

By: Williams

S.B. No. 1012

Substitute the following for S.B. No. 1012:

By: Cook of Colorado

C.S.S.B. No. 1012

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the establishment of regional participation agreements
3 between certain municipalities and districts; authorizing the
4 issuance of bonds.

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

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

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

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

17 (2) "Eligible municipality" means a municipality:

18 (A) that has a population of 1.5 million or more
19 and that includes in its extraterritorial jurisdiction at least 90
20 percent by area of the territory of a district; or

21 (B) that includes in its extraterritorial
22 jurisdiction not more than 10 percent of the territory of a district
23 that has entered into a regional participation agreement with
24 another eligible municipality under this section.

1 (3) "Party" means a district, eligible municipality,
2 or person that is a party to a regional participation agreement
3 approved and entered into under this section.

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

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

16 (b) Notwithstanding any contrary law or municipal charter
17 provision, the governing body of an eligible municipality, the
18 governing body of a district, and, if applicable, a person may
19 approve and authorize execution and performance of a regional
20 participation agreement to further regional participation in the
21 funding of eligible programs or projects. A regional participation
22 agreement must include as parties at least one eligible
23 municipality and one district and may include as parties other
24 eligible municipalities, districts, or persons.

25 (c) A regional participation agreement may provide or allow
26 for:

27 (1) the establishment, administration, use,

1 investment, and application of a regional participation fund, which
2 shall be a special fund or escrow account to be used solely for
3 funding the costs and expenses of eligible programs or projects;

4 (2) payments to be made by a party into the regional
5 participation fund for application, currently or in the future,
6 toward eligible programs or projects;

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

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

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

22 (6) any type of annexation of any part of the territory
23 of a district to be deferred by an eligible municipality that is a
24 party for a mutually agreeable period;

25 (7) the release of all or part of the territory of a
26 district from the extraterritorial jurisdiction of an eligible
27 municipality that is a party at a specified time or upon the

1 occurrence of specified events;

2 (8) the consent of an eligible municipality that is a
3 party to the incorporation of, or the adoption of an alternate form
4 of government by, all or part of the territory of a district at a
5 specified time or upon the occurrence of specified events;

6 (9) remedies for breach of the agreement;

7 (10) the modification, amendment, renewal, extension,
8 or termination of the agreement;

9 (11) other districts, eligible municipalities, or
10 persons to join the agreement as a party at any time;

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

13 (13) the duration of the agreement, including an
14 unlimited term;

15 (14) the creation and administration of a nonprofit
16 corporation, joint powers agency, local government corporation, or
17 other agency for the purpose of administration and management of a
18 regional participation fund, program, or project under the
19 agreement; and

20 (15) any other provision or term to which the parties
21 agree.

22 (d) A regional participation agreement may provide for the
23 funding of any program or project, whether individual,
24 intermittent, or continuing and whether located or conducted within
25 or outside the boundaries of a party, for the planning, design,
26 construction, acquisition, lease, rental, installment purchase,
27 improvement, provision of furnishings or equipment,

1 rehabilitation, repair, reconstruction, relocation, preservation,
2 beautification, use, execution, administration, management,
3 operation, or maintenance of any works, improvements, or
4 facilities, or for providing any functions or services, whether
5 provided to, for, by, or on behalf of a party, that provide a
6 material benefit to each party in the accomplishment of the
7 purposes of each party, related to:

8 (1) mobility or transportation, including mass
9 transportation, traffic circulation, or ground, air, rail, water,
10 or other means of transportation or movement of people, freight,
11 goods, or materials;

12 (2) health care treatment, research, teaching, or
13 education facilities or infrastructure;

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

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

19 (5) environmental preservation or enhancement,
20 including air or water quality protection, improvement,
21 preservation, or enhancement, and noise abatement;

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

24 (7) drainage, stormwater management or detention, and
25 flood control or prevention;

26 (8) solid waste collection, transfer, processing,
27 reuse, resale, disposal, and management; or

1 (9) public safety and security, including law
2 enforcement, firefighting and fire prevention, emergency services
3 and facilities, and homeland security.

4 (e) A regional participation agreement must be:

5 (1) in writing;

6 (2) approved by the governing body of each eligible
7 municipality or district that is or that becomes a party to the
8 agreement; and

9 (3) must be recorded in the deed records of any county
10 in which is located any territory of a district that is or that
11 becomes a party to the agreement.

12 (f) A district, eligible municipality, or person may join or
13 become a party to a regional participation agreement in the manner
14 authorized in the agreement.

15 (g) A regional participation agreement is not required to
16 describe the land contained within the boundaries of a district
17 that is a party to the agreement.

18 (h) A regional participation agreement binds each party to
19 the agreement for the term specified in the agreement and each owner
20 and future owner of land that is subject to the agreement during any
21 annexation deferral period established in the agreement. If a
22 party, land, or landowner is excluded or removed from an agreement,
23 the removal or exclusion is effective on the recordation of the
24 amendment, supplement, modification, or restatement of the
25 agreement implementing the removal or exclusion.

