

1-1 By: Elkins (Senate Sponsor - West) H.B. No. 3223
1-2 (In the Senate - Received from the House May 11, 2007;
1-3 May 15, 2007, read first time and referred to Committee on
1-4 Intergovernmental Relations; May 18, 2007, reported favorably by
1-5 the following vote: Yeas 3, Nays 0; May 18, 2007, sent to
1-6 printer.)

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to public improvement districts designated by a county or
1-10 municipality.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Sections 372.003(a), (b), and (d), Local
1-13 Government Code, are amended to read as follows:

1-14 (a) If the governing body of a municipality or county finds
1-15 that it promotes the interests of the municipality or county, the
1-16 governing body may undertake an improvement project that confers a
1-17 special benefit on a definable part of the municipality or county or
1-18 the municipality's extraterritorial jurisdiction. A project may be
1-19 undertaken:

1-20 (1) in the municipality or county or the
1-21 municipality's extraterritorial jurisdiction; or
1-22 (2) inside or outside the district.

1-23 (b) A public improvement project may include:

1-24 (1) landscaping;

1-25 (2) erection of fountains, distinctive lighting, and
1-26 signs;

1-27 (3) acquiring, constructing, improving, widening,
1-28 narrowing, closing, or rerouting of sidewalks or of streets, any
1-29 other roadways, or their rights-of-way;

1-30 (4) construction or improvement of pedestrian malls;

1-31 (5) acquisition and installation of pieces of art;

1-32 (6) acquisition, construction, or improvement of
1-33 libraries;

1-34 (7) acquisition, construction, or improvement of
1-35 off-street parking facilities;

1-36 (8) acquisition, construction, improvement, or
1-37 rerouting of mass transportation facilities;

1-38 (9) acquisition, construction, or improvement of
1-39 water, wastewater, or drainage facilities or improvements;

1-40 (10) the establishment or improvement of parks;

1-41 (11) projects similar to those listed in Subdivisions
1-42 (1)-(10);

1-43 (12) acquisition, by purchase or otherwise, of real
1-44 property in connection with an authorized improvement;

1-45 (13) special supplemental services, enhancements, and
1-46 public facilities for improvement and promotion of the district,
1-47 including:

1-48 (A) services relating to advertising and[]
1-49 promotion of the district; and

1-50 (B) public facilities that the governing body
1-51 finds will:

1-52 (i) provide[] health and sanitation;

1-53 (ii) provide or improve[] water and
1-54 wastewater;

1-55 (iii) provide or improve[] public safety
1-56 and[] security, including facilities for police or fire services;

1-57 (iv) provide governmental services in one
1-58 or more municipal buildings;

1-59 (v) enhance business recruitment and[]
1-60 development;

1-61 (vi) provide[] recreation[] and cultural
1-62 enhancement; or

1-63 (vii) improve the quality of life in the
1-64 district; and

(14) payment of expenses incurred in the establishment, administration, and operation of the district.

(d) A county may establish a public improvement district except that if the proposed district includes territory in the corporate limits or extraterritorial jurisdiction of a home rule municipality, the district may not be established unless:

(1) within 30 days after the date of a county's action to approve such a district, the county sends notice by certified mail of the proposed action to each home rule municipality in whose corporate limits or extraterritorial jurisdiction all or any part of the district is proposed to be established; and

(2) within 30 days after the date of receipt of the notice, a home rule municipality does not object [objects] to its establishment within the municipality's corporate limits or extraterritorial jurisdiction.

SECTION 2. Section 372.007(a), Local Government Code, is amended to read as follows:

(a) Before holding the hearing required by Section 372.009, the governing body of the municipality may use the services of municipal employees, the governing body of the county may use the services of county employees, or the governing body of the municipality or county may employ consultants to prepare a report to determine whether an improvement or combination of improvements should be made as proposed by petition [or otherwise or whether the improvement should be made in combination with other improvements authorized under this subchapter]. The governing body may also require that a preliminary estimate of the cost of the improvement or combination of improvements be made.

