

**House Bill 4109**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION	SENATE VERSION	CONFERENCE
ARTICLE 1. AMENDMENTS EFFECTIVE IMMEDIATELY	Same as House version.	
SECTION 1.01. Subsection (d), Section 1, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows: (d) The creation <u>and continued operations</u> of the district <u>are</u> [is] declared to be essential to the accomplishment of the purposes of Article III, <u>Sections</u> [Section] 52 and 52-a, and Article XVI, Section 59, of the Texas Constitution and to the accomplishment of the several other public purposes stated in this Act.	Same as House version.	
SECTION 1.02. Subsection (a), Section 5, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows: (a) The legislature finds that <u>the creation and operation of the district and</u> [ <del>all of the land and other property included within the boundaries of the district will be benefited by</del> ] the works, projects, improvements, and services that are to be <u>promoted, facilitated, and</u> accomplished by the district under powers conferred by Article III, <u>Sections</u> [Section] 52 and 52-a, and Article XVI, Section 59, of the Texas Constitution and other powers granted under this Act <u>will provide a substantial and continuing</u> [ <del>and that the district is created to serve a</del> ] public use and benefit <u>not only within and adjacent to the boundaries of the district, but throughout the state, by</u>	Same as House version.	

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promoting and stimulating business activity, commerce, tourism, travel, and economic development and diversification in the state; promoting and facilitating public safety and health, the mobility of people, traffic circulation, and mass transportation in the state; preserving and promoting scenic and aesthetic beauty in the state; promoting and advancing employment and business relocation and retention in the state; reducing or eliminating unemployment and underemployment in the state; and protecting and securing the general welfare of the state and all of its citizens.

SECTION 1.03. Section 6, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsection (c) to read as follows:

(c) Sections 375.161, 375.207, and 375.208, Local Government Code, do not apply to the district.

Same as House version.

SECTION 1.04. Section 7, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsection (r) to read as follows:

(r) The district may sponsor, create, establish, utilize, administer, and contract with a local government corporation under Subchapter D, Chapter 431, Transportation Code.

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SECTION 1.05. Chapter 289, Acts of the 73rd

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Legislature, Regular Session, 1993, is amended by adding Section 7-a to read as follows:

Sec. 7-a. ADDING TERRITORY BY ELECTION. (a) Except as provided by Subsections (d) and (e) of this section, the board may also add territory, as provided by Section 7(d) of this Act on its own motion and without petitions and after notice and hearing given and conducted in the manner provided by Subchapter J, Chapter 49, Water Code, but subject to a confirmation election.

(b) The board shall order a confirmation election to be held on the next lawfully available uniform election date following the conclusion of any appeals from the order adding land. The confirmation election shall be held within the district, as enlarged by reason of any addition of territory under this subsection, to confirm such addition of territory and the assumption by the added territory of its pro rata share of the district's bonds, taxes, indebtedness, and contract obligations.

(c) A map or plat showing the boundaries of the district, as adjusted from time to time, shall be recorded in the real property records of each county in which all or part of the district is situated not later than the seventh day after the date of each such boundary adjustment.

(d) Notwithstanding Section 7(d) of this Act, territory within the corporate limits or extraterritorial jurisdiction of a municipality with a population of less than 1.5 million may not be added to the district under this section without the express, written consent of the municipality given by ordinance, resolution, or written

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agreement.

(e) The district and a municipality may enter into a written agreement for a specified term consenting to the addition of territory by the district as provided by Subsection (d) of this section or limiting the territory that may be added by the district under this section or Section 7(d) of this Act.

(f) If either the proposition submitted to confirm the initial addition of territory or the proposition submitted under Section 9(g) of this Act fails to pass by a majority vote, this section expires on the date the results of the election are canvassed.

No equivalent provision.

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SECTION \_\_. Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Section 7F to read as follows:

Sec. 7F. FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES. (a) In this section, "fire protection personnel" has the meaning assigned by Section 419.021, Government Code.

(b) The district may employ, contract with, or otherwise engage other persons or entities, including fire protection personnel, to provide, improve, enhance, and support fire protection and emergency medical services in and adjacent to the district.

(c) Before January 1, 2010, the district may not directly employ any fire protection personnel. This subsection expires January 1, 2010.

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SECTION 1.06. The heading to Section 9, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

Sec. 9. ~~[CONFIRMATION AND DIRECTORS]~~  
ELECTIONS.

