

1-1 By: Vasut, Thompson of Brazoria H.B. No. 5336
 1-2 (Senate Sponsor - Huffman)
 1-3 (In the Senate - Received from the House May 10, 2023;
 1-4 May 11, 2023, read first time and referred to Committee on
 1-5 Transportation; May 18, 2023, reported adversely, with favorable
 1-6 Committee Substitute by the following vote: Yeas 9, Nays 0;
 1-7 May 18, 2023, sent to printer.)

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9				
1-10	Nichols	X		
1-11	West	X		
1-12	Alvarado	X		
1-13	Eckhardt	X		
1-14	Hancock	X		
1-15	King	X		
1-16	Miles	X		
1-17	Parker	X		
1-18	Perry	X		

1-19 COMMITTEE SUBSTITUTE FOR H.B. No. 5336 By: Hancock

1-20 A BILL TO BE ENTITLED
 1-21 AN ACT

1-22 relating to the powers and duties of Port Freeport; limiting the
 1-23 authority of certain municipalities to regulate land use by Port
 1-24 Freeport; and the creation of a reinvestment zone containing
 1-25 property owned by Port Freeport.

1-26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-27 SECTION 1. Chapter 5002, Special District Local Laws Code,
 1-28 is amended by adding Subchapters D and E to read as follows:

1-29 SUBCHAPTER D. POWERS AND DUTIES

1-30 Sec. 5002.151. DEFINITIONS. In this subchapter:

1-31 (1) "Port use" means any use permitted or allowed,
 1-32 with or without a special use permit, in the following zoning
 1-33 districts under the zoning ordinance, or any additional use
 1-34 subsequently permitted or allowed in the following zoning districts
 1-35 under an amendment to the zoning ordinance:

1-36 (A) a zoning district designated as DT, C-1, C-2,
 1-37 C-3, or W-1; or

1-38 (B) a zoning district designated as "IN," other
 1-39 than heavy industrial or other heavy industrial uses as defined in
 1-40 the zoning ordinance.

1-41 (2) "Port zone" means:

1-42 (A) the lands within the protected zone that are
 1-43 located both south of West Eighth Street and east of Cherry Street;
 1-44 and

1-45 (B) all lands east of Farm-to-Market Road 1495
 1-46 that are included within the Plat and Dedication of the Freeport
 1-47 Townsite recorded in Volume 2, at Page 95 of the Brazoria County
 1-48 Real Property Records.

1-49 (3) "Protected zone" means the portion of the
 1-50 corporate limits of the City of Freeport as they exist on September
 1-51 1, 2023, that lies:

1-52 (A) within the enclosed space bounded by
 1-53 beginning at the intersection of State Highway 36 and the center of
 1-54 the Brazos River, then north along the center of the Brazos River to
 1-55 the intersection of the center of the Brazos River and the center of
 1-56 the DOW fresh water canal, then north and east along the center of
 1-57 the DOW fresh water canal to the intersection of the center of the
 1-58 DOW fresh water canal and Farm-to-Market Road 1495, then south
 1-59 along Farm-to-Market Road 1495 to the intersection of
 1-60 Farm-to-Market Road 1495 and State Highway 36, and then west along

2-1 State Highway 36 to the intersection of State Highway 36 and the
2-2 center of the Brazos River;

2-3 (B) within Brazoria County 2020 United States
2-4 Census tract 664501 blocks 2027, 2032, and 2034;

2-5 (C) within the enclosed space bounded by
2-6 beginning at the intersection of Farm-to-Market Road 1495 and the
2-7 Intracoastal Waterway, then west along the Intracoastal Waterway to
2-8 the intersection of the Intracoastal Waterway and the Brazos River,
2-9 then south along the Brazos River to the Gulf of Mexico, then east
2-10 along the Gulf of Mexico to the intersection of a line extending
2-11 from the southern terminus of Farm-to-Market Road 1495 due south to
2-12 the intersection with the Gulf of Mexico, and then due north to the
2-13 intersection of Farm-to-Market Road 1495 and the Intracoastal
2-14 Waterway;

2-15 (D) adjacent to the old Brazos River channel and
2-16 inside the floodgate, which is zoned as a W-1 District under the
2-17 zoning ordinance, and bounded by Farm-to-Market Road 1495 on the
2-18 west;

2-19 (E) within the portion of Brazoria County 2020
2-20 United States Census tract 664200 blocks 2059, 2060, and 2061 that
2-21 lies within 3,500 feet of the centerline of State Highway 332;

2-22 (F) within the 13.316 acre tract of land
2-23 described in that certain Deed recorded in Volume 11199, at Page 471
2-24 of the Brazoria County Real Property Records; or

2-25 (G) within the 56.751 acre tract of land
2-26 described in that certain Deed of Exchange recorded in Volume
2-27 86286, at Page 927 of the Brazoria County Real Property Records.

