

By: Eissler

H.B. No. 2197

A BILL TO BE ENTITLED

AN ACT

relating to the establishment of regional participation agreements between certain municipalities and special districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 43, Local Government Code, is amended by adding Section 43.0754 to read as follows:

Sec. 43.0754. REGIONAL PARTICIPATION AGREEMENTS. (a) In this section:

(1) "District" means a political subdivision created by general or special law that has the powers of a municipal management district under Chapter 375 and a conservation and reclamation district under Chapters 49 and 54, Water Code, all or substantially all of the territory of which is located within the boundaries of a planned community and within the extraterritorial jurisdiction of one or more municipalities.

(2) "Municipality" means a municipality:

(A) that has a population of 1.5 million or more and that includes in its extraterritorial jurisdiction all or substantially all of the territory of a district; or

(B) that includes in its extraterritorial jurisdiction not more than 10 percent of the territory of the district.

(3) "Party" means a district, municipality, or other person that is a party to a regional participation agreement

1 approved and entered into under this section.

2 (4) "Planned community" means a planned community of
3 20 square miles or more with a population of 50,000 or more that is
4 subject in whole or in part to a restrictive covenant that contains
5 an ad valorem-based assessment on real property used or to be used,
6 in any part, to fund governmental or quasi-governmental services
7 and facilities within and for the planned community.

8 (5) "Regional participation agreement" means a
9 contract or agreement entered into under this section or in
10 anticipation of the enactment of this section and any amendment,
11 modification, supplement, addition, renewal, or extension to or of
12 the contract or agreement or any proceeding relating to the
13 contract or agreement.

14 (b) Notwithstanding any contrary law or municipal charter
15 provision, the governing body or bodies of one or more
16 municipalities and the governing body or bodies of one or more
17 districts and other benefited persons may approve and authorize
18 execution and performance of a regional participation agreement to
19 further regional participation in the funding of eligible programs
20 or projects between the municipality or municipalities and the
21 district or districts and other benefited persons.

22 (c) A regional participation agreement may provide or allow
23 for:

24 (1) the establishment, administration, use,
25 investment, and application of a regional participation fund, which
26 shall be a special fund or escrow account to be used solely for
27 funding the costs and expenses of eligible programs or projects;

1 (2) payments to be made by a district, a municipality,
2 or other persons into the regional participation fund for
3 application currently or in the future toward eligible programs or
4 projects;

5 (3) the methods and procedures by which eligible
6 programs or projects are prioritized, identified, and selected for
7 implementation and are planned, designed, bid, constructed,
8 administered, inspected, and completed;

9 (4) the methods and procedures for accounting for
10 amounts on deposit in, or to the credit of, or expended from the
11 regional participation fund, as well as any related investment
12 income or amounts due and owing to or from any party to such fund;

13 (5) credits against payments otherwise due by any
14 party under the agreement resulting from taxes, charges, fees,
15 assessments, tolls, or other payments in support of or related to
16 the usage or costs of eligible programs or projects that are levied
17 or imposed upon, assessed against, or made applicable to a party or
18 its citizens, ratepayers, taxpayers, or constituents after the
19 effective date of the agreement;

20 (6) any type of annexation of any part of the territory
21 of a district to be deferred by a municipality for a mutually
22 agreeable period;

23 (7) the release of all or part of the territory of a
24 district from the extraterritorial jurisdiction of a municipality
25 at a specified time or upon the occurrence of specified events;

26 (8) remedies for breach of the agreement;

27 (9) the modification, amendment, renewal, extension,

1 or termination of the agreement;

2 (10) another district, municipality, or other
3 benefited person to join the agreement as a party at any time;

4 (11) third-party beneficiaries to be specifically
5 designated and conferred rights or remedies under the agreement;
6 and

7 (12) any other provision or term to which the parties
8 agree.

9 (d) A regional participation agreement may provide for the
10 funding of any program or project, whether individual,
11 intermittent, or continuing and whether located or conducted within
12 or outside the boundaries of a party, for the planning, design,
13 construction, acquisition, lease, rental, installment purchase,
14 improvement, provision of furnishings or equipment,
15 rehabilitation, repair, reconstruction, relocation, preservation,
16 beautification, use, execution, administration, management,
17 operation, or maintenance of any works, improvements, or
18 facilities, or any functions or services, whether provided to, for,
19 by, or on behalf of a party, that provide a material benefit to each
20 party in the accomplishment of the public purposes of each party,
21 related to:

22 (1) mobility or transportation, including mass
23 transportation, traffic circulation, or ground, air, rail, water,
24 or other means of transportation or movement of people, freight,
25 goods or materials;

26 (2) health care treatment, research, teaching,
27 or education facilities or infrastructure;

1 (3) parks or recreation, open space, and scenic,
2 wildlife, wetlands, or wilderness areas;

3 (4) public assembly or shelter, including halls,
4 arenas, stadiums or similar facilities for sporting events,
5 exhibitions, conventions, or other mass assembly purposes;

6 (5) environmental preservation or enhancement,
7 including air or water quality protection, improvement,
8 preservation, or enhancement, and noise abatement;

9 (6) the supply, conservation, transportation,
10 treatment, disposal, or reuse of water or wastewater;

11 (7) drainage, stormwater management or
12 detention, and flood control or prevention; or

13 (8) public safety and security, including law
14 enforcement, firefighting and fire prevention, emergency services
15 and facilities, and homeland security.

