

BILL ANALYSIS

Senate Research Center

C.S.H.B. 3246
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Intergovernmental Relations
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties have recently identified certain modifications and corrections to provisions of law relating to the creation of public improvement districts and the financing of public improvement projects believed to be necessary for those laws to adequately meet the needs of cities and counties. C.S.H.B. 3246 seeks to address this issue by amending provisions of the Public Improvement District Assessment Act.

C.S.H.B. 3246 amends current law relating to public improvement districts designated by a municipality or county.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Attorney General of Texas in SECTION 4 (Section 372.031, Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 372.0015, Local Government Code, as follows:

Sec. 372.0015. New heading: DEFINITIONS. Defines, in this subchapter, "costs" and "extraterritorial jurisdiction."

SECTION 2. Amends Subchapter A, Chapter 372, Local Government Code, by adding Section 372.0025, as follows:

Sec. 372.0025. PUBLIC IMPROVEMENT DISTRICT. Provides that a public improvement district is an area, the boundaries of which are designated by the governing body of a municipality or county under this subchapter, that is authorized to include two or more noncontiguous areas separated by:

- (1) a right-of-way or other land dedicated to or owned, leased, or used by a political subdivision or other governmental entity, tax-exempt entity, public or private utility, or railroad; or
- (2) not more than 1,000 feet, as measured in a straight line, between the nearest points on the property lines of the closest situated noncontiguous areas.

SECTION 3. Amends Sections 372.003(b) and (c), Local Government Code, as follows:

(b) Authorizes a public improvement project to include:

- (1)-(9) Makes no changes to these subdivisions;
- (10) the establishment or improvement of parks and recreation facilities;
- (11) facilities or equipment for firefighters, police, sheriffs, and emergency service providers;

- (12) the right to receive or provide utility services;
- (13) projects similar to those listed in Subdivisions (1)-(12);
- (14) Makes a nonsubstantive change;
- (15) special supplemental services for improvement and promotion of the district, including services relating to:
 - (A) advertising;
 - (B) promotion;
 - (C) health and sanitation;
 - (D) water and wastewater;
 - (E) firefighters, police, sheriffs, emergency service providers, and other public safety and security personnel;
 - (F) business recruitment;
 - (G) development;
 - (H) recreation; and
 - (I) cultural enhancement; and
- (16)-(17) Makes nonsubstantive changes.

(c) Authorizes a public improvement project to be limited to the provision of the services described by Subsection (b)(15), rather than described by (b)(13).

SECTION 4. Amends Chapter 372, Local Government Code, by adding Section 372.031, as follows:

Sec. 372.031. FINDINGS PRIOR TO ISSUANCE OF CERTAIN BONDS OR OBLIGATIONS. (a) Requires the governing body of a municipality with a population of 250,000 or less or the governing body of a county with a population of 1 million or less issuing the bonds or obligations, prior to the issuance under this chapter of bonds or obligations wholly or partly payable from or secured by assessments, to find and determine the following:

- (1) construction of all underground water, wastewater, and drainage facilities and roadways to serve the real property liable for assessments necessary to support the payment of the bonds or obligations is at least 95 percent complete; and
- (2) construction of at least 25 percent of the houses or other buildings on the real property liable for assessments and necessary to support the bonds or obligations has been completed.

(b) Requires a municipality with a population of more than 700,000 or a county with a population of more than 1 million issuing the bonds or obligations, prior to the issuance under this chapter of bonds or obligations wholly or partly payable from or secured by assessments, to obtain an independent market study from a firm recognized in the area of real estate market analysis supporting the development projects for the real property liable for assessments and necessary to support the payment of the bonds or obligations.

(c) Provides that Subsections (a) and (b) do not apply to general obligation bonds or certificates of obligations.

(d) Requires the attorney general to adopt rules to enforce this section and to ensure the integrity and economic feasibility of bonds or obligations issued under this chapter.

SECTION 5. Amends Subchapter A, Chapter 372, Local Government Code, by adding Section 372.0035, as follows:

Sec. 372.0035. AUTHORIZED HIGHER EDUCATION FACILITIES; LEASE TO INSTITUTION OF HIGHER EDUCATION. (a) Defines, in this section, "institution of higher education."

(b) Authorizes a public improvement project under Section 372.003 (Authorized Improvements) to include the acquisition, construction, maintenance, or improvement of buildings and other facilities commonly used for:

(1) teaching, research, or the preservation of knowledge by an institution of higher education; or

(2) an auxiliary purpose of an institution of higher education, including the provision of administrative services, student services, student housing, athletics, performing arts, and alumni support.

(c) Authorizes the governing body of a municipality or county that establishes a public improvement district to finance a public improvement project described by Subsection (b) to enter into a memorandum of understanding with an institution of higher education that provides educational services in the municipality or county under which the municipality or county leases the public improvement project to the institution, at a nominal rate, for use by the institution in providing teaching, research, public service, or auxiliary enterprise activities to students of the institution.

