

BILL ANALYSIS

Senate Research Center
88R23930 MP-F

H.B. 5336
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Transportation
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Port Freeport, formerly the Brazos River Harbor Navigation District, operates a deep-water seaport along the Gulf Coast within the corporate limits and extraterritorial jurisdiction of the City of Freeport in Brazoria County. Over the past approximately twenty years, Port Freeport acquired lands immediately adjacent to the main port facilities, known as the "terminal expansion area." The expansion area is needed by the port to improve traffic flow and safety, expand its operations, and promote economic activity in Brazoria County.

A dispute has arisen between Port Freeport and the City of Freeport concerning the acquisition of remaining properties in the East End owned by the City of Freeport. As part of a mediation of this dispute, the parties identified changes in Port Freeport's enabling statute that would protect the City of Freeport from similar future expansions by Port Freeport and other changes that would provide the requisite predictability in land use regulation necessary for Port Freeport to continue to develop its properties to promote economic development. H.B. 5336 is a response to this mediation and incorporates language from representatives of both parties. The legislation sets out and then limits Port Freeport's powers regarding acquiring land and constructing facilities within the city limits. H.B. 5336 ensures that Port Freeport can develop certain lands that it owns or acquires for the purposes for which navigation districts are created, limits the type of land use regulations the City of Freeport can adopt concerning Port Freeport property, and provides flexibility for the creation of reinvestment zones within the district.

H.B. 5336 amends current law relating to the powers and duties of Port Freeport, limiting the authority of certain municipalities to regulate land use by Port Freeport, and the creation of a reinvestment zone containing property owned by Port Freeport.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

Section 1. Amends Chapter 5002, Special District Local Laws Code, by adding Subchapters D and E, as follows:

SUBCHAPTER D. POWERS AND DUTIES

Sec. 5002.151. DEFINITIONS. Defines "port use," "port zone," "protected zone," and "zoning ordinance."

Sec. 5002.152. POWERS REGARDING PORTS AND FACILITIES. Authorizes Port Freeport (district), except as provided by Section 5002.153, to:

- (1) acquire by gift, purchase, or eminent domain and own land adjacent or accessible by road, rail, or water to navigable water and ports developed by the district that is necessary for the development and operation of the navigable water or ports within the district or necessary for or in aid of the development of industries and businesses on that land; and

(2) construct, extend, improve, repair, maintain, and reconstruct, cause to be constructed, extended, improved, repaired, maintained, and reconstructed, and own, rent, lease, use, and operate any facility of any kind necessary or convenient to the exercise of the rights, powers, privileges, and functions granted by this Chapter 5002 (Port Freeport).

Sec. 5002.153. LIMITATION ON ACQUISITION AND USE OF REAL PROPERTY WITHIN THE CORPORATE LIMITS OF CERTAIN MUNICIPALITIES. Prohibits the district, after the effective date of the Act enacting this section, from:

(1) acquiring by gift, purchase, or condemnation any real property located within the protected zone unless:

(A) the acquisition is of a residential lot or lots for which no change in the permitted use will be sought by the district; or

(B) the acquisition is submitted to the qualified voters of the municipality within which the real property is located at an election held on a uniform election date and is approved by a majority of the votes received at the election;

(2) using any property owned or acquired by the district in the port zone for anything other than a port use; or

(3) using any property owned or acquired by the district in the protected zone that is not in the port zone for anything other than a use permitted under the zoning ordinance unless the use is approved by the governing body of the municipality in which the land is located.

Sec. 5002.154. CALLING ELECTION. Requires the governing body of a municipality to call an election under Section 5002.153(3) to be held on the next uniform election date within 30 days of the municipality's receipt from the district of a written request for the election and the description of all property subject to the election.

Sec. 5002.155. REPLATTING OF LAND. (a) Authorizes the district to replat land owned by the district in accordance with Subchapter A (Regulation of Subdivisions), Chapter 212, Local Government Code, for the purpose of combining previously platted lots for development.

(b) Requires the municipal authority responsible for approving the plat to approve a replat requested by the district for the purposes set forth in this section within 60 days following receipt of the application for replat.

(c) Provides that the provisions of Subsection (b) do not apply to the replatting of land by the district if the replat creates or proposes municipally owned or municipally maintained public right-of-way or municipally owned or municipally maintained water, wastewater, or stormwater infrastructure within the property being platted.

