

1-1 By: Williams S.B. No. 1012  
1-2 (In the Senate - Filed February 28, 2007; March 14, 2007,  
1-3 read first time and referred to Committee on Intergovernmental  
1-4 Relations; March 29, 2007, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 3, Nays 0;  
1-6 March 29, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1012 By: Nichols

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the establishment of regional participation agreements  
1-11 between certain municipalities and districts; authorizing the  
1-12 issuance of bonds.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subchapter D, Chapter 43, Local Government Code,  
1-15 is amended by adding Section 43.0754 to read as follows:

1-16 Sec. 43.0754. REGIONAL PARTICIPATION AGREEMENTS. (a) In  
1-17 this section:

1-18 (1) "District" means a political subdivision created  
1-19 by general or special law that has the powers of a municipal  
1-20 management district under Chapter 375 and a conservation and  
1-21 reclamation district under Chapters 49 and 54, Water Code, a  
1-22 majority by area of the territory of which is located within a  
1-23 planned community and within the extraterritorial jurisdiction of  
1-24 one or more municipalities.

1-25 (2) "Eligible municipality" means a municipality:

1-26 (A) that has a population of 1.5 million or more  
1-27 and that includes in its extraterritorial jurisdiction at least 90  
1-28 percent by area of the territory of a district; or

1-29 (B) that includes in its extraterritorial  
1-30 jurisdiction not more than 10 percent of the territory of a district  
1-31 that has entered into a regional participation agreement with  
1-32 another eligible municipality under this section.

1-33 (3) "Party" means a district, eligible municipality,  
1-34 or person that is a party to a regional participation agreement  
1-35 approved and entered into under this section.

1-36 (4) "Planned community" means a planned community of  
1-37 20 square miles or more with a population of 50,000 or more that is  
1-38 subject in whole or in part to a restrictive covenant that contains  
1-39 an ad valorem-based assessment on real property used or to be used,  
1-40 in any part, to fund governmental or quasi-governmental services  
1-41 and facilities within and for the planned community.

1-42 (5) "Regional participation agreement" means a  
1-43 contract or agreement entered into under this section or in  
1-44 anticipation of the enactment of this section and any amendment,  
1-45 modification, supplement, addition, renewal, or extension to or of  
1-46 the contract or agreement or any proceeding relating to the  
1-47 contract or agreement.

1-48 (b) Notwithstanding any contrary law or municipal charter  
1-49 provision, the governing body of an eligible municipality, the  
1-50 governing body of a district, and, if applicable, a person may  
1-51 approve and authorize execution and performance of a regional  
1-52 participation agreement to further regional participation in the  
1-53 funding of eligible programs or projects. A regional participation  
1-54 agreement must include as parties at least one eligible  
1-55 municipality and one district and may include as parties other  
1-56 eligible municipalities, districts, or persons.

1-57 (c) A regional participation agreement may provide or allow  
1-58 for:

1-59 (1) the establishment, administration, use,  
1-60 investment, and application of a regional participation fund, which  
1-61 shall be a special fund or escrow account to be used solely for  
1-62 funding the costs and expenses of eligible programs or projects;