SECTION 6. Amends Section 372.014, Local Government Code, by adding Subsection (c), as follows:

(c) Provides that the assessment plan is intended to be flexible to provide for various development scenarios, including:

(1) assessments against all property to pay the costs of improvements that benefit all the property and additional assessments levied against portions of the property to pay the costs of improvements that benefit those portions of the property; or

(2) assessments levied to pay the costs for all improvements contemplated for all phases of development of the property with different payment and collection dates for the different phases determined by events established by the plan, including events related to the future phased development of the property.

SECTION 7. Amends Section 372.015, Local Government Code, by adding Subsections (e), (f), (g), and (h), as follows:

(e) Authorizes the annual installment of an assessment payable in installments to be increased or decreased by the governing body of the municipality or county as reflected in the updated annual service plan and the corresponding updated assessment roll.

(f) Authorizes the assessment against a parcel to be reallocated among the subdivided parcels if the parcel is subdivided.

(g) Authorizes the assessments against each parcel to be reallocated to the consolidated parcel if two or more parcels are consolidated.

(h) Provides that if a proposed use of an undeveloped parcel changes after an assessment is levied against a parcel:

(1) the change in use does not affect the validity of the assessment against the parcel; and

(2) the aggregate amount of assessments levied against multiple undeveloped parcels for which the proposed use has changed may be reallocated among the undeveloped parcels.

SECTION 8. Amends Subchapter A, Chapter 372, Local Government Code, by adding Section 372.0175, as follows:

Sec. 372.0175. CONTRACTS FOR COLLECTION OF ASSESSMENTS. Authorizes the governing body of a municipality or county to contract with the governing body of another taxing unit, as defined by Section 1.04 (Definitions), Tax Code, or the board of directors of an appraisal district to perform the duties of the municipality or county relating to collection of special assessments levied under this subchapter.

SECTION 9. Amends Section 372.018, Local Government Code, by amending Subsections (a) and (f) and adding Subsection (g), as follows:

(a) Provides that if general obligation bonds, revenue bonds, installment sales contracts, reimbursement agreements, time warrants, or temporary notes are issued or entered into to finance or pay for the improvement for which the assessment is levied, the interest rate for the assessment is prohibited from exceeding a rate that is one-half of one percent higher than the actual interest rate paid on the debt. Requires that the interest on any delinquent installment be added to each subsequent installment until all delinquent installments are paid. Authorizes the added interest to be used to pay costs, including the payment or prepayment of the assessment, administrative costs, costs of improvements, and costs of financing such as reserves for debt service. Deletes existing text providing that if general obligation bonds, revenue bonds, time warrants, or temporary notes are issued to finance the improvement for which the assessment is assessed, the interest rate for that assessment is prohibited from exceeding a rate that is one-half of one percent higher than the actual interest rate paid on the debt. Deletes existing text requiring that interest on the assessment between the effective date of the ordinance or order levying the assessment and the date the first installment is payable be added to the first installment.

(f) Requires that delinquent installments of the assessment incur interest, penalties, and attorney's fees in the same manner as delinquent ad valorem taxes.

(g) Creates this subsection from existing text. Authorizes the owner of assessed property to pay at any time on any parcel or lot all or any part of the assessment, with interest that:

(1) has accrued on the assessment; and

(2) will accrue on the assessment until the next scheduled prepayment or redemption date on the general obligation bonds, revenue bonds, installment sales contract, reimbursement agreement, temporary note, or time warrant issued or entered into to finance or pay for the improvements.

Makes a nonsubstantive change.

SECTION 10. Amends Section 372.023, Local Government Code, by amending Subsections (a), (d), (e), and (g) and adding Subsections (a-1) and (d-1), as follows:

(a) Authorizes costs of improvements to be paid or reimbursed by any combination of the methods described by this section if the improvements are dedicated, conveyed, leased, or otherwise provided to or for the benefit of:

(1) a municipality or county;

(2) a political subdivision or other entity exercising the powers granted under this subchapter as authorized by other law; or

(3) an entity that:

(A) is approved by the governing body of an entity described by Subdivision (1) or (2); and

(B) is authorized by order, ordinance, resolution, or other official action to act for an entity described by Subdivision (1) or (2).

Deletes existing text requiring that the cost of an improvement made under this subchapter be paid in accordance with this section.

(a-1) Authorizes the payment or reimbursement to be provided before or after a method of payment or reimbursement authorized by this section is entered into or issued.

(d) Authorizes costs payable from a special assessment that is payable in installments to be paid by any combination of the following methods:

(1) under an installment sales contract or a reimbursement agreement between the municipality or county and the person who acquires, installs, or constructs the improvements;

(2) as provided by a temporary note or time warrant issued by the municipality or county and payable to the person who acquires, installs, or constructs the improvements; or

(3) by the issuance and sale of bonds under Section 372.024.

