

BILL ANALYSIS

C.S.H.B. 4782
By: Eissler
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

H.B. 4109 and S.B. 1012, 80th Legislature, Regular Session, 2007, provided the authority for The Woodlands Township, previously known as Town Center Improvement District of Montgomery County, Texas, to enter into a regional participation agreement with the City of Houston pursuant to which the township agreed to participate in the funding of certain regional improvement projects of mutual benefit to the township and the City of Houston and, in return, the City of Houston agreed to release the township from its extraterritorial jurisdiction in the future upon the request of the township. In November 2007, the boundaries of The Woodlands Township were expanded to include all of the area known as The Woodlands in order to provide a single, consolidated local government. The Woodlands Township and the Community Associations of The Woodlands subsequently entered into a transition agreement whereby the functions and responsibilities of the associations were to be consolidated with those functions of the township to provide a single governmental services operation in The Woodlands. The transition agreement requires that the township seek passage of legislation to authorize the township to grant tax abatements to those businesses which will be subject to property taxation by the township for the first time in 2009 but which had previously had assessment abatement agreements with the associations. The result of such legislation would be no change in the current tax impact upon these businesses.

C.S.H.B. 4782 authorizes The Woodlands Township to perform the functions and services of a qualified association; to vote on appraisal district board members; to exercise powers similar to a municipality to regulate signs in road rights-of-way; to provide for firefighting services; to provide for the creation of an emergency services district; to impose an event admission tax and a supplemental hotel occupancy tax; and to incorporate as a municipality if approved by the voters. The bill clarifies the continued operations of The Woodlands Township Economic Development Zone upon incorporation and modernizes the authority of the Township to issue bonds and notes.

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

C.S.H.B. 4782 amends Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, to establish that a reference to the Town Center Improvement District of Montgomery County means the name of the district as changed by resolution of the board of directors.

C.S.H.B. 4782 authorizes the district to make, enter into, and enforce tax abatement agreements in the same manner as other taxing units under the Property Redevelopment and Tax Abatement Act.

C.S.H.B. 4782 authorizes the district, in order to promote business retention, sustain employment, and prevent substandard and blighted housing conditions, to function in the same manner as a qualified association with respect to the general powers and duties of a qualified association under community covenants; any undertakings with any person in the exercise of such duties; administration, enforcement, amendment, supplementation, repeal, revocation, or rescission of a community covenant as provided by the covenant; or the functions, duties, and responsibilities of the board of directors of a qualified association, without the necessity of electing or appointing members of the board of directors of the qualified association. The bill authorizes the district to administer and perform procedures established in a community covenant or a related agreement for the selection or appointment of members or officers to committees, village association governing bodies, or similar positions; arrange or contract with one or more municipalities, political subdivisions, or nonprofit organizations for the provision of services and facilities to territory in or adjacent to the district with certain restrictions; own, acquire, construct, improve, repair, rehabilitate, operate, maintain, lease, purchase, sell, dispose of, encumber, abandon, or remove any buildings, improvements, or facilities, or any real, personal, or mixed property; and assess, charge, collect, pledge, encumber, and apply any fees, rents, charges, or proceeds received for the use, enjoyment, or disposition of a building, improvement, facility, or property or for a service or facility.

C.S.H.B. 4782 establishes that such actions and proceedings of the district and the board of directors are governmental functions. The bill prohibits provisions concerning restrictive covenants from applying to the district. The bill prohibits its provisions from being construed as constituting a waiver of governmental or sovereign immunity from suit, liability, or judgment. The bill defines "qualified association" and "community covenant." The bill authorizes the district to develop, maintain, sell, lease, encumber, abandon, or dispose of recreational facilities. The bill makes provisions relating to all districts in the Water Code inapplicable to the district. The bill establishes the district as a special district that is treated as a conservation and reclamation district and entitled to participate in the election of the board of directors of an appraisal district. The bill authorizes the district and a county tax assessor-collector to contract for the collection of the delinquent assessments of a qualified association for which the district has been assigned and has assumed the duties, functions, and responsibilities. The bill establishes provisions regarding the collection of assessments and a suit for collection of delinquent assessments.

C.S.H.B. 4782 establishes that the district has the same rights and powers as a municipality annexing territory in a district that provides emergency services to cause all or part of the territory of the district to be removed from the district providing emergency services.

C.S.H.B. 4782 authorizes the board of directors by resolution to cause district territory to be removed from the boundaries and taxing jurisdiction of a transit authority whose territory overlaps the district's territory if the district and a municipality enter into a regional participation agreement that requires the district to deposit money into a regional participation fund for the purpose of funding mobility projects of mutual benefit. The bill makes a removal of territory effective on the date the board provides a certified copy of the resolution to the transit authority and the comptroller. The bill authorizes the district, subject to approval by the county, to prohibit, regulate, or authorize placement of signs on the right-of-way of a road or highway maintained by the county within the district, other than standard traffic control or directional signs, or to administer a kiosk program. The bill authorizes the district to enter into an interlocal agreement with the county for such authority. The bill makes this provision inapplicable to a sign regulated by another municipality, if all or part of the territory of the district is incorporated, that is located within the exclusive extraterritorial jurisdiction of that other municipality.

