

BILL ANALYSIS

C.S.H.B. 3223
By: Elkins
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Local Government Code currently provides that a governing body of a municipality or county may include additional improvements not contemplated or proposed in the petition for creation of the public improvement district. The current law does not address the addition or exclusion of land from the boundaries of a public improvement district. In addition, currently an improvement may not be purchased pursuant to an installment sales contract.

C.S.H.B. 3223 provides that the governing body may only consider those improvements contemplated in the petition for creation of the public improvement district and the boundaries of public improvement district may be amended. Also, an improvement may be purchased by a public improvement district and paid for through installment payments and provides how such interest rate on the assessment shall be calculated.

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

C.S.H.B. 3223 clarifies that public improvement projects approved by the governing body may be undertaken inside or outside the boundaries of a district and may include enhancements and public facilities to improve and promote the district, including facilities for police or fire services; provide governmental services in one or more municipal buildings; and including facilities that enhance business recruitment and improve quality of life in the district. In addition, the bill requires a county to give written notice to a municipality if the county creates a district within the corporate limits or extraterritorial jurisdiction of the municipality.

The bill clarifies that the determination by the governing body regarding whether an improvement or combination of improvements should be made is based on the improvements proposed by the landowner petition requesting creation of the district.

The bill authorizes the governing body to amend a resolution creating a public improvement district provided the amendment is requested by landowner petition and is adopted after notice and public hearing (which petition, notice, and hearing requirements are the same as those that apply to the creation of a district). The amendment may change the public improvement projects (including the cost thereof) and the proposed method of assessment. C.S.H.B. 3223 also adds this section to require a county to give written notice to a municipality of any amendment that would apply to a district created by the county within the corporate limits or extraterritorial jurisdiction of the municipality.

The bill clarifies that a resolution authorizing a district may find advisable any improvement or combination of improvements; and to clarify that an existing improvement may be acquired only after the expiration of the same 20-day protest period applicable to the construction of new improvements.

The bill clarifies that a district may include noncontiguous land; and to provide a process whereby, prior to the issuance of bonds secured by assessments, land can be added to or excluded from a district upon landowner petition and after notice and hearing (which petition, notice, and hearing requirements are the same as those that apply to the creation of a district). In

addition, the bill requires a county to give written notice to a municipality of any addition or exclusion to a district created by the county within the corporate limits or extraterritorial jurisdiction of the municipality.

The bill clarifies that the service plan required by Chapter 372 shall include projected costs for the improvements or combination of improvements found advisable by the governing body in the resolution authorizing the district.

The bill provides that the cost of an improvement may be assessed in a manner that includes a provision for a reduction or elimination of an assessment or installment payment to the extent other revenues are available to pay for the improvement; and that the governing body may establish a method of allocating assessments upon the subdivision of an assessed parcel provided the resulting allocation does not increase the total assessment of any assessed parcel (which allocation must be reflected in each annual assessment roll prepared for the district).

The bill clarifies that the governing body determines the total cost of an improvement or combination of improvements; and to provide that annual service plans must include revised assessment rolls that reflect the subdivision of any assessed parcels and the resulting allocation of assessments against each subdivided parcel (but without increasing the total assessment against any parcel).

The bill provides that the governing body may provide that assessments be paid in periodic installments (which may or may not result in level annual installment payments) at the times, at an interest rate, and for periods approved by the governing body.

The bill provides an interest rate limitation for general obligation and revenue bonds, time warrants, and temporary notes used to finance improvements for which assessment are levied; and to provide that tax lien foreclosures do not eliminate the outstanding principal balance of an assessment.

The bill allows, but does not require, a separate public improvement district fund to which proceeds from the sale of bonds, temporary notes, time warrants, and other sums shall be credited.

