

- SUBJECT:** Revising the Chambers County-Cedar Bayou Navigation District
- COMMITTEE:** County Affairs — committee substitute recommended
- VOTE:** 7 ayes — W. Smith, Naishtat, Farabee, Harless, Heflin, Leibowitz, T. Smith
- 0 nays
- 2 absent — Bolton, Coleman
- WITNESSES:** For — Stephen H. Don Carlos, City of Baytown; Scott Forbes, Port of Houston Authority; Calvin Munding, Intermodal Task Force Chairman; Pudge Wilcox, Chambers-Liberty Counties Navigation District; (*Registered, but did not testify:* Robert Floyd, Richardson Stevedoring and Logistics Inc.)
- Against — J.W. Don Johnson, John M. Rocco, Pat Younger, Chambers County-Cedar Bayou Navigation District; Guido Persiani, City of Beach City; (*Registered, but did not testify:* Kevin Younger, Chambers County-Cedar Bayou Navigation District; Dan Pearson, Bayer Material Sciences)
- BACKGROUND:** Local Government Code, sec. 375.064 requires the board of directors for a municipal management district to recommend potential board members to the governing body of the municipality. After reviewing the recommendations, the governing body must approve or disapprove the directors recommended by the board. If the governing body is not satisfied with the recommendations submitted by the board, the board must submit additional recommendations to the governing body.
- The 79th Legislature in 1997 enacted HB 3579 by Zbranek, creating the Chambers County-Cedar Bayou Navigation District. Except for the initial directors named in the act, the Chambers County commissioners court appoints the five directors from a list recommended by the board in the same manner as Local Government Code, sec. 375.064. Directors must own property in the district or hold an interest or position in a corporation or trust owning property in the district.

Water Code, ch. 62, subch. F requires the commissioners court in which a navigation district is located to order an election to issue bonds. The ballots must be printed to allow voting for or against the proposition and say: "the issuance of bonds and the levy of a tax to pay for bonds." Notice must be given, the election conducted, and the returns properly canvassed.

DIGEST:

CSHB 3158 would rename the Chambers County-Cedar Bayou Navigation District the "Cedar Bayou Navigation District" and increase the number of board members from five to seven. Positions 1, 2, 3, 4, and 5 would be appointed by the Chambers County Commissioners Court from a list of candidates recommended by the board in the manner provided in Local Government Code, sec. 375.064. If the commissioners court was not satisfied with any of the recommended candidates, it could select from nominees submitted by members of the commissioners court.

The bill would require the board members to serve staggered six-year terms, with positions 1 and 3 expiring May 1 of an odd-numbered year, positions 2 and 4 expiring May 1 of a different odd-numbered year, and position 5 expiring May 1 of another odd-numbered year.

The bill would require position 6 to be appointed by the mayor of the city of Baytown and position 7 to be appointed by the Baytown city council. The qualifications for positions 6 and 7 would be that the appointees would have to be at least 18 years old and a resident of the city of Baytown. The bill would require these board members to serve staggered six-year terms, with position 6 expiring on the same odd-numbered year as positions 1 and 3, and with position 7 expiring on the same odd-numbered year as positions 2 and 4. Regardless of the length of terms prescribed, the appointees to positions 6 and 7 would begin their terms on September 1, 2007, but the position 6 term would expire May 1, 2011, while position 7 term would expire May 1, 2013.

In addition to the powers already granted to the Cedar Bayou Navigation District, CSHB 3158 would allow the district to:

- develop navigation and improve bayous, bays, creeks and streams inside or adjacent to the district;
- construct and maintain harbors, basins, and waterways to permit or aid navigation; and
- purchase or otherwise acquire, establish, construct, own, maintain, operate, develop, and regulate wharves, piers, docks, fleeting areas,

land, roadways, and other structures and facilities incident to or accommodating of commerce or navigation.

The bill would not require the district to fully absorb the cost and expense of an adjustment or relocation of a pipeline, conduit, or underground facility that passed through a channel, bayou, creek, stream, or other waterway within or adjacent to the district, if it was part of any navigation improvement or maintenance project involving the waterway.

The rights, powers, privileges, and authority of the Cedar Bayou Navigation District would not supersede or diminish the rights, powers, privileges, and authority of the Port of Houston Authority of Harris County, Texas, the United States Army Corps of Engineers, or any state or federal agency. The district could not exercise its powers inside the boundaries of another navigation district without that district's agreement.

