

SUBJECT: Establishing inland port authorities

COMMITTEE: Transportation — committee substitute recommended

VOTE: 5 ayes — Krusee, Phillips, Haggerty, Hill, Murphy

1 nay — Deshotel

3 absent — Harper-Brown, Harless, Macias

SENATE VOTE: On final passage, May 10 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

DIGEST: CSSB 1693 would add Business and Commerce Code, Title 15 to establish inland port authorities (IPAs) as special districts defined in Texas Constitution, Art. 16, sec. 59. The purpose of inland ports would be to facilitate commerce through investment in multi-modal transportation assets and comprehensive planning development, management, and operation of infrastructure and facilities that supported transportation, commercial processing, and trade.

Port establishment. A municipality or county could create an inland port authority completely or partly in its jurisdiction, including an extraterritorial jurisdiction. Establishing entities could create an authority through order, ordinance, or resolution and would have to formally execute an agreement to establish an authority and specify its powers as provided in law.

An inland port authority could be created in a contiguous area that was located in two or fewer counties that did not include property zoned for residential use comprising more than 5 percent of the total taxable appraised value in the area. An eligible area also would have to include:

- a municipally owned airport with a runway at least 4,900 feet in length;
- a portion of an interstate highway or a highway designated as a high priority trade corridor on the national highway system; and

- operational assets of at least one Class I railroad (e.g., Union Pacific, Burlington Northern Santa Fe).

An area to be included in an authority could not include any property that was willfully excluded by the owner.

Port processes. An entity interested in establishing an authority would be required to hold two hearings to consider the creation of the proposed authority and would have to provide notice by posting in a general circulation paper. A notice for a hearing would have to contain information about the boundaries and powers of a proposed IPA and information about the opt-out option available to property owners. Following a hearing, the governing bodies of all participating entities could order the creation of an authority by specifying the number of directors to oversee the IPA, the party or parties that would be responsible for appointing the directors, and the authority's boundaries.

An authority's board of directors would comprise three directors appointed by the largest member municipality, one director appointed by smaller municipalities, and one director appointed by each school district that owned property within the authority's boundaries. Elected officials and employees of participating entities would not be barred from becoming a director of the IPA. The bill would include additional provisions regulating boards and board members, including compensation, conduct, and the authority and processes for removing a director.

Port power and authorities. An authority would facilitate and process domestic and international trade through strategic investment in multi-modal transportation assets, logistics systems, security processes, customs, freight transfer equipment, and through the promotion of value-added services. An authority would have the powers and duties of a municipal management district recognized in existing statutory provisions. An authority could adopt rules governing its operations, including rules for port employees, facilities, the health, safety, and general welfare of persons and property, and other necessary and relevant matters.

An IPA could acquire or finance a transportation project or public utility facility, purchase property for the purposes of such a project, and construct or improve a transportation project as necessary to ensure adequate transportation and public utility infrastructure to support facilities and operations. An IPA would not have the power of eminent domain. An

authority also could enter into agreements providing for the lease of rights-of-way, granting of easements, issuance of franchises, concessions, licenses, permits, and other arrangements necessary to effectively construct and operate transportation projects.

An authority would have a broad range of powers relating to the establishment and management of transportation projects. A governing entity could convey title or usage rights to an authority when necessary but would have to consent in order for an IPA to acquire any property listed on its tax rolls. Authorities would be able to adopt different methods of constructing transportation projects, including the “manager-at-risk” and “design-build” procedures. An authority also could engage in a number of practices to further transportation projects, including acting jointly with other entities, engaging in promotion and advertising, hiring security, accepting grants, loans, and donations, and purchasing insurance.

Any authority property and improvement projects would be subject to municipal land use regulations and other controls. An authority could exercise additional powers over transportation projects with the consent of a municipality, the Texas Department of Transportation, or a railroad, as applicable.

