

By: Smith of Harris, Noriega, et al.

H.B. No. 3011

Substitute the following for H.B. No. 3011:

By: Harless

C.S.H.B. No. 3011

A BILL TO BE ENTITLED

AN ACT

relating to the creation of ship channel security districts by certain populous counties.

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

SECTION 1. Title 4, Water Code, is amended by adding Chapter 68 to read as follows:

CHAPTER 68. SHIP CHANNEL SECURITY DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 68.001. DEFINITIONS. In this chapter:

(1) "Board" means a district's board of directors.

(2) "District" means a ship channel security district created under this chapter.

(3) "Security project" means a project promoting or aiding security in a district.

(4) "Security service" means a service promoting or aiding security in a district.

Sec. 68.002. NATURE OF DISTRICT; PURPOSE. A district is a special district and political subdivision of this state. A district is created under Section 59, Article XVI, Texas Constitution, and is essential to accomplish the purposes of that section and Sections 52 and 52-a, Article III, Texas Constitution.

Sec. 68.003. PUBLIC PURPOSE OF SECURITY PROJECTS. A security project is owned, used, and held for public purposes by the district.

1       Sec. 68.004. LIBERAL CONSTRUCTION OF CHAPTER. This chapter  
2 shall be liberally construed in conformity with the findings and  
3 purposes stated in this chapter.

4       Sec. 68.005. GENERAL WATER DISTRICT LAW NOT APPLICABLE.  
5 Chapter 49 does not apply to a district.

6           [Sections 68.006-68.050 reserved for expansion]

7                   SUBCHAPTER B. FACILITIES

8       Sec. 68.051. APPLICABILITY TO FACILITIES. (a) In this  
9 section:

10           (1) "Chemical manufacturers' association" means an  
11 association of chemical manufacturers, refiners, and supporting  
12 distribution and terminal facility managers that operate in a  
13 district.

14           (2) "Chemical manufacturers' association facility"  
15 means a facility owned by a member of a chemical manufacturers'  
16 association.

17           (3) "Mutual aid organization" means an organization  
18 that operates in a district and whose:

19                   (A) primary purpose is the promotion of social  
20 welfare by providing assistance for the common good and general  
21 welfare to and within the communities of its members for emergency  
22 fire protection and other public safety matters; and

23                   (B) members include various industries and  
24 governmental entities with the resources required to participate in  
25 those activities.

26           (b) This chapter applies to the following types of  
27 facilities in the district:

- 1           (1) a chemical manufacturers' association facility;  
2           (2) a mutual aid organization facility;  
3           (3) a facility as defined in 46 U.S.C. Section 70101;  
4           (4) a facility described by 33 C.F.R. Section  
5 105.105(a);  
6           (5) a facility subject to an area maritime  
7 transportation security plan under 46 U.S.C. Section 70103(b);  
8           (6) a facility subject to 40 C.F.R. Part 112;  
9           (7) a general shipyard facility as defined by 46  
10 C.F.R. Section 298.2;  
11           (8) a facility included in one or more of the following  
12 categories and codes of the 2007 North American Industry  
13 Classification System:  
14           (A) crude petroleum and natural gas extraction,  
15 211111;  
16           (B) petroleum refineries, 324110;  
17           (C) petroleum manufacturing, 325110;  
18           (D) petroleum lubricating oil and grease  
19 manufacturing, 324191;  
20           (E) all other petroleum and coal products  
21 manufacturing, 324199;  
22           (F) all other chemical and other manufacturing,  
23 311111-339999;  
24           (G) petroleum bulk stations and terminals,  
25 424710;  
26           (H) plastics, chemical, and petroleum  
27 wholesalers, 424610, 424690, and 424720;

1                   (I) transportation, including rail, water, and  
2 road transportation and pipelines, 486110-486990, 488210, 488390,  
3 and 488490;

4                   (J) port and harbor operations, 488310;

5                   (K) marine cargo handling, 488320;

6                   (L) warehousing and storage, including general,  
7 refrigerated, farm and other, 493110, 493120, 493130, and 493190;  
8 and

9                   (M) deep sea and coastal freight and passenger  
10 transportation, 483111-483114; and

11                   (9) a facility described by Subsection (c).