SECTION 3. Subchapter A, Chapter 372, Local Government Code, is amended by adding Section 372.0095 to read as follows:

Sec. 372.0095. PETITION; AMENDMENTS TO RESOLUTION CREATING DISTRICT. (a) Before assessments have been levied to pay the costs of the improvements, the real property owners in a district may file a petition requesting the governing body of the municipality or county to amend the resolution creating the district to:

- (1) increase or decrease the estimated cost of the improvements;
- (2) add or delete one or more improvements; or
- (3) revise the method of assessment.

(b) The petition must satisfy the requirements of Section 372.005.

(c) Before the resolution may be amended, the governing body must hold a hearing in the same manner as a hearing under Section 372.009. If the governing body finds that an amendment is advisable, the governing body may by majority vote of all members of the governing body amend the resolution creating the district accordingly.

(d) Within 30 days after the date of a hearing under Subsection (c), the county shall send notice by certified mail of the amendment to each home rule municipality in whose corporate limits or extraterritorial jurisdiction the district is wholly or partly located.

(e) The amendment takes effect only if:
(1) it has been published in the manner provided by Subsection (f); and

(2) a home rule municipality to which notice has been sent under Subsection (d) does not object to the amendment within 30 days after the date of receipt of the notice.

(f) The amendment must be published one time in a newspaper of general circulation in the municipality or county. If any part of a district created by a county is located in a municipality or a municipality's extraterritorial jurisdiction or if any part of the improvements are to be undertaken in a municipality or a municipality's extraterritorial jurisdiction, the amendment must also be published one time in a newspaper of general circulation in the part of the municipality or the municipality's extraterritorial jurisdiction in which the district is located or in which the improvements are to be undertaken.

SECTION 4. Sections 372.010(a) and (c), Local Government

Code, are amended to read as follows:

(a) During the six-month period after the date of the final adjournment of the hearing under Section 372.009, the governing body of the municipality or county may authorize an improvement district if, by majority vote of all members of the governing body, the members adopt a resolution authorizing the district in accordance with its finding as to the advisability of any [the] improvement or combination of improvements.

(c) Actual construction of a new [an] improvement may not begin, or acquisition of an existing improvement may not occur, until after the 20th day after the date the authorization takes effect and may not begin or occur if during that 20-day period written protests signed by at least two-thirds of the owners of record of property within the improvement district or by the owners of record of property comprising at least two-thirds of the total area of the district are filed with the municipal or county secretary or other officer performing the duties of the municipal or county secretary. A person whose name appears on a protest may withdraw the name from the protest at any time before the governing body of the municipality or county convenes to determine the sufficiency of the protest.

SECTION 5. Section 372.012, Local Government Code, is amended to read as follows:

Sec. 372.012. AREA OF DISTRICT; ADDING OR EXCLUDING AREA.

(a) The area of a public improvement district to be assessed according to the findings of the governing body of the municipality or county may be less than the area described in the proposed boundaries stated by the notice under Section 372.009. The area to be assessed may not include property not described by the notice as being within the proposed boundaries of the district unless a hearing is held to include the property and notice for the hearing is given in the same manner as notice under Section 372.009.

(b) A district is not required to be composed of contiguous territory.

(c) Unless the public improvement district has issued general obligation or revenue bonds that are secured by assessments or an obligation exists in the district to pay in installments the cost of improvements, the majority of the owners of an area may file a petition to add or exclude an area. The petition must satisfy the requirements of Section 372.005. Before the area may be added or excluded, the governing body of the municipality or county must hold a hearing in the same manner as a hearing under Section 372.009. Except as provided by Subsection (d), if the governing body finds that the addition or exclusion is advisable, the area is added or excluded.

(d) If the added or excluded area is wholly or partly located in a home rule municipality's corporate limits or extraterritorial jurisdiction, within 30 days after the date of a county's hearing, the county shall send notice by certified mail of the petition to each home rule municipality in whose corporate limits or extraterritorial jurisdiction the district is wholly or partly located. If a home rule municipality objects to the petition within 30 days after the date of receipt of the notice, the area may not be added or excluded.

SECTION 6. Section 372.013(b), Local Government Code, is amended to read as follows:

(b) The plan must cover a period of at least five years and must also define the annual indebtedness and the projected costs for the improvement or combination of improvements found advisable in a resolution authorizing the district under Section 372.006. The plan shall be reviewed and updated annually for the purpose of determining the annual budget for improvements.

