

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Jon Niermann, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 10, 2017

The Honorable Dan Patrick  
Lieutenant Governor of Texas  
Capitol Station  
PO Box 12068  
Austin, Texas 78711

Re: Responsibility of the Texas Commission on Environmental Quality (TCEQ) Pursuant to Article XVI, Section 59(d), Texas Constitution

Senate Bill (SB) 2269, as Filed by Senator Brandon Creighton - Relating to the creation of the Bolivar Management District; authority to impose assessments, fees, and taxes.

Dear Governor Patrick:

The following comments are provided pursuant to the Constitutional requirements referenced above. Under those requirements, the TCEQ must submit, to the Governor, Lieutenant Governor and Speaker of the House of Representatives, the TCEQ's recommendations on specific legislation affecting water districts. We recommend that these comments be considered in the evaluation of the proposed legislation.

Sincerely,

A handwritten signature in black ink that reads "Cari-Michel LaCaille".

Cari-Michel LaCaille, Director  
Water Supply Division

cc: Honorable Eddie Lucio, Jr., Chairman, Senate Intergovernmental Relations Committee  
Senator Brandon Creighton, Texas Senate

Enclosure

**SB 2269, as Filed by Senator Brandon Creighton  
Texas Commission on Environmental Quality's Comments**

The Legislative Budget Board, in cooperation with the Texas Water Development Board (TWDB) and the Texas Commission on Environmental Quality (TCEQ), has determined that:

This bill amends the Special District Local Laws Code by adding Chapter 3942 which creates Bolivar Management District (District).

**Comments on Powers/Duties Different from Similar Types of Districts:**

Except as otherwise provided by this chapter, Chapter 383, Local Government Code, relating to county development districts, applies to the District; the District is to be governed by a board of five voting directors that are appointed by the governing body of the City of Galveston (City); the bill specifies that the District may exercise powers given to the following: a corporation under Chapter 505, Local Government Code; a housing finance corporation under Chapter 394, Local Government Code; a county under Chapter 383, Local Government Code; an entity described in Chapters 284 and 441, Transportation Code; and a district governed by Subchapters E and M, Chapter 60, Water Code, and Section 61.116, Water Code; the board by resolution may authorize the creation of a nonprofit corporation to assist and act for the District in implementing a project or providing a service authorized by this chapter; the District may contract with the county or the city to provide law enforcement services in the District for a fee; Section 375.221, Local Government Code, relating to the waiver of the competitive bid requirement, applies to the district, but only for a contract that has a value greater than \$15,000; the District may join and pay dues to an organization that: enjoys tax-exempt status under Section 501(c)(3), (4), or (6), Internal Revenue Code of 1986, as amended; and performs a service or provides an activity consistent with the furtherance of a District purpose; the District may establish and provide for the administration of one or more programs to promote state or local economic development and to stimulate business and commercial activity in the District; Section 375.243, Local Government Code, requiring a petition for bond election, does not apply to the District; the District may not impose an impact fee or assessment on the property, including the equipment, rights-of-way, facilities, or improvements, of: an electric utility or a power generation company as defined by Section 31.002, Utilities Code; a gas utility as defined by Section 101.003 or 121.001,

Utilities Code; a telecommunications provider as defined by Section 51.002, Utilities Code; or person who provides to the public cable television or advanced telecommunications services; the county is not required to pay a bond, note, or other obligation of the District; the bill specifies that the board may vote to dissolve while the District has debt. If the vote is in favor of dissolution, the District shall remain in existence solely for the limited purpose of discharging its debts. The dissolution is effective when all debts have been discharged; and, House Bill 4286 by Rep. Faircloth is the companion to this proposed bill.

**Overlapping Services:** TCEQ does not have mapping information for water and/or wastewater providers because this function was transferred from the TCEQ to the Public Utility Commission on September 1, 2014. As a result, TCEQ is unaware of possible overlapping service providers.

**TCEQ's Supervision:** As with general law districts, the TCEQ will have general supervisory authority, including bond review authority and review of financial reports.

