

BILL ANALYSIS

C.S.S.B. 1693
By: Nelson
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Inland ports are areas with direct access to highway, rail, air transport, and/or intermodal facilities but located away from traditional coastal borders. Inland ports have the capacity to facilitate and process national and international trade through strategic investment in multimodal transportation assets, logistics systems, security processes, customs facilities, and freight transfer equipment. They can also promote homeland security and will contribute to the development and diversification of the state's economy. C.S.S.B. 1693 would provide for the creation, financing, management, powers, operation, and control of inland port authorities (IPAs) which would have the authority to issue bonds, and levy assessments and ad valorem taxes to pay for improvements necessary to further the public purpose of developing and diversifying the economy of the state; promoting homeland security and protection; eliminating unemployment and underemployment; and developing or expanding transportation and commerce.

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

SECTION 1. Amends Business & Commerce Code, by adding Title 15, Chapter 672 as follows:

Subchapter A, General Provisions: Specifies that an IPA is a special district and political subdivision of the state created under Section 59, Article XVI, Texas Constitution. Provides that an IPA is created to serve a public use and benefit and all land included in an authority will benefit from the works and projects to be provided by the authority. Further provides that the creation of the IPA is in the public interest and is essential to (1) further the public purposes of developing and diversifying the economy of the state; (2) promote homeland security and protection; (3) eliminate unemployment and underemployment; and (4) develop or expand transportation and commerce. Further provides that an IPA furthers the public purposes of developing and diversifying the economy of the state by encouraging the establishment of inland ports to facilitate commerce through investment in multi-modal transportation assets; comprehensive planning, management and operation of facilities and infrastructure for transportation, commercial processing; and domestic and international trade. Provides that the authority will not act as the instrumentality of any private interests even though it will benefit private and public interests.

Subchapter B, Creation of Authority: Provides that an IPA may only be created in a contiguous area located in not more than two adjacent counties that does not include property zoned for residential use that comprises more than five percent of the total appraised value of real property in the IPA's proposed boundaries, and which includes: 1) a municipally-owned airport with a runway of at least 4,900 feet in length, 2) a portion of an interstate highway or a highway designated as a high priority trade corridor on the national highway system, and 3) operating assets of at least one Class I railroad. Provides that the contiguous area may not include any property for which a participating entity has received written notice from the property owner that the property owner elects to have the property excluded from the IPA. Provides that a county or municipality located wholly or partly in the IPA's boundaries is eligible to create an IPA. Sets forth procedures for creation of an IPA through official action by each participating entity. Requires that the governing body of each participating entity proposing to form an IPA hold

hearings, and requires that the governing body of each participating entity proposing to form an IPA pass an ordinance or resolution authorizing creation.

Subchapter C, Board of Directors: Provides that an IPA is governed by a board of directors composed of an odd number of directors in a number to be agreed upon by the participating entities, including: three directors appointed by the most populous municipality in the IPA; one director appointed by each county in the IPA; one director appointed by each municipality in the IPA other than the most populous municipality; one director appointed by each school district which owns property located within the boundaries of the IPA; and any other directors appointed as provided in the concurrent order, ordinance, or resolution creating the IPA. Provides that directors serve staggered four-year terms with as near as possible to one-half of the directors' terms expiring every two years. Requires that directors reside within the geographic boundaries of one of the participating entities and may be elected officials or employees of a participating entity. Provides for the election by the board of directors of officers and provides that directors serve without compensation and are entitled to reimbursement for actual and necessary expenses. Sets forth prohibited conduct for directors and employees.

Subchapter D, Powers & Duties: Grants an IPA the powers and duties applicable to a municipal management district under Subchapter E., Chapter 375, Local Government Code. Provides that an IPA may adopt rules to govern its operation relating to employees; facilities; health, safety and general welfare of persons or property; and any other necessary matters concerning its purpose. Provides that an IPA shall facilitate and process national and international trade through strategic investment in multi-modal transportation assets, logistics systems, security processes, customs facilities, and freight transfer equipment, and by providing value-added services as goods move through the supply chain.

Provides that an IPA may acquire a transportation project or public utility facility, acquire property for such a project or facility, and construct or improve such a project or facility inside, or if contiguous to a project or facility inside the IPA, outside the IPA as necessary to ensure an adequate transportation or public utility infrastructure to support authority facilities or operations. Further provides that an IPA may finance a transportation project or public utility facility or the construction, acquisition, or improvement of such a project or facility from money available to the IPA under this chapter.

Provides that a transportation project that is subject to a development agreement with a private entity, including facilities acquired or constructed on the project, is public property and belongs to the IPA that entered into the agreement. Authorizes an IPA to enter into an agreement that provides for the lease of rights-of-way; the granting of easements; the issuance of franchises, concessions, licenses, or permits; or any lawful uses to enable a private entity to construct, occupy, operate, and maintain a project, including supplemental facilities. Provides that at the termination of the agreement, the transportation project, including the facilities, must be in a state of proper maintenance as determined by the IPA and returned to the IPA in satisfactory condition at no further cost.

