

BILL ANALYSIS

Senate Research Center
76R11519 CMR-F

H.B. 3738
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Natural Resources
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Engrossed

DIGEST

The Texas Constitution provides for the creation of certain conservation and reclamation districts. H.B. 3738 would create coastal county conservation districts in counties that border the Gulf of Mexico and that have a beach parks board.

PURPOSE

As proposed, H.B. 3738 creates coastal county conservation districts in counties that border the Gulf of Mexico and that have a beach parks board.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 12A, Local Government Code, by adding Chapter 378, as follows:

CHAPTER 378. COASTAL COUNTY CONSERVATION DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 378.001. LEGISLATIVE FINDINGS; PURPOSES. Sets forth legislative findings and purposes of the Act.

Sec. 378.002. CONSTRUCTION OF CHAPTER. Sets forth construction of the chapter.

Sec. 378.003. DEFINITIONS. Defines "board," "bond," "commission," and "district."

Sec. 378.004. GOVERNMENTAL AGENCY; TORT CLAIMS. Provides that conservation management district (district) is a governmental agency, a body politic and corporate, and a political subdivision of the state. Provides that a district is a unit of government for purposes of Chapter 101, Civil Practice and Remedies Code, and operations of a district are considered to be essential governmental functions and not proprietary functions for all purposes, including the application of the Texas Tort Claims Act.

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 378.021. AREAS ELIGIBLE FOR CREATION OF DISTRICT. Authorizes the creation of a district only in a county that borders the Gulf of Mexico and has a beach parks board.

Sec. 378.022. PETITION. Authorizes the creation of a district only after the county receives a petition requesting one. Sets forth the requirements of the petition.

Sec. 378.023. COUNTY HEARING; NOTICE. Requires the county or a person authorized by the commissioners court to set a date, time, and place for a hearing to consider each petition received. Requires the commissioners court or authorized person to issue a notice of the date, time, and place of hearing.

Sec. 378.024. PUBLICATION OF NOTICE. Requires the commissioners court or authorized

person to publish notice of the hearing in a newspaper of general circulation in the county in which the proposed district is located. Provides that the publication must occur not later than the 31st day before the date on which the hearing will be held. Requires the petitioner, not later than the 30th day before the date of the hearing, to send the notice of the hearing by certified mail to each person who owns real property in the proposed district, according to the most recent certified county property tax rolls, other than a property owner who signed the petition for creation. Requires the tax assessor and collector to certify from the tax rolls ownership of property on the date the petition is filed with the commissioners court.

Sec. 378.025. HEARING. Requires the commissioners court, at a hearing set under this Act, to examine the petition to determine its sufficiency. Authorizes any interested person to appear before the commissioners court and offer testimony. Provides that the commissioners court has jurisdiction to determine each issue relating to the creation of the district. Requires the commissioners court, if after the hearing it finds that the district is feasible and necessary and would be a benefit to all or any part of the land proposed to be included in the district and the public, to grant the petition. Authorizes the commissioners court to create the district over only a portion of the area described in the petition.

Sec. 378.026. ORDER; INITIAL DIRECTORS. Requires the commissioners court, if it grants the petition, to appoint the initial directors in the order creating the district.

SUBCHAPTER C. BOUNDARIES

Sec. 378.041. BOUNDARIES. Provides that the boundaries of a district are as prescribed by the commissioners court order creating the district. Authorizes the commissioners court to issue a subsequent order changing the boundaries of the district.

Sec. 378.042. ANNEXATION. Authorizes a district to annex land as provided by Chapter 49, Water Code, subject to the approval of the commissioners court.

Sec. 378.043. EXCLUDING TERRITORY. Authorizes the board on its own motion, at any time during which a district does not have outstanding bonds, to call a hearing on the question of the exclusion of land from the district in the manner provided by Chapter 49, Water Code, if the exclusions are practicable, just, or desirable. Requires the board to call a hearing on the exclusion of land or other property from the district if a landowner or property owner in the district files with the secretary of the board a written petition requesting the hearing before the issuance of bonds.