LETTER OF TRANSMITTAL  
TEXAS SENATE  
STATE OF TEXAS

SB 2269

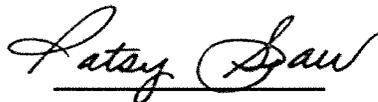
Bill Number

TO: The Honorable Governor of Texas  
SUBJECT: A Bill Relating to a Conservation and Reclamation District

This is to transmit to you and the Texas Commission on Environmental Quality copies of a bill relating to a conservation and reclamation district and copies of the notice of intention to introduce the bill. One copy is for your files and one for you to forward to the Texas Commission on Environmental Quality, under Section 59(d), Article XVI, Constitution of the State of Texas.

4/10/2017

Date transmitted to  
Governor's Office



Secretary of the Senate

TO: Texas Commission on Environmental Quality  
SUBJECT: A Bill Relating to a Conservation and Reclamation District

This is to forward to you a copy of a bill relating to conservation and reclamation district and a copy of the notice of intention to introduce the bill.

April 13, 2017

Date transmitted to  
Texas Commission on Environmental Quality



Governor

TO: The Honorable President of the Senate  
The Honorable Speaker of the House of Representatives  
The Honorable Governor of Texas  
SUBJECT: A Bill Relating to a Conservation and Reclamation District

Attached are recommendations of the Texas Commission on Environmental Quality in compliance with Section 59(d), Article XVI, Constitution of the State of Texas.



Texas Commission on Environmental Quality

By: Creighton

S.B. No. 2269

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to creation of the Bolivar Management District; providing  
3 authority to issue bonds; providing authority to impose  
4 assessments, fees, and taxes.

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

6 SECTION 1. Subtitle C, Title 4, Special District Local Laws  
7 Code, is amended by adding Chapter 3942 to read as follows:

8 CHAPTER 3942. BOLIVAR MANAGEMENT DISTRICT

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 3942.001. DEFINITIONS. In this chapter:

11 (1) "Board" means the board of directors of the  
12 district.

13 (2) "City" means the City of Galveston.

14 (3) "County" means Galveston County.

15 (4) "District" means the Bolivar Management District.

16 Sec. 3942.002. BOLIVAR MANAGEMENT DISTRICT. The Bolivar  
17 Management District is a special district created under Section 59,  
18 Article XVI, Texas Constitution.

19 Sec. 3942.003. PURPOSE; DECLARATION OF INTENT. (a) The  
20 creation of the district is essential to accomplish the purposes of  
21 Sections 52 and 52-a, Article III, and Section 59, Article XVI,  
22 Texas Constitution, and other public purposes stated in this  
23 chapter. By creating the district and in authorizing the county and  
24 other political subdivisions to contract with the district, the

1 legislature has established a program to accomplish the public  
2 purposes set out in Section 52-a, Article III, Texas Constitution.

3 (b) The creation of the district is necessary to promote,  
4 develop, encourage, and maintain employment, commerce,  
5 transportation, housing, tourism, recreation, the arts,  
6 entertainment, economic development, safety, and the public  
7 welfare in the area of the district.

8 (c) This chapter and the creation of the district may not be  
9 interpreted to relieve the county from providing the level of  
10 services provided, as of the effective date of the Act enacting this  
11 chapter, to the area in the district. The district is created to  
12 supplement and not to supplant the county services provided in the  
13 area in the district.

14 Sec. 3942.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a)  
15 The district is created to serve a public use and benefit.

16 (b) All land and other property included in the district  
17 will benefit from the improvements and services to be provided by  
18 the district under powers conferred by Sections 52 and 52-a,  
19 Article III, and Section 59, Article XVI, Texas Constitution, and  
20 other powers granted under this chapter.

21 (c) The creation of the district is in the public interest  
22 and is essential to:

23 (1) further the public purposes of development and  
24 diversification of the economy of the state;

25 (2) eliminate unemployment and underemployment; and

26 (3) develop or expand transportation and commerce.

27 (d) The district will:

1           (1) promote the health, safety, and general welfare of  
2 residents, employers, employees, visitors, and consumers in the  
3 district, and of the public;

4           (2) provide needed funding to preserve, maintain, and  
5 enhance the economic health and vitality of the district as a  
6 community and business center; and

7           (3) promote the health, safety, welfare, and enjoyment  
8 of the public by providing pedestrian ways and by landscaping and  
9 developing certain areas in the district, which are necessary for  
10 the restoration, preservation, and enhancement of scenic beauty.