12                   (c) After the district is created, the commissioners court  
13 that created the district by order may provide for this chapter to  
14 apply to any other facility that the district by petition requests  
15 the court to add.

16                   (d) This chapter does not apply to the following facilities:

17                   (1) a residential property, including a single-family  
18 or multifamily residence;

19                   (2) a retail or service business that is not a facility  
20 as defined by 46 U.S.C. Section 70101; or

21                   (3) a public access facility as defined by 33 C.F.R.  
22 Section 101.105.

23                   Sec. 68.052. DESIGNEES FOR FACILITY OWNERS. A facility's  
24 owner may designate a person:

25                   (1) to act for the owner in connection with a district;  
26 and

27                   (2) to bind the owner under this chapter.

1 [Sections 68.053-68.100 reserved for expansion]

2 SUBCHAPTER C. CREATION

3 Sec. 68.101. DISTRICT CREATION BY CERTAIN POPULOUS COUNTIES  
4 WITH SHIP CHANNELS. A district may be created only by the  
5 commissioners court of a county with a population of 3.3 million or  
6 more that has a ship channel in the county.

7 Sec. 68.102. PETITION FOR CREATION. A district may be  
8 created only if the commissioners court of the county in which the  
9 district is proposed to be created receives a petition requesting  
10 the district's creation. The petition must be signed by:

11 (1) the owners of a majority of facilities in the  
12 proposed district; and

13 (2) the owners of a majority of the assessed value of  
14 facilities in the proposed district according to the most recent  
15 certified property tax rolls of the county.

16 Sec. 68.103. CONTENTS OF PETITION; DISTRICT TERRITORY. The  
17 petition must:

18 (1) propose a name for the district, which must:

19 (A) generally describe the location of the  
20 district; and

21 (B) be of the form "\_\_\_\_\_ Ship Channel Security  
22 District";

23 (2) state the general nature of the security projects  
24 and security services to be provided by the district; and

25 (3) describe the proposed district territory and the  
26 boundaries of not fewer than four security zones inside the  
27 proposed district.

1       Sec. 68.104. NOTICE OF HEARING; CONTENTS OF NOTICE. (a)

2       The commissioners court of the county in which a district is  
3       proposed to be created shall set a date, time, and place for a  
4       hearing to consider the petition received by the commissioners  
5       court.

6       (b) The commissioners court shall issue public notice of the  
7       hearing. The notice must state:

8               (1) the date, time, and place of the hearing; and

9               (2) that any person may appear, present evidence, and  
10       testify for or against the creation of the proposed district.

11       (c) The commissioners court shall publish the notice in a  
12       newspaper of general circulation in the county at least one time at  
13       least 30 days before the hearing date.

14       Sec. 68.105. HEARING. At the hearing, any interested  
15       person may appear in person or by attorney, present evidence, and  
16       offer testimony for or against the creation of the proposed  
17       district.

18       Sec. 68.106. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. After  
19       the hearing, the commissioners court shall consider whether to  
20       create the proposed district. The commissioners court must make  
21       the following findings before approving a petition requesting  
22       creation of a district:

23               (1) the district will serve a public use and benefit;

24               (2) facilities in the district will benefit from the  
25       security projects and security services proposed to be provided by  
26       the district;

27               (3) the creation of the district is in the public

1 interest and useful for the protection of facilities in the  
2 district against the threat posed by terrorism; and

3 (4) the creation of the district is necessary to  
4 accomplish the purposes of Sections 52 and 52-a, Article III, and  
5 Section 59, Article XVI, Texas Constitution, and other public  
6 purposes stated in this chapter.

7 Sec. 68.107. ORDER CREATING DISTRICT; CHANGES. (a) If the  
8 commissioners court makes the findings under Section 68.106, the  
9 commissioners court by order shall create the proposed district.

10 (b) The commissioners court may include in the order any  
11 changes or modifications to the proposed district as the court  
12 determines are appropriate.

13 [Sections 68.108-68.150 reserved for expansion]

14 SUBCHAPTER D. BOARD OF DIRECTORS

15 Sec. 68.151. GOVERNING BODY; COMPOSITION. A district is  
16 governed by a board of at least 10 directors, appointed or serving  
17 as follows:

18 (1) two directors for each security zone appointed by  
19 the commissioners court of the county and nominated as provided by  
20 Section 68.152;

21 (2) one director appointed for the district at large  
22 by the commissioners court of the county;

23 (3) one director appointed under Section 68.153; and

24 (4) any director serving under Section 68.154.