16 (e) A regional participation agreement must be:

17 (1) in writing;

18 (2) approved by the governing body of each
19 municipality or district that is or that becomes a party to the
20 agreement; and

21 (3) must be recorded in the deed records of any county
22 in which any territory of a district is located.

23 (f) Another district, municipality, or benefited person may
24 join or become a party to a regional participation agreement in the
25 manner authorized in the agreement.

26 (g) A regional participation agreement need not describe
27 the land contained within the boundaries of a district that is a

1 party to the agreement.

2 (h) A regional participation agreement binds each party to
3 the agreement and each owner and future owner of land that is
4 subject to the agreement. If a party or land or a landowner is
5 excluded or removed from an agreement, the removal or exclusion is
6 effective on the recordation of the amendment, supplement,
7 modification, or restatement of the agreement implementing such
8 removal or exclusion.

9 (i) A regional participation agreement may not require a
10 district to make payments from any funds that are restricted,
11 encumbered, or pledged for the payment of contractual obligations
12 or indebtedness of a district. Otherwise, any party may commit or
13 pledge any available source of funds, including unencumbered sales
14 and use taxes, to make payments due or to become due under the
15 agreement.

16 (j) A regional participation agreement and any action taken
17 under the agreement are not subject to any method of approval or
18 appeal under the Water Code.

19 (k) Notwithstanding any defect, ambiguity, discrepancy,
20 invalidity, or unenforceability of a regional participation
21 agreement that has been voluntarily entered into and fully executed
22 by the parties thereto, or any contrary law, common law doctrine, or
23 municipal charter provision, and for the duration of any annexation
24 deferral period established in the agreement during which a
25 district continues to perform its obligations under the agreement:

26 (1) Section 42.023 and any other law or municipal
27 charter provision relating to the reduction of the extraterritorial

1 jurisdiction of a municipality that is a party to the agreement
2 shall not apply, and Sections 42.041(b)-(e) do not apply to any land
3 or owner of land within a district that is a party to the agreement;

4 (2) the governing body of a municipality may not
5 include the area covered by the agreement in a municipal annexation
6 plan and may not initiate or continue an annexation proceeding
7 relating to that area; and

8 (3) any area of a district to be released from the
9 extraterritorial jurisdiction of a municipality pursuant to the
10 agreement shall, by operation of law, and without further action by
11 a party or its governing body, be released at the time or upon the
12 occurrence of the events specified in the agreement.

13 (1) This section shall be liberally construed so as to give
14 effect to its legislative purposes and to sustain the validity of a
15 regional participation agreement if the agreement was entered into
16 under or in anticipation of enactment of this section.

17 SECTION 2. The legislature finds and determines that the
18 financial burdens of implementing essential regional public
19 improvement projects, including projects located outside of
20 municipal boundaries, or that are of substantial benefit to areas
21 within and adjacent to a municipality, or to the state as a whole,
22 often are borne by large municipalities in the state; that there
23 exists insufficient legislative authority to promote and
24 facilitate regional participation in the funding and
25 implementation of such projects; that annexation of adjacent areas
26 by large municipalities in many instances does not provide a
27 satisfactory means of apportioning such financial burdens and may

1 create or exacerbate public service delivery and financial burdens
2 of municipalities; that financial participation in such projects by
3 populous, defined communities in close proximity to large
4 municipalities by mutual agreement provides an equitable,
5 material, and effective alternative means of addressing such
6 circumstances without resort to municipal annexation; that to
7 prevent the fragmentation of, or non-uniform allocation of costs
8 to, participating defined communities, provision should also be
9 made for similar agreements with other municipalities with
10 jurisdiction over insubstantial portions of such defined
11 communities; and that implementation of the provisions of this Act
12 will be of substantial benefit to participating communities and
13 municipalities, to the regions of the state that include such
14 participants, and to the state as a whole by promoting and
15 facilitating regional governmental cooperation and the funding of
16 essential public improvement projects, thereby accomplishing the
17 public purposes of conserving and preserving the natural resources
18 of the state, promoting and advancing employment and economic
19 diversification and development and stimulating business within
20 the state, permitting the improvement of traffic circulation, the
21 movement of people, freight, goods, and materials, mass
22 transportation, and health care facilities and infrastructure
23 within the state, promoting the enhancement and improvement of air
24 and water quality and noise abatement measures within the state,
25 promoting the development of parks, recreational facilities, and
26 public assembly facilities within the state, and encouraging the
27 preservation and protection of scenic, wildlife, wetlands, and

1 wilderness areas in the state, and other purposes beneficial to the
2 state.

3 SECTION 3. The provisions of this Act are severable. If any
4 word, phrase, clause, sentence, section, provision, or part of this
5 Act is held invalid or unconstitutional, it shall not affect the
6 validity of the remaining portions, and it is declared to be the
7 legislative intent that this Act would have been passed as to the
8 remaining portions regardless of the invalidity of any part.

9 SECTION 4. A regional participation agreement entered into
10 in anticipation of this Act is not invalid because of the
11 agreement's authorization, execution, or delivery before the
12 effective date of this Act.

13 SECTION 5. This Act takes effect immediately if it receives
14 a vote of two-thirds of all the members elected to each house, as
15 provided by Section 39, Article III, Texas Constitution. If this
16 Act does not receives the vote necessary for immediate effect, this
17 Act takes effect September 1, 2007.