C.S.H.B. 4782 provides for the meaning of "fire-fighting services." The bill specifies in the definition of "fire protection personnel" that a reference to a fire department includes a nonprofit corporation employing fire protection personnel and providing fire-fighting services that is owned, operated, or controlled by the district. The bill prohibits the district from directly

employing any fire protection personnel before January 1, 2012, rather than January 1, 2010, but authorizes the district to own, operate, or control a nonprofit corporation employing fire protection personnel and providing fire-fighting services. The bill provides for the expiration of this provision February 1, 2012, rather than January 1, 2010. The bill authorizes a district to directly, or through a nonprofit corporation created, funded, owned, operated, or controlled by the district, establish, acquire, operate, and maintain a fire department to perform fire-fighting services in or adjacent to the district. The bill authorizes a district to issue public securities to finance the construction, acquisition, improvement, renovation, repair, or rehabilitation of any related buildings, facilities, interests in land, equipment, or supplies. The bill provides a temporary provision, set to expire January 1, 2012, requiring the district, unless other law requires a prior election, to hold an election to determine whether the district shall adopt provisions regarding fire and police employee relations, if the district receives a timely petition signed by a majority of the fire protection personnel of the fire department of the district or of any nonprofit corporation owned, operated, or controlled by the district. The bill sets forth provisions governing such an election.

C.S.H.B. 4782 authorizes the board, instead of the commissioners court of the county to conduct a public hearing on the creation and establishment of an emergency services district to be located wholly in one county, wholly within the corporate limits or extraterritorial jurisdiction of the requesting municipality, and outside the boundaries of any existing emergency services district. The bill sets forth provisions regarding such a request; notice of the hearing; hearing procedures; the creation of the district; including provisions for the governing body of the district and the imposition of a tax; and the dissolution of the district. The bill makes a provision relating to the required approval of a commissioners court for the issuance of bonds or notes by a majority vote inapplicable to an emergency services district created under the bill's provisions.

C.S.H.B. 4782 authorizes the Town Center Improvement District to impose an event admissions tax and sets forth general provisions related to the tax. The bill defines "cultural education," "event," "venue," and "venue user" for the purposes of these provisions. The bill establishes that an agreement entered into in anticipation of the tax taking effect that otherwise meets the requirements of provisions regarding the tax is not invalid because it was authorized, executed, or entered into before the effective date of the bill.

C.S.H.B. 4782 establishes that, except as otherwise provided by provisions regarding the removal of a director and a vacancy in the office of director, a majority of the total authorized number of directors of the board of the district, rather than 4 directors, constitutes a quorum for the consideration of all matters pertaining to the business of the district. The bill specifies, in a provision relating to an election of four directors called after the confirmation election of the district, that the directors be elected by position, rather than at large, and for elections called annually thereafter for the election of either three or four directors, that such directors be elected by position. The bill authorizes an election held on the proposition of incorporating all or part of the territory of the district to be held regardless of population or area limits described by provisions concerning territorial requirements for incorporation as a general-law municipality, or other law, if the area to be incorporated has a population of 5,000 or more inhabitants according to the most recent federal decennial census or other credible population records.

C.S.H.B. 4782 authorizes the board by order to impose, repeal, increase, or decrease a supplemental hotel occupancy tax in the same manner as a limited sales and use tax. The bill prohibits the rate of the supplemental tax from exceeding two percent of the price paid for a room in a hotel. The bill requires the district to apply the proceeds from the supplemental tax solely for the purposes described by certain provisions relating to a county hotel occupancy tax, provided that at least 75 percent of the proceeds from the supplemental tax, determined annually, be used to establish, operate, and maintain a convention and visitors bureau within or adjacent to the district. The bill prohibits the board from imposing the supplemental tax before January 1, 2011. The bill authorizes the board to impose the tax at a rate not to exceed one percent until December 31, 2011, and on or after January 1, 2012, to impose the tax at a rate not to exceed two

percent.

C.S.H.B. 4782 provides for the board by resolution to extend the terms of office of members of the governing body of a development zone beyond two years to the extent necessary to coordinate those terms with the next election of members of the board or to provide for one-year terms of office for members of a subsequent governing body. The bill grants the board the power and authority to issue tax increment bonds or notes for and in the name of a development zone in the same manner as provided under the Tax Increment Financing Act to fund any project of the zone and pay any related bond issuance and bond reserve costs or to refund any bonds, notes, contractual obligations, commitments, or undertakings of the zone, including the reimbursement to any person for project costs and related interest for which the zone would have been authorized to issue its bonds or notes.

