

BILL ANALYSIS

C.S.H.B. 4077
By: McClendon
Local Government Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

C.S. H.B. 4077 amends Subtitle C, Title 4, Special District Local Laws Code, to authorize the City of San Antonio to establish a special district officially identified as the "East San Antonio Economic Development District," to be known as the Eastside Improvement District No. 1.

The east side of San Antonio has traditionally been an African-American community and has a very rich and cultural history. However, this same area has been among the highest of the eight San Antonio City Council districts on issues such as poverty, illiteracy, unemployment, school dropouts and teen pregnancy.

For many years, the majority of the City's development has emphasized the North side of the city while the East side largely has been overlooked. In many eastside areas, however, there remain many empty buildings waiting to be revitalized.

Currently, no single-purpose entity exists to help improve economic development opportunities in the East side of San Antonio. Transformation and reclamation will occur in this area of San Antonio through design and renovation improvements supported by a strong set of redevelopment tools that cover initial and ongoing funding, combined with a coordinated, consistent management approach.

The East San Antonio Economic Development District, otherwise known as the Eastside Improvement District No. 1, will encompass a 4-sided area bounded on the west by IH-37, on the north by IH-35, on the east by South New Braunfels Avenue, and on the South by East Commerce Street.

This district will have the tools needed to improve and redevelop this blighted area of San Antonio, by using public investment to stimulate private investment. The district will be governed by a fifteen-member board, the directors of which will be appointed by the mayor and city council and will serve staggered four year terms. The district will have the power to issue bonds and make assessments, but not the power of the power of eminent domain or ad valorem taxation. It may, in accordance with the provisions of Section 375.3085, Local Government Code, annex or disannex territory in the same manner as a defense adjustment management authority. That annexation or disannexation may not occur until the district has held two public hearings and obtained the consent of the City of San Antonio, by ordinance.

C.S. H.B. 4077 is designed to help reclaim, conserve and redevelop the east side of San Antonio, an area that has become physically and economically deteriorated, unsafe and poorly planned. This bill will enable the City of San Antonio and the special district to implement capital projects in blighted areas, such as street and landscaping improvements, incentives for private investments and job creation, residential development, parks and open space.

Similar legislation has been passed in previous Sessions for special districts in Harris County, and all have had favorable results. Albuquerque has had success with this type of endeavor by utilizing the New Mexico Metropolitan Redevelopment Code.

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

CSHB 4077 creates an economic development district in a mixed-use area east of downtown San Antonio, officially identified for purposes of the enabling Act as the East San Antonio Economic Development District, otherwise to be known as the Eastside Improvement District No. 1.

Section 1 of the CSHB 4077 sets forth the purposes of the district, which are:

- (a) to help the community redevelop areas that are physically or economically deteriorated, unsafe, or poorly planned, and
- (b) to help reclaim blighted areas and transform them by implementing capital projects, providing incentives for private investments and creating jobs, and assisting in developing residential areas, parks and open spaces.

Section 2 of CSHB 4077 adds Chapter 3845 to Subtitle C, Title 4, Special District Local Laws Code. The original HB4077 likewise added Chapter 3845; however, certain of those provisions have been revised to reflect more accurately the intended parameters of the district's powers and purposes than were captured in the original Bill. The author offers the Committee Substitute of April 23, Legislative Council #80R16095, for review and vote by the Committee and by the House, rather than the original Bill.

Within Section 2 of CSHB 4077, Chapter 3845 contains Subchapters A-F, which set forth general provisions, the creation of the board of directors, powers and duties of the district, enabling provisions for creating and managing parking facilities, financial provisions, and dissolution matters.

SUBCHAPTER A. GENERAL PROVISIONS

Chapter 3845, Subchapter A, contains General Provisions such as definitions, Constitutional enabling references, a more detailed statement of purposes of the district and its public purposes, the description of the territorial boundaries of the district, the application of municipal management districts laws, and a statement of liberal construction to be applied in interpretation.

Certain sections of Subchapter A, Chapter 3845, are not particularly noteworthy, however some deserve special mention, as follows:

Sec. 3845.002. CREATION BY CITY; NATURE OF DISTRICT. The City of San Antonio, by ordinance or resolution, is authorized to create the Eastside Improvement District No. 1, a special district, under Section 59, Article XVI, Texas Constitution.