1-63 (2) payments to be made by a party into the regional

2-1 participation fund for application, currently or in the future,  
2-2 toward eligible programs or projects;  
2-3 (3) the methods and procedures by which eligible  
2-4 programs or projects are prioritized, identified, and selected for  
2-5 implementation and are planned, designed, bid, constructed,  
2-6 administered, inspected, and completed;  
2-7 (4) the methods and procedures for accounting for  
2-8 amounts on deposit in, to the credit of, or expended from the  
2-9 regional participation fund, as well as any related investment  
2-10 income or amounts due and owing to or from any party to the fund;  
2-11 (5) credits against payments otherwise due by any  
2-12 party under the agreement resulting from taxes, charges, fees,  
2-13 assessments, tolls, or other payments in support of or related to  
2-14 the usage or costs of eligible programs or projects that are levied  
2-15 or imposed upon, assessed against, or made applicable to a party or  
2-16 its citizens, ratepayers, taxpayers, or constituents after the  
2-17 effective date of the agreement;  
2-18 (6) any type of annexation of any part of the territory  
2-19 of a district to be deferred by an eligible municipality that is a  
2-20 party for a mutually agreeable period;  
2-21 (7) the release of all or part of the territory of a  
2-22 district from the extraterritorial jurisdiction of an eligible  
2-23 municipality that is a party at a specified time or upon the  
2-24 occurrence of specified events;  
2-25 (8) the consent of an eligible municipality that is a  
2-26 party to the incorporation of, or the adoption of an alternate form  
2-27 of government by, all or part of the territory of a district at a  
2-28 specified time or upon the occurrence of specified events;  
2-29 (9) remedies for breach of the agreement;  
2-30 (10) the modification, amendment, renewal, extension,  
2-31 or termination of the agreement;  
2-32 (11) other districts, eligible municipalities, or  
2-33 persons to join the agreement as a party at any time;  
2-34 (12) third-party beneficiaries to be specifically  
2-35 designated and conferred rights or remedies under the agreement;  
2-36 (13) the duration of the agreement, including an  
2-37 unlimited term;  
2-38 (14) the creation and administration of a nonprofit  
2-39 corporation, joint powers agency, local government corporation, or  
2-40 other agency for the purpose of administration and management of a  
2-41 regional participation fund, program, or project under the  
2-42 agreement; and  
2-43 (15) any other provision or term to which the parties  
2-44 agree.  
2-45 (d) A regional participation agreement may provide for the  
2-46 funding of any program or project, whether individual,  
2-47 intermittent, or continuing and whether located or conducted within  
2-48 or outside the boundaries of a party, for the planning, design,  
2-49 construction, acquisition, lease, rental, installment purchase,  
2-50 improvement, provision of furnishings or equipment,  
2-51 rehabilitation, repair, reconstruction, relocation, preservation,  
2-52 beautification, use, execution, administration, management,  
2-53 operation, or maintenance of any works, improvements, or  
2-54 facilities, or for providing any functions or services, whether  
2-55 provided to, for, by, or on behalf of a party, that provide a  
2-56 material benefit to each party in the accomplishment of the  
2-57 purposes of each party, related to:  
2-58 (1) mobility or transportation, including mass  
2-59 transportation, traffic circulation, or ground, air, rail, water,  
2-60 or other means of transportation or movement of people, freight,  
2-61 goods, or materials;  
2-62 (2) health care treatment, research, teaching, or  
2-63 education facilities or infrastructure;  
2-64 (3) parks or recreation, open space, and scenic,  
2-65 wildlife, wetlands, or wilderness areas;  
2-66 (4) public assembly or shelter, including halls,  
2-67 arenas, stadiums or similar facilities for sporting events,  
2-68 exhibitions, conventions, or other mass assembly purposes;  
2-69 (5) environmental preservation or enhancement,

3-1 including air or water quality protection, improvement,  
 3-2 preservation, or enhancement, and noise abatement;

3-3 (6) the supply, conservation, transportation,  
 3-4 treatment, disposal, or reuse of water or wastewater;

3-5 (7) drainage, stormwater management or detention, and  
 3-6 flood control or prevention;

3-7 (8) solid waste collection, transfer, processing,  
 3-8 reuse, resale, disposal, and management; or

3-9 (9) public safety and security, including law  
 3-10 enforcement, firefighting and fire prevention, emergency services  
 3-11 and facilities, and homeland security.

3-12 (e) A regional participation agreement must be:

3-13 (1) in writing;

3-14 (2) approved by the governing body of each eligible  
 3-15 municipality or district that is or that becomes a party to the  
 3-16 agreement; and

3-17 (3) must be recorded in the deed records of any county  
 3-18 in which is located any territory of a district that is or that  
 3-19 becomes a party to the agreement.

