

BILL ANALYSIS

C.S.H.B. 3804
By: Gallego
Natural Resources
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, certain property is being developed in Brewster County as a master-planned community with related commercial development. C.S.H.B. 3804 seeks to establish provisions relating to the creation of the Lajitas Utility District No. 1 of Brewster County, providing authority to impose taxes and issue bonds and granting a limited power of eminent domain in order to provide, and enable the financing of, public services for such property.

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. 3804 amends the Special District Local Laws Code to establish that the Lajitas Utility District No. 1 of Brewster County is a utility district with combined powers created under constitutional provisions relating to conservation and reclamation districts. The bill sets out provisions relating to an election to confirm the district and to elect a permanent board of directors, as well as the initial district territory and makes provision for certain mistakes in the description of the boundaries.

C.S.H.B. 3804 sets out provisions relating to the district's public purpose and benefit, including provisions establishing that the district is created to accomplish the purposes of a municipal utility district; the purposes of certain constitutional provisions that relate to the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads; and the purposes of certain constitutional provisions that relate to the development and diversification of the economy of the state, and certain other purposes.

C.S.H.B. 3804 sets out provisions relating to the number and terms of the members of the district board of directors, including provisions for temporary directors; district powers and duties, including those of a municipal utility district; district authority to provide certain improvement projects and services in the same manner as a municipal management district; district authority to undertake certain road projects, required repair and maintenance of any internal streets and roads in the district, and the requirements for approval of a road project; and mandatory compliance with any municipal consent ordinance or resolution. The bill, if it receives a two-thirds vote of all the members elected to each house, prohibits the district from exercising the power of eminent domain outside the district to acquire a site or easement for an authorized road project or a recreational facility, and requires the district, if the district's exercise of its eminent domain power requires relocating, raising, lowering, rerouting, or altering the construction of any electric transmission or electric distribution line, conduit, pole, or facility, to bear the actual cost of relocating, raising, lowering, rerouting, or altering the construction of any electric transmission or electric distribution line to provide a comparable replacement without enhancing the facility, after deducting from the cost the net salvage value derived from the old facility. The

bill, if it does not receive such a vote, prohibits the district from exercising the power of eminent domain.

C.S.H.B. 3804 authorizes the district to construct or acquire electric power generating, transmission, and distribution facilities and improvements in aid of these facilities. The bill authorizes the district to construct, acquire, improve, maintain, and operate an airport and improvements in aid of the airport. The bill authorizes the district to exercise the powers of a corporation created under the Development Corporation Act. The bill authorizes the district to be divided into two or more new districts only if the district has no outstanding bonded debt and is not imposing property taxes, and sets out provisions relating to the powers and duties of a new district, limitation on the area of a new district, division procedures, and required confirmation and directors' election for a new district. The bill authorizes any new district created by the division of the Lajitas Utility District No. 1 of Brewster County, subject to voter approval, to impose a maintenance tax or issue bonds payable wholly or partly from property taxes.

C.S.H.B. 3804 makes a provision relating to a limitation on rulemaking power of groundwater conservation districts over wells in certain counties inapplicable to a groundwater well owned or used by the Lajitas Utility District No. 1 of Brewster County within the boundaries of the Brewster County Groundwater Conservation District. The bill establishes that the rules of the Brewster County Groundwater Conservation District govern a groundwater well owned or used by the Lajitas Utility District No. 1 of Brewster County within the Brewster County Groundwater Conservation District. The bill prohibits the Lajitas Utility District No. 1 of Brewster County from providing retail electric utility services, including transmission and distribution services, to residential, retail, commercial, industrial, or other customers inside or outside the district.

C.S.H.B. 3804 requires the district to transfer improvements in aid of electric power generating, transmission, and distribution facilities on the later of the date that the district acquires or completes the improvement or the date the receiving entity approves the transfer. The bill requires such a transferred public improvement to be constructed in compliance with the requirements and specifications established by the receiving entity on or before the date that construction of the improvement begins and any tariffs for the electric utility or cooperative that is the receiving entity. The bill authorizes the district to transfer part of an improvement if the district completes construction of the improvement in stages. The bill requires the district to convey all public improvements that it is required to transfer without debt or other encumbrance. The bill establishes that, after a transfer, the receiving entity owns the improvement and has sole jurisdiction and control over the improvement. The bill makes the receiving entity, on acceptance of the transfer, responsible for all maintenance of the improvement, and establishes that the district is not responsible for the improvement or its maintenance. The bill establishes that its provisions relating to ownership and responsibility after transfer do not affect any authority of the receiving entity to alter, relocate, close, or discontinue maintenance of an improvement. The bill establishes that conveyance of a public improvement to a receiving entity does not affect the sole responsibility of the district to pay in full the principal of and interest and any premium on any outstanding district bonds or other debt or the district's responsibility to perform the obligations provided by an order or resolution authorizing bonds or other debt. The bill, for purposes of its provisions relating to the transfer of public improvements, defines "receiving entity" to mean the entity that holds a certificate of convenience and necessity issued by the Public Utility Commission of Texas for the territory included in the district.