SUBCHAPTER E. RELATIONSHIP WITH MUNICIPALITIES

Sec. 5002.201. DISTRICT PROPERTY SUBJECT TO MUNICIPAL JURISDICTION.

(a) Provides that this section applies only to property:

(1) owned or leased by the district; and

(2) located in:

(A) the district; and

(B) the boundaries or extraterritorial jurisdiction of a municipality with a population of less than 20,000 that is wholly located in the district and whose corporate limits border the Gulf of Mexico.

(b) Provides that the district has exclusive land use jurisdiction over property to which this section applies, except as provided by Subsection (c).

(c) Provides that this section does not apply to an ordinance, rule, or other measure adopted by a municipality that:

(1) applies only to property within the boundaries of the municipality;

(2) regulates only the safety of the operations of the municipality or reasonable aesthetics, including regulations governing fire and emergency response, traffic, light, or noise;

(3) is commercially reasonable; and

(4) does not effectively prohibit development and operation of industries and businesses on property owned or leased by the district that are built in accordance with building codes adopted by the district that meet or exceed the building codes adopted by the local municipality.

(d) Authorizes a municipality to conduct inspections to verify compliance with Subsection (c) if the inspections are conducted in a timely manner, and any differences in interpretation of applicable codes are determined in favor of the district.

(e) Prohibits a municipality, except as provided by Subsection (c), from adopting or enforcing an ordinance, rule, or other measure that prohibits or restricts:

(1) the acquisition or leasing of property to which this section applies for a purpose described by Section 5002.152; or

(2) the development of industries and businesses on property to which this section applies.

Sec. 5002.202. MUNICIPAL CONSENT NOT REQUIRED. Provides that municipal consent is not required for the district to exercise a power or duty under this chapter.

Sec. 5002.203. DESIGNATION OF REINVESTMENT ZONE. Authorizes the district to submit a written request to the commissioners court of a county in which a property owned by the district is located for the commissioners court to designate the property as a reinvestment zone or area for the purposes of Chapter 312 (Property Redevelopment and Tax Abatement Act), Tax Code, notwithstanding Subchapter B (Tax Abatement in Municipal Reinvestment Zone), Chapter 312, Tax Code. Authorizes the commissioners court to designate the property as a reinvestment zone or area if the commissioners court finds the criteria set forth in Section 312.202 (Criteria for Reinvestment Zone), Tax Code, are met for the property as if a municipality in which the property is located were creating the zone.

Sec. 5002.204. ENFORCEMENT OF SUBCHAPTERS. (a) Authorizes the provisions of Subchapters D and E to be enforced only through mandamus or declaratory or injunctive relief. Provides that a political subdivision's immunity from suit is waived in regard to an action under this subchapter.

(b) Authorizes a court to award court costs and reasonable and necessary attorney's fees to the prevailing party in an action under this subchapter.

Sec. 5002.205. EFFECT OF INVALIDITY OF CERTAIN PROVISIONS. (a) Provides that this section applies only to a municipality with a population of more than 5,000 that is wholly located in the district and to property:

- (1) owned or leased by the district;
- (2) located in the district and within seven miles of the Gulf of Mexico;
and
- (3) located in the corporate limits or extraterritorial jurisdiction of a municipality that is subject to this section.

(b) Provides that if enforcement of any part of Section 5002.201 is ever permanently enjoined or held to be invalid or to violate the requirements of the Texas Constitution by a final, non-appealable order or judgment of a court of competent jurisdiction, other than pursuant to an action initiated by the district, then:

- (1) all of Section 5002.201 will be automatically enjoined from enforcement; and
- (2) the authority of a municipality subject to this section to regulate property subject to this section under Chapter 211 (Municipal Zoning Authority) or 212 (Municipal Regulation of Subdivisions and Property Development), Local Government Code, or any local code or ordinance is required to be expressly preempted and Chapter 232 (County Regulation of Subdivisions), Local Government Code, is required to exclusively apply to such property.

(c) Provides that if enforcement of any part of Section 5002.153 or 5002.154 is ever permanently enjoined or held to be invalid or to violate the requirements of the Texas Constitution by a final, non-appealable order or judgment of a court of competent jurisdiction, other than pursuant to an action initiated by a municipality, then Section 5002.201 will be automatically enjoined from enforcement.

SECTION 2. Effective date: upon passage or September 1, 2023.