

BILL ANALYSIS

C.S.S.B. 1012
By: Williams
Land & Resource Management
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In many of the large metropolitan areas of the state, the principal municipality must provide regional public improvement projects and economic development programs to benefit areas within and outside the boundaries of the municipality, the region and the state as a whole. Insufficient legislative authority currently exists to permit large, developed unincorporated areas in the extraterritorial jurisdiction (ETJ) of these principal municipalities to financially participate in these regional programs and projects. The use of municipal annexation to secure financial participation of the unincorporated areas in these regional programs and projects is often not desirable or beneficial to either the municipality or the unincorporated area.

The purpose of C.S.S.B. 1012 is to provide permissive authority for certain municipalities and certain large, planned communities in unincorporated areas to mutually agree on the selection and funding of mutually beneficial regional programs and projects, and in consideration of such financial participation by the unincorporated area, provision may be made in a regional participation agreement (RPA) for the deferral of annexation of the unincorporated area or the release of the unincorporated area from the ETJ of the municipality.

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

This bill amends the Local Government Code. It defines "district," "eligible municipality," "party," "planned community," and "regional participation agreement."

This bill authorizes the governing body of an eligible municipality, the governing body of a district, and if applicable, a person to approve and authorize execution and performance of a RPA to further regional participation in the funding of eligible programs or projects, notwithstanding any contrary law or municipal charter provision. It requires a RPA to include as parties at least one eligible municipality and one district and authorizes it to include as parties other eligible municipalities, districts, or persons.

This bill authorizes a RPA to provide or allow for certain actions, methods and procedures, and provisions.

This bill authorizes a RPA to provide for the funding of any program or project, whether individual, intermittent, or continuing and whether located or conducted within or outside the boundaries of a party, for the planning, design, construction, acquisition, lease, rental, installment purchase, improvement, provision of furnishings or equipment, rehabilitation, repair, reconstruction, relocation, preservation, beautification, use, execution, administration, management, operation, or maintenance of any works, improvements, or facilities, or for providing any functions or services, whether provided to, for, by, or on behalf of a party, that provide a material benefit to each party in the accomplishment of the public purposes of each party, related to certain functions and responsibilities.

This bill requires a RPA to meet certain criteria.

This bill authorizes another district, municipality, or benefited person to join or become a party to a RPA in the manner authorized in the agreement.

This bill provides that a RPA is not required to describe the land contained within the boundaries of a district that is a party to the agreement.

This bill provides that a RPA binds each party to the agreement for the term specified in the agreement and each owner and future owner of land that is subject to the agreement during any annexation deferral period established in the agreement. Provides that if a party or land or a landowner is excluded or removed from an agreement, the removal or exclusion is effective on the recordation of the amendment, supplement, modification, or restatement of the agreement implementing such removal or exclusion.

This bill prohibits a RPA from requiring a district to make payments from any funds that are restricted, encumbered, or pledged for the payment of contractual obligations or indebtedness of a district. It authorizes any party to commit or pledge to issue bonds payable from or secured by a pledge of any available source of funds, including unencumbered sales and use taxes, to make payments due or to become due under the agreement.

This bill provides that a program or project to be funded and any bonds to be issued by a district to make payments under a RPA are not subject to review or approval by the Texas Commission on Environmental Quality, notwithstanding any other law.

This bill provides that a RPA and any action taken under the agreement are not subject to any method of approval or appeal under the Water Code.

This bill requires a RPA, including any related amendment, supplement, modification, or restatement, and a pledge of funds to make payments under an agreement to be final and incontestable in any court of this state after due authorization, execution, delivery, and recordation as provided by this section.

This bill provides that notwithstanding any defect, ambiguity, discrepancy, invalidity, or unenforceability of a RPA that has been voluntarily entered into and fully executed by the parties thereto, or any contrary law, common law doctrine, or municipal charter provision, and for the duration of any annexation deferral period established in the agreement during which a district continues to perform its obligations under certain agreements:

(1) Provides that Section 42.023 and any other law or municipal charter provision relating to the reduction of the ETJ of a municipality that is a party to the agreement shall not apply, and Sections 42.041(b)-(e) do not apply to any land or owner of land within a district that is a party.

(2) Prohibits the governing body of an eligible municipality that is a party from initiating or continuing an annexation proceeding relating to that area, but allows the eligible municipality to include the area covered by the agreement in a municipal annexation plan

(3) Requires any district that is a party to be released from the ETJ of an eligible municipality that is a party under an agreement, or that is to be incorporated or included within an alternate form of government with the consent of a municipality that is a party under an agreement, to be released from the ETJ by operation of law and without further action by a party or its governing body, or requires consent of the municipality to the incorporation or adoption of an alternate form of government to be deemed to have been given, at the time or upon the occurrence of the events specified in the agreement.

This bill provides that a district or an eligible municipality is not required to hold an election to authorize a RPA, notwithstanding the provisions of any municipal charter or other law. It prohibits payments or income from a regional participation fund from being deemed revenues to an eligible municipality for purposes of any law or municipal charter provisions relating to revenue or property tax caps or limits, as long as such funds remain restricted for use under an agreement.

This bill provides that this section is cumulative of all other authority to make, enter into, and perform a RPA. Requires that this section prevail and control in case of any conflict or ambiguity between this section and any other law or municipal charter provision.

This bill requires this section to be liberally construed so as to give effect to its legislative purposes and to sustain the validity of a RPA if the agreement was entered into under or in anticipation of enactment of this section.

This bill sets forth certain legislative findings and determinations.

This bill provides that the provisions of this Act are severable. It requires that if any word, phrase, clause, sentence, section, provision, or part of this Act is held invalid or unconstitutional, it does not affect the validity of the remaining portions, and declares it to be the legislative intent that this Act would have been passed as to the remaining portions regardless of the invalidity of any part.

This bill provides that a RPA entered into in anticipation of this Act is not invalid because of the agreement's authorization, execution, or delivery before the effective date of this Act.

This bill provides for an effective date (upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007).

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 Committee Substitute includes clarifying language on page 8, lines 16 to 19, to read "alternate form of government *by the district* shall be deemed to have been given, *as appropriate under the agreement*, at the time or upon the occurrence of the events specified in the agreement" instead of similar language in the Original that reads "alternate form of government shall be deemed to have been given at the time or upon the occurrence of the events specified in the agreement."