11           (e) Pedestrian ways along or across a street, whether at  
12 grade or above or below the surface, and street lighting, street  
13 landscaping, and street art objects are parts of and necessary  
14 components of a street and are considered to be a street or road  
15 improvement.

16           (f) The district will not act as the agent or  
17 instrumentality of any private interest even though the district  
18 will benefit many private interests, as well as the public.

19           Sec. 3942.005. DISTRICT TERRITORY. (a) The district is  
20 composed of the territory described by Section 2 of the Act enacting  
21 this chapter as that territory may have been modified under:

22                   (1) Subchapter J, Chapter 49, Water Code; or

23                   (2) other law.

24           (b) The boundaries and field notes of the district contained  
25 in Section 2 of the Act enacting this chapter form a closure. A  
26 mistake made in the field notes or in copying the field notes in the  
27 legislative process does not in any way affect the district's:

- 1           (1) organization, existence, or validity;
- 2           (2) authority to issue any type of bond for a purpose
- 3 for which the district is created or to pay the principal of and
- 4 interest on a bond;
- 5           (3) right to impose or collect an assessment or tax; or
- 6           (4) legality or operation.

7           Sec. 3942.006. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES.  
8 All or any part of the area of the district is eligible to be  
9 included in:

- 10           (1) a tax increment reinvestment zone created under
- 11 Chapter 311, Tax Code;
- 12           (2) a tax abatement reinvestment zone created under
- 13 Chapter 312, Tax Code; or
- 14           (3) an enterprise zone created under Chapter 2303,
- 15 Government Code.

16           Sec. 3942.007. APPLICABILITY OF COUNTY DEVELOPMENT  
17 DISTRICTS LAW. Except as otherwise provided by this chapter,  
18 Chapter 383, Local Government Code, applies to the district.

19           Sec. 3942.008. LIBERAL CONSTRUCTION OF CHAPTER. This  
20 chapter shall be construed liberally in conformity with the  
21 findings and purposes stated in this chapter.

22                           SUBCHAPTER B. BOARD OF DIRECTORS

23           Sec. 3942.051. GOVERNING BODY; TERMS. (a) Except as  
24 provided by Subsection (c), the district is governed by a board of  
25 five directors appointed under Section 3942.052.

26           (b) Voting directors serve staggered terms of four years,  
27 with two or three directors' terms expiring June 1 of each

1 odd-numbered year.

2 (c) The board by resolution may increase or decrease the  
3 number of directors on the board if the board finds it is in the best  
4 interest of the district. The board may not consist of fewer than 5  
5 or more than 15 directors.

6 Sec. 3942.052. APPOINTMENT OF DIRECTORS. The governing  
7 body of the county shall appoint the directors.

8 Sec. 3942.053. CONFLICTS OF INTEREST; ONE-TIME AFFIDAVIT.

9 (a) Except as provided by this section:

10 (1) a director may participate in all board votes and  
11 decisions; and

12 (2) Chapter 171, Local Government Code, governs  
13 conflicts of interest for directors.

14 (b) Section 171.004, Local Government Code, does not apply  
15 to the district. A director who has a substantial interest in a  
16 business or charitable entity that will receive a pecuniary benefit  
17 from a board action shall file a one-time affidavit declaring the  
18 interest. An additional affidavit is not required if the  
19 director's interest changes. After the affidavit is filed with the  
20 board secretary, the director may participate in a discussion or  
21 vote on that action if:

22 (1) a majority of the directors have a similar  
23 interest in the same entity; or

24 (2) all other similar business or charitable entities  
25 in the district will receive a similar pecuniary benefit.

26 (c) A director who is also an officer or employee of a public  
27 entity may not participate in the discussion of or vote on a matter

1 regarding a contract with that public entity.

2 (d) For purposes of this section, a director has a  
3 substantial interest in a charitable entity in the same manner that  
4 a person would have a substantial interest in a business entity  
5 under Section 171.002, Local Government Code.