Financial provisions. The bill would provide an authority with the ability to establish and collect reasonable rates and charges for the use of its facilities. An authority could reimburse a private entity for money spent to improve facilities or other properties that had a public benefit. Authorities would have the financial flexibility to borrow and enter into credit agreements. Authorities could impose standard assessments and impact fees and finance a range of public improvement projects.

IPAs also could issue bonds and certificates of obligation and levy property taxes following an election called for that purpose. An authority’s tax rate could not exceed 10 cents of each \$100 valuation of taxable property in the authority.

Withdrawal and dissolution. A participating entity would reserve the right to withdraw from an IPA if the governing body of each entity agreed to the withdrawal and if any debt holders agreed to the withdrawal in the event that the authority had outstanding bonded indebtedness. A withdrawal would trigger a revision of the authority’s boundaries and a vacation of any appointed positions. An authority could be dissolved by

unanimous consent among governing bodies of participating entities if all debts and other liabilities of the authority had been discharged, no suits were pending against the authority, and the authority had commitments from governmental entities to assume all vacated property.

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:**

CSSB 1693 would promote efficient and economical movement of freight in Texas by facilitating the construction of intermodal transportation hubs. The bill would provide for the creation of IPAs that would serve as tools for developing transportation infrastructure away from traditional coastal areas. The establishment of IPAs near key freight transportation features — namely commercial airports, large railroads, and interstates and trade corridor highways — would help leverage existing infrastructure while enhancing capacity to pursue new transportation projects. Providing an institutional means of enhancing transportation resources would have great economic benefits because it would concentrate transportation services and increase the commercial accessibility and cost of such services. Reducing transportation costs would help enhance the competitiveness of Texas goods domestically and internationally.

CSSB 1693 would be permissive in allowing municipalities and counties to create IPAs if and when they were necessary. The bill would not create additional regulatory requirements and would not allow IPAs to assess additional property taxes without an election supporting such a measure. IPAs would not be allowed to acquire the land or complete transportation improvements on land or facilities owned by any participating governmental entities without their express prior consent. Property owners could request to have their property excluded from an IPA prior to its establishment. The bill also would contain provisions for withdrawing from and disbanding an IPA, which would provide additional security for participating entities electing to establish an IPA in their jurisdictions.

**OPPONENTS
SAY:**

IPAs provide little added advantages over other currently available tools municipalities may use to finance public improvements, such as tax increment financing arrangements. Their use would create an additional level of taxes and bureaucracy for little added value to the public interest. IPAs would have an unfair advantage over current intermodal facilities because they would have the authority to impose property taxes, issue

bonds, and utilize additional financing options unavailable to other entities. A municipality that established an IPA could tax current private logistics facilities and use revenue attained to compete with existing facilities.

OTHER
OPPONENTS
SAY:

The committee substitute would create political imbalances among governing bodies that decided to establish IPAs. The bill would give the largest municipality participating in an IPA agreement a preponderance of appointments of IPA directors — three — while all other participating bodies would get only one appointment. All municipalities partaking in an IPA agreement should have an equal influence over the proceedings of the authority. The bill also inadequately would specify whether all entities would have to consent in order to create an IPA or whether one municipality could decide to establish an authority, and whether an affected municipality could opt out of an IPA.

CSSB 1693 would not allow an entity that appointed a director to take measures to remove the director for reasons other than incompetence. This effectively would nullify any meaningful control by entities subsequent to an original appointment.

The bill also would not require a municipality considering establishing an IPA to take diligent measures to notify potentially affected homeowners. Under the passive notification measures required in the bill, homeowners unwittingly could lose their chance to opt out of an IPA prior to its establishment. Lack of sufficient notification could cause a great deal of confusion and anguish. Notification should be required through verified mail and should be distributed to all affected property owners.

NOTES:

The committee substitute made a number of changes to the Senate-passed version of the bill and would:

- provide that an area to be included in an authority could not include any property that willfully was excluded by the owner;
- require an IPA to obtain consent prior to acquiring property on an entity's tax roles and to conform with land use regulations; and
- not allow IPAs to adopt comprehensive development agreements.