Deletes existing text requiring a cost payable from a special assessment that is to be paid in installments and a cost payable by the municipality or county as a whole but not payable from available general funds or other available general improvement funds to be paid under an installment sale contract or a reimbursement agreement with the person who contracts to install or construct the improvement for which the costs apply, as provided by a temporary note or time warrant issued by the municipality or county to reimburse a person for money advanced or work performed in connection with an improvement or by the issuance and sale of revenue or general obligation bonds.

(d-1) Authorizes an installment sales contract, reimbursement agreement, temporary note, or time warrant described by Subsection (d) to be assigned by the payee without the consent of the municipality or county.

(e) Provides that the interest rate on unpaid amounts due under an installment sales contract, reimbursement agreement, temporary note, or time warrant described by Subsection (d):

(1) is prohibited from exceeding, for a period of not more than five years, as determined by the governing body of the municipality or county, five percent above the highest average index rate for tax-exempt bonds reported in a daily or weekly bond index approved by the governing body and reported in the month before the date the obligation was incurred; and

(2) after the period described by Subdivision (1), is prohibited from exceeding two percent above the bond index rate described by Subdivision (1).

Deletes existing text prohibiting the net effective interest rate, as computed for a public security under Section 1204.005 (Computation of Net Effective Interest Rate), Government Code, on money owed or paid under Subsection (d) from exceeding one-half of one percent above the highest average interest rate reported by a newspaper in a weekly bond index in the month before the date of the contract or agreement or the issuance of the bond, temporary note, or time warrant. Deletes existing text requiring the newspaper to specialize in bonds and be acceptable as a reliable source for bond interest rates to the governing body of the municipality or county that enters into the contract or agreement or that issues the bond, temporary note, or time warrant.

(g) Authorizes the cost of more than one improvement to be paid from a single issue and sale of bonds without other consolidation proceedings before the bond issue, or under a single installment sales contract, reimbursement agreement, temporary note, or time warrant.

Deletes existing text authorizing the cost of more than one improvement to be paid from a single issue and sale of bonds without other consolidation proceedings before the bond issue, or under an agreement with a person who contracts to install or construct the improvement and who sells the improvement to the municipality or county.

SECTION 11. Amends Section 372.024, Local Government Code, as follows:

Sec. 372.024. GENERAL OBLIGATION AND REVENUE BONDS. (a) Authorizes the governing body of a municipality or county to issue:

- (1) general obligation bonds under Subtitles A (General Provisions) and C (Provisions Applicable to Securities Issued by More Than One Type of Local Government), Title 9 (Public Securities), Government Code;
- (2) certificates of obligation under Subchapter C (Acquisition, Sale, or Lease Provisions Applying to More Than One Type of Local Government), Chapter 271 (Purchasing and Contracting Authority of Municipalities, Counties, and Certain Other Local Governments); and
- (3) revenue bonds, issued in one or more series.

Deletes existing text requiring that general obligation bonds issued to pay costs under Section 372.023(d) (relating to payment of costs) be issued under the provisions of Subtitles A and C, Title 9, Government Code. Deletes existing text providing that revenue bonds issued to pay costs under that subsection are authorized to be issued from time to time in one or more series and providing that they are to be payable from and secured by liens on all or part of the revenue derived from improvements authorized under this subchapter, including revenue derived from installment payments of special assessments.

(b) Authorizes the bond or obligation to be:

- (1) issued on the terms determined by the governing body of the municipality or county;
- (2) issued to pay costs;
- (3) issued to refund any obligation entered into or issued under this subchapter, including an installment sales contract, reimbursement agreement, temporary note, and time warrant; and
- (4) payable from and secured by special assessments.

(c) Provides that the lien created by the originally levied special assessment continues uninterrupted for the term of the bond or obligation to secure payment of the bond or obligation if the bond or obligation is issued for the purpose described by Subsection (b)(3) and is secured wholly or partly by a special assessment.

SECTION 12. Amends Section 372.026, Local Government Code, by adding Subsection (g), as follows:

(g) Authorizes the governing body of a municipality or county to pledge all or any part of the revenue collected to pay general obligation bonds, certificates of obligation, or revenue bonds issued to refund those obligations if an assessment is collected and applied to pay an amount due under an installment sales contract, reimbursement agreement, temporary note, or time warrant. Provides that the pledge authorized by this subsection does not affect the lien of that assessment, and is not a reassessment or a new assessment.

SECTION 13. Repealer: Section 372.023(f) (relating to authorizing the governing body of a municipality or county to issue temporary notes to pay the costs of the improvement while an improvement is in progress and authorizing the bond proceeds to be used to repay those obligations), Local Government Code.

SECTION 14. Effective date: upon passage or September 1, 2011.