the court a new list under Subsection (a) if the commissioners court is not satisfied with the list provided for a security zone.

Sec. 68.153. AT-LARGE DIRECTOR. Authorizes certain persons to be appointed as at-large director for the district.

Sec. 68.154. MUNICIPAL DIRECTOR. (a) Requires a countywide association of mayors and city councils of municipalities in a county that creates a district to appoint one director, if there is such a countywide association.

(b) Requires the municipalities in the district to appoint a director if there is not an association described by Subsection (a). Authorizes the governing body of each municipality by resolution to vote in favor of a nominated person and provides that a person who receives the votes of a majority of governing bodies is appointed director if there is more than one municipality in the district.

(c) Requires the director appointed under this section to reside in a municipality adjacent to the largest ship channel in the district.

Sec. 68.155. PORT AUTHORITY; EX OFFICIO DIRECTOR. (a) Defines "port authority."

(b) Provides that the executive director, or a person designated by the executive director, serves as a director if a port authority is located in the district. Provides that the executive director of the port authority with the largest territory inside the district, or a person designated by the executive director, serves as a director if more than one port authority is located in the district.

Sec. 68.156. TERMS; INITIAL DIRECTORS. (a) Provides that the directors serve staggered two-year terms except as provided by Subsection (b).

(b) Requires the initial directors to stagger their terms, with a majority of the directors serving two years, and a minority of directors serving one year. Provides that the terms are staggered equally if the initial board has an even number of directors. Requires the directors to draw lots to determine the directors who serve one-year terms if the initial directors cannot agree on the staggering.

Sec. 68.157. VACANCY. Provides that a vacancy in the board is filled by the remaining directors by appointing a person who meets the qualifications for the position. Requires a person who meets the qualifications for the position to serve for the unexpired term.

Sec. 68.158. QUORUM. Provides that a vacant board position is not counted for purposes of determining whether a quorum of the board is present.

Sec. 68.159. OFFICERS. Requires the board to elect from its directors a presiding officer, a secretary, and any other officers the board considers necessary or appropriate.

Sec. 68.160. COMPENSATION. Provides that a director is not entitled to compensation for service on the board. Entitles a director to reimbursement for necessary and reasonable expenses incurred in carrying out the duties of a director.

Sec. 68.161. MEETINGS. (a) Requires the board to determine the frequency of its meetings and authorizes the board to hold meetings at any time the board determines.

(b) Requires the board to conduct its meetings in the district.

Sec. 68.162. REMOVAL. Authorizes the board to 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.

[Reserves Sections 68.163-68.200 for expansion.]

#### SUBCHAPTER E. POWERS AND DUTIES

Sec. 68.201. GENERAL POWERS OF DISTRICT. (a) Provides that a district has all powers necessary or required to accomplish the purposes for which it was created.

(b) Authorizes a district to do anything necessary, convenient, or desirable to carry out the powers expressly granted or implied by this chapter.

Sec. 68.202. APPLICABILITY OF MUNICIPAL MANAGEMENT DISTRICTS LAW. Provides that a district has the powers of a district created under Chapter 375 (Municipal Management Districts in General), Local Government Code, except as provided by this chapter.

Sec. 68.203. RULES. Authorizes the district to adopt rules to govern the operation of the district.

Sec. 68.204. NAME CHANGE. Authorizes a board by resolution to change a district's name.

Sec. 68.205. CONTRACTS; GENERALLY. Authorizes a district to contract with any person for any district purpose.

Sec. 68.206. SECURITY PROJECTS AND SERVICES. (a) Requires the board to determine what security projects or security services the district will perform. Authorizes a security project to include a project eligible for funding under a port security grant program of the United States Department of Homeland Security.

(b) Authorizes a district to own, operate, and maintain a security project or provide a security service as reasonably necessary to carry out a district power under this chapter.

(c) Authorizes a district to 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.

