

By: West

S.B. No. 1234

A BILL TO BE ENTITLED

AN ACT

relating to municipal management districts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 375.003(3) and (4), Local Government Code, are amended to read as follows:

(3) "Commission" means the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~].

(4) "Disadvantaged business" means:

(A) a corporation formed for the purpose of making a profit and at least 51 percent of all classes of the shares of stock or other equitable securities of which are owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and American Indians;

(B) a sole proprietorship formed for the purpose of making a profit that is owned, operated, and controlled exclusively by one or more persons described by Paragraph (A);

(C) a partnership that is formed for the purpose of making a profit, in which 51 percent of the assets and interest in the partnership is owned by one or more persons described by Paragraph (A), and in which minority or women partners have a

1 proportionate interest in the control, operation, and management of
2 the partnership affairs;

3 (D) a joint venture between minority and women's
4 group members formed for the purpose of making a profit and the
5 minority participation in which is based on the sharing of real
6 economic interest, including equally proportionate control over
7 management, interest in capital, and interest earnings, other than
8 a joint venture in which majority group members own or control debt
9 securities, leasehold interest, management contracts, or other
10 interests; ~~or~~

11 (E) a supplier contract between persons
12 described in Paragraph (A) and a prime contractor in which the
13 disadvantaged business is directly involved for the manufacture or
14 distribution of the supplies or materials or otherwise for
15 warehousing and shipping the supplies; or

16 (F) a person certified as a disadvantaged
17 business by:

18 (i) this state;

19 (ii) a political subdivision of this state;

20 or

21 (iii) a regional planning commission,
22 council of governments, or similar regional planning agency created
23 under Chapter 391.

24 SECTION 2. Section 375.022(c), Local Government Code, is
25 amended to read as follows:

26 (c) The petition must:

27 (1) describe the boundaries of the proposed district;

- 1 (A) by metes and bounds;
- 2 (B) by verifiable landmarks, including a road,
- 3 creek, or railroad line; or
- 4 (C)~~[r]~~ if there is a recorded map or plat and
- 5 survey of the area, by lot and block number;
- 6 (2) state the specific purposes for which the district
- 7 will be created;
- 8 (3) state the general nature of the work, projects, or
- 9 services proposed to be provided, the necessity for those services,
- 10 and the costs as estimated by the persons filing the petition;
- 11 (4) include a name of the district, which must be
- 12 generally descriptive of the location of the district, followed by
- 13 "Management District" or "Improvement District";
- 14 (5) include a proposed list of initial directors that
- 15 includes the directors' experience and initial term of service; and
- 16 (6) include a resolution of the governing body of the
- 17 municipality in support of the creation of the district.

18 SECTION 3. Section 375.023, Local Government Code, is

19 amended to read as follows:

20 Sec. 375.023. NOTICE AND [COMMISSION] HEARING ON DISTRICT

21 CREATION~~[, CONTENTS OF NOTICE]~~. If a petition is filed under

22 Section 375.022, the commission shall give notice of an application

23 as required by Section 49.011, Water Code, and may conduct a hearing

24 on the application if the commission determines that a hearing is

25 necessary under Section 49.011, Water Code. ~~[The commission or a~~

26 ~~person authorized by the commission shall set a date, time, and~~

27 ~~place for a hearing to consider each petition received. The~~

1 ~~commission or authorized person shall issue a notice of the date,~~
2 ~~time, and place of hearing. The notice must state that each person~~
3 ~~has a right to appear and present evidence and testify for or~~
4 ~~against the allegations in the petition, the form of the petition,~~
5 ~~the necessity and feasibility of the district's project, and the~~
6 ~~benefits to accrue.]~~

7 SECTION 4. Section 375.025, Local Government Code, is
8 amended to read as follows:

9 Sec. 375.025. HEARING; GRANTING OR REFUSING PETITION. (a)
10 If the commission determines that [A~~t~~] a hearing is necessary under
11 Section 49.011, Water Code, the commission shall conduct a hearing
12 and accept evidence on [set under Section 375.023, the commission
13 shall examine the petition to determine its sufficiency. Any
14 interested person may appear before the commission in person or by
15 attorney and offer testimony on] the sufficiency of the petition
16 and whether the district is feasible, practicable, and necessary
17 and would be a benefit to all or any part of the land proposed to be
18 included in the district. The commission may adjourn the hearing
19 from day to day.