SECTION 1.07. Section 9, Chapter 289, Acts of the 73rd Legislature, Regular Session, 2003, is amended by adding Subsections (e) through (k) to read as follows:

(e) The board shall order that a confirmation election be held in conjunction with the initial election required under Section 7-a(b) of this Act to determine whether the proposed changes in the composition of the board under Subsection (g) of this section shall be confirmed and implemented. If either proposition submitted at the confirmation election fails to pass by a majority vote, both propositions shall be deemed to have failed.

(f) All registered and qualified voters within the district, as enlarged by the addition of territory to the district under Section 7-a of this Act, are eligible to vote in any confirmation election called under Subsection (e) of this section or Section 7-a of this Act. Otherwise, only registered and qualified voters within the district are eligible to vote in all other district elections.

(g) After passage of the propositions in the confirmation election, as required by Subsection (e) of this section and Section 7-a of this Act:

(1) an election shall be called for the uniform election date in May of the next even-numbered year for the

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election of five directors at large. The three candidates receiving the highest number of votes shall be elected for a term of three years, and the two candidates receiving the next highest number of votes shall be elected for a term of two years;

(2) an election shall be called for the uniform election date in May of the next succeeding even-numbered year after the election held under Subdivision (1) of this subsection, for the election of four directors at large. The four candidates receiving the highest number of votes shall be elected for a term of two years; and

(3) an election shall be called annually thereafter for the uniform election date in May of each year for the election of either three or four directors, as appropriate, to serve two-year terms.

(h) The board may call and conduct elections from time to time on a uniform election date for the purposes of:

(1) determining whether, according to a regional participation agreement authorized by this Act or other law, all or part of the territory of the district should be released from the extraterritorial jurisdiction of a municipality;

(2) determining whether, according to a regional participation agreement, all or part of the territory of the district should be incorporated as a municipality or should adopt another form of local government;

(3) authorizing the levy and assessment of ad valorem taxes for district purposes on a uniform basis throughout the district;

(4) authorizing the issuance of indebtedness payable in

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whole or in part from ad valorem taxes; and

(5) submitting to the qualified voters of the district any other bonds, contracts, indebtedness, measures, or propositions authorized by law.

(i) Passage of all confirmation, contract, tax, or other propositions or measures at an election shall require a favorable vote by a majority of the eligible voters voting in the election.

(j) The passage at an election of a proposition to confirm the addition of territory to the district under Section 7-a of this Act shall be deemed to be an election to assume the added territory's pro rata share of the bonds, taxes, indebtedness, and contract obligations of the district.

(k) This subsection and Subsections (e)-(j) of this section expire if either the proposition submitted to confirm the initial addition of territory under Section 7-a of this Act or the proposition submitted under Subsection (e) of this section fails to pass by a majority vote.

SECTION 1.08. Subsection (d), Section 11C, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(d) Before designating a development zone on its own motion or, if ad valorem taxes are to be used, in whole or in part, for the payment of improvement project costs in a development zone to be designated in response to a landowner petition, the board shall call and hold a public hearing on the creation of the zone in the manner provided by Sections 311.003(c) and (d)~~[Section~~

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~~311.003~~], Tax Code, for reinvestment zones designated by a municipality.

SECTION 1.09. The following provisions of Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, are repealed:

- (1) Subsections (a) and (b), Section 9; and
- (2) Subsection (b), Section 11B.

Same as House version.

ARTICLE 2. AMENDMENTS EFFECTIVE WITH CONFIRMATION ELECTION

Same as House version.

SECTION 2.01. Subsections (b), (h), and (k), Section 7, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, are amended to read as follows:

(b) The board may levy, assess, and apply the proceeds from the ~~[limited sales and use]~~ taxes, fees, and charges authorized by ~~[Section 11 of]~~ this Act for any authorized district purposes, including making, or funding debt service and other costs related to the issuance of bonds to make, any payments required under the terms of a regional participation agreement authorized by this Act or other law with one or more other governmental entities relating to the financing of regional programs, improvements, and facilities that mutually benefit the district and such other governmental entities ~~[provided that, during each interval of three calendar years~~