25 Sec. 68.152. SECURITY ZONE DIRECTORS. (a) The  
26 commissioners court of the county shall appoint two directors for  
27 each security zone from a list of two persons nominated by a

1 majority vote of the facility owners in each security zone. Each  
2 nominated person must be employed by a facility in the zone.

3 (b) After reviewing the list, the commissioners court shall  
4 approve or disapprove the nominations for each security zone.

5 (c) If the commissioners court is not satisfied with the  
6 list provided for a security zone, the facility owners in the  
7 security zone shall provide to the court a new list under Subsection  
8 (a).

9 Sec. 68.153. MUNICIPAL DIRECTOR. (a) If there is a  
10 countywide association of mayors and city councils of  
11 municipalities in a county that creates a district, the association  
12 shall appoint one director.

13 (b) If there is not an association described by Subsection  
14 (a), the municipalities in the district shall appoint a director.  
15 If there is more than one municipality in the district, the  
16 governing body of each municipality by resolution may vote in favor  
17 of a nominated person and a person who receives the votes of a  
18 majority of governing bodies is appointed director.

19 (c) The director appointed under this section must reside in  
20 a municipality adjacent to the largest ship channel in the  
21 district.

22 Sec. 68.154. PORT AUTHORITY; EX OFFICIO DIRECTOR. (a) In  
23 this section, "port authority" means a navigation district located  
24 wholly or partly in the security district, and created or operating  
25 under Section 52, Article III, or Section 59, Article XVI, Texas  
26 Constitution.

27 (b) If a port authority is located in the district, the



1 executive director, or a person designated by the executive  
2 director, serves as a director. If more than one port authority is  
3 located in the district, the executive director, or a person  
4 designated by the executive director, of the port authority with  
5 the largest territory inside the district serves as a director.

6 Sec. 68.155. TERMS; INITIAL DIRECTORS. (a) Except as  
7 provided by Subsection (b), directors serve staggered two-year  
8 terms.

9 (b) The initial directors shall stagger their terms, with a  
10 majority of the directors serving two years, and a minority of  
11 directors serving one year. If the initial board has an even number  
12 of directors, the terms are staggered equally. If the initial  
13 directors cannot agree on the staggering, the directors shall draw  
14 lots to determine the directors who serve one-year terms.

15 Sec. 68.156. VACANCY. A vacancy in the board is filled by  
16 the remaining directors by appointing a person who meets the  
17 qualifications for the position, who shall serve for the unexpired  
18 term.

19 Sec. 68.157. QUORUM. For purposes of determining whether a  
20 quorum of the board is present, a vacant board position is not  
21 counted.

22 Sec. 68.158. OFFICERS. The board shall elect from its  
23 directors a presiding officer, a secretary, and any other officers  
24 the board considers necessary or appropriate.

25 Sec. 68.159. COMPENSATION. A director is not entitled to  
26 compensation for service on the board, but is entitled to  
27 reimbursement for necessary and reasonable expenses incurred in

1 carrying out the duties of a director.

2 Sec. 68.160. MEETINGS. (a) The board shall determine the  
3 frequency of its meetings and may hold meetings at any time the  
4 board determines.

5 (b) The board shall conduct its meetings in the district.

6 Sec. 68.161. REMOVAL. The board may remove an appointed  
7 director for misconduct or failure to carry out the director's  
8 duties on receiving a written petition signed by a majority of the  
9 remaining directors.

10 [Sections 68.162-68.200 reserved for expansion]

11 SUBCHAPTER E. POWERS AND DUTIES

12 Sec. 68.201. GENERAL POWERS OF DISTRICT. (a) A district  
13 has all powers necessary or required to accomplish the purposes for  
14 which it was created.

15 (b) A district may do anything necessary, convenient, or  
16 desirable to carry out the powers expressly granted or implied by  
17 this chapter.

18 Sec. 68.202. APPLICABILITY OF MUNICIPAL MANAGEMENT  
19 DISTRICTS LAW. Except as provided by this chapter, a district has  
20 the powers of a district created under Chapter 375, Local  
21 Government Code.