20 (b) The commission has jurisdiction to determine each issue
21 relating to the sufficiency of the petition and to the creation of
22 the district and may issue necessary incidental orders in relation
23 to the issues before the commission. [~~The commission may adjourn~~
24 ~~the hearing from day to day.]~~

25 (c) If [~~after the hearing]~~ the commission finds, with or
26 without a hearing, that the petition conforms to the requirements
27 of Section 375.022(c) and that the district is feasible,

1 practicable, and necessary and would benefit the public, the
2 commission by order shall make that finding and grant the petition.

3 (d) In determining if the project is feasible, practicable,
4 and necessary and would benefit the public, the commission shall
5 consider:

6 (1) the availability of comparable services from other
7 systems, including special districts, municipalities, and regional
8 authorities; and

9 (2) the reasonableness of the proposed public purpose
10 projects and services.

11 SECTION 5. Section 375.043, Local Government Code, is
12 amended to read as follows:

13 Sec. 375.043. ANNEXATION. A district may annex land as
14 provided by Chapters 49 and [Chapter] 54, Water Code, subject to the
15 approval of the governing body of the municipality.

16 SECTION 6. Section 375.044(b), Local Government Code, is
17 amended to read as follows:

18 (b) The board shall call a hearing on the exclusion of land
19 or other property from the district if a signed petition evidencing
20 the consent of the owners of a majority of the acreage in the
21 district, according to the most recent certified tax roll of the
22 county, is filed [~~landowner or property owner in the district~~
23 ~~files~~] with the secretary of the board [~~a written petition~~]
24 requesting the hearing before the issuance of bonds.

25 SECTION 7. Section 375.061, Local Government Code, is
26 amended to read as follows:

27 Sec. 375.061. NUMBER OF DIRECTORS; TERMS. A district is

1 governed by a board of at least five [~~nine~~] but not more than 30
2 directors who serve staggered four-year terms.

3 SECTION 8. Section 375.071, Local Government Code, is
4 amended to read as follows:

5 Sec. 375.071. QUORUM. One-half of the serving directors
6 constitutes a quorum, and a concurrence of a majority of a quorum of
7 directors is required for any official action of the district. The
8 written consent of at least two-thirds of the directors is required
9 to authorize the levy of assessments, the levy of taxes, the
10 imposition of impact fees, or the issuance of bonds.

11 SECTION 9. Section 375.091, Local Government Code, is
12 amended to read as follows:

13 Sec. 375.091. GENERAL POWERS OF DISTRICT. [~~(a)~~] A district
14 has the rights, powers, privileges, authority, and functions
15 conferred by the general law of this state applicable to
16 conservation and reclamation districts created under Article XVI,
17 Section 59, of the Texas Constitution, including those conferred by
18 Chapter 54, Water Code.

19 [~~(b)~~ ~~The district may contract and manage its affairs and~~
20 ~~funds for any corporate purpose in accordance with Chapter 54,~~
21 ~~Water Code.~~

22 [~~(c)~~ ~~The district has all the rights, powers, privileges,~~
23 ~~authority, and functions of road districts and road utility~~
24 ~~districts created pursuant to Article III, Section 52, of the Texas~~
25 ~~Constitution, including the power to levy ad valorem taxes for the~~
26 ~~construction, maintenance, and operation of macadamized, graveled,~~
27 ~~or paved roads and turnpikes, or in aid thereof. This power~~

1 ~~includes the power to levy ad valorem taxes to provide for mass~~
2 ~~transit systems in the manner and subject to the limitations~~
3 ~~provided in Article III, Section 52, and Article III, Section~~
4 ~~52(a), of the Texas Constitution.~~

5 ~~[(d) A district has those powers conferred by Chapters 365~~
6 ~~and 441, Transportation Code, and the additional rights,~~
7 ~~privileges, authority, and functions contained in those chapters.]~~

8 SECTION 10. Subchapter E, Chapter 375, Local Government
9 Code, is amended by adding Sections 375.0921 and 375.0922 to read as
10 follows:

11 Sec. 375.0921. AUTHORITY FOR ROAD PROJECTS. (a) Under
12 Section 52, Article III, Texas Constitution, a district may design,
13 acquire, construct, finance, issue bonds for, improve, operate,
14 maintain, and convey to this state, a county, or a municipality for
15 operation and maintenance macadamized, graveled, or paved roads, or
16 improvements, including storm drainage, in aid of those roads.