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~~following the commencement of collection of such tax, the board shall, consistent with constitutional limitations and the district's authorized powers and purposes, and in its sound discretion, endeavor to apply an annual average of not less than 10 percent of the net proceeds of the taxes collected under Section 11 of this Act, after deduction of the general and administrative costs and expenses of the district and the costs and expenses of levying, assessing, and collecting such taxes, toward mitigation of the net negative impact of development within the district on the impact area, including without limitation effects on public utilities and services, public transportation and traffic movement, and scenic and aesthetic beauty. Direct expenditures made for the district or the impact area are allocable to each area for which the expenditure was made. Expenditures for the general welfare, promotion, or benefit of the district and impact area are allocable between the district and the impact area in the amount, as determined by the board, that is proportionate to the benefit conferred on each area].~~

(h) The board may establish, revise, repeal, enforce, collect, and apply the proceeds from user fees, concessions, admissions, rentals, or other similar fees or charges for the enjoyment, sale, rental, or other use of the district's facilities, services, properties, or improvement projects; however, ~~[because the district is created in an area that is devoted primarily to commercial and business activity,]~~ the district may not impose an impact fee or assessment on a single family residential property

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or a residential duplex, triplex, quadruplex, or condominium.

(k) The district may not employ peace officers, but may contract with:

(1) a county or municipality that has territory wholly or partly in or contiguous to the district's territory [~~or impact area~~] for the county or municipality to provide law enforcement services by any lawful means for the district, including a warrantless arrest, to the same extent and with the same effect as if the district were authorized to employ its own peace officers directly; and

(2) off-duty peace officers directly to provide public safety and security services in connection with a special event, holiday, period with high traffic congestion, or similar circumstance.

SECTION 2.02. Section 7C, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

Sec. 7C. CONFLICT BETWEEN DISTRICT RULE AND OTHER LOCAL REGULATIONS. To the extent a district rule conflicts with a rule, order, ordinance, or regulation of a county or municipality with jurisdiction in the district's territory [~~or impact area~~], the rule, order, ordinance, or regulation of the county or municipality controls.

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No equivalent provision.

SECTION 2.03. Subsections (a), (e), and (j), Section 8, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, are amended to read as follows:

(a) The district is governed by a board ~~[composed]~~ of [44] directors elected ~~[or appointed]~~ as provided by Section 9(g) of this Act to [Subsection (e) of this section. Directors] serve staggered terms as described by that section [of four years]. To be qualified to serve as a director, a person must be at least 18 years of age and be a resident of the district.

(e) A vacancy in the office of director shall be filled by appointment of a qualified individual by a majority vote

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SECTION \_\_. Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Section 7G to read as follows:

Sec. 7G. UTILITY PROPERTY EXEMPT FROM IMPACT FEES AND ASSESSMENTS. The board may not impose an impact fee or assessment on the property, including the equipment, rights-of-way, facilities, or improvements, of:

(1) an electric utility or a power generation company as defined by Section 31.002, Utilities Code;

(2) a gas utility as defined by Section 101.003 or 121.001, Utilities Code;

(3) a telecommunications provider as defined by Section 51.002, Utilities Code; or

(4) a person who provides to the public cable television or advanced telecommunications services.

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of the remaining directors, except that if the number of directors for any reason is less than four ~~[six]~~, on petition of a resident of or owner of real property in the district, the commission shall appoint the required number of qualified individuals to fill the vacancies. ~~[The board may remove a director for misconduct or failure to carry out the director's duties by unanimous vote of all of the remaining directors.]~~

(j) Except as provided by ~~[in]~~ Subsection (e) of this section, four ~~[five]~~ directors constitute a quorum for the consideration of all matters pertaining to the business ~~[purposes]~~ of the district, and a concurrence of a majority of a quorum of directors shall be required for any official action of the district.

SECTION 2.04. Section 11C, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, is amended by adding Subsections (q) and (r) to read as follows:

(q) Upon the creation and organization of a development zone over the territory of one or more existing development zones, and upon the imposition or assessment by the governing body of an ad valorem tax or limited sales and use tax for the development zone, the existing development zones are dissolved and abolished and all assets, properties, indebtedness, obligations, and liabilities of the existing development zones transfer to and are assumed by the newly created and organized development zone.

(r) For a development zone created to facilitate a

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continuing improvement project, the board and the governing body need not specify or include in a preliminary financing plan, in the resolution creating the development zone, or in the project plan or financing plan of the development zone a duration or date of termination of the development zone.