6 Sec. 3942.054. INITIAL DIRECTORS. (a) The initial board  
7 consists of the following directors:

8	<u>Pos. No.</u>	<u>Name of Director</u>
9	<u>1</u>	<u>Robert Morgan</u>
10	<u>2</u>	<u>Justin Thompson</u>
11	<u>3</u>	<u>Tom Harrison</u>
12	<u>4</u>	<u>Brad Ballard</u>
13	<u>5</u>	<u>Ross Harrison</u>

14 (b) Of the initial directors, the terms of directors  
15 appointed for positions one and two expire June 1, 2019, and the  
16 terms of directors appointed for positions three through five  
17 expire June 1, 2021.

18 (c) Section 3942.052 does not apply to this section.

19 SUBCHAPTER C. POWERS AND DUTIES

20 Sec. 3942.101. ADDITIONAL POWERS OF DISTRICT. The district  
21 may exercise the powers given to:

22 (1) a corporation under Chapter 505, Local Government  
23 Code, including the power to own, operate, acquire, construct,  
24 lease, improve, and maintain projects described by that chapter;

25 (2) a housing finance corporation under Chapter 394,  
26 Local Government Code, to provide housing or residential  
27 development projects in the district;

1           (3) a county under Chapter 383, Local Government Code;  
2           (4) an entity described in Chapters 284 and 441,  
3 Transportation Code; and

4           (5) a district governed by Subchapters E and M,  
5 Chapter 59, Water Code, and Section 61.116, Water Code.

6           Sec. 3942.102. NONPROFIT CORPORATION. (a) The board by  
7 resolution may authorize the creation of a nonprofit corporation to  
8 assist and act for the district in implementing a project or  
9 providing a service authorized by this chapter.

10          (b) The nonprofit corporation:

11           (1) has each power of and is considered for purposes of  
12 this chapter to be a local government corporation created under  
13 Chapter 431, Transportation Code; and

14           (2) may implement any project and provide any service  
15 authorized by this chapter.

16          (c) The board shall appoint the board of directors of the  
17 nonprofit corporation. The board of directors of the nonprofit  
18 corporation shall serve in the same manner as the board of directors  
19 of a local government corporation created under Chapter 431,  
20 Transportation Code.

21          Sec. 3942.103. AGREEMENTS; GRANTS. (a) The district may  
22 make an agreement with or accept a gift, grant, or loan from any  
23 person.

24          (b) The implementation of a project is a governmental  
25 function or service for the purposes of Chapter 791, Government  
26 Code.

27          Sec. 3942.104. LAW ENFORCEMENT SERVICES. To protect the

1 public interest, the district may contract with the county or the  
2 city to provide law enforcement services in the district for a fee.

3 Sec. 3942.105. COMPETITIVE BIDDING. Section 375.221, Local  
4 Government Code, applies to the district, but only for a contract  
5 that has a value greater than \$15,000.

6 Sec. 3942.106. MEMBERSHIP IN CHARITABLE ORGANIZATIONS. (a)  
7 The district may join and pay dues to an organization that:

8 (1) enjoys tax-exempt status under Section 501(c)(3),  
9 (4), or (6), Internal Revenue Code of 1986, as amended; and

10 (2) performs a service or provides an activity  
11 consistent with the furtherance of a district purpose.

12 (b) An expenditure of public money for membership in the  
13 organization is considered to further a district purpose and to be  
14 for a public purpose.

15 Sec. 3942.107. ECONOMIC DEVELOPMENT PROGRAMS. The district  
16 may establish and provide for the administration of one or more  
17 programs to promote state or local economic development and to  
18 stimulate business and commercial activity in the district,  
19 including programs to:

20 (1) make loans and grants of public money; and

21 (2) provide district personnel and services.

22 SUBCHAPTER D. FINANCIAL PROVISIONS

23 Sec. 3942.151. DISBURSEMENTS OR TRANSFERS OF MONEY. The  
24 board by resolution shall establish the number of directors'  
25 signatures and the procedure required for a disbursement or  
26 transfer of the district's money.