The bill provides that assessments payable in installments may be paid in accordance with an installment sale contract or agreement to reimburse the person who contracts to install or construct improvements or in accordance with the terms of a temporary note or time warrant issued to evidence the obligation of the municipality or county to reimburse the payee for funds advanced or work performed in connection with improvements; to provide a maximum net effective interest rate (one-half of one percent above the average rate reported by a newspaper in a weekly bond index in the month before the date of the contract or issuance of the temporary note, time warrant or bond) for public securities, assessments to be paid in installments, and other monies owed; to provide that while an improvement is in progress, the governing body may issue temporary notes for funds advanced or time warrants for work performed or the governing body may issue bonds; to provide that the cost of more than one improvement may be paid under an agreement with a person who contracts to install or construct the improvement and sell it to the municipality; and to provide that the costs of any improvement shall include interest payable on a temporary note or time warrant.

The bill provides that the governing body may pledge income from improvements (including installment payments) for the payment of obligations under an installment sale contract or reimbursement agreement, bonds, temporary notes, and time warrants (including principal and interest and any other amounts required or permitted in connection with such obligations); to provide that pledged income must be sufficient, with other pledged sources, to pay principal, interest, and other expenses related to all obligations (not just bonds); to provide that all obligations (not just bonds) may also be secured by mortgages or deeds of trust on real property related to facilities authorized by the subchapter; to provide that the governing body may pledge other revenue to the payment of obligations (not just bonds); and to provide that the governing body may create a corporation to manage the district and to finance and own improvement projects and may pledge district revenues to secure the corporation's indebtedness.

The bill provides that an installment contract made or attempted to be made between a county or municipality and a party constructing an improvement is validated as of the date the contract was made or attempted to be made if the contract was made or attempted to be made before the effective date of the Act and if the contract complies with the Act (excluding any matter that on the effective date of the Act was in litigation or was held invalid by a court judgment).

The bill validates the creation of a district containing multiple non-contiguous tracts and validates the resolution, any improvements created by the resolution, any related service and assessment plan, any ordinance levying assessments, including any temporary notes referred to in the service and assessment plan and any security for the notes, if the resolution and ordinance creating the district and levying the assessments were adopted before the effective date of the Act and were approved in writing by the owners of 100% of the land in the district (excluding any matter that on the effective date of the Act was in litigation or was held invalid by a court judgment).

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 modifies the original by clarifying that governing bodies may undertake public improvement projects inside or outside the boundaries of the public improvement district (PID); and deletes the provision authorizing governing bodies to limit the use of public improvement projects to areas liable for assessment. The substitute further clarifies that public improvement projects may include enhancements and public facilities for the improvement of the PID and facilities for police, fire, and governmental services. The substitute clarifies that the boundaries of a PID may include noncontiguous land; and before assessments have been levied, to provide that a Resolution creating a PID may be amended (after notice and hearing) to change the estimated cost of improvement projects, to add or delete improvement projects, and to revise the proposed method of assessment; and clarifies that assessments may be reduced or eliminated to the extent other revenues are available to pay for improvement projects.

The substitute clarifies that governing bodies may authorize a method by which an assessment against a parcel may be allocated upon subsequent subdivision of the parcel so long as the resulting allocation does not increase the total assessment; and clarifies that assessment liens survive tax foreclosures. The substitute corrects the reference to the time of the report of a newspaper in a weekly bond index relative to the net effective interest rate described; and provides that governing bodies may enter into contracts with corporations created by the cities or counties for the management of the PIDs, including the issuance of bonds secured by assessments. In addition, The substitute requires a county to notify a municipality when the county creates a district in the corporate limits or extraterritorial jurisdiction of the municipality or adjusts the boundaries of such a district or amends the resolution creating such a district.

The substitute validates installment sales agreements pursuant to which a city or county agreed to pay for improvement projects from installment payments of assessments (excluding any matter involved in litigation that ultimately results in the matter being held invalid and excluding any matter held invalid by a final court judgment); and validates districts with non-contiguous tracts if 100% of the owners consented to the resolutions and ordinances creating the districts and levying the assessments.