SUBCHAPTER D. ADMINISTRATIVE PROVISIONS; BOARD OF DIRECTORS

Sec. 378.061. NUMBER OF DIRECTORS; TERMS. Provides that a district is governed by a board of seven directors who serve staggered four-year terms.

Sec. 378.062. TERMS OF INITIAL DIRECTORS. Requires the initial directors to be divided into one group of four directors and one group of three directors; the group of four directors serves four-year terms, and the group of three directors serves two-year terms. Requires the grouping of initial directors and terms for the directors in each group be determined by the commissioners court.

Sec. 378.063. QUALIFICATIONS OF DIRECTORS. Provides that a person, to be qualified to serve as a director, must be at least 18 years old and a resident of the district or an owner of property in the district.

Sec. 378.064. APPOINTMENT OF DIRECTORS. Requires the initial and each succeeding member of the board of directors be appointed by the commissioners court. Authorizes board members to serve successive terms.

Sec. 378.065. REMOVAL OF DIRECTOR. Authorizes the commissioners court, after notice and hearing, to remove a director for misconduct or failure to carry out the director's duties on a petition by a majority of the remaining directors.

Sec. 378.066. BOARD VACANCY. Requires a vacancy in the office of director to be filled by

the remaining members of the board for the unexpired term.

Sec. 378.067. DIRECTOR'S BOND AND OATH. Requires a director, as soon as practicable after the director is appointed, to execute a \$10,000 bond payable to the district and conditioned on the faithful performance of the director's duties. Provides that each director's bond must be approved by the board, and requires each director to take the oath of office prescribed by the constitution for public officers. Requires the bond and oath to be filed with the district and retained in its records.

Sec. 378.068. OFFICERS. Requires the directors, after they are appointed and have qualified by executing a bond and taking the oath, to organize by electing a president, a vice-president, a secretary, and any other officers the board considers necessary.

Sec. 378.069. COMPENSATION OF DIRECTORS; REIMBURSEMENT OF EXPENSES. Entitles a director, in accordance with Section 49.060, Water Code, to compensation for service on the board and reimbursement for necessary expenses incurred in carrying out the duties and responsibilities of a director.

Sec. 378.070. QUORUM. Provides that one-half of the directors constitutes a quorum, and provides that a concurrence of a majority of a quorum of directors is required for any official action of the district.

SUBCHAPTER E. POWERS AND DUTIES

Sec. 378.091. GENERAL POWERS OF DISTRICT. Provides that a district has the rights, powers, privileges, authority, and functions conferred by the general law of this state applicable to conservation and reclamation districts created under Article XVI, Section 59, of the Texas Constitution, including those conferred by Chapter 54, Water Code, with respect to the purposes for which it is created. Authorizes the district to contract and manage its affairs and funds for any corporate purpose in accordance with Chapter 54, Water Code.

Sec. 378.092. SPECIFIC POWERS. Provides that a district has the powers necessary or convenient to carry out and effect the purposes and provisions of this Act, including the powers granted in this section. Sets forth specific powers.

Sec. 378.093. USE AND ALTERATION OF LAND AND PUBLIC WAYS. Authorizes the district to construct all improvements and facilities necessary to accomplish the purposes for which it was created on lands, whether publicly or privately owned. Provides that a district, before constructing an improvement or facility on lands owned by the county, the state, a municipality, or another political subdivision, must obtain approval from the relevant government entity of the plans and specifications of such improvement or facility. Provides that a district, if it requires certain modifications to certain facilities or property, must cover all cost and expense of such modifications. Requires the district to bear damages that are suffered by the owners of the facilities or property.

Sec. 378.094. NO EMINENT DOMAIN POWER. Prohibits a district from exercising the power of eminent domain. Authorizes the commissioner's court to exercise its power of eminent domain to implement a district facility or improvement.

Sec. 378.095. MANAGEMENT BY BOARD OF DIRECTORS. Vests the responsibility for the management, operation, and control of the property belonging to a district in the board.