Provides that an IPA may acquire, construct, complete, develop, finance, own, operate, maintain, lease, and sell any kind of property to any person for any IPA purpose. Provides that an IPA may purchase an interest in real property to acquire, construct, or operate an IPA facility on terms and at a price agreed to by the IPA and owner. Provides that the governing body of a municipality, county, or other governmental entity may convey title or rights and easements to any property needed by the IPA to affect its purposes. Prohibits an IPA from acquiring real property listed on the tax rolls of a participating entity without the consent of the participating entity. Provides that an IPA does not have the power of eminent domain.

Provides that an IPA may contract for the design and construction of a transportation project by a construction manager-at-risk procedure under which the construction manager-at-risk provides consultation to the IPA during the design of the transportation project and is responsible for the construction of the transportation project in accordance with the IPA's specifications. Further provides that the IPA shall select the construction manager-at-risk based on criteria established by the IPA, which may include experience, past performance, safety record, proposed personnel and methodology, proposed fees, and other appropriate factors. Authorizes an IPA to contract for the design and construction of a transportation project using a design-build procedure in which

services for the design and construction of the project are provided under a single contract. Specifies procedures that must be followed if using a design-build procedure.

Provides that an IPA may lease the use of its facilities or equipment for a term that may not exceed 50 years. Provides that an IPA may enter into an agreement with any person, including the United States or any governmental entity, for any IPA purpose. Provides that the participating entities may amend the agreement creating the IPA to limit or expand the IPA's powers, but may not expand the IPA's powers beyond the powers granted by Chapter 672. Prohibits the amendment of the agreement creating the IPA if the IPA has incurred outstanding indebtedness and the amendment reduced the IPA's powers or negatively affects the holders of debt issued by the IPA. Further provides that an IPA may act jointly with any person, private or public, inside or outside the state or the United States, in the performance of any power or duty under this chapter or other law. Provides that an IPA may purchase and pay premiums to insurers for insurance of any type in amounts considered necessary or advisable by the board, and that an IPA may purchase an additional insured provision to any liability insurance contract.

Provides that an IPA may promote the use of an IPA project, facility, or service, including one that it operates on behalf of another entity or that another entity operates on behalf of the IPA, by appropriate means, including advertising or marketing as the authority determines appropriate. Provides that an IPA may employ a security officer who holds a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education. Permits an IPA may accept a grant, loan, or donation from any person, including the United States, the state of Texas, or a political subdivision of the state.

Provides that all IPA property and any improvement project, transportation project, or public utility facility constructed for the IPA is subject to the land use regulations and other applicable ordinances or rules of each municipality in whose corporate boundaries or extraterritorial jurisdiction the property, project, or facility is located. Provides that with the consent of a municipality, county, or other political subdivision, an IPA may use streets, alleys, roads, highways, and other public ways of the municipality, county, or other political subdivision; and relocate, raise, reroute, change the grade of, or alter, at the expense of the IPA, the construction of a street, alley, highway, road or railroad; electric lines and facilities; telegraph and telephone properties and facilities; pipelines and facilities; conduits and facilities; and other property, whether publicly or privately owned, as necessary or useful in the construction, reconstruction, repair, maintenance, and operation of facilities. Prohibits an IPA from altering a highway that is part of the state highway system without the consent of TxDOT. Prohibits an IPA from altering a railroad without the consent of the railroad. Prohibits an IPA from providing retail utility services. Prohibits an IPA from duplicating a service or facility of another public entity.

Subchapter E, General Financial Provisions: Provides that an IPA shall establish and maintain commercially reasonable and nondiscriminatory rates, rentals, fees, charges, or other compensation for the use of facilities constructed, operated, regulated, or maintained by the IPA. Provides that an IPA may reimburse a private entity for money spent to improve facilities or other property in the IPA if the improvement has been or will be dedicated or otherwise transferred to public use. Allows an IPA to purchase any improvement to property that has been or will be constructed by a private entity, regardless of whether construction occurs before or after the creation of the IPA.

Allows an IPA to incur liabilities, borrow money on terms determined by the board, enter into short-term borrowing and commercial paper transactions, and issue bonds. Further allows an IPA to enter into credit agreements under Chapter 1371, Government Code. Provides that an IPA shall adopt rules governing the awards of contracts through competitive processes for goods and services. Allows an IPA to procure goods and services, including materials, engineering, design, construction, operations, maintenance, and other goods and services, through any procedure authorized by Chapter 672. Provides that the board, by resolution, shall designate a bank or banks as the IPA's depository and that all IPA money must be secured in the manner provided for securing county funds.

