

BILL ANALYSIS

C.S.H.B. 3484
By: Coleman
County Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Municipalities and counties use tax increment financing for purposes of redevelopment of specified areas within their jurisdictions. This type of financing provides for the redirection of existing tax revenue streams, not additional taxation. Various provisions of the Tax Increment Financing Act are inconsistent or outmoded, in part due to the fact that taxing entities are no longer required to participate in tax increment reinvestment zones.

Municipal management districts are government entities that work under the direction of cities and counties to also provide similar area-specific redevelopment and enhancements. The creation and operation of these districts require confirmation and validation to allow the districts to perform their functions without interruption due to technical deficiencies or challenges.

C.S.H.B. 3484 revises existing law relating to the funding, creation, and operation of tax increment reinvestment zones. The bill amends various provisions to clean up and update the Tax Increment Financing Act, and clarifies school district participation in certain zones. The bill also provides for the validation of municipal management district acts.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Validity of Certain Acts or Proceedings of Municipal Management Districts

C.S.H.B. 3484 amends the Local Government Code to provide that on and after the second anniversary of the effective date of a governmental act or proceeding of a municipal management district, the governmental act or proceeding is conclusively presumed, as of the date it occurred, to be valid and to have occurred in accordance with law. The bill makes the presumption inapplicable to a governmental act or proceeding of a district regarding which a lawsuit to annul or invalidate the act or proceeding is filed on or before the second anniversary of the effective date of the governmental act or proceeding. The bill makes the presumption inapplicable to a governmental act or proceeding of a district that at the time the act or proceeding occurred was a misdemeanor or felony under Texas law or federal law, or a district rule that, at the time it was passed, was preempted by Texas law or federal law, including certain provisions of the Alcoholic Beverage Code relating to the application and jurisdiction of that code. The bill excludes from this presumption an act or proceeding for which a lawsuit to annul or invalidate is filed on or before August 31, 2009, or a matter that on September 1, 2009, is involved in litigation that results in the matter being held invalid by a court or has already been held invalid. The bill provides that the legislature validates and confirms, as of the dates on which they occurred, all governmental acts or proceedings of certain districts created or operated under the bill's provisions except a matter that on the 30th day after the effective date of the bill is involved in litigation that results in the matter being held invalid by a court or has already been held invalid.

Tax Increment Financing

C.S.H.B. 3484 amends the Tax Code to modify the definition of "project costs" in the context of a reinvestment zone under the Tax Increment Financing Act. The bill applies the term to monetary obligations incurred or estimated by a municipality or county designating, rather than establishing, a reinvestment zone, and that the costs may be not only for public works and public improvements, but also for programs or other projects benefiting the zone. The bill includes within the definition of "project costs" the actual costs of the remediation of conditions that contaminate public land or buildings; the actual costs of the preservation of the façade of a public or private building; and the actual costs of the demolition of public or private buildings. The bill includes in this definition the costs of a program implemented by the board of directors of a reinvestment zone under the Tax Increment Financing Act for certain public purposes; the costs of school buildings, other educational buildings, other educational facilities, or other buildings owned by or on behalf of a school district, community college district, or other political subdivision of Texas; and the costs of providing affordable housing or areas of public assembly in or outside of the zone.

C.S.H.B. 3484 authorizes the governing body of a county by order or the governing body of a municipality by ordinance to designate a geographic area that is in the corporate limits of the municipality, in the extraterritorial jurisdiction of the municipality, or in both to be a reinvestment zone and makes conforming changes. The bill adds to the requirements for an area to be designated a reinvestment zone that it be predominantly undeveloped or underdeveloped, and establishes that the designated area need not be contiguous if the governing body determines that the tracts included in the area are substantially related.

C.S.H.B. 3484 provides that the designation of an area that is wholly or partly located in the extraterritorial jurisdiction of a municipality is not affected by a subsequent annexation of real property in the reinvestment zone by the municipality, and that the tax increment base of a municipality that annexes an area in a zone after the area is included in the zone is computed as if the area were located in the corporate limits of the municipality at the time the area was included in the zone. The bill removes a requirement that the governing body of a municipality or county that designates a reinvestment zone must send a copy of a preliminary reinvestment zone financing plan to the governing body of each taxing unit that levies taxes on real property in the proposed zone.