SECTION 7. Section 372.015, Local Government Code, is amended by adding Subsection (b-1) and amending Subsection (c) to read as follows:

(b-1) The amount of an assessment under Subsection (b) or the amount of an installment payment may be reduced or eliminated to the extent other revenue is available to pay for the improvements under Section 372.026(e).

4-1 (c) The governing body may establish by ordinance or order:
4-2 (1) reasonable classifications and formulas for the
4-3 apportionment of the cost between the municipality or county and
4-4 the area to be assessed; ~~and~~

4-5 (2) the methods of assessing the special benefits for
4-6 various classes of improvements; and

4-7 (3) a method of allocating assessments that is used if
4-8 an assessed parcel is subdivided and that does not increase the
4-9 total assessment on any assessed parcel.

4-10 SECTION 8. Section 372.016, Local Government Code, is
4-11 amended by amending Subsection (a) and adding Subsection (d) to
4-12 read as follows:

4-13 (a) After the total cost of an improvement, or combination
4-14 of improvements, to be paid from assessments is determined, the
4-15 governing body of the municipality or county shall prepare a
4-16 proposed assessment roll. The roll must state the assessment
4-17 against each parcel of land in the district, as determined by the
4-18 method of assessment chosen by the municipality or county under
4-19 this subchapter.

4-20 (d) A revised assessment roll must be included as part of
4-21 the service plan under Section 372.013 to reflect the subdivision
4-22 of assessed parcels and the resulting allocation of the assessments
4-23 against each parcel on subdivision. The allocation:

4-24 (1) must be consistent with the methodology
4-25 established in the service plan, including the assessment plan
4-26 under Section 372.014; and

4-27 (2) may not increase the total assessment on the
4-28 parcel.

4-29 SECTION 9. Section 372.017(b), Local Government Code, is
4-30 amended to read as follows:

4-31 (b) After all objections have been heard and the governing
4-32 body has passed on the objections, the governing body by ordinance
4-33 or order shall levy the assessment as a special assessment on the
4-34 property. The governing body by ordinance or order shall specify
4-35 the method of payment of the assessment. The governing body may
4-36 provide that assessments be paid in periodic installments, at an
4-37 interest rate and for a period approved by the governing body. The
4-38 provision that assessments be paid in periodic installments may,
4-39 but is not required to, result in level annual installment
4-40 payments. The installments must be in amounts necessary to meet
4-41 annual costs for improvements and must continue for:

4-42 (1) the [a] period necessary to retire the
4-43 indebtedness on the improvements; or

4-44 (2) the period approved by the governing body for the
4-45 payment of the installments.

4-46 SECTION 10. Section 372.018, Local Government Code, is
4-47 amended to read as follows:

4-48 Sec. 372.018. INTEREST ON ASSESSMENT; LIEN. (a) An
4-49 assessment bears interest at the rate specified by the governing
4-50 body of the municipality or county beginning at the time or times or
4-51 on the occurrence of one or more events specified by the governing
4-52 body. If general obligation bonds, revenue bonds, time warrants,
4-53 or temporary notes are issued to finance the improvement for which
4-54 the assessment is assessed, the interest rate for that assessment
4-55 [, but] may not exceed a rate that is one-half of one percent higher
4-56 than the actual interest rate paid on the [public] debt [used to
4-57 finance the improvement]. Interest on the assessment between the
4-58 effective date of the ordinance or order levying the assessment and
4-59 the date the first installment is payable shall be added to the
4-60 first installment. The interest on any delinquent installment
4-61 shall be added to each subsequent installment until all delinquent
4-62 installments are paid.

4-63 (b) An assessment or reassessment, with interest, the
4-64 expense of collection, and reasonable attorney's fees, if incurred,
4-65 is:

4-66 (1) a first and prior lien against the property
4-67 assessed;

4-68 (2) [r] superior to all other liens and claims except
4-69 liens or claims for state, county, school district, or municipality

5-1 ad valorem taxes; ~~[7]~~ and

5-2 (3) ~~[is]~~ a personal liability of and charge against
 5-3 the owners of the property regardless of whether the owners are
 5-4 named.