3-20 (f) A district, eligible municipality, or person may join or  
 3-21 become a party to a regional participation agreement in the manner  
 3-22 authorized in the agreement.

3-23 (g) A regional participation agreement is not required to  
 3-24 describe the land contained within the boundaries of a district  
 3-25 that is a party to the agreement.

3-26 (h) A regional participation agreement binds each party to  
 3-27 the agreement for the term specified in the agreement and each owner  
 3-28 and future owner of land that is subject to the agreement during any  
 3-29 annexation deferral period established in the agreement. If a  
 3-30 party, land, or landowner is excluded or removed from an agreement,  
 3-31 the removal or exclusion is effective on the recordation of the  
 3-32 amendment, supplement, modification, or restatement of the  
 3-33 agreement implementing the removal or exclusion.

3-34 (i) A regional participation agreement may not require a  
 3-35 district to make payments from any funds that are restricted,  
 3-36 encumbered, or pledged for the payment of contractual obligations  
 3-37 or indebtedness of the district. Otherwise, any party may commit or  
 3-38 pledge or may issue bonds payable from or secured by a pledge of any  
 3-39 available source of funds, including unencumbered sales and use  
 3-40 taxes, to make payments due or to become due under an agreement.

3-41 (j) Notwithstanding any other law, a program or project to  
 3-42 be funded and any bonds to be issued by a district to make payments  
 3-43 under a regional participation agreement are not subject to review  
 3-44 or approval by the Texas Commission on Environmental Quality.

3-45 (k) A regional participation agreement and any action taken  
 3-46 under the agreement are not subject to any method of approval or  
 3-47 appeal under the Water Code.

3-48 (l) After due authorization, execution, delivery, and  
 3-49 recordation as provided by this section, a regional participation  
 3-50 agreement, including any related amendment, supplement,  
 3-51 modification, or restatement, and a pledge of funds to make  
 3-52 payments under an agreement shall be final and incontestable in any  
 3-53 court of this state.

3-54 (m) Notwithstanding any defect, ambiguity, discrepancy,  
 3-55 invalidity, or unenforceability of a regional participation  
 3-56 agreement that has been voluntarily entered into and fully executed  
 3-57 by the parties, or any contrary law, common law doctrine, or  
 3-58 municipal charter provision, and for the duration of any annexation  
 3-59 deferral period established in the agreement during which a  
 3-60 district continues to perform its obligations under the agreement:

3-61 (1) Section 42.023 and any other law or municipal  
 3-62 charter provision relating to the reduction of the extraterritorial  
 3-63 jurisdiction of an eligible municipality that is a party do not  
 3-64 apply, and Sections 42.041(b)-(e) do not apply to any land or owner  
 3-65 of land within a district that is a party;

3-66 (2) the governing body of an eligible municipality  
 3-67 that is a party may not include the area covered by the agreement in  
 3-68 a municipal annexation plan and may not initiate or continue an  
 3-69 annexation proceeding relating to that area; and

4-1           (3) any area of a district that is a party to be  
 4-2 released from the extraterritorial jurisdiction of an eligible  
 4-3 municipality that is a party under an agreement, or that is to be  
 4-4 incorporated or included within an alternate form of government  
 4-5 with the consent of a municipality that is a party under an  
 4-6 agreement, shall, by operation of law and without further action by  
 4-7 a party or its governing body, be released at the time or upon the  
 4-8 occurrence of the events specified in the agreement.

4-9           (n) Notwithstanding the provisions of any municipal charter  
 4-10 or other law, a district or an eligible municipality is not required  
 4-11 to hold an election to authorize a regional participation  
 4-12 agreement. As long as such funds remain restricted for use under an  
 4-13 agreement, payments to or income from a regional participation fund  
 4-14 shall not be deemed revenues to an eligible municipality for  
 4-15 purposes of any law or municipal charter provision relating to  
 4-16 revenue or property tax caps or limits.