C.S.H.B. 3484 sets forth procedures for the governing bodies of two or more municipalities to follow in designating a joint reinvestment zone. The bill authorizes the governing bodies to each adopt an ordinance designating a contiguous area in the jurisdiction of each of the municipalities to be a joint reinvestment zone, and requires each municipality to follow the procedures in specified provisions of the Tax Code. The bill sets forth requirements for the ordinances adopted by all of the municipalities designating an area as a joint reinvestment zone, requiring that the ordinances contain the same terms and requiring the ordinances to describe the boundaries of the zone with sufficient definiteness to identify with ordinary and reasonable certainty the territory included in the zone, and to create a board of directors for the zone. The bill requires the ordinances to specify the number, qualifications, manner of appointment, and terms of directors, the manner in which vacancies on the board are filled, and the manner by which officers of the board are selected. The bill requires the ordinances to provide that the zone takes effect immediately on adoption of the ordinance by the last of the municipalities in the jurisdiction of which the area contained in the zone is located; to provide a termination date for the zone; to assign a name to the zone; to establish a tax increment fund for the zone; and to contain findings that improvements in the zone will significantly enhance the value of all taxable real property in the zone and will be of general benefit to the municipalities, and that the area meets the requirements of specified provisions of the Tax Code.

C.S.H.B. 3484 establishes that the ordinances are not required to identify the specific parcels of real property to be enhanced in value; that the boundaries of a joint reinvestment zone may be enlarged or reduced by ordinance of the governing bodies that designated the zone, subject to certain restrictions; that the municipalities designating the zone may exercise any power necessary and convenient to carry out provisions relating to the designation of joint reinvestment zones and other provisions of the Tax Increment Financing Act. The bill establishes that the board of directors of a joint reinvestment zone has the same powers and duties and is subject to the same limitations as the board of directors of a reinvestment zone designated by a single municipality. The bill specifies provisions of the Tax Code that apply to the municipalities designating a joint reinvestment zone and specifies that a reference to or requirement of a municipality in those provisions are a reference to or requirement of all municipalities designating the zone. The bill permits expenditures from tax increment financing funds or bonds secured by tax increment financing to be made without regard to the location from which the funds were derived or the location within the joint reinvestment zone at which the funds are spent, as long as those expenditures are authorized as required by the Tax Increment Financing Act.

C.S.H.B. 3484 provides that the governing body that designated a reinvestment zone may extend the term of all or a portion of the zone after notice and hearing in the manner provided for the designation of the zone. The bill exempts a taxing unit other than the municipality or county that designated the zone from the requirement to participate in the zone or portion of the zone for the extended term unless the taxing unit enters into a written agreement to do so, and makes conforming changes.

C.S.H.B. 3484 authorizes a municipality or county to sell, as well as acquire real property to implement project plans related to a reinvestment zone. The bill authorizes the governing body of a municipality or county to impose a fee on property owners who submit a petition requesting an area to be designated as a reinvestment zone for processing the petition, or for reviewing a project designated or proposed to be designated as a reinvestment zone. The bill requires the fee to be reasonably related to the estimated cost to the municipality or county of processing the petition or reviewing the project, respectively. The bill makes provisions relating to the power of certain municipalities under the Tax Increment Financing Act to dedicate revenue from the tax increment fund to a school district applicable to a municipality with a population of less than 130,000 as shown by the 2000 federal decennial census, and makes conforming changes.

C.S.H.B. 3484 modifies provisions relating to the composition of the board of directors of a reinvestment zone to condition the right of a taxing unit that levies taxes on real property in the zone to appoint one member to the board on the taxing unit's approval of the payment of all or part of the tax increment produced by the unit into the tax increment fund for the zone. The bill establishes that the governing body of the municipality or county that designated a zone as the result of a petition by property owners may provide for the board of directors to consist of nine members, unless more than nine members are required for compliance. The bill replaces references to a school district, county, or municipality with a taxing unit, and provides that the municipality or county may appoint a number of members of the board such that the board comprises nine members if fewer than seven taxing units, other than the municipality or county that designated the zone, are eligible to appoint members of the board of directors of the zone. The bill provides that a municipality or county may appoint one member if at least seven taxing units, other than the municipality or county that designated the zone, are eligible to appoint members of the board of directors of the zone, and makes conforming changes. The bill adds to eligibility requirements for appointment to the board of directors of a reinvestment zone that has at least five and not more than 15 members, that the person be a resident of Texas and a citizen of the United States, and removes the requirements that the person be a qualified voter of the municipality or county, and own real property in the zone. The bill adds to eligibility requirements for appointment to the board of directors of a reinvestment zone designated as a result of a petition that the person may be a tenant of a person who owns real property in the zone.