17 (b) The district may impose ad valorem taxes to provide for
18 mass transit systems in the manner and subject to the limitations
19 provided by Section 52, Article III, and Section 52-a, Article III,
20 Texas Constitution.

21 Sec. 375.0922. ROAD STANDARDS AND REQUIREMENTS. (a) A road
22 project must meet all applicable construction standards, zoning and
23 subdivision requirements, and regulations of each municipality in
24 whose corporate limits or extraterritorial jurisdiction the road
25 project is located.

26 (b) If a road project is not located in the corporate limits
27 or extraterritorial jurisdiction of a municipality, the road

1 project must meet all applicable construction standards,
2 subdivision requirements, and regulations of each county in which
3 the road project is located.

4 (c) If the state will maintain and operate the road, the
5 Texas Transportation Commission must approve the plans and
6 specifications of the road project.

7 SECTION 11. Section 375.097(a), Local Government Code, is
8 amended to read as follows:

9 (a) The board may appoint a hearings examiner to conduct any
10 hearing called by the board, including a hearing required by
11 Chapter 395. The hearings examiner may be an employee or contractor
12 of the district, or a member of the district's board.

13 SECTION 12. Subchapter E, Chapter 375, Local Government
14 Code, is amended by adding Section 375.098 to read as follows:

15 Sec. 375.098. DISTRICT ACT OR PROCEEDING PRESUMED VALID.

16 (a) A governmental act or proceeding of a district is conclusively
17 presumed, as of the date it occurred, valid and to have occurred in
18 accordance with all applicable statutes and rules if:

19 (1) the third anniversary of the effective date of the
20 act or proceeding has expired; and

21 (2) a lawsuit to annul or invalidate the act or
22 proceeding has not been filed on or before that third anniversary.

23 (b) This section does not apply to:

24 (1) an act or proceeding that was void at the time it
25 occurred;

26 (2) an act or proceeding that, under a statute of this
27 state or the United States, was a misdemeanor or felony at the time

1 the act or proceeding occurred;

2 (3) a rule that, at the time it was passed, was
3 preempted by a statute of this state or the United States, including
4 Section 1.06 or 109.57, Alcoholic Beverage Code; or

5 (4) a matter that on the effective date of this
6 section:

7 (A) is involved in litigation if the litigation
8 ultimately results in the matter being held invalid by a final
9 judgment of a court; or

10 (B) has been held invalid by a final judgment of a
11 court.

12 SECTION 13. Section 375.114, Local Government Code, is
13 amended to read as follows:

14 Sec. 375.114. PETITION REQUIRED. The board may not finance
15 services and improvement projects under this chapter unless a
16 written petition has been filed with the board requesting those
17 improvements or services signed by:

18 (1) the owners of 50 percent or more of the assessed
19 value of the property in the district subject to assessment,
20 according to [~~as determined from~~] the most recent certified county
21 property tax rolls; or

22 (2) the owners of 50 percent or more of the surface
23 area of the district, excluding roads, streets, highways, and
24 utility rights-of-way, other public areas, and any other property
25 exempt from assessment under Section 375.162 or 375.163, according
26 to [~~as determined from~~] the most recent certified county property
27 tax rolls.

1 SECTION 14. Section 375.202(e), Local Government Code, is
2 amended to read as follows:

3 (e) If provided by the bond order or resolution, the
4 proceeds from the sale of bonds may be used to pay interest on the
5 bonds during and after the period of the acquisition or
6 construction of any improvement project to be provided through the
7 issuance of the bonds, to pay administrative and operation expenses
8 to create a reserve fund for the payment of the principal of and
9 interest on the bonds, to pay costs associated with the issuance of
10 the bonds, and to create any other funds. The proceeds of the bonds
11 may be placed on time deposit or invested, until needed, in
12 securities in the manner provided by the bond order or resolution.