4-17           (o) This section is cumulative of all other authority to  
 4-18 make, enter into, and perform a regional participation agreement.  
 4-19 In case of any conflict or ambiguity between this section and any  
 4-20 other law or municipal charter provision, this section shall  
 4-21 prevail and control.

4-22           (p) This section shall be liberally construed so as to give  
 4-23 effect to its legislative purposes and to sustain the validity of a  
 4-24 regional participation agreement if the agreement was entered into  
 4-25 under or in anticipation of enactment of this section.

4-26           SECTION 2. The legislature finds and determines that the  
 4-27 financial burdens of implementing essential economic development  
 4-28 programs and related regional public improvement projects,  
 4-29 including programs and projects located inside or outside municipal  
 4-30 boundaries that are of substantial benefit to areas within a  
 4-31 municipality and its extraterritorial jurisdiction, or to the state  
 4-32 as a whole, often are borne by large municipalities in the state;  
 4-33 that there exists insufficient legislative authority to promote and  
 4-34 facilitate regional participation in the funding and  
 4-35 implementation of such programs and projects; that annexation of  
 4-36 adjacent areas by large municipalities in many instances does not  
 4-37 provide a satisfactory means of apportioning such financial burdens  
 4-38 and may create or exacerbate public service delivery and financial  
 4-39 burdens of municipalities; that financial participation in such  
 4-40 programs or projects by populous, defined communities in close  
 4-41 proximity to large municipalities by mutual agreement provides an  
 4-42 equitable, material, and effective alternative means of addressing  
 4-43 such circumstances without resort to municipal annexation; that to  
 4-44 prevent the fragmentation of, or nonuniform allocation of costs to,  
 4-45 participating defined communities, provision should also be made  
 4-46 for similar agreements with other municipalities with  
 4-47 extraterritorial jurisdiction over insubstantial portions of such  
 4-48 defined communities; and that implementation of the provisions of  
 4-49 this Act will be of substantial benefit to participating  
 4-50 communities and municipalities, to the regions of the state that  
 4-51 include such participants, and to the state as a whole as a program  
 4-52 for promoting and facilitating regional governmental cooperation  
 4-53 and the funding of essential economic development and public  
 4-54 improvement projects under Section 52-a, Article III, Texas  
 4-55 Constitution, thereby accomplishing the public purposes of  
 4-56 promoting and advancing employment and economic diversification  
 4-57 and development and stimulating business within the state,  
 4-58 conserving and preserving the natural resources of the state,  
 4-59 permitting the improvement of traffic circulation, the movement of  
 4-60 people, freight, goods, and materials, mass transportation, and  
 4-61 health care facilities and infrastructure within the state,  
 4-62 promoting the enhancement and improvement of air and water quality  
 4-63 and noise abatement measures within the state, promoting the  
 4-64 development of parks, recreational facilities, and public assembly  
 4-65 facilities within the state, and encouraging the preservation and  
 4-66 protection of scenic, wildlife, wetlands, and wilderness areas in  
 4-67 the state, and other purposes beneficial to the state.

4-68           SECTION 3. The provisions of this Act are severable. If any  
 4-69 word, phrase, clause, sentence, section, provision, or part of this

5-1 Act is held invalid or unconstitutional, it shall not affect the  
5-2 validity of the remaining portions, and it is declared to be the  
5-3 legislative intent that this Act would have been passed as to the  
5-4 remaining portions regardless of the invalidity of any part.

5-5 SECTION 4. A regional participation agreement entered into  
5-6 in anticipation of this Act is not invalid because of the  
5-7 agreement's authorization, execution, or delivery before the  
5-8 effective date of this Act.

5-9 SECTION 5. This Act takes effect immediately if it receives  
5-10 a vote of two-thirds of all the members elected to each house, as  
5-11 provided by Section 39, Article III, Texas Constitution. If this  
5-12 Act does not receive the vote necessary for immediate effect, this  
5-13 Act takes effect September 1, 2007.

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