5-5 (c) The lien is effective from the date of the ordinance or
 5-6 order levying the assessment until the assessment is paid.

5-7 (d) The lien runs with the land and that portion of an
 5-8 assessment payment that has not yet come due is not eliminated by
 5-9 foreclosure of an ad valorem tax lien.

5-10 (e) The assessment lien ~~[and]~~ may be enforced by the
 5-11 governing body in the same manner that an ad valorem tax lien
 5-12 against real property may be enforced by the governing body.
 5-13 Foreclosure of accrued installments does not eliminate the
 5-14 outstanding principal balance of the assessment. Any purchaser of
 5-15 the property in foreclosure takes the property subject to the
 5-16 assessment lien and any associated obligations.

5-17 (f) Delinquent installments of the assessment shall incur
 5-18 interest, penalties, and attorney's fees in the same manner as
 5-19 delinquent ad valorem taxes. The owner of assessed property may pay
 5-20 at any time all or any part of the ~~[entire]~~ assessment, with
 5-21 interest that has accrued on the assessment, on any lot or parcel.

5-22 SECTION 11. Section 372.022, Local Government Code, is
 5-23 amended to read as follows:

5-24 Sec. 372.022. SEPARATE FUNDS. A separate public
 5-25 improvement district fund may ~~[shall]~~ be created in the municipal
 5-26 or county treasury for each district. Proceeds from the sale of
 5-27 bonds, temporary notes, and time warrants, and other sums
 5-28 appropriated to the fund by the governing body of the municipality
 5-29 or county shall be credited to the fund. The fund may be used solely
 5-30 to pay costs incurred in making an improvement. When an improvement
 5-31 is completed, the balance of the part of the assessment that is for
 5-32 improvements shall be transferred to the fund established for the
 5-33 retirement of bonds.

5-34 SECTION 12. Section 372.023, Local Government Code, is
 5-35 amended by amending Subsections (d), (e), (f), and (g) and adding
 5-36 Subsection (h) to read as follows:

5-37 (d) A cost payable from a special assessment that is to be
 5-38 paid in installments and a cost payable by the municipality or
 5-39 county as a whole but not payable from available general funds or
 5-40 other available general improvement funds shall be paid:

5-41 (1) under an installment sale contract or a
 5-42 reimbursement agreement with the person who contracts to install or
 5-43 construct the improvement for which the costs apply;

5-44 (2) as provided by a temporary note or time warrant
 5-45 issued by the municipality or county to reimburse a person for money
 5-46 advanced or work performed in connection with an improvement; or

5-47 (3) by the issuance and sale of revenue or general
 5-48 obligation bonds.

5-49 (e) The net effective interest rate, as computed for a
 5-50 public security under Section 1204.005, Government Code, on money
 5-51 owed or paid under Subsection (d) may not exceed one-half of one
 5-52 percent above the highest average interest rate reported by a
 5-53 newspaper in a weekly bond index in the month before the date of the
 5-54 contract or agreement or the issuance of the bond, temporary note,
 5-55 or time warrant. The newspaper must specialize in bonds and be
 5-56 acceptable as a reliable source for bond interest rates to the
 5-57 governing body of the municipality or county that enters into the
 5-58 contract or agreement or that issues the bond, temporary note, or
 5-59 time warrant.

5-60 (f) ~~[(e)]~~ While an improvement is in progress, the governing
 5-61 body of the municipality or county, to pay the costs of the
 5-62 improvement, may issue temporary notes for money advanced or time
 5-63 warrants to pay for work performed in connection with ~~[the costs of]~~
 5-64 the improvement and, on completion of the improvement, issue
 5-65 revenue or general obligation bonds. The bond proceeds may be used
 5-66 to repay the obligations incurred under this subsection.

5-67 (g) ~~[(f)]~~ The cost of more than one improvement may be paid:

5-68 (1) from a single issue and sale of bonds without other
 5-69 consolidation proceedings before the bond issue; or

6-1 (2) under an agreement with a person who contracts to
 6-2 install or construct the improvement and who sells the improvement
 6-3 to the municipality or county.