13 SECTION 15. Section 375.205(a), Local Government Code, is
14 amended to read as follows:

15 (a) The district shall submit bonds and the appropriate
16 proceedings authorizing their issuance to the attorney general for
17 examination. This subsection applies only to bonds that are public
18 securities, as that term is defined by Section 1202.001, Government
19 Code.

20 SECTION 16. Subchapter J, Chapter 375, Local Government
21 Code, is amended by adding Section 375.209 to read as follows:

22 Sec. 375.209. TAXES FOR BONDS. At the time the district
23 issues bonds payable wholly or partly from ad valorem taxes, the
24 board shall provide for the annual imposition of a continuing
25 direct annual ad valorem tax, without limit as to rate or amount,
26 while all or part of the bonds are outstanding as required and in
27 the manner provided by Sections 54.601 and 54.602, Water Code.

1 SECTION 17. Section 375.221, Local Government Code, is
2 amended to read as follows:

3 Sec. 375.221. APPLICABILITY OF WATER DISTRICTS LAW TO
4 COMPETITIVE BIDDING ON CERTAIN [~~PUBLIC WORKS~~] CONTRACTS. (a)
5 Except as provided by Subsection (b) of this section, Subchapter I,
6 Chapter 49, Water Code, applies to a district contract for
7 construction work, equipment, materials, or machinery.

8 (b) [A contract, other than a contract for services, for
9 more than \$50,000 for the construction of improvements or the
10 purchase of material, machinery, equipment, supplies, and other
11 property, except real property, may be entered into only after
12 competitive bids. Notice of the contract for the purpose of
13 soliciting bids shall be published once a week for two consecutive
14 weeks in a newspaper with general circulation in the area in which
15 the district is located. The first publication of notice must be
16 not later than the 14th day before the date set for receiving bids.]

17 The board may adopt rules governing receipt of bids and the award of
18 the contract and providing for the waiver of the competitive bid
19 requirement if:

20 (1) there is an emergency;
21 (2) the needed materials are available from only one
22 source;

23 (3) in a procurement requiring design by the supplier
24 competitive bidding would not be appropriate and competitive
25 negotiation, with proposals solicited from an adequate number of
26 qualified sources, would permit reasonable competition consistent
27 with the nature and requirements of the procurement; or

1 (4) after solicitation, it is ascertained that there
2 will be only one bidder.

3 ~~[(b) If a proposed contract for works, plant improvements,~~
4 ~~facilities other than land, or the purchase of equipment,~~
5 ~~appliances, materials, or supplies is for an estimated amount of~~
6 ~~more than \$50,000 or for a duration of more than two years,~~
7 ~~competitive sealed proposals shall be asked from at least three~~
8 ~~persons.]~~

9 SECTION 18. Section 375.263(a), Local Government Code, is
10 amended to read as follows:

11 (a) The ~~[Except as limited by Section 375.264, the]~~
12 governing body of a municipality in which a district is wholly
13 located, by a vote of not less than two-thirds of its membership,
14 may adopt an ordinance dissolving the district.

15 SECTION 19. Section 375.264, Local Government Code, is
16 amended to read as follows:

17 Sec. 375.264. LIMITATION ON DISSOLUTION BY BOARD. A
18 district may not be dissolved by its board ~~[or by a municipality]~~ if
19 the district has any outstanding bonded indebtedness until that
20 bonded indebtedness has been repaid or defeased in accordance with
21 the order or resolution authorizing the issuance of the bonds.

22 SECTION 20. Subchapter N, Chapter 375, Local Government
23 Code, is amended by adding Section 375.282 to read as follows:

24 Sec. 375.282. STRATEGIC PARTNERSHIP AGREEMENT. A district
25 with territory in the extraterritorial jurisdiction of a
26 municipality may negotiate and enter into a written strategic
27 partnership with the municipality under Section 43.0751.

1 SECTION 21. Sections 375.021, 375.024, 375.027, and
2 375.064(f), Local Government Code, are repealed.

3 SECTION 22. The change in law made by this Act to Section
4 375.221, Local Government Code, applies only to a contract awarded
5 on or after January 1, 2012. A contract awarded before January 1,
6 2012, is governed by the law in effect on the date the contract was
7 awarded, and that law is continued in effect for that purpose.

8 SECTION 23. This Act takes effect September 1, 2011.