22 Sec. 68.203. RULES. The district may adopt rules to govern  
23 the operation of the district.

24 Sec. 68.204. NAME CHANGE. A board by resolution may change  
25 a district's name.

26 Sec. 68.205. CONTRACTS; GENERALLY. A district may contract  
27 with any person for any district purpose.

1       Sec. 68.206. SECURITY PROJECTS AND SERVICES. (a) The board  
2 shall determine what security projects or security services the  
3 district will perform. A security project may include a project  
4 eligible for funding under a port security grant program of the  
5 United States Department of Homeland Security.

6       (b) A district may own, operate, and maintain a security  
7 project or provide a security service as reasonably necessary to  
8 carry out a district power under this chapter.

9       (c) A district may acquire, construct, complete, develop,  
10 own, operate, maintain, and lease a security project or part of a  
11 security project or provide a security service inside and outside  
12 its boundaries.

13       Sec. 68.207. CONTRACTS FOR SECURITY PROJECTS OR SERVICES.

14       (a) A district may contract with any person to plan, establish,  
15 develop, construct, renovate, maintain, repair, replace, or  
16 operate a security project or to provide a security service.

17       (b) A district may lease to any person a security project or  
18 any part of a security project.

19       (c) A district may contract with any person for the use or  
20 operation of a security project or any part of a security project.

21       Sec. 68.208. CONTRACTS FOR JOINT USE OF SECURITY PROJECT. A  
22 district may contract with any person, public or private, for the  
23 joint use of a security project.

24       Sec. 68.209. CONTRACTS WITH DISTRICT BY GOVERNMENTAL  
25 ENTITY. This state, a municipality, a county, another political  
26 subdivision of this state, or any other person, without further  
27 authorization, may contract with the district to accomplish any

1 district purpose.

2 Sec. 68.210. PROPERTY POWERS; GENERALLY. A district may  
3 acquire by grant, purchase, gift, devise, lease, or otherwise, and  
4 may hold, use, sell, lease, or dispose of any property, and  
5 licenses, patents, rights, and interests necessary, convenient, or  
6 useful for the full exercise of any of its powers under this  
7 chapter.

8 Sec. 68.211. SUITS. A district may sue and be sued.

9 Sec. 68.212. EXEMPTION FROM COMPETITIVE BIDDING LAWS. The  
10 competitive bidding laws of this state do not apply to a district.

11 Sec. 68.213. NO EMINENT DOMAIN POWER. A district may not  
12 exercise the power of eminent domain.

13 [Sections 68.214-68.250 reserved for expansion]

14 SUBCHAPTER F. GENERAL FINANCIAL PROVISIONS

15 Sec. 68.251. GRANTS; LOANS. A district may apply for and  
16 accept a grant or loan from any person, including:

17 (1) the United States;

18 (2) this state; and

19 (3) a political subdivision of this state.

20 Sec. 68.252. PAYMENT OF EXPENSES. A district may provide  
21 for payment of all expenses incurred in its establishment,  
22 administration, and operation.

23 Sec. 68.253. TAXES PROHIBITED. A district may not impose  
24 any tax, including a property tax or a sales and use tax.

25 Sec. 68.254. BONDS PROHIBITED. A district may not issue  
26 bonds.

27 [Sections 68.255-68.300 reserved for expansion]

1                   SUBCHAPTER G. ASSESSMENTS

2           Sec. 68.301. AUTHORITY TO IMPOSE ASSESSMENT. The board may  
3 impose an assessment against facilities for any district purpose.

4           Sec. 68.302. PROPOSED ASSESSMENTS. A security project or  
5 security service may be financed under this chapter after a hearing  
6 notice given as required by this subchapter and a public hearing by  
7 the board on the advisability of:

8                   (1) the security project or security service; and

9                   (2) the proposed assessments.

10          Sec. 68.303. NOTICE OF HEARING. (a) Not later than the  
11 30th day before the date of the hearing, the district shall provide  
12 notice of the hearing by certified mail, return receipt requested,  
13 to each facility owner at the current address of each facility  
14 according to the appraisal record maintained by the appraisal  
15 district for that facility under Section 25.02, Tax Code.