2-28 (4) "Zoning ordinance" means Chapter 155, Code of
2-29 Ordinances, of the City of Freeport, Texas in effect on January 1,
2-30 2023.

2-31 Sec. 5002.152. POWERS REGARDING PORTS AND FACILITIES.
2-32 Except as provided by Section 5002.153, the district may:

2-33 (1) acquire by gift, purchase, or eminent domain and
2-34 own land adjacent or accessible by road, rail, or water to navigable
2-35 water and ports developed by the district that is necessary for the
2-36 development and operation of the navigable water or ports within
2-37 the district or necessary for or in aid of the development of
2-38 industries and businesses on that land; and

2-39 (2) construct, extend, improve, repair, maintain, and
2-40 reconstruct, cause to be constructed, extended, improved,
2-41 repaired, maintained, and reconstructed, and own, rent, lease, use,
2-42 and operate any facility of any kind necessary or convenient to the
2-43 exercise of the rights, powers, privileges, and functions granted
2-44 by this chapter.

2-45 Sec. 5002.153. LIMITATION ON ACQUISITION AND USE OF REAL
2-46 PROPERTY WITHIN THE CORPORATE LIMITS OF CERTAIN MUNICIPALITIES.
2-47 After the effective date of the Act enacting this section, the
2-48 district shall not:

2-49 (1) acquire by gift, purchase, or condemnation any
2-50 real property located within the protected zone unless:

2-51 (A) the acquisition is of a residential lot or
2-52 lots for which no change in the permitted use will be sought by the
2-53 district; or

2-54 (B) the acquisition is submitted to the qualified
2-55 voters of the municipality within which the real property is
2-56 located at an election held on a uniform election date and is
2-57 approved by a majority of the votes received at the election;

2-58 (2) use any property owned or acquired by the district
2-59 in the port zone for anything other than a port use; or

2-60 (3) use any property owned or acquired by the district
2-61 in the protected zone that is not in the port zone for anything
2-62 other than a use permitted under the zoning ordinance unless the use
2-63 is approved by the governing body of the municipality in which the
2-64 land is located.

2-65 Sec. 5002.154. CALLING ELECTION. The governing body of a
2-66 municipality shall call an election under Section 5002.153(1)(B) to
2-67 be held on the next uniform election date within 30 days of the
2-68 municipality's receipt from the district of a written request for
2-69 the election and the description of all property subject to the

3-1 election.
3-2 Sec. 5002.155. REPLATTING OF LAND. (a) The district may
3-3 replat land owned by the district in accordance with Subchapter A,
3-4 Chapter 212, Local Government Code, for the purpose of combining
3-5 previously platted lots for development.

3-6 (b) The municipal authority responsible for approving the
3-7 plat shall approve a replat requested by the district for the
3-8 purposes set forth in this section within 60 days following receipt
3-9 of the application for replat.

3-10 (c) The provisions of Subsection (b) do not apply to the
3-11 replattng of land by the district if the replat creates or proposes
3-12 municipally owned or municipally maintained public right-of-way or
3-13 municipally owned or municipally maintained water, wastewater, or
3-14 stormwater infrastructure within the property being platted.

3-15 SUBCHAPTER E. RELATIONSHIP WITH MUNICIPALITIES

3-16 Sec. 5002.201. DISTRICT PROPERTY SUBJECT TO MUNICIPAL
3-17 JURISDICTION. (a) This section applies only to property:

3-18 (1) owned or leased by the district; and

3-19 (2) located in:

3-20 (A) the district; and

3-21 (B) the boundaries or extraterritorial
3-22 jurisdiction of a municipality with a population of less than
3-23 20,000 that is wholly located in the district and whose corporate
3-24 limits border the Gulf of Mexico.

3-25 (b) Except as provided by Subsection (c), the district has
3-26 exclusive land use jurisdiction over property to which this section
3-27 applies.