C.S.H.B. 4782 adds to the purposes excepted from certain provisions of the Tax Increment Financing Act applicable to the district that a development zone created without a duration or date of termination may be dissolved by a two-thirds vote of the board of directors of the district or of the governing body of a municipality or other form of local government succeeding to the principal assets, powers, functions, and liabilities of the district only if the zone has no outstanding indebtedness or other obligations, or the assets, powers, functions, and liabilities, and any outstanding indebtedness or obligations of the development zone are expressly assumed by the district or the succeeding municipality or local government. The bill authorizes the district or a municipality or other local government succeeding to the principal assets, powers, functions, and liabilities of the district to assume, exercise, perform, and discharge the assets, powers, functions, and liabilities of a development zone in the same manner, to the same extent, and for the same purposes as a development zone created under these provisions.

C.S.H.B. 4782 authorizes the board, rather than issuing bonds, to issue, sell, and deliver the public securities of the district for any district purpose or to finance or pay for any district facilities, programs, or improvement projects, 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 provisions relating to the district or other law, to refund or refinance any public security or other contract, agreement, commitment, or undertaking of the district in payment of which the district could have issued its public securities, or to fund or pay for any reserve fund or issuance expenses related to the public securities and makes conforming changes.

C.S.H.B. 4782 authorizes the public securities of the district to be secured and made payable by a pledge of any part of the net proceeds the district receives from any revenues, receipts, fees, charges, income, funds, or proceeds received or to be received by the district from refunding public securities, in addition to contracts, agreements, or other sources, including a contract with a development zone to facilitate an improvement project or project plan of the district or the development zone. The bill removes as such a source any other revenues, income, or proceeds that in accordance with provisions governing the district or other law are authorized to be pledged or used to facilitate an improvement project or project plan of the district or zone.

C.S.H.B. 4782 authorizes the board of directors, or an officer or employee of the district to whom the board delegates authority, to sell a district public security at a public or private sale in the form, at the price, on the terms and conditions, at the interest rate or rates, whether fixed, variable, floating, adjustable, or otherwise, as the board determines appropriate. The bill prohibits the net effective interest rate of the public securities from exceeding the maximum rate allowed by law. The bill authorizes the board to secure a district public security with a security agreement, credit agreement, or both, with the security interest or interests, other than a mortgage interest in real property, and with the parity or priority of pledge and lien as the board determines appropriate. The bill assigns, under provisions relating to public securities regarding the district, established definitions to "public security," "credit agreement," "security agreement," and "security interest."

C.S.H.B. 4782 establishes that the legislature ratifies and confirms all governmental acts and proceedings of the district and its board and of The Woodlands Township Economic Development Zone and its governing body before the effective date of the bill in relation to specific matters, except for a matter that on the effective date of the bill is involved in litigation, if the litigation ultimately results in the matter being held invalid by a final court judgment, or has been held invalid by a final court judgment.

C.S.H.B. 4782 provides legislative findings regarding the district.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 4782 differs from the original by adding a municipality, in addition to a political subdivision or nonprofit organization, as an entity that the district is authorized to arrange or contract with for the provision of services and facilities.

C.S.H.B. 4782 differs from the original by establishing that the district is a special district but is treated as a conservation and reclamation district, rather than establishing that the district is a conservation and reclamation district, that is entitled to participate in the election of the board of directors of an appraisal district under applicable provisions.

C.S.H.B. 4782 modifies provisions in the original authorizing the district, subject to approval by the county, to prohibit, regulate, or authorize placement of signs on the right-of-way of a road or highway maintained by the county within the district, other than standard traffic control or directional signs. The substitute adds a provision not in the original authorizing the district, subject to county approval, to administer a kiosk program. The substitute adds a provision not in the original making certain provisions of the bill inapplicable to a sign regulated by another municipality, if all or part of the territory of the district is incorporated, that is located within the exclusive extraterritorial jurisdiction of that other municipality.

C.S.H.B. 4782 differs from the original by specifying that the emergency services district that the board of directors of the district is authorized to conduct a public hearing on the creation and establishment of be located wholly within the corporate limits or extraterritorial jurisdiction of a requesting municipality. The substitute differs from the original by making a specific requirement relating to commissioners court approval of bonds or notes inapplicable to an emergency services district created under the bill's provisions, rather than making more general provisions relating to authorized notes and bonds regarding an emergency services district inapplicable to such district.

C.S.H.B. 4782 differs from the original by specifying in the definition of "venue user" that such a user is not a governmental entity and presents more than four events in a calendar year.

C.S.H.B. 4782 differs from the original by requiring that at least 75 percent of the proceeds from a supplemental hotel occupancy tax be used for the purpose of establishing, operating, and maintaining a convention and visitors bureau within or adjacent to the district. The substitute differs from the original by changing the end date, from December 1, 2011 to December 31, 2011, for the period during which the board of directors of the district is authorized to impose the supplemental tax at a rate not to exceed one percent.

C.S.H.B. 4782 differs from the original by making the prohibition on net effective interest rates of public securities of the district exceeding the maximum rate allowed by law applicable to the entire section governing public securities rather than to a single subsection.