Sec. 378.096. SPECIFIC POWERS AND DUTIES OF BOARD. Authorizes the board to employ necessary persons, dismiss employees, adopt a seal for the district, invest funds, establish a fiscal year, establish a system of accounts required to be open for public inspection, and designate depository banks. Requires funds of a district to be deposited in the depository bank or banks unless otherwise required by orders or resolutions authorizing the issuance of the district's bonds or notes. Provides that funds in the depository bank or banks, to the extent that they are not insured by the Federal Deposit Insurance Corporation, must be secured in the manner provided by law for the security of funds of counties. Authorizes the board by resolution to authorize a designated representative to supervise the substitution of securities pledged to secure the district's

fund. Authorizes the board to adopt and enforce reasonable rules and regulations governing the administration of the district and its programs and projects. Authorizes the board, by resolution, to establish or change the name of the district.

Sec. 378.097. HEARINGS EXAMINER; ADMINISTRATIVE PROCEDURE ACT. Authorizes the board to appoint a hearings examiner to conduct any hearing called by the board, including a hearing required by Chapter 395, Local Government Code. Authorizes the hearings examiner to be an employee of the district or a member of the district's board. Requires the hearing to be conducted in accordance with Chapter 2001, Government Code.

SUBCHAPTER F. ASSESSMENTS

Sec. 378.111. GENERAL POWERS RELATING TO ASSESSMENTS. Authorizes the board to levy and collect an assessment for any purpose authorized by this Act. Authorizes the board of a district to undertake improvement projects and services that confer a special benefit on all or a definable part of the district. Authorizes the board to levy and collect special assessment on property in that area, based on the benefit conferred by the improvement project or services, to pay all or part of the cost of the project and services. Authorizes the district to provide improvements and services to an area outside the boundaries of the district, if the board determines that there is a benefit to the district.

Sec. 378.112. SPECIFIC POWERS RELATING TO ASSESSMENTS. Authorizes an improvement project or services provided by the district to include the construction, acquisition, improvement, relocation, operation, maintenance, or provision of certain improvements, projects, or services; and expenses incurred in the establishment, administration, maintenance, and operation of the district or any of its improvements, projects, or services.

Sec. 378.113. PROPOSED ASSESSMENTS. Authorizes services or improvement projects to be financed under this Act after a hearing notice given as required by this Act and a public hearing by the board on the advisability of the improvements and services and the proposed assessments.

Sec. 378.114. PETITION REQUIRED. Prohibits the board from financing services and improvement projects under this Act unless a written petition has been filed with the board requesting those improvements or services signed by at least 25 persons who own real property in the district if, according to the most recent certified property tax rolls, more than 25 persons own real property in the district.

Sec. 378.115. ASSESSMENT ELECTION. Prohibits assessments from being levied unless approved by a majority of the qualified voters in the district voting at an election held for that purpose unless a written petition has been filed with the board requesting the improvements or services which is signed by the owners of 50 percent or more of the assessed value of the property in the district to be assessed as determined from the most recent certified county property tax rolls. Requires elections required by this section to be conducted in accordance with Chapter 376, Local Government Code.

Sec. 378.116. NOTICE OF HEARING. Requires notice of the hearing to be given in a newspaper with general circulation in the county in which the district is located. Provides that the final publication must be made no later than the 30th day before the date of the hearing. Sets forth the composition of the notice. Requires the written notice to be sent by certified mail not later than the 30th day before the date of the hearing. Requires the notice to be mailed to each property owner in the district who will be subject to assessment at the current address of the property to be assessed as reflected on the tax rolls.

Sec. 378.117. CONCLUSION OF HEARING; FINDINGS. Authorizes a hearing on the services or improvement project, whether conducted by the board or a hearings examiner, to be adjourned from time to time. Requires the board, at the conclusion of the hearing to make findings by resolution or order relating to the advisability of the improvement project or services, the nature of the improvement project or services, the estimated cost, the area benefitted, the method of assessment, and the method and time for payment of the assessment. Requires the hearings examiner, if a hearings examiner is appointed to conduct the hearing, to file with the board a report stating the examiner's findings and conclusions after conclusion of the hearing.