Sec. 3845.003. PURPOSE; DECLARATION OF INTENT.

- (a) The district is authorized to be created by the City of San Antonio, pursuant to purposes of Sections 52 and 52-a, Article III, and of Section 59 of Article XVI, Texas Constitution, and other public purposes stated in this chapter. Bexar County, the City of San Antonio, and other political subdivisions are authorized to contract with the district.
- (b) The authorization for the creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the east area of the city of San Antonio.
- (c) Bexar County and the City of San Antonio will continue to provide the level of services provided in and for this area as of the effective date of this Act, the

creation of the district not being a basis for releasing the county or city from the obligations each authority has to provide services to this area.

Sec. 3845.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE.

....

(d) Recognizes it is in the public interest to create the district to reclaim and conserve the defined area within the City of San Antonio for further development and diversification of the state's economy, eliminate unemployment and underemployment, and develop or expand transportation and commerce.

(e) The district will promote the public health, safety and general welfare, provide money for economic health and vitality of the district, promote public art, restore, preserve and enhance the area, promote and benefit commercial endeavors, promote and develop new and alternative means of pedestrian traffic and public transportation that are safe, attractive, and convenient.

(f) Specifies that street lighting, street landscaping, and street art objects are considered to be street or road improvements.

(g) Although the district will benefit many private as well as public interests, it will not act as the agent or instrumentality of any private interest.

Sec. 3845.005. DISTRICT TERRITORY.

(a) The district is composed of the territory described by Section 3 of the Act enacting this chapter [see below].

(b) Serves as a "savings clause" for preserving the validity of the district, notwithstanding any mistake in the legislative process regarding the description of the territory or any field notes or the copying of same, so that the district and the board are still legally authorized to organize, exist, operate, issue bonds, impose assessments, and conduct the public purposes provided in the Bill.

Sec. 3845.006. APPLICABILITY OF MUNICIPAL MANAGEMENT DISTRICTS LAW. The district will operate under Chapter 375, Local Government Code, except as otherwise provided by this chapter.

Sec. 3845.007. LIBERAL CONSTRUCTION OF CHAPTER. The rule of liberal construction applies in regard to construing the findings and purpose stated in Chapter 3845.

[Sections 3845.008-3845.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Chapter 3845, Subchapter B, Board of Directors, contains organizational terms for the Board of Directors, specifying the number, the terms, manner of appointment, establishment of nonvoting directors, statements of conflicts of interest guidelines (including City of San Antonio guidelines incorporated by reference), and selection of initial voting directors.

Sec. 3845.051. COMPOSITION; TERMS. There will be 15 voting directors, serving staggered 4-year terms; 7 or 8 directors' terms expire each even-numbered anniversary of the district's creation. If it is in the best interest of the district, the board can resolve to increase the number of voting directors to no more than 30, or decrease the number to no fewer than 9. The change in voting directors is effective following consent by the City of San Antonio, by ordinance.

Sec. 3845.052. APPOINTMENT OF DIRECTORS. The City will appoint the voting directors based on applications and recommendations, eligibility being governed by qualifications stated in Subchapter D, Chapter 375, Local Government Code.

Sec. 3845.053. NONVOTING DIRECTORS. Nonvoting Directors may include local and municipal officials, being directors of the parks and recreation, planning and community development, and public works departments of the City of San Antonio; the chief of police of the City of San Antonio; the general manager of the VIA Metropolitan Transit Authority; and the president of each institution of higher learning located in the district. If any of those departments undergo changes, the board can appoint a director representative of the comparable department. The board can also appoint the presiding officer of an eastside San Antonio nonprofit corporation as a nonvoting director.

Sec. 3845.054. QUORUM. Nonvoting directors are not counted for purposes of determining whether a quorum is present.

Sec. 3845.055. VACANCY. Vacancies are filled for the remainder of the unexpired term, in the same manner as originally appointed.