3-28 (c) This section does not apply to an ordinance, rule, or
3-29 other measure adopted by a municipality that:

3-30 (1) applies only to property within the boundaries of
3-31 the municipality;

3-32 (2) regulates only the safety of the operations of the
3-33 municipality or reasonable aesthetics, including regulations
3-34 governing fire and emergency response, traffic, light, or noise;

3-35 (3) is commercially reasonable; and

3-36 (4) does not effectively prohibit development and
3-37 operation of industries and businesses on property owned or leased
3-38 by the district that are built in accordance with building codes
3-39 adopted by the district that meet or exceed the building codes
3-40 adopted by the local municipality.

3-41 (d) A municipality may conduct inspections to verify
3-42 compliance with Subsection (c) if the inspections are conducted in
3-43 a timely manner, and any differences in interpretation of
3-44 applicable codes are determined in favor of the district.

3-45 (e) Except as provided by Subsection (c), a municipality may
3-46 not adopt or enforce an ordinance, rule, or other measure that
3-47 prohibits or restricts:

3-48 (1) the acquisition or leasing of property to which
3-49 this section applies for a purpose described by Section 5002.152;
3-50 or

3-51 (2) the development of industries and businesses on
3-52 property to which this section applies.

3-53 Sec. 5002.202. MUNICIPAL CONSENT NOT REQUIRED. Municipal
3-54 consent is not required for the district to exercise a power or duty
3-55 under this chapter.

3-56 Sec. 5002.203. DESIGNATION OF REINVESTMENT ZONE.
3-57 Notwithstanding Subchapter B, Chapter 312, Tax Code, the district
3-58 may submit a written request to the commissioners court of a county
3-59 in which a property owned by the district is located for the
3-60 commissioners court to designate the property as a reinvestment
3-61 zone or area for the purposes of Chapter 312, Tax Code. The
3-62 commissioners court may designate the property as a reinvestment
3-63 zone or area if the commissioners court finds the criteria set forth
3-64 in Section 312.202, Tax Code, are met for the property as if a
3-65 municipality in which the property is located were creating the
3-66 zone.

3-67 Sec. 5002.204. ENFORCEMENT OF SUBCHAPTERS. (a) The
3-68 provisions of Subchapters D and E may be enforced only through
3-69 mandamus or declaratory or injunctive relief. A political

4-1 subdivision's immunity from suit is waived in regard to an action
4-2 under this subchapter.

4-3 (b) A court may award court costs and reasonable and
4-4 necessary attorney's fees to the prevailing party in an action
4-5 under this subchapter.

4-6 Sec. 5002.205. EFFECT OF INVALIDITY OF CERTAIN PROVISIONS.

4-7 (a) This section applies only to a municipality with a population
4-8 of more than 5,000 that is wholly located in the district and to
4-9 property:

4-10 (1) owned or leased by the district;

4-11 (2) located in the district and within seven miles of
4-12 the Gulf of Mexico; and

4-13 (3) located in the corporate limits or
4-14 extraterritorial jurisdiction of a municipality that is subject to
4-15 this section.

4-16 (b) If enforcement of any part of Section 5002.201 is ever
4-17 permanently enjoined or held to be invalid or to violate the
4-18 requirements of the Texas Constitution by a final, non-appealable
4-19 order or judgment of a court of competent jurisdiction, other than
4-20 pursuant to an action initiated by the district, then:

4-21 (1) all of Section 5002.201 will be automatically
4-22 enjoined from enforcement; and

4-23 (2) the authority of a municipality subject to this
4-24 section to regulate property subject to this section under Chapter
4-25 211 or 212, Local Government Code, or any local code or ordinance
4-26 shall be expressly preempted and Chapter 232, Local Government
4-27 Code, shall exclusively apply to such property.

4-28 (c) If enforcement of any part of Section 5002.153 or
4-29 5002.154 is ever permanently enjoined or held to be invalid or to
4-30 violate the requirements of the Texas Constitution by a final,
4-31 non-appealable order or judgment of a court of competent
4-32 jurisdiction, other than pursuant to an action initiated by a
4-33 municipality, then Section 5002.201 will be automatically enjoined
4-34 from enforcement.

4-35 SECTION 2. This Act takes effect immediately if it receives
4-36 a vote of two-thirds of all the members elected to each house, as
4-37 provided by Section 39, Article III, Texas Constitution. If this
4-38 Act does not receive the vote necessary for immediate effect, this
4-39 Act takes effect September 1, 2023.

4-40 * * * * *