The bill would allow the Cedar Bayou Navigation District to make a contract with other navigation districts to provide authorized services and pay or secure these services through ad valorem taxes or other revenues of the district. If the Texas Constitution required an election to permit the payment and security, it would have to be held in accordance with the requirements of Water Code, ch. 62, subch. F.

The bill would remove language referring to the names and expiration dates of specific board members appointed in 1997.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 3158 would protect the interests of all taxpayers affected by the Cedar Bayou Navigation District, which would be reflected in the proposed name change. Citizens of Baytown will be affected by development along the navigation district, since the city has residential property along the west bank of the bayou, with views facing an undeveloped stretch of the east bank within the district. Decisions made by the navigation district could lead to port development activities along the east bank, in part because of the arrival of a Wal-Mart Distribution Center in the area. Because quality of life and property values in Baytown could be affected by the actions of the navigation district, the city should have a voice on the board of directors of the navigation district.

The bill has the support of a wide range of the communities impacted by the Cedar Bayou Navigation District, including Chambers County, the city of Baytown, all other adjacent counties, and the Port of Houston. It would not expand the eminent domain rights of the district.

CSHB 3158 would allow the Chambers County Commissioner Court to exercise greater authority over who is appointed to the Cedar Bayou Navigation District board. The 1997 enabling legislation has encouraged nepotism on the board of directors because of the method in which vacancies are filled. Currently, county commissioners must select from a list of nominees provided by the board. Instead, the bill would allow the commissioners court to reject the list provided by the board and recommend nominees of their own choosing. The bill would further ensure that the navigation district would not attempt to supersede the authority of surrounding districts, authorities, or government entities of the state of Texas or the United States.

To address concerns regarding the potential for appointing board members with no economic stake in the Cedar Bayou Navigation District, a floor amendment will be offered that would require the board positions to be filled by representatives of those with the highest taxable value of real and personal property in the district.

**OPPONENTS
SAY:**

CSHB 3158 would allow for the appointment of board members that have no economic stake in the Cedar Bayou Navigation District. This bill should respect the fact that the navigation district was created in order to serve the interests of the citizens and businesses within the district's boundaries. By allowing the Chambers County commissioners court to appoint members to the board over the objection of the board of directors, this bill would allow the county commissioners to appoint people to the board with no regard to their financial interest in the district.

While some adjacent authorities would like to affect private development in the area, the Cedar Bayou Navigation District has no zoning or permitting authority along the waterway and cannot influence private development within its jurisdiction. The navigation district simply is authorized to improve the navigation of vessels along the bayou and should have a board of directors dedicated to serving that purpose. The navigation district has already proven it is a good steward by agreeing to expand the board to include two members from the city of Baytown even though the city is not technically within the boundaries of the district. This

bill should not handicap the Cedar Bayou Navigation District by making it function differently than other navigation districts across the state.

OTHER
OPPONENTS
SAY:

CSHB 3158 should protect the economic interests of all people living in the Cedar Bayou Navigation District by creating a seat on the board of directors for the city of Beach City, whose citizens currently are taxed by the district but have no representative on the board.

NOTES:

A floor amendment will be offered that would require:

- board of director positions 1 and 2 to be representatives of a company or business in the district that has the highest and second highest taxable value of real and personal property located in the district, as certified by the Chambers County Appraisal District;
- board of director positions 3 and 4 to be representatives of a company or business in the district that owned real or personal property with a taxable value of at least \$25 million but less than \$250 million, as certified by the Chambers County Appraisal District; and
- and board of director position 5 to be a representative of a company or business in the district that owns real or personal property with a taxable value of at least \$5 million but less than \$25 million, as certified by the Chambers County Appraisal District.

The floor amendment also would allow the board of directors to elect a chairperson from the board of directors, who could serve in that position for a term of four years. Beginning on September 1, 2007, the chairperson would be elected by positions 1, 2, 3, 4, and 5. At the conclusion of the term of the initial chairperson, the next chairperson would be elected by directors 6 and 7. The group of directors that elected the chairperson would continue to alternate thereafter.

The committee substitute differs from the original by allowing the commissioners court to reject nominees to the district's board of directors and appoint their own nominees. The substitute would add fleeting areas to the navigation district's jurisdiction and not include the ability to control the operation of vessels. The Cedar Bayou Navigation District could not supersede or diminish the rights of other governmental entities and could not exercise its powers over another district without that district's

agreement. The substitute would not provide the navigation district the ability to annex new territory within its boundary without an election or allow the adjacent district to disannex such territory.