Sec. 3845.056 [was Sec. 3845-054]. CONFLICTS OF INTEREST. Unless an exception in this Section applies, a director may participate in board discussion, votes and decisions, and Chapter 171 of the Local Government code governs conflicts of interest, except for Section 171.004. A director having a substantial interest in a business or charity that would receive a pecuniary benefit from an action of the board is required to file an affidavit with the secretary of the board, after which the director may participate in a discussion or vote on the action only under defined circumstances. If the interest of the director changes at any time, a subsequent affidavit is required. A substantial interest in a charitable entity is determined in the same manner as for a substantial interest in a business entity under Section 171.002, Local Government Code. Directors who serve as officers or employees of a public entity may not vote or participate in discussion of matters regarding contracts with that public entity. In matters of ethics, the City of San Antonio ethics code applies to directors, and the provisions of the City's ethics code prevail in the event of conflicts between the City code and Chapter 3845.

Sec. 3845.057. INITIAL VOTING DIRECTORS. The City of San Antonio will accept applications from which it will appoint the initial 15 voting directors no later than 180 days following the creation of the district; positions 1-8 expire on the second anniversary of the district's creation date, and positions 9-15 expire on the fourth anniversary of the district's creation date. After the initial board is appointed, it may make recommendations for future appointments, in conjunction with the application process. This particular section expires September 1, 2012.

[Sections 3845.058 [was Sec. 3845.056]- 3845.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Section 3845, Subchapter C, describes the powers and duties to be exercised and fulfilled by the district, some general and some specific, including the power to create a nonprofit corporation upon the consent of the City. Consent by the City may contain limitations and restrictions on the creation and board of the nonprofit corporation. Other powers of the district include authority to enter into contracts, apply for grants, receive donations, and let contracts and agreements on competitive bidding. The district will not have powers of eminent domain or independent annexation.

In particular, the City of San Antonio is authorized to grant the district corporate powers granted under the Development Corporation Act of 1979, Section 4B (Art. 5190.6, Vernon's Texas Civil Statutes), and those granted to a housing finance corporation under Local Government Code Chapter 394. It can own, operate, acquire, construct, lease, improve and maintain district projects, and undertake projects in the district for housing or residential development. Upon approval through City ordinance, the Board may implement projects or services authorized by Chapter 3845, by creating, by resolution, a nonprofit corporation to assist in carrying out such projects and services. The Board, subject to the ordinance, shall appoint the nonprofit board of directors, who will serve in the same manner and for the same term as directors would for a local government corporation created under Chapter 431 of the Transportation Code. The C.S.H.B. 4077 80(R)

City's ordinance may contain conditions on the creation of, powers of, or appointment of directors for, the corporation.

Also under Chapter 3845, Subchapter C, the district may contract with Bexar County, the City of San Antonio, or another political subdivision of this state, in providing services or implementing projects of the district. In addition, the district may enter into contracts, leases, or agreements with any person, including the United States government, this state or a state agency, political subdivisions of this state, and public or private corporations (including a nonprofit corporation created under this subchapter), and may also make or accept grants or loans or donations to or from the same. The implementation of district projects is a governmental function or service for purposes of Chapter 791, Government Code.

Sec. 3845.105. COMPETITIVE BIDDING. District contracts for \$25,000 or less do not require competitive bidding which would otherwise be required under Section 375.221, Local Government Code.

Sec. 3845.106. ANNEXATION OR DISANNEXATION. The District may, in accordance with the provisions of Section 375.3085, Local Government Code, resolve to annex or disannex territory in the same manner as a defense adjustment management authority. In that regard, annexation or disannexation may not occur until the district has held two public hearings and obtained the consent of the City of San Antonio, by ordinance. Chapter 49, Subchapter J of the Water Code does not apply to this district.

Sec. 3845.107. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

[Sections 3845.108-3845.150 reserved for expansion]

SUBCHAPTER D. PUBLIC PARKING FACILITIES

Chapter 3845, Subchapter D, as stated, refers to public parking facilities. Parking facilities would be authorized as proper projects for the district, for which rules would be established, and provisions regarding financing of parking facilities are stated.

Sec. 3845.151. PARKING FACILITIES AUTHORIZED. To the extent authorized by a city ordinance, city parking facilities contract, or city bond covenant, the district may acquire, lease as lessor or lessee, construct, develop, own, operate, and maintain parking facilities, including:

- (1) lots, garages, parking terminals, or other structures or accommodations for the parking of motor vehicles; and
- (2) equipment, entrances, exits, fencing, and other accessories necessary for safety and convenience in the parking of vehicles.