C.S.H.B. 3804 sets out provisions authorizing the district to issue, without an election, bonds and other obligations secured by revenue other than property taxes or by certain contract payments. The bill authorizes the district, subject to the approval of district voters, to impose a property tax and issue bonds payable from property taxes, but the district is prohibited from issuing bonds payable from property taxes to finance a road project unless the issuance is approved by a two-thirds majority of district voters. The bill authorizes the district to impose an operation and

maintenance tax if it is authorized at an election and to impose a tax other than an operation and maintenance tax and use the revenue derived from the tax to make payments under a voter-approved contract.

C.S.H.B. 3804 authorizes the district to impose a sales and use tax if authorized by a majority of district voters. The bill authorizes revenue from the tax to be used for any purpose for which property tax revenue of the district may be used. The bill prohibits the district from adopting a sales and use tax if as a result of the adoption of the tax the combined rate of all sales and use taxes imposed by the district and other political subdivisions of the state having territory in the district would exceed two percent at any location in the district. The bill establishes that an election to adopt a district sales and use tax has no effect if the voters of the district approve the adoption of the sales and use tax at an election held on the same election date on which another political subdivision adopts a sales and use tax or approves an increase in the rate of its sales and use tax and as a result the combined rate of all sales and use taxes imposed by the district and other political subdivisions of the state having territory in the district would exceed two percent at any location in the district.

C.S.H.B. 3804 makes the Municipal Sales and Use Tax Act applicable to the imposition, computation, administration, enforcement, and collection of a district sales and use tax except to the extent it is inconsistent with the bill's provisions relating to the district. The bill prohibits the district from imposing or collecting a sales and use tax at a rate that would cause the rate of the total sales and use taxes collected by all municipalities and other political subdivisions at a location in the district to exceed the maximum rate allowed by law. The bill, if a political subdivision's increase to a sales and use tax rate causes the total sales and use tax rate imposed at a location in the district to exceed the maximum rate allowed by law, automatically reduces the district's sales and use tax rate to bring the total rate imposed at that location down to a rate allowed by law.

C.S.H.B. 3804 authorizes the district to levy and collect special assessments in the same manner and for the same purposes as a municipal management district, except that the district is prohibited from imposing an impact fee or assessment on the property, including the equipment, rights-of-way, facilities, or improvements, of an electric cooperative.

C.S.H.B. 3804 authorizes the district to issue bonds or other obligations payable wholly or partly from property taxes, impact fees, revenue, contract payments, grants, sales and use taxes, other district money, or any combination of those sources, and requires the board, on bonds payable wholly or partly from property taxes, to provide for the annual imposition of a property tax, without limit as to rate or amount, while all or part of the bonds are outstanding. The bill prohibits the total principal amount of bonds or other obligations issued or incurred to finance road projects and payable from property taxes from exceeding one-fourth of the assessed value of the real property in the district at the time of issuance.

C.S.H.B. 3804 sets out in detail the initial boundaries of the district. The bill defines "board," "director," and "district."

EFFECTIVE DATE

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3804 contains a provision not included in the original requiring the Lajitas Utility District No. 1 of Brewster County, if the district's exercise of its eminent domain power requires relocating, raising, lowering, rerouting, or altering the construction of any electric transmission or electric distribution line, conduit, pole, or facility, to bear the actual cost of relocating, raising,

lowering, rerouting, or altering the construction of any electric transmission or electric distribution line to provide a comparable replacement without enhancing the facility, after deducting from the cost the net salvage value derived from the old facility.

C.S.H.B. 3804 omits a provision included in the original authorizing the district to improve, maintain, and operate electric power generating, transmission, and distribution facilities and improvements in aid of these facilities.

C.S.H.B. 3804 contains a provision not included in the original prohibiting the district from providing retail electric utility services, including transmission and distribution services, to residential, retail, commercial, industrial, or other customers inside or outside the district.

C.S.H.B. 3804 contains provisions not included in the original requiring the district to transfer improvements in aid of electric power generating, transmission, and distribution facilities and providing for the definition of "receiving entity," construction standards, partial transfer in stages, required transfer without debt, ownership and responsibility after transfer, and the effect of conveyance on district debt.

C.S.H.B. 3804 omits provisions included in the original authorizing the district to impose a hotel occupancy tax in the same manner as a municipality and providing for related provisions.

C.S.H.B. 3804 contains a provision not included in the original prohibiting the district from imposing an impact fee or assessment on the property, including the equipment, rights-of-way, facilities, or improvements, of an electric cooperative.