16           (b) The notice must include:

17                   (1) the time and place of the hearing;

18                   (2) the general nature of the proposed security  
19 project or security service;

20                   (3) the estimated cost of the security project or  
21 security service; and

22                   (4) the proposed method of assessment.

23          Sec. 68.304. CONDUCTING HEARING; FINDINGS. (a) A hearing  
24 on a proposed security project or security service, whether  
25 conducted by the board or a hearing examiner, may be adjourned from  
26 time to time.

27           (b) At the conclusion of the hearing, the board by

1 resolution shall make findings relating to:

2 (1) the advisability of the security project or  
3 security service;

4 (2) the nature of the security project or security  
5 service;

6 (3) the estimated cost;

7 (4) the facilities benefited;

8 (5) the method of assessment; and

9 (6) the method and time for payment of the assessment.

10 (c) If a hearing examiner is appointed to conduct the  
11 hearing, after conclusion of the hearing, the hearing examiner  
12 shall file with the board a report stating the examiner's findings  
13 and conclusions for the board's consideration.

14 Sec. 68.305. FACILITIES TO BE ASSESSED. (a) In accordance  
15 with the findings, the board may impose an assessment against all  
16 the facilities in the district or any portion of the facilities in  
17 the district, and may impose an assessment against fewer facilities  
18 than those proposed for assessment in the hearing notice.

19 (b) Except as provided by Subsection (c), the facilities to  
20 be assessed may not include a facility that is not in the district  
21 at the time of the hearing unless there is an additional hearing  
22 preceded by the required notice.

23 (c) The owner of a facility described by Subsection (b) may  
24 waive the right to notice and an assessment hearing and may agree to  
25 the imposition and payment of assessments at an agreed rate for the  
26 facility.

27 Sec. 68.306. ASSESSMENT RATE CHANGE. After notice and a

1 hearing, the board by majority vote may increase or decrease the  
2 rate of assessment. The board must provide notice of the hearing in  
3 the manner provided by Section 68.303.

4 Sec. 68.307. OBJECTIONS; LEVY OF ASSESSMENT. (a) At a  
5 hearing on proposed assessments, at any adjournment of the hearing,  
6 or after consideration of the hearing examiner's report, the board  
7 shall hear and rule on all objections to each proposed assessment.

8 (b) The board by majority vote may amend proposed  
9 assessments for any facility.

10 (c) After all objections have been heard and action has been  
11 taken with regard to those objections, the board by resolution  
12 shall impose the assessments on the facilities and shall specify  
13 the method of payment of the assessments and may provide that those  
14 assessments be paid in periodic installments.

15 (d) Periodic installments must be in amounts sufficient to  
16 meet annual costs for security projects or security services  
17 provided by this chapter and continue for the number of years  
18 required to pay for the security projects and security services to  
19 be rendered.

20 (e) If assessments are imposed for more than one security  
21 project or security service, the board may provide that assessments  
22 collected for one security project or security service may be used  
23 for another security project or security service.

24 (f) The board shall establish a procedure for the use or  
25 refund of any assessments in excess of those necessary to finance a  
26 security project or security service for which those assessments  
27 were collected.

1       Sec. 68.308. APPORTIONMENT OF ASSESSMENT. The board shall  
2 apportion the cost of a security project or security service to be  
3 assessed against a facility based on any reasonable assessment plan  
4 that results in imposing fair and equitable shares of the cost.

5       Sec. 68.309. ASSESSMENT ROLL. (a) Once the estimated total  
6 cost of a security project or security service is determined, the  
7 board shall impose the assessments against each facility against  
8 which an assessment may be imposed in the district. The board may  
9 impose an annual assessment that is lower but not higher than the  
10 initial assessment.

11       (b) The board shall have an assessment roll prepared showing  
12 the assessments against each facility and the board's basis for the  
13 assessment. The assessment roll shall be filed with the secretary  
14 of the board or other officer who performs the function of secretary  
15 and be open for public inspection.

16       Sec. 68.310. SUPPLEMENTAL ASSESSMENTS. After notice and  
17 hearing in the manner required for original assessments, the board  
18 may make supplemental assessments to correct omissions or mistakes  
19 in the assessment:

20           (1) relating to the total cost of the security project  
21 or security service; or

22           (2) covering delinquencies or costs of collection.