Sec. 3845.152 authorizes the district to adopt rules concerning its public parking facility interests; provided, however that rules regarding right-of-way or off-street parking uses are subject to applicable municipal charter, code or ordinance requirements.

Sec. 3845.153 authorizes the district to use its various financial resources to pay for acquisition and operation of public parking facilities. It is also authorized to set and impose fees or charges for use of the public parking facilities, and issue bonds or notes to finance their cost.

[Sections 3845.154 -3845.200 reserved for expansion]

SUBCHAPTER E. FINANCIAL PROVISIONS

Chapter 3845, Subchapter E, Financial Provisions, contains 13 sections, as follows:

Sec. 3845.201 enables the Board to initiate the financing of a service or improvement project under Chapter 3845, on the basis of a written petition which must be filed with the Board. The petition is to be submitted by real property owners in the district, and it must be signed either by the owners of a majority of the value of real properties in the district assessed on the most recent Bexar County certified tax rolls, or by at least 50 owners of land in the district, if more than 50 persons own appraised property in the district according to the most recent County certified tax rolls.

Sec. 3845.202. DISBURSEMENTS AND TRANSFERS OF MONEY. The board by resolution shall establish the number of directors' signatures and the procedure required for a disbursement or transfer of the district's money.

Sec. 3845.203 [was Sec. 3845.203. Original Sec. 3845.203 has been deleted].
AUTHORITY TO IMPOSE ASSESSMENTS.

The board may impose an assessment in accordance with the provisions of Chapter 375, Local Government Code, to provide an improvement or service for a project or activity the district may acquire, construct, improve or provide. Chapter 375 requires the district to publish notice of and hold a public hearing on the advisability of the improvements and services and the proposed assessments. It further requires the notice to be mailed by certified mail to all property owners in the district who will be subject to assessment, at the current address of the property as reflected on the tax rolls.

Sec. 3845.204 [was Sec. 3845.205]. ASSESSMENT IN PART OF DISTRICT. An assessment may be imposed on only a part of the district if only that part will benefit from the service or improvement.

Sec. 3845.205 [was Sec. 3845.206]. LIENS FOR ASSESSMENTS. Assessments are a first and prior lien against the property assessed, superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes. The lien against the property also becomes a personal liability of the property owner, and is effective from the date of the board's resolution imposing the assessment until the date the assessed lien is paid. The board is authorized to enforce the lien in the same manner that the city may enforce an ad valorem tax lien against real property.

Sec. 3845.206 [was Sec. 38.45.207]. SUITS TO RECOVER ASSESSMENTS. Assessments on property under Chapter 3845 are determined as of January 1 of the year in which the assessment is imposed, and become a personal obligation of the person owning the property on January 1, even if they transfer title to the property; the assessment is enforceable by a lien attaching to the property as January 1 of the year for which the assessment is imposed, and the lien priority is the same as a lien for a district tax. The district may file suit to foreclose and/or enforce the obligation for the assessment and any accrued interest, costs and attorneys' fees (and the costs may not exceed 20 percent of the amount of the assessment and interest); the district must file suit no later than the 4th anniversary of the date when the delinquent assessment became due, or else the assessment and accrued interest are considered paid.

Sec. 3845.207 prohibits the district from imposing an assessment upon a governmental entity or an organization exempt from federal taxation, but permits the entities and organizations to contract with the district to pay assessments under terms and conditions the parties consider advisable, including apportioned assessments.

Sec. 3845.208 provides that single-family detached residential properties, duplexes, triplexes and fourplexes are exempt from assessments, as are property, equipment and facilities of service providers of public cable tv, gas, light, power, telephone, sewer or water services.

Sec. 3845.209 authorizes the district to issue bonds, notes and other obligation instruments in accordance with Chapter 375, Subchapters I and J of the Local Government Code, and the form of the indebtedness may be evidenced by bonds, notes, certificates of participation, or other instruments of proportionate interest in payments the district would be making.