C.S.H.B. 3484 provides that to be eligible for appointment to a board of directors of a reinvestment zone designated by a municipality which is wholly or partially located in a county with a population of less than 1.4 million in which the principal municipality has a population of 1.1 million or more, a person does not have to meet certain requirements if the person is appointed by a conservation and reclamation district created under the Texas Constitution the jurisdiction of which covers four counties.

C.S.H.B. 3484 permits an agreement entered into by the board of directors of a reinvestment zone and the governing body that designates the zone to provide for the use of revenue in the tax increment fund to pay any project costs, in addition to those already listed, relating to the cost of the construction of a road, sidewalk, or other public infrastructure in or out of the zone, including the cost of acquiring the real property necessary for the construction of the road, sidewalk, or other public infrastructure. The bill removes authorization for an agreement to dedicate revenue to pay a neighborhood enterprise association for providing services or carrying out certain projects in the zone, and removes the prohibition on an agreement with a neighborhood enterprise association from exceeding 10 years. The bill removes the board of directors of a reinvestment zone from an exemption from the law governing the purchasing and contracting authority of municipalities. The bill requires the governing body of a county, in addition to a municipality, that designated the zone to approve certain programs established and administered by the board of directors of a reinvestment zone. The bill provides that the approval may be granted in an ordinance or an order depending on the governing entity approving a project plan or reinvestment zone financing plan or approving an amendment to a project plan or reinvestment zone financing plan. The bill removes language relating to the amount that a board of directors of a reinvestment zone may grant or loan from the tax increment fund.

C.S.H.B. 3484 provides that certain provisions relating to costs associated with transportation or transit projects do not limit the power of the board of directors of a reinvestment zone or the governing body of the municipality that designates a reinvestment zone to dedicate, pledge, or otherwise provide for the use of revenue in the tax increment fund for the zone to finance the costs of a project involving real property located outside the zone.

C.S.H.B. 3484 removes a requirement that a project plan and a reinvestment zone financing plan adopted for a zone be as consistent as possible with the preliminary plans developed for the zone before the creation of the board. The bill removes a requirement that the project plan include a map showing existing uses and conditions of real property in the zone and instead requires the plan to provide a description of that information. The bill removes the requirement that the project plan include the proposed improvements to a property, the master plan of the municipality, and a list of estimated nonproject costs. The bill requires the reinvestment zone financing plan to include a statement listing the proposed kind, number, and location of public works or public improvements to be financed by the zone, a finding that the plan is economically feasible rather than an economic feasibility study, the estimated time when related costs or monetary obligations are to be incurred, and a description of the percentage of tax increment to be derived from the property taxes of each taxing unit anticipated to contribute tax increment to the zone. The bill removes the requirement that approval of a project plan by a municipality or county must find that the plan conforms to the master plan of the municipality or to subdivision rules and regulations of the county. The bill provides that a school district that participates in a zone is not required to increase the percentage or amount of the tax increment to be contributed by the school district because of an amendment to the project plan or reinvestment zone financing plan for the zone, and makes conforming changes. The bill establishes that all amounts contained in the project plan or reinvestment zone financing plan, including amounts of expenditures relating to project costs and amounts relating to participation by taxing units, are considered estimates and do not act as a limitation on the described items, unless specifically provided otherwise in the plan.

C.S.H.B. 3484 provides that the amount of a taxing unit's tax increment for a year is the amount of property taxes levied and assessed by the unit for that year on the captured appraised value of real property taxable by the unit and located in a reinvestment zone or the amount of property taxes levied and collected by the unit for that year on the captured appraised value of real property taxable by the unit and located in a reinvestment zone. The bill requires the governing body of a taxing unit to determine which of the methods is used to calculate the amount of the unit's tax increment. The bill provides that the tax increment base of a taxing unit is the total taxable, rather than appraised, value of all real property taxable by the unit and located in a reinvestment zone for the year in which the zone was designated under the Tax Increment Financing Act. The bill establishes that if the boundaries of a zone are enlarged, the tax increment base is increased by the taxable value of the real property added to the zone for the year in which the property was added, and if reduced, the tax increment base is reduced by the taxable value of the real property removed from the zone for the year in which the property was originally included in the zone's boundaries. The bill provides that the tax increment base is determined by the appraisal district in which the zone is located using assumptions regarding exemptions and other relevant information provided to the appraisal district by the municipality if the municipality that designates a zone does not levy a property tax in the year in which the zone is designated.