SECTION 2.05. Subsections (a) and (c), Section 12A, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, are amended to read as follows:

(a) The board may issue bonds of the district for any district purpose or improvement project, including for the purpose of making or providing for payment of any amounts due or to become due from the district under a regional participation agreement authorized by this Act or other law, which shall be deemed to be in furtherance of a program authorized pursuant to Section 52-a, Article III, Texas Constitution, in the manner provided by Subchapter J, Chapter 375, Local Government Code. Sections 375.207 and 375.208, Local Government Code, do not apply to bonds issued by the district under this Act.

(c) In addition to the sources of money described by Subchapter J, Chapter 375, Local Government Code, the bonds of the district may be secured and made payable, wholly or partly, by a pledge of any part of the net proceeds the district receives from:

(1) a specified portion, but not more than one-half of one percent, of the sales and use tax authorized by

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Section 11 of this Act; ~~and~~

(2) the hotel occupancy tax authorized by Section 11A of this Act;

(3) an ad valorem tax approved by the voters of the district at an election called for that purpose;

(4) any revenues or proceeds received or to be received by the district from contracts, agreements, or other lawful sources, including a contract with a development zone to facilitate an improvement project or project plan of the district or the development zone;

(5) any other revenues, income, or proceeds that in accordance with this Act or other law may be pledged or used for purposes described by Subdivision (4) of this subsection; or

(6) any combination of revenues, taxes, or proceeds from one or more of the sources described by Subdivisions (1)-(5) of this subsection.

SECTION 2.06. Subsection (b), Section 13, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

(b) The district and a municipality any part of which is located in the boundaries of the district ~~[or impact area]~~ may enter into and carry out an interlocal agreement for the accomplishment of an improvement project or the provision of a facility, a service, or equipment by the district in or for the benefit of the municipality. Notwithstanding any other law, payment for the improvement project, facility, service, or equipment may

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be made or pledged by the municipality to the district out of any money the municipality collects under Chapter 351, Tax Code, or out of any other available money.

SECTION 2.07. Section 14, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, is amended to read as follows:

Sec. 14. DISSOLUTION. (a) The board may elect by majority vote to dissolve the district at any time~~[-and the board shall dissolve the district on written petition of the owners of 75 percent, in terms of acreage, of the real property in the district];~~ however, the district may not be dissolved by the board if the district has any outstanding indebtedness or contractual obligations, including obligations under a regional participation agreement authorized by this Act or other law, until such indebtedness or contractual obligations have been repaid or discharged, unless the indebtedness or contractual obligations have been assumed by another governmental entity with the power and authority to repay or discharge them.

(b) After the board elects to dissolve the district, the board shall transfer ownership of all property and assets of the district to Montgomery County, except as provided by Subsection (c) of this section.

(c) If on the date of the vote to dissolve the district more than 50 percent of the territory within the district is within the boundaries [corporate limits] of another governmental entity that has assumed the indebtedness

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<p><u>and contractual obligations of the district under Subsection (a) of this section [a-municipality]</u>, the board shall transfer ownership of the district's property and assets to that <u>governmental entity [municipality]</u>.</p> <p>(d) The district may not be dissolved by a municipality <u>annexing all or part of [in-which]</u> the district <u>[is-located]</u>.</p>		
<p>SECTION 2.08. The following provisions of Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, are repealed:</p> <p>(1) Subdivision (4), Section 2;</p> <p>(2) Subsections (b), (c), and (k), Section 8;</p> <p>(3) Subsection (d), Section 9; and</p> <p>(4) Subsection (e), Section 11C.</p>	Same as House version.	
<p>ARTICLE 3. PROCEDURAL MATTERS AND EFFECTIVE DATES</p>	Same as House version.	
<p>SECTION 3.01. The legislature finds that proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, that the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and laws of this state, including the governor, who has submitted the notice and Act to the Texas Commission on Environmental Quality,</p>	Same as House version.	



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that the Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time, and that all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 3.02. (a) Article 2 of this Act takes effect only if a majority of the voters, at an initial confirmation election held under Section 7-a and Subsection (e), Section 9, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, as added by Article 1 of this Act, approve the propositions. If no election is held under Section 7-a or Subsection (e), Section 9, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, as added by Article 1 of this Act, or if the election is held but the voters do not approve the propositions or the propositions are deemed not to have been passed, Article 2 of this Act has no effect.

(b) If Article 2 of this Act takes effect under Subsection (a) of this section, the effective date of Article 2 of this Act is the date the results of the election are officially declared.

SECTION 3.03. Except as otherwise provided by this Act, this Act takes effect immediately if it receives a vote

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of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

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