23       Sec. 68.311. APPEAL. (a) Not later than the 30th day after  
24 the date that an assessment is adopted, a facility owner may file a  
25 notice appealing the assessment to the board.

26       (b) The board shall set a date to hear the appeal.

27       (c) Failure to file the notice in the time required by this



1 section results in loss of the right to appeal the assessment.

2 (d) The board may make a reassessment or new assessment of  
3 the facility if the assessment against the facility is:

4 (1) set aside by a court;

5 (2) found excessive by the board; or

6 (3) determined invalid by the board.

7 (e) A reassessment or new assessment under Subsection  
8 (d)(1) may not violate the court order that set aside the  
9 assessment.

10 Sec. 68.312. APPEAL OF RESOLUTION. (a) A facility against  
11 which an assessment is made by board resolution may appeal the  
12 assessment to a district court in the county in the manner provided  
13 for the appeal of contested cases under Chapter 2001, Government  
14 Code.

15 (b) Review by the district court is by trial de novo.

16 Sec. 68.313. FAILURE TO PAY ASSESSMENT; LIENS FOR  
17 ASSESSMENTS. (a) If an assessed facility fails to pay an  
18 assessment as provided in a district's assessment plan, the  
19 district may impose a lien against the facility assessed.

20 (b) An assessment, a reassessment, or an assessment  
21 resulting from an addition to or correction of the assessment roll  
22 by the district, penalties and interest on an assessment or  
23 reassessment, an expense of collection, and reasonable attorney's  
24 fees incurred by the district:

25 (1) are a first and prior lien against the property  
26 assessed;

27 (2) are superior to any other lien or claim other than

1 a lien or claim for county, school district, or municipal ad valorem  
2 taxes; and

3 (3) are the personal liability of and a charge against  
4 the owners of the property even if the owners are not named in the  
5 assessment proceedings.

6 (c) The lien is effective from the date of the board's  
7 resolution imposing the assessment until the date the assessment is  
8 paid. The board may enforce the lien in the same manner that the  
9 board may enforce an ad valorem tax lien against real property.

10 Sec. 68.314. DELINQUENT ASSESSMENTS. A delinquent  
11 assessment incurs interest, penalties, and attorney's fees in the  
12 same manner as a delinquent ad valorem tax. The owner of a facility  
13 may pay at any time the entire assessment, with interest,  
14 penalties, and attorney's fees that have accrued on the assessment.

15 Sec. 68.315. ASSESSMENT OF GOVERNMENTAL ENTITIES AND  
16 NONPROFITS. (a) Except as provided by this section, the district  
17 may not impose an assessment on:

18 (1) a governmental entity, including a municipality,  
19 county, or other political subdivision; or

20 (2) an organization exempt from taxation under Section  
21 501(a), Internal Revenue Code of 1986, as an organization described  
22 by Section 501(c)(3) of that code.

23 (b) An entity or organization described by Subsection (a)  
24 may contract with a district to pay assessments under terms the  
25 district and the entity or organization consider advisable.

26 [Sections 68.316-68.350 reserved for expansion]

1                   SUBCHAPTER H. DISSOLUTION

2           Sec. 68.351. DISSOLUTION OF DISTRICT FOR FAILURE TO IMPOSE  
3 AN ASSESSMENT. A district is dissolved if the district has not  
4 imposed an assessment before the fifth anniversary of the date of  
5 the order creating the district under Section 68.107. The county  
6 that created the district assumes any district debts or assets.

7           Sec. 68.352. DISSOLUTION OF DISTRICT BY BOARD VOTE OR OWNER  
8 PETITION. (a) The board by majority vote may dissolve the district  
9 at any time.

10           (b) A district may be dissolved as provided by Section  
11 375.262, Local Government Code.

12           (c) The county that created the district assumes any debts  
13 or assets of a dissolved district.

14           SECTION 2. This Act takes effect immediately if it receives  
15 a vote of two-thirds of all the members elected to each house, as  
16 provided by Section 39, Article III, Texas Constitution. If this  
17 Act does not receive the vote necessary for immediate effect, this  
18 Act takes effect September 1, 2007.