C.S.H.B. 3484 authorizes an agreement between a taxing unit and a governing body of the municipality or county that designated a reinvestment zone to specify projects to which a participating taxing unit's tax increment will be dedicated and that the taxing unit's participation may be computed with respect to a base year later than the original base year of the zone, in addition to any other terms to which the parties may agree. The bill authorizes a taxing unit including, rather than excluding, a municipality to offer property owners in a reinvestment zone an exemption from property taxes, as long as the an agreement regarding the exemption is approved by the board of directors of the reinvestment zone and the governing body of each taxing unit that imposes taxes on real property in the reinvestment zone and deposits or agrees to deposit any of its tax increment into the tax increment fund for the zone. The bill removes certain restrictions on a taxing unit's offering of a tax abatement agreement to property owners in the reinvestment zone. The bill makes technical changes to include the governing body of a county as well as a municipality as an entity that makes determinations relating to a tax increment zone and a tax increment fund. The bill removes a limitation on the amount a school district meeting certain qualifications must pay into a tax increment fund.

C.S.H.B. 3484 requires the governing body of the municipality or county that designated the reinvestment zone, or the board of directors of the zone, to administer the tax increment and other funds deposited in the tax increment fund of the zone in order to implement the project plan and reinvestment zone financing plan for the zone during the term of the zone, as it may be extended, and for any period in which the zone remains in existence for collection and disbursement. The bill adds a program related to economic development and diversification to the purposes for which money from the fund may be disbursed. The bill adds payments pursuant to agreements made under provisions of the Tax Increment Financing Act and payments pursuant to programs under that act to the authorized uses of proceeds from the issuance of tax increment bonds or notes. The bill authorizes a municipality, in lieu of issuing tax increment bonds or notes, to issue certificates of obligation to pay the project costs for a zone and to use tax increment from the zone to pay debt service on the certificates. The bill requires such a bond or note to mature on or before the date by which the final payments of tax increment into the tax increment fund are due, instead of within 20 years of the date of issue.

C.S.H.B. 3484 changes, from on or before the 90th day to on or before the 150th day following the end of the fiscal year of the municipality or county, the date by which the governing body of a municipality or county must submit to the chief executive officer of each taxing unit that levies property taxes on real property in a reinvestment zone designated by the municipality or county a report on the status of the zone that is required to be sent to the attorney general and the comptroller. The bill provides that a reinvestment zone terminates on the earlier of the

termination date designated in the ordinance or order designating the zone or an earlier or later termination date designated by an ordinance or order adopted under provisions relating to changing the boundaries of an existing zone, and makes conforming changes.

C.S.H.B. 3484 provides that a taxing unit that taxes real property located in the zone, other than the municipality or county that designated the zone, is not required to pay any of its tax increment into the tax increment fund for the zone for any tax year after the termination date designated in the ordinance or order designating the zone unless the governing body of the taxing unit enters into an agreement to do so with the governing body of the municipality or county that designated the zone. The bill provides that a zone designated under other law as described by provisions relating to an enterprise zone terminates on the date specified in the ordinance or order designating the zone as a reinvestment zone, regardless of whether the zone has terminated under the other law under which the zone was originally designated.

C.S.H.B. 3484 establishes that if tax increment bonds or other obligations issued or incurred for the zone are outstanding when the zone terminates, the zone remains in existence solely for the purpose of collecting and disbursing tax increment with respect to tax years during the designated term of the zone, as it may have been extended. The bill requires those funds to be used to pay the tax increment bonds or other obligations issued or incurred for the zone. The bill provides that the termination date of a zone for purposes of any contract entered into by the board, or by the municipality or county that designated the zone, remains the termination date designated by ordinance or order in effect on the date the contract was executed unless a subsequent amendment to the contract expressly provides otherwise. The bill authorizes the governing body of the municipality or county that designated the zone, after termination of the zone, to continue the zone for an additional period for the purpose of continuing the implementation of the reinvestment zone project plan and financing plan. The bill specifies that in such an event, although tax increment shall cease to be deposited with respect to tax years following termination of the zone, the zone shall retain all remaining funds, property, and assets of the zone to be used to implement the plans as authorized by the governing body.