6-4 (h) [~~g~~] The costs of any improvement include interest
 6-5 payable on a temporary note or time warrant and all costs incurred
 6-6 in connection with the issuance of bonds under Section 372.024 and
 6-7 may be included in the assessments against the property in the
 6-8 improvement district as provided by this subchapter.

6-9 SECTION 13. Section 372.026, Local Government Code, is
 6-10 amended to read as follows:

6-11 Sec. 372.026. PLEDGES. (a) In this section, "obligation"
 6-12 means bonds, temporary notes, time warrants, or an obligation under
 6-13 an installment sale contract or reimbursement agreement.

6-14 (b) For the payment of obligations [~~bonds~~] issued or agreed
 6-15 to under this subchapter and the payment of principal, interest,
 6-16 and any other amounts required or permitted in connection with the
 6-17 obligations [~~bonds~~], the governing body of the municipality or
 6-18 county may pledge all or part of the income from improvements
 6-19 financed under this subchapter, including income received in
 6-20 installment payments under Section 372.023.

6-21 (c) [~~b~~] Pledged income must be fixed and collected in
 6-22 amounts sufficient, with other pledged resources, to pay principal,
 6-23 interest, and other expenses related to the obligations [~~bonds~~],
 6-24 and to the extent required by the ordinance, [~~or~~] order, or
 6-25 agreement authorizing the obligations [~~bonds~~], to pay for the
 6-26 operation, maintenance, and other expenses related to improvements
 6-27 authorized by this subchapter.

6-28 (d) [~~c~~] The obligations [~~bonds~~] may also be secured by
 6-29 mortgages or deeds of trust on any real property related to the
 6-30 facilities authorized under this subchapter that are owned or are
 6-31 to be acquired by the municipality or county and by chattel
 6-32 mortgages, liens, or security interests on any personal property
 6-33 appurtenant to that real property. The governing body may
 6-34 authorize the execution of trust indentures, mortgages, deeds of
 6-35 trust, or other forms of encumbrance [~~encumbrances~~] as evidence of
 6-36 the indebtedness.

6-37 (e) [~~d~~] The governing body may pledge to the payment of
 6-38 obligations [~~bonds~~] all or part of a grant, donation, revenue, or
 6-39 income received or to be received from the government of the United
 6-40 States or any other public or private source, whether or not it is
 6-41 received pursuant to an agreement or otherwise.

6-42 (f) The governing body may enter into an agreement with a
 6-43 corporation created by the municipality or county under the Texas
 6-44 Constitution or other law that provides for payment of amounts
 6-45 pledged under this section to the corporation to secure
 6-46 indebtedness issued by the corporation to finance an improvement
 6-47 project, including indebtedness to pay capitalized interest and a
 6-48 reserve fund permitted by this subchapter for revenue or general
 6-49 obligation bonds issued under this subchapter and indebtedness
 6-50 issued to pay the corporation's costs of issuance. In addition, the
 6-51 agreement may provide that:

6-52 (1) the corporation is responsible for managing the
 6-53 district; or

6-54 (2) title to one or more improvements will be held by
 6-55 the corporation.

6-56 SECTION 14. Section 372.102, Local Government Code, is
 6-57 amended to read as follows:

6-58 Sec. 372.102. NATURE OF DISTRICT; PURPOSE. (a) A district
 6-59 is created under Section 52, Article III, and Section 59, Article
 6-60 XVI, Texas Constitution.

6-61 (b) By enacting this subchapter, the legislature has
 6-62 created a program for economic development as provided in Section
 6-63 52-a, Article III, Texas Constitution. A county may engage in
 6-64 economic development projects as provided by this subchapter, and,
 6-65 on a determination of the commissioners court of the county to
 6-66 create a district, may delegate the authority to oversee and manage
 6-67 the economic development project to an appointed board of
 6-68 directors. In appointing a board, the commissioners court
 6-69 delegates its authority to serve a public use and benefit.

7-1 SECTION 15. Sections 372.126(a) and (c), Local Government
 7-2 Code, are amended to read as follows:

7-3 (a) A district may not issue bonds unless approved by the
 7-4 commissioners court of the county that created the district. Bonds
 7-5 ~~[If the population in the district is more than 1,000, the bonds]~~
 7-6 may not be issued unless approved by a majority of the voters of the
 7-7 district voting in an election held for that purpose. A bond
 7-8 election under this subsection does not affect prior bond issuances
 7-9 and is not required for refunding bond issuances.