26 (i) A regional participation agreement may not require a
27 district to make payments from any funds that are restricted,

1 encumbered, or pledged for the payment of contractual obligations
2 or indebtedness of the district. Otherwise, any party may commit or
3 pledge or may issue bonds payable from or secured by a pledge of any
4 available source of funds, including unencumbered sales and use
5 taxes, to make payments due or to become due under an agreement.

6 (j) Notwithstanding any other law, a program or project to
7 be funded and any bonds to be issued by a district to make payments
8 under a regional participation agreement are not subject to review
9 or approval by the Texas Commission on Environmental Quality.

10 (k) A regional participation agreement and any action taken
11 under the agreement are not subject to any method of approval or
12 appeal under the Water Code.

13 (l) After due authorization, execution, delivery, and
14 recordation as provided by this section, a regional participation
15 agreement, including any related amendment, supplement,
16 modification, or restatement, and a pledge of funds to make
17 payments under an agreement shall be final and incontestable in any
18 court of this state.

19 (m) 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, 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 an eligible municipality that is a party do not
2 apply, and Sections 42.041(b)-(e) do not apply to any land or owner
3 of land within a district that is a party;

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

8 (3) any area of a district that is a party to be
9 released from the extraterritorial jurisdiction of an eligible
10 municipality that is a party under an agreement, or that is to be
11 incorporated or included within an alternate form of government
12 with the consent of a municipality that is a party under an
13 agreement, shall, by operation of law and without further action by
14 a party or its governing body, be released from the
15 extraterritorial jurisdiction, or consent of the municipality to
16 the incorporation or adoption of an alternate form of government by
17 the district shall be deemed to have been given, as appropriate
18 under the agreement, at the time or upon the occurrence of the
19 events specified in the agreement.

20 (n) Notwithstanding the provisions of any municipal charter
21 or other law, a district or an eligible municipality is not required
22 to hold an election to authorize a regional participation
23 agreement. As long as such funds remain restricted for use under an
24 agreement, payments to or income from a regional participation fund
25 shall not be deemed revenues to an eligible municipality for
26 purposes of any law or municipal charter provision relating to
27 revenue or property tax caps or limits.

1 (o) This section is cumulative of all other authority to
2 make, enter into, and perform a regional participation agreement.
3 In case of any conflict or ambiguity between this section and any
4 other law or municipal charter provision, this section shall
5 prevail and control.

6 (p) This section shall be liberally construed so as to give
7 effect to its legislative purposes and to sustain the validity of a
8 regional participation agreement if the agreement was entered into
9 under or in anticipation of enactment of this section.

10 SECTION 2. The legislature finds and determines that the
11 financial burdens of implementing essential economic development
12 programs and related regional public improvement projects,
13 including programs and projects located inside or outside municipal
14 boundaries that are of substantial benefit to areas within a
15 municipality and its extraterritorial jurisdiction, or to the state
16 as a whole, often are borne by large municipalities in the state;
17 that there exists insufficient legislative authority to promote and
18 facilitate regional participation in the funding and
19 implementation of such programs and projects; that annexation of
20 adjacent areas by large municipalities in many instances does not
21 provide a satisfactory means of apportioning such financial burdens
22 and may create or exacerbate public service delivery and financial
23 burdens of municipalities; that financial participation in such
24 programs or projects by populous, defined communities in close
25 proximity to large municipalities by mutual agreement provides an
26 equitable, material, and effective alternative means of addressing
27 such circumstances without resort to municipal annexation; that to

1 prevent the fragmentation of, or nonuniform allocation of costs to,
2 participating defined communities, provision should also be made
3 for similar agreements with other municipalities with
4 extraterritorial jurisdiction over insubstantial portions of such
5 defined communities; and that implementation of the provisions of
6 this Act will be of substantial benefit to participating
7 communities and municipalities, to the regions of the state that
8 include such participants, and to the state as a whole as a program
9 for promoting and facilitating regional governmental cooperation
10 and the funding of essential economic development and public
11 improvement projects under Section 52-a, Article III, Texas
12 Constitution, thereby accomplishing the public purposes of
13 promoting and advancing employment and economic diversification
14 and development and stimulating business within the state,
15 conserving and preserving the natural resources of the state,
16 permitting the improvement of traffic circulation, the movement of
17 people, freight, goods, and materials, mass transportation, and
18 health care facilities and infrastructure within the state,
19 promoting the enhancement and improvement of air and water quality
20 and noise abatement measures within the state, promoting the
21 development of parks, recreational facilities, and public assembly
22 facilities within the state, and encouraging the preservation and
23 protection of scenic, wildlife, wetlands, and wilderness areas in
24 the state, and other purposes beneficial to the state.

25 SECTION 3. The provisions of this Act are severable. If any
26 word, phrase, clause, sentence, section, provision, or part of this
27 Act is held invalid or unconstitutional, it shall not affect the

1 validity of the remaining portions, and it is declared to be the
2 legislative intent that this Act would have been passed as to the
3 remaining portions regardless of the invalidity of any part.

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

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