27 Sec. 3942.152. TAX AND BOND ELECTIONS. (a) The district

1 shall hold an election in the manner provided by Subchapter L,  
2 Chapter 375, Local Government Code, to obtain voter approval before  
3 the district imposes a maintenance tax or issues bonds payable from  
4 ad valorem taxes.

5 (b) The board may not include more than one purpose in a  
6 single proposition at an election.

7 (c) Section 375.243, Local Government Code, does not apply  
8 to the district.

9 Sec. 3942.153. MAINTENANCE AND OPERATION TAX. (a) If  
10 authorized at an election held in accordance with Section 3942.152,  
11 the district may impose an annual ad valorem tax on taxable property  
12 in the district for the:

13 (1) maintenance and operation of the district and the  
14 improvements constructed or acquired by the district; or

15 (2) provision of a service.

16 (b) The board shall determine the tax rate.

17 Sec. 3942.154. ASSESSMENTS; LIENS FOR ASSESSMENTS. (a)  
18 The board by resolution may impose an assessment for any purpose  
19 authorized by this chapter.

20 (b) An assessment, a reassessment, or an assessment  
21 resulting from an addition to or correction of the assessment roll  
22 by the district, penalties and interest on an assessment or  
23 reassessment, an expense of collection, and reasonable attorney's  
24 fees incurred by the district:

25 (1) are a first and prior lien against the property  
26 assessed;

27 (2) are superior to any other lien or claim other than

1 a lien or claim for county, school district, or municipal ad valorem  
2 taxes; and

3 (3) are the personal liability of and a charge against  
4 the owners of the property even if the owners are not named in the  
5 assessment proceedings.

6 (c) The lien is effective from the date of the board's  
7 resolution imposing the assessment until the date the assessment is  
8 paid. The board may enforce the lien in the same manner that the  
9 board may enforce an ad valorem tax lien against real property.

10 (d) The board may make a correction to or deletion from the  
11 assessment roll that does not increase the amount of assessment of  
12 any parcel of land without providing notice and holding a hearing in  
13 the manner required for additional assessments.

14 Sec. 3942.155. PETITION REQUIRED FOR FINANCING SERVICES AND  
15 IMPROVEMENTS. (a) The board may not finance a service or  
16 improvement project with assessments under this chapter unless a  
17 written petition requesting that service or improvement has been  
18 filed with the board.

19 (b) The petition must be signed by the owners of a majority  
20 of the assessed value of real property in the district subject to  
21 assessment according to the most recent certified tax appraisal  
22 roll for the county.

23 Sec. 3942.156. UTILITY PROPERTY EXEMPT FROM IMPACT FEES AND  
24 ASSESSMENTS. The district may not impose an impact fee or  
25 assessment on the property, including the equipment,  
26 rights-of-way, facilities, or improvements, of:

27 (1) an electric utility or a power generation company

1 as defined by Section 31.002, Utilities Code;

2 (2) a gas utility as defined by Section 101.003 or  
3 121.001, Utilities Code;

4 (3) a telecommunications provider as defined by  
5 Section 51.002, Utilities Code; or

6 (4) a person who provides to the public cable  
7 television or advanced telecommunications services.

8 Sec. 3942.157. BONDS AND OTHER OBLIGATIONS. (a) The  
9 district may issue bonds or other obligations payable wholly or  
10 partly from ad valorem taxes, assessments, impact fees, revenue,  
11 grants, or other money of the district, or any combination of those  
12 sources of money, to pay for any authorized purpose of the district.

13 (b) In exercising the district's power to borrow, the  
14 district may issue a bond or other obligation in the form of a bond,  
15 note, certificate of participation or other instrument evidencing a  
16 proportionate interest in payments to be made by the district, or  
17 other type of obligation.

18 Sec. 3942.158. COUNTY NOT REQUIRED TO PAY DISTRICT  
19 OBLIGATIONS. The county is not required to pay a bond, note, or  
20 other obligation of the district.

21 Sec. 3942.159. TAX AND ASSESSMENT ABATEMENTS. Without  
22 further authorization or other procedural requirement, the  
23 district may grant, consistent with Chapter 312, Tax Code, an  
24 abatement for a tax or assessment owed to the district.