Section 3845.209 (c) and (d) state some specific requirements regarding City of San Antonio approval concerning bonds and budgeting:

- (c) The district must obtain the approval of the City of San Antonio:
 - (1) for the issuance of any bonds;
 - (2) of the plans and specifications of the improvement project to be financed by the bonds; and
 - (3) of the plans and specifications of a district improvement project related to:
 - (A) the use of land owned by the City of San Antonio;
 - (B) an easement granted by the City of San Antonio; or
 - (C) a right-of-way of a street, road, or highway.
- (d) If the district obtains the approval of the City of San Antonio of a capital improvements budget for a specified period not to exceed five years, the district may finance the capital improvements and issue bonds specified in the budget subject to further approval from the City of San Antonio.

Sec. 3845.210. SPENDING ON PROJECTS OUTSIDE THE DISTRICT PROHIBITED. The district may not spend money for a project outside the district.

Sec. 3845.211. NO AD VALOREM TAX OR IMPACT FEE. The district may not impose an ad valorem tax or impact fee.

Under Sec. 3845.212, the district may impose assessments for the cost of work associated with electrical or optical lines, above ground or below ground, such as burying or removing lines (electrical, telephone, cable or fiber optic, or other), reconnecting lines, or removing poles and elevated lines using the poles. Also, the district may negotiate a license agreement with the city to use a municipal right-of-way to acquire, operate, or charge fees for the use of district conduits, and charge fees for another person's telecommunications network, fiber-optic cable, data transmission line, or any other type of communications transmission line or supporting facility; however, it may not require a person to use a district conduit.

[Sections 3845.213-3845.250 reserved for expansion]

SUBCHAPTER F. DISSOLUTION

Chapter 3845, Subchapter F, Dissolution, contains Sec. 3845.251, which allows the district to dissolve with outstanding debt existing, subject to consent by the City of San Antonio; however, it must remain in existence until all debts are discharged. Section 375.264 of the Local Government Code does not apply to the district. Subchapter F concludes Section 2 of CSHB 4077.

Sec. 3845.252 permits dissolution of the district by the City of San Antonio, following publication of notice of and a public hearing on the dissolution, in the same manner as a municipality creating a defense adjustment management authority under Subchapter O, Chapter 375, Local Government Code. On dissolution by the City of San Antonio, the city assumes all district assets, debts, and other obligations. Section 375.263, Local Government Code, does not apply to the district.

Section 3 of CSHB 4077 describes the general boundaries covered by the District, unless otherwise specified, being a 4-sided area on the east side of downtown San Antonio, beginning at East Commerce Street and IH-37 and bounded on the west by IH-37, on the north by IH-35, on the east by South New Braunfels Avenue, and on the south by East Commerce street, returning to a point of closure at East Commerce Street and IH-37.

Section 4 of CSHB 4077 states the Legislative Findings regarding published notice in an area newspaper of general circulation, notice to the Governor, notice to the municipality, and to the Commissioners Court of the County. [Not stated in the bill, but provided for the information of the Committee, are the facts that notice was published in the San Antonio Express-News on April 6, 2007 and filed with the Chief Clerk of the House, and the remaining notice requirements have been met as well.]

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EFFECTIVE DATE

Section 5 of CSHB 4077 states the Effective Date of the Bill, which would be September 1, 2007, unless it takes effect immediately upon the requisite 2/3 vote of the House and the Senate.

COMPARISON OF ORIGINAL BILL TO SUBSTITUTE

Like the original HB 4077, CSHB serves as the enabling legislation to establish an economic development and redevelopment district in a mixed-use area east of downtown San Antonio, officially identified for purposes of the enabling Act as the East San Antonio Economic Development District.

Unlike the original HB, which established the district directly through the legislation, the CSHB enables the City of San Antonio to create the district. The CSHB also provides that the Board may resolve to establish a non-profit corporation to assist in carrying out its projects, subject to terms of a City ordinance being passed in this regard.

The substitute Bill contains more specific language describing the boundaries of the district, provides a familiar name for the district, which will be known as the Eastside Improvement District No. 1, and contains various provisions designed to meet City of San Antonio requirements to make the legislation compatible with existing city ordinance requirements.

The CSHB clarifies that the management of the district by the board will focus on alleviating problems associated with urban blight, reclaiming and conserving this area within the City of San Antonio for future public use and benefit. Additional details are included in the CSHB about how various board decisions of the district are to be coordinated with City of San Antonio departments and staff.