Sec. 68.207. **CONTRACTS FOR SECURITY PROJECTS OR SERVICES.** (a) Authorizes a district to contract with any person to plan, establish, develop, construct, renovate, maintain, repair, replace, or operate a security project or to provide a security service.

(b) Authorizes a district to lease to any person a security project or any part of a security project.

(c) Authorizes a district to contract with any person for the use or operation of a security project or any part of a security project.

Sec. 68.208. **CONTRACTS FOR JOINT USE OF SECURITY PROJECT.** Authorizes a district to contract with any person, public or private, for the joint use of a security project.

Sec. 68.209. **CONTRACTS WITH DISTRICT BY GOVERNMENTAL ENTITY.** Authorizes certain entities, without further authorization, to contract with the district to accomplish any district purpose.

Sec. 68.210. **PROPERTY POWERS; GENERALLY.** Authorizes a district to acquire in certain manners, and to 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.

Sec. 68.211. **SUITS.** Authorizes a district to sue and be sued.

Sec. 68.212. **NO EMINENT DOMAIN POWER.** Prohibits a district from exercising the power of eminent domain.

[Reserves Sections 68.213-68.250 for expansion.]

#### SUBCHAPTER F. GENERAL FINANCIAL PROVISIONS

Sec. 68.251. **GRANTS; LOANS.** Authorizes a district to apply for and accept a grant or loan from any person, including certain entities.

Sec. 68.252. **PAYMENT OF EXPENSES.** Authorizes a district to provide for payment of all expenses incurred in its establishment, administration, and operation.

Sec. 68.253. **TAXES PROHIBITED.** Prohibits a district from imposing any tax.

Sec. 68.254. **BONDS PROHIBITED.** Prohibits a district from issuing bonds.

[Reserves Sections 68.255-68.300 for expansion.]

#### SUBCHAPTER G. ASSESSMENTS

Sec. 68.301. **AUTHORITY TO IMPOSE ASSESSMENT.** Authorizes the board to impose an assessment against facilities for any district purpose.

Sec. 68.302. **PROPOSED ASSESSMENTS.** Authorizes a security project or security service to 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.

Sec. 68.303. **NOTICE OF HEARING.** (a) Requires the district to 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 (Form and Content), Tax Code, not later than the 30th day before the date of the hearing.

(b) Provides certain requirements of the notice.

Sec. 68.304. CONDUCTING HEARING; FINDINGS. (a) Authorizes a hearing on a proposed security project or security service, whether conducted by the board or a hearing examiner, to be adjourned from time to time.

(b) Requires the board by resolution to make findings relating to certain considerations at the conclusion of the hearing.

(c) Requires the hearing examiner to file with the board a report stating the examiner's findings and conclusions for the board's consideration if a hearing examiner is appointed to conduct the hearing, after conclusion of the hearing.

Sec. 68.305. FACILITIES TO BE ASSESSED. (a) Authorizes the board to impose certain assessments against certain facilities in accordance with the findings.

(b) Prohibits the facilities to be assessed from including 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 except as provided by Subsection (c).

(c) Authorizes the owner of a facility described by Subsection (b) to waive the right to notice and an assessment hearing and to agree to the imposition and payment of assessments at an agreed rate for the facility.

Sec. 68.306. ASSESSMENT RATE CHANGE. Authorizes the board by majority vote to increase or decrease the rate of assessment after notice and a hearing. Requires the board to provide notice of the hearing in the manner provided by Section 68.303.

Sec. 68.307. OBJECTIONS; LEVY OF ASSESSMENT. (a) Requires the board to hear and rule on all objections to each proposed assessment at a hearing on proposed assessments, at any adjournment of the hearing, or after consideration of the hearing examiner's report.

(b) Authorizes the board to amend proposed assessments for any facility by majority vote.

(c) Requires the board by resolution to impose the assessments on the facilities and to specify the method of payment of the assessments and authorizes the board to provide that those assessments be paid in periodic installments after all objections have been heard and action has been taken with regard to those objections.

