

BILL ANALYSIS

C.S.H.B. 5336
By: Vasut
Transportation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. C.S.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. C.S.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.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 5336 amends the Special District Local Laws Code to limit the authority of certain municipalities to regulate land use by the Port Freeport navigation district and to create a reinvestment zone containing property owned by the district.

C.S.H.B. 5336 authorizes the district to do the following:

- 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

- 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 to the district.

The bill prohibits the district, after the bill's effective date, from doing the following:

- acquiring by gift, purchase, or condemnation any real property located within the protected zone unless the acquisition is of a residential lot or lots for which no change in the permitted use will be sought by the district or 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;
- using any property owned or acquired by the district in the port zone for anything other than a port use; or
- 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.

The bill requires the governing body of a municipality to call an election to approve the use of district property for anything other than a use permitted under the zoning ordinance.

C.S.H.B. 5336 authorizes the district to replat land owned by the district for the purpose of combining previously platted lots for development. The bill requires the municipal authority responsible for approving the plat to approve a replat requested by the district for such purposes within 60 days following receipt of the application for replat. The bill exempts from the applicability of this requirement 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.

C.S.H.B. 5336 establishes that, other than the exceptions provided by the bill, the district has exclusive land use jurisdiction of property owned or leased by the district that is located in the district and 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. The district's land use jurisdiction does not apply to an ordinance, rule, or other measure adopted by a municipality that:

- applies only to property within the municipality's boundaries;
- regulates only the safety of the operations of the municipality or reasonable aesthetics, including regulations governing fire and emergency response, traffic, light, or noise;
- is commercially reasonable; and
- 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.

C.S.H.B. 5336 authorizes an applicable municipality to conduct inspections to verify compliance with excepted ordinances, rules, and measures, if the inspections are conducted in a timely manner, and any differences in interpretation of applicable codes are determined in favor of the district. Except as provided by the bill, an applicable municipality may not adopt or enforce an ordinance, rule, or other measure that prohibits or restricts the acquisition or leasing of property under the district's jurisdiction for a purpose authorized by the bill or the development of industries and businesses on such property. Municipal consent is not required for the district to exercise a power or duty under the bill's provisions.

C.S.H.B. 5336 establishes that if enforcement of any part of the bill's provisions regarding district property in an applicable municipality 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 all such provisions will be automatically enjoined from enforcement and the authority of the municipality to regulate property under certain Local Government Code provisions or any local code or ordinance must be expressly preempted and authority for the county regulation of the property exclusively applies. If enforcement of any part of the bill's provisions regarding the district's acquisition of municipal real property and the associated election 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 the bill's provisions regarding district property subject to municipal jurisdiction will be automatically enjoined from enforcement. These provisions apply only to a municipality with a population of more than 5,000 that is wholly located in the district and to property:

- owned or leased by the district;
- located in the district and within seven miles of the Gulf of Mexico; and
- located in the corporate limits or extraterritorial jurisdiction of the municipality.

C.S.H.B. 5336 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 under the Property Redevelopment and Tax Abatement Act. The bill authorizes the commissioners court to designate the property as a reinvestment zone or area if the commissioners court finds the criteria for designation as a reinvestment zone are met for the property as if a municipality in which the property is located were creating the zone.

C.S.H.B. 5336 establishes that the bill's provisions may only be enforced through mandamus or declaratory or injunctive relief and a political subdivision's immunity from suit is waived in regard to an action under the bill's provisions regarding the district's relationship with municipalities. The bill authorizes a court to award court costs and reasonable and necessary attorney's fees to the prevailing party in an action under those provisions.

C.S.H.B. 5336 defines the following:

- "port use" as any use permitted or allowed, with or without a special use permit, in the specified zoning districts under the zoning ordinance, or any additional use subsequently permitted or allowed in those districts under an amendment to the zoning ordinance;
- "port zone" as the lands within the protected zone that are located both south of West Eighth Street and east of Cherry Street and all lands east of Farm-to-Market Road 1495 that are included within the Plat and Dedication of the Freeport Townsite recorded in Volume 2, at Page 95 of the Brazoria County Real Property Records;
- "protected zone" as the portion of the corporate limits of the City of Freeport as they exist on September 1, 2023, that lies within and adjacent to certain areas as specified by the bill; and
- "zoning ordinance" as Chapter 155, Code of Ordinances, of the City of Freeport, Texas in effect on January 1, 2023.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 5336 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the introduced and the substitute define "protected zone" as the portion of the corporate limits of the City of Freeport as they exist on September 1, 2023, that lies within and adjacent to certain areas. However, the versions of the bill differ as follows:

- whereas the introduced included among that portion the area located adjacent to the old Brazos River channel and inside the floodgate, which is zoned as a W-1 District under the zoning ordinance, and bounded by F.M. 1495 on the east, S.H. 36 / S.H. 288 on the south, and the Brazos River diversion channel on the west, the substitute instead includes among that portion the area adjacent to the old Brazos River channel and inside the floodgate, which is zoned as a W-1 District under the zoning ordinance, and bounded by Farm-to-Market Road 1495 on the west; and
- the substitute includes the following areas, which were absent from the introduced, among that portion:
 - the area within the portion of Brazoria County 2020 United States Census tract 664200 blocks 2059, 2060, and 2061 that lies within 3,500 feet of the centerline of State Highway 332;
 - the area within the 13.316 acre tract of land described in that certain Deed recorded in Volume 11199, at Page 471 of the Brazoria County Real Property Records; or
 - the area within the 56.751 acre tract of land described in that certain Deed of Exchange recorded in Volume 86286, at Page 927 of the Brazoria County Real Property Records.

The substitute includes a provision not in the introduced excepting from the applicability of the requirement for a municipality to approve a replat requested by the district for purposes of combining previously platted lots for development within 60 days following receipt of the application for replat 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.

While both the introduced and substitute establish the ordinances, rules, or other measures adopted by a municipality to which the district's land use jurisdiction does not apply, the introduced includes as a requisite criterion for such a municipality that the municipality does not effectively prohibit development and operation of industries and businesses on property owned or leased by the district. However, the substitute instead includes as such a criterion that the municipality 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.

The substitute includes an authorization absent from the introduced for an applicable municipality to conduct inspections to verify compliance with excepted ordinances, rules, and measures, if the inspections are conducted in a timely manner, and any differences in interpretation of applicable codes are determined in favor of the district.