C.S.H.B. 3484 establishes that a governmental act or proceeding of a municipality or county, the board of directors of a reinvestment zone, or an entity under contract with either of these bodies relating to the designation, operation, or administration of a reinvestment zone or the implementation of a project plan or reinvestment zone financing plan is conclusively presumed, as of the date it occurred, valid and to have occurred in accordance with all applicable statutes and rules if the second anniversary of the effective date of the act or proceeding has expired and a lawsuit to annul or invalidate the act or proceeding has not been filed on or before the later of that second anniversary or August 1, 2009. The bill establishes that this provision does not apply to an act or proceeding that was void at the time it occurred; an act or proceeding that was a misdemeanor or felony under state or federal law at the time the act or proceeding occurred; a rule that, at the time it was passed, was preempted by state or federal law; or a matter that on the effective date of this bill is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court, or has been held invalid by a final judgment of a court.

C.S.H.B. 3484 amends the Education Code to add an amount equal to the amount the school district is required to pay into the tax increment fund for a certain reinvestment zone in the current tax year to the elements of a sum used to calculate the amount of state revenue to which a school district is entitled. The bill requires these amounts to be paid at the same time as other state revenue is paid to the school district and requires payments to be based on amounts paid according to the immediately preceding provision for the preceding year. The bill requires any deficiency to be paid to the school district at the same time the final amount to be paid to the district is determined, and any overpayment to be deducted from the payments the school district would otherwise receive in the following year.

C.S.H.B. 3484 amends the Government Code to remove from the elements used to calculate taxable value for a school district an amount relating to an amount of taxes the school district would have paid into the tax increment fund if the district levied taxes at the rate the school district levied in 2005, and makes conforming changes to the Local Government Code.

C.S.H.B. 3484 establishes that the legislature validates and confirms all governmental acts and proceedings of a municipality or county, the board of directors of a reinvestment zone, or an entity under agreement with those authorities that were taken before the effective date of the bill's provisions relating to tax increment financing and relate to or are associated with the designation, operation, or administration of a reinvestment zone or the implementation of a project plan or reinvestment zone financing plan under the Tax Increment Financing Act, including the extension of the term of a reinvestment zone, as of the dates on which they occurred. The bill prohibits the acts and proceedings from being held invalid because they were not in accordance with that act or other law. The bill excepts from these provisions any matter that on the 30th day after the effective date of the bill's provisions relating to tax increment financing is involved in litigation if the litigation ultimately results in the matter being held invalid by a final judgment of a court or has been held invalid by a final judgment of a court.

C.S.H.B. 3484 applies the changes made by this bill to the definition of "project costs" under the Tax Increment Financing Act to all costs described by that provision regardless of when they were incurred.

C.S.H.B. 3484 applies the changes made by this bill to provisions of the Education Code relating to state revenue to which a school district is entitled as if the changes were in effect in the state fiscal year beginning September 1, 2006, and any amounts due a school district under these provisions for the state fiscal years beginning September 1, 2006, September 1, 2007, and September 1, 2008, are required to be paid to the district in the state fiscal year beginning September 1, 2009, at the time payments are made to the district under provisions relating to Foundation School Fund transfers.

C.S.H.B. 3484 establishes that the provisions relating to tax increment financing take effect on passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

C.S.H.B. 3484 repeals Sections 311.003(e), (f), and (g), 311.006, and 311.013(d) and (e), Tax Code.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3484 differs from the original by removing provisions relating to the powers and duties of special purpose districts, and replacing them with provisions relating to the funding, creation, and operation of tax increment investment zones.

C.S.H.B. 3484 adds provisions not included in the original relating to the presumption of validity of an act or proceeding of a municipal management district, a municipality, a county, the board of directors of a reinvestment zone, or certain entities acting under contract with either of these bodies relating to the designation, operation, or administration of a reinvestment zone or the implementation of a project plan or reinvestment zone financing plan.