(d) Requires periodic installments to 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.

(e) Authorizes the board to provide that assessments collected for one security project or security service may be used for another security project or security service if assessments are imposed for more than one security project or security service.

(f) Requires the board to 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.

Sec. 68.308. APPORTIONMENT OF ASSESSMENT. Requires the board to 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.

Sec. 68.309. ASSESSMENT ROLL. (a) Requires the board to impose the assessments against each facility against which an assessment may be imposed in the district once the estimated total cost of a security project or security service is determined. Authorizes the board to impose an annual assessment that is lower but not higher than the initial assessment.

(b) Requires the board to have an assessment roll prepared showing the assessments against each facility and the board's basis for the assessment. Requires the assessment roll to be filed with the secretary of the board or other officer who performs the function of secretary and be open for public inspection.

Sec. 68.310. SUPPLEMENTAL ASSESSMENTS. Authorizes the board to make supplemental assessments to correct omissions or mistakes in the assessment of certain costs after notice and hearing in the manner required for original assessments.

Sec. 68.311. APPEAL. (a) Authorizes a facility owner to file a notice appealing the assessment to the board not later than the 30th day after the date that an assessment is adopted.

(b) Requires the board to set a date to hear the appeal.

(c) Provides that failure to file the notice in the time required by this section results in loss of the right to appeal the assessment.

(d) Authorizes the board to make a reassessment or new assessment of the facility under certain circumstances.

(e) Prohibits a reassessment or new assessment under Subsection (d)(1) from violating the court order that set aside the assessment.

Sec. 68.312. APPEAL OF RESOLUTION. (a) Authorizes a facility against which an assessment is made by board resolution to appeal the assessment to a district court in the county in the manner provided for the appeal of contested cases under Chapter 2001 (Administrative Procedure), Government Code.

(b) Provides that review by the district court is by trial de novo.

Sec. 68.313. FAILURE TO PAY ASSESSMENT; LIENS FOR ASSESSMENTS. (a) Authorizes the district to impose a lien against the facility assessed if an assessed facility fails to pay an assessment as provided in a district's assessment plan.

(b) Provides that an assessment, a reassessment, or an assessment resulting from an addition to or correction of the assessment roll by the district, penalties and interest 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.

(c) Provides that the lien is effective from the date of the board's resolution imposing the assessment until the date the assessment is paid. Authorizes the board to enforce the lien in the same manner that the board may enforce an ad valorem tax lien against real property.

Sec. 68.314. DELINQUENT ASSESSMENTS. Provides that a delinquent assessment incurs certain fees in the same manner as a delinquent ad valorem tax. Authorizes the owner of a facility to pay at any time the entire assessment, with certain fees that have accrued on the assessment.

Sec. 68.315. ASSESSMENT OF GOVERNMENTAL ENTITIES AND NONPROFITS.  
(a) Prohibits the district from imposing an assessment on certain entities except as provided by this section.

(b) Authorizes an entity or organization described by Subsection (a) to contract with a district to pay assessments under terms the district and the entity or organization consider advisable.

[Reserves Sections 68.316-68.350 for expansion.]

#### SUBCHAPTER H. DISSOLUTION

Sec. 68.351. DISSOLUTION OF DISTRICT FOR FAILURE TO IMPOSE AN ASSESSMENT. Provides that 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. Provides that the county that created the district assumes any district debts or assets.

Sec. 68.352. DISSOLUTION OF DISTRICT BY BOARD VOTE OR OWNER PETITION. (a) Authorizes the board by majority vote to dissolve the district at any time.

(b) Provides that a district may be dissolved as provided by Section 375.262 (Dissolution by Petition by Owners), Local Government Code.

(c) Provides that the county that created the district assumes any debts or assets of a dissolved district.

SECTION 2. Effective date: upon passage or September 1, 2007.