7-10 (c) If the commissioners court grants approval under this
 7-11 section, bonds, notes, and other district obligations may be
 7-12 secured by district revenue or any type of district taxes or
 7-13 assessments, or any combination of taxes and revenue pledged to the
 7-14 payment of bonds.

7-15 SECTION 16. Section 372.130, Local Government Code, is
 7-16 amended by amending Subsection (b) and adding Subsections (c) and
 7-17 (d) to read as follows:

7-18 (b) Except as otherwise provided in this subchapter, a sales
 7-19 and use tax must be imposed in accordance with Chapter 383, Local
 7-20 Government Code, or [and] Chapter 323, Tax Code.

7-21 (c) The ballot for a sales tax election shall be printed to
 7-22 provide for voting for or against the proposition: "A sales and use
 7-23 tax at a rate not to exceed _____ [insert percentage rate] in the
 7-24 _____ [insert name of district]" or "The adoption of a _____ [insert
 7-25 percentage rate] sales and use tax in the _____ [insert name of
 7-26 district]."

7-27 (d) A tax authorized at an election held under this section
 7-28 may be imposed at a rate less than or equal to the rate printed in
 7-29 the ballot proposition.

7-30 SECTION 17. (a) All acts and proceedings related to the
 7-31 authorization of any taxes or bonds, including acts and proceedings
 7-32 related to an election, by a district created under Subchapter C,
 7-33 Chapter 372, Local Government Code, before the effective date of
 7-34 this Act are validated, ratified, and confirmed in all respects as
 7-35 if the acts and proceedings occurred as authorized by law.

7-36 (b) This section does not apply to any matter that on the
 7-37 effective date of this Act:

7-38 (1) is involved in litigation if the litigation
 7-39 ultimately results in the matter being held invalid by a final court
 7-40 judgment; or

7-41 (2) has been held invalid by a final court judgment.

7-42 SECTION 18. (a) An installment sales contract made or
 7-43 attempted to be made by a county or municipality with the party
 7-44 constructing an improvement relating to an improvement district is
 7-45 validated as of the date the contract was made or attempted to be
 7-46 made if the contract:

7-47 (1) was made or attempted to be made before the
 7-48 effective date of this Act; and

7-49 (2) complies with Section 372.023, Local Government
 7-50 Code, as amended by this Act.

7-51 (b) This section does not apply to any matter that on the
 7-52 effective date of this Act:

7-53 (1) is involved in litigation if the litigation
 7-54 ultimately results in the matter being held invalid by a final court
 7-55 judgment; or

7-56 (2) has been held invalid by a final court judgment.

7-57 SECTION 19. (a) The creation by a municipality of a public
 7-58 improvement district under Subchapter A, Chapter 372, Local
 7-59 Government Code, that contains multiple tracts of noncontiguous
 7-60 land is validated as of the date of the adoption of the resolution
 7-61 by the governing body of the municipality required by Section
 7-62 372.010, Local Government Code. The resolution, any improvements
 7-63 authorized by the resolution, any ordinance levying assessments by
 7-64 the municipality in the district, and any related service and
 7-65 assessment plan, including any temporary notes referred to in the
 7-66 plan and any security for the notes, are validated as of the date of
 7-67 the municipality's adoption of the ordinance, if the resolution and
 7-68 the ordinance were:

7-69 (1) adopted before the effective date of this Act; and

8-1 (2) approved and accepted in writing by the owners of
8-2 100 percent of the taxable property in the district before the
8-3 effective date of this Act.

8-4 (b) This section does not apply to any matter that on the
8-5 effective date of this Act:

8-6 (1) is involved in litigation if the litigation
8-7 ultimately results in the matter being held invalid by a final court
8-8 judgment; or

8-9 (2) has been held invalid by a final court judgment.

8-10 SECTION 20. This Act takes effect immediately if it
8-11 receives a vote of two-thirds of all the members elected to each
8-12 house, as provided by Section 39, Article III, Texas Constitution.
8-13 If this Act does not receive the vote necessary for immediate
8-14 effect, this Act takes effect September 1, 2007.

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