25 SUBCHAPTER E. DISSOLUTION

26 Sec. 3942.201. DISSOLUTION OF DISTRICT WITH OUTSTANDING  
27 DEBT. (a) The board may vote to dissolve a district that has debt.

1 If the vote is in favor of dissolution, the district shall remain in  
2 existence solely for the limited purpose of discharging its debts.  
3 The dissolution is effective when all debts have been discharged.

4 (b) Section 383.121, Local Government Code, does not apply  
5 to the district.

6 SECTION 2. The Bolivar Management District initially  
7 includes all the territory contained in the following area:

8 Land lying and being situated in Galveston County, Texas, out  
9 of the Port Bolivar Townsite, Samuel Parr Survey, Abstract No. 162,  
10 Galveston County, Texas as follows:

11	Block	Lot(s)
12	320	1-33
13	345	13-24
14	346	1-34

15 Water Lots # 33 - 55 Lying North of Intracoastal Waterway.

16 SECTION 3. (a) The legal notice of the intention to  
17 introduce this Act, setting forth the general substance of this  
18 Act, has been published as provided by law, and the notice and a  
19 copy of this Act have been furnished to all persons, agencies,  
20 officials, or entities to which they are required to be furnished  
21 under Section 59, Article XVI, Texas Constitution, and Chapter 383,  
22 Government Code.

23 (b) The governor, one of the required recipients, has  
24 submitted the notice and Act to the Texas Commission on  
25 Environmental Quality.

26 (c) The Texas Commission on Environmental Quality has filed  
27 its recommendations relating to this Act with the governor,

1 lieutenant governor, and speaker of the house of representatives  
2 within the required time.

3 (d) The general law relating to consent by political  
4 subdivisions to the creation of districts with conservation,  
5 reclamation, and road powers and the inclusion of land in those  
6 districts has been complied with.

7 (e) All requirements of the constitution and laws of this  
8 state and the rules and procedures of the legislature with respect  
9 to the notice, introduction, and passage of this Act have been  
10 fulfilled and accomplished.

11 SECTION 4. This Act takes effect immediately if it receives  
12 a vote of two-thirds of all the members elected to each house, as  
13 provided by Section 39, Article III, Texas Constitution. If this  
14 Act does not receive the vote necessary for immediate effect, this  
15 Act takes effect September 1, 2017.

AFFP  
Notice

**Affidavit of Publication**

STATE OF TX )  
COUNTY OF GALVESTON ) SS

Donna Rhoades, being duly sworn, says:

That she is Donna Rhoades of the The Galveston County Daily News, a daily newspaper of general circulation, printed and published in Galveston, Galveston County, TX; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:  
February 02, 2017

That said newspaper was regularly issued and circulated on those dates.

SIGNED:



Donna Rhoades

Subscribed to and sworn to me this 2nd day of February 2017.

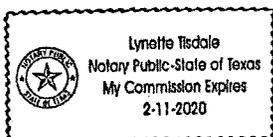


Lynette Tisdale, Notary Public, State of Texas, Galveston County, TX

My commission expires: February 11, 2020

18131218 00426616 (409) 763-2879

Gus Knebel  
Mills Shirley LLP  
2228 Mechanic St., Suite 400  
Galveston, TX 77550



**NOTICE OF INTENT TO  
INTRODUCE A LOCAL BILL**

This is to give notice of intent to introduce in the 85th Legislature, Regular Session, a bill to be entitled "Bolivar Management District" relating to the creation of a Management District on Bolivar Peninsula under Article III Sections 52 and 52-a and Article XVI Section 59 all of the Texas Constitution. The district is necessary to promote the public welfare in the area. The proposed district will be located on the following tracts of land lying and being situated in Galveston County, Texas, out of the Port Bolivar Townsite, Samuel Parr Survey, Abstract No. 162, Galveston County, Texas as follows:

Block Lot(s)  
320 1-33  
345 13-24  
346 1-34

Water Lots # 33 - 55 Lying  
North of Intracoastal Waterway

Published: February 2,  
2017  
00426616