Subchapter F, Assessments and Impact Fees: Grants an IPA the authority to impose assessments and impact fees under Subchapters F, G, and H, Chapter 375, Local Government Code. Provides that an improvement project undertaken by an IPA may include the financing of any

improvements described in Chapter 375.112, Local Government Code; and the construction, financing, acquisition, improvement, relocation, operation, maintenance, or provision of an inland port facility or transportation project.

Subchapter G, Ad Valorem Taxes and Bonds: Provides that an IPA may issue bonds as provided by Subchapter J, Chapter 375, Local Government Code. Provides that Sections 375.207 and 375.208, Local Government Code, do not apply to an IPA.

Prohibits an IPA from issuing bonds secured by taxes unless the issuance of the bonds and the tax to source the bonds are approved at an election in the IPA held for that purpose. Provides that an IPA may issue bonds not secured by taxes without an election. Provides that the proposition submitted in the election must state the purpose for which the bonds are to be issued; the amount of the bonds; the interest rate; the tax rate that will be imposed sufficient to pay the annual interest on the bonds and to provide a sinking fund to redeem the bonds at maturity; and the maturity date of the bonds or that the bonds may be issued to mature serially over a specified number of years not to exceed 40. Provides notice requirements in addition to those required by Section 4.003(c), Election Code.

Grants the IPA the authority to impose an ad valorem tax for any IPA purpose if a majority of the IPA voters voting at an election called for that purpose vote in favor of the tax. Provides that the IPA's tax rate may not exceed: 10 cents on each \$100 valuation of all taxable property in the IPA. Provides that the IPA shall publish notice and hold a hearing on the tax rate in the same manner as provided by Section 672.054. Further provides that after setting the tax rate, the IPA is governed by the provisions of the Tax Code governing ad valorem taxes of home-rule municipalities. Provides that the initial tax rate does not take effect until the tax year beginning on a date after the date of the initial meeting of the board or the tax year following the date the board sets the initial tax rate, whichever is later.

Grants an IPA the authority to issue certificates of obligation in the manner provided by Subchapter C, Chapter 271, Local Government Code. Provides that except as provided by Section 672.402, a participating entity is not obligated to pay any IPA bonds. Provides that bonds issued under Chapter 672, the transfer of bonds, and income from the bonds, including profits from the sale of bonds, are exempt from taxation in the state. Provides that Subchapter H, Chapter 375, Local Government Code applies to an IPA; further provides that Chapter 2007, Government Code, does not apply to a tax imposed by an IPA.

Subchapter H, Withdrawal and Dissolution: Provides that a participating entity may withdraw from the IPA if the governing body of each participating entity agrees to the withdrawal and if the IPA has outstanding bonded indebtedness, the debt holders agree in writing to the withdrawal. Further provides that if a participating entity withdraws from the IPA, the boundaries of the IPA are revised to reflect the removal of the territory of the withdrawing entity. Provides that if an entity that appoints directors withdraws, the directors that were appointed by that entity vacate the director's office, and the participating entities shall appoint a new director to fill the remainder of each withdrawing director's term.

Provides that an IPA is dissolved if the dissolution is approved by the governing body of each participating entity, all debts and other liabilities of the IPA have been paid and discharged or adequate provision has been made for the payment of all debts and other liabilities; there are no suits pending against the IPA, or adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in any pending suit; and the IPA has commitments from other governmental entities to assume jurisdiction of all IPA property, including facilities and equipment.

SECTION 2. Effective Date: Immediate if it receives a vote of two thirds of all members of each house; otherwise, 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 House committee substitute provides that a small amount of residential property may be included in an IPA, while the Senate engrossed bill excluded all residential property from the IPA. The House committee substitute reduces the required runway length for a municipal airport in an area authorized to create an IPA from 5500 feet to 4900 feet and expands the required roadway in an area authorized to create an IPA to include a portion of an interstate highway. The House committee substitute also adds a provision allowing property owners to opt out of inclusion in an IPA; provides additional details as to what may be covered in an agreement among “participating entities”; removes the prohibition on elected officials or employees of participating entities serving as directors of an IPA; adds a requirement for the IPA to obtain the consent of a participating entity prior to the acquisition of property on the tax rolls of that entity; and adds an explicit requirement for an IPA to comply with land use regulations and other applicable ordinances or rules of each municipality in whose corporate boundaries or extraterritorial jurisdiction the IPA property, project, or facility is located. Additionally, the House committee substitute removes the authority to enter into comprehensive development agreements and adds the authority to contract for the design and construction of a transportation project using a design-build procedure. The House committee substitute also adds a provision clarifying that the boundaries of an IPA will be adjusted and the board composition changed if a participating entity withdraws from the IPA.