Sec. 378.118. AREA TO BE ASSESSED. Authorizes the area of the district to be assessed according to the findings of the board to be the entire district or any part of the district and to be less than the area proposed in the notice of the hearing. Prohibits the area to be assessed, except as provided by Subsection(c), from including property that is not within the district boundaries at the time of the hearing unless there is an additional hearing, preceded by the required notice. Authorizes the owner of improvements constructed or land annexed to the district after the district has imposed assessments to waive the right to notice and an assessment hearing and to agree to the imposition and payment of assessments at an agreed rate for improvements constructed or land annexed to the district.

Sec. 378.119. OBJECTIONS; LEVY OF ASSESSMENT. Requires the board, at a hearing on proposed assessments, at any adjournment of the hearing, or after consideration of the hearings examiner's report, to hear and rule on all objections to each proposed assessment. Authorizes the board to amend proposed assessments for any parcel. Requires the board, by order or resolution, after all objections have been heard and action has been taken with regard to those objections, to levy the assessments as special assessments on the property and to specify the method of payment of the assessments. Authorizes the board to provide that those assessments be paid in periodic installments, including interest. Provides that periodic installments must be in amounts sufficient to meet annual costs for services and improvements as provided by this Act and continue for the number of years required to retire indebtedness or pay for the services to be rendered. Authorizes the board to provide interest charges or penalties for failure to make timely payment and also to levy an amount to cover delinquencies and expenses of collection. Authorizes the board, if assessments are levied for more than one service or improvement project, to authorize that assessments collected for one service or improvement project be borrowed to be used for another service or improvement project. Requires the board to establish a procedure for the distribution or use of any assessments in excess of those necessary to finance the services or improvement project for which those assessments were collected.

Sec. 378.120. APPORTIONMENT OF COST. Requires the portion of the cost of an improvement project or services to be assessed against the property in the district to be apportioned by the board based on the special benefits accruing to the property because of the improvement project or services. Authorizes the cost to be assessed equally by front foot or by square foot of land area against all property in the district; against property according to the value of the property as determined by the board, with or without regard to structures or other improvements on the property; or on any other reasonable assessment plan that results in imposing fair and equitable shares of the cost on property similarly benefitted.

Sec. 378.121. ASSESSMENT ROLL. Requires the board, if the total cost of an improvement project or services is determined, to levy the assessments against each parcel of land against which an assessment may be levied in the district. Authorizes the board, with regard to an assessment for services, to levy an annual assessment that may be lower but not higher than the initial assessment. Requires the board to have an assessment roll prepared showing the assessments against each property and the board's basis for the assessment. Requires the assessment roll to be filed with the secretary of the board or other officer who performs the function of secretary and be open for public inspection.

Sec. 378.122. INTEREST ON ASSESSMENTS; LIEN. Prohibits the rate specified by the board at which assessments bear interest from exceeding the interest rate permitted by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, V.T.C.S.). Requires interest on an assessment between the effective date of the order or resolution levying the assessment and the date the first installment and any related penalty is payable to be added to the first installment. Requires the interest or penalties on all unpaid installments to be added to each subsequent installment until paid. Provides that assessments, reassessments or assessments resulting from an addition to or correction of the assessment roll by the district, penalties and interest on an assessment or reassessment, expenses of collection, and reasonable attorneys' fees incurred by the district area first and prior lien against the property assessed; are superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes; and are the personal liability of and charge against the owners of the property even if the owners are not named in the assessment proceedings. Provides that the lien is effective from the date of the resolution of the board levying the assessment until the assessment is paid. Authorizes the board to enforce the lien in the same manner that the board is authorized to enforce an ad valorem tax

lien against real property. Authorizes the owner of any property assessed to pay at any time the entire assessment against any lot or parcel with accrued interest to the date of the payment.

Sec. 378.123. SUPPLEMENTAL ASSESSMENTS. Authorizes the board, after notice and hearing in the manner required for original assessments, to make supplemental assessments to correct omissions or mistakes in the assessment relating to the total cost of the improvement project or services; or covering delinquencies or costs of collection.

Sec. 378.124. APPEAL. Authorizes a property owner, after determination of an assessment, to appeal the assessment to the board. Sets forth the appeal process.

Sec. 378.125. APPEAL OF ORDER. Authorizes a person against whom an assessment is made by board order, if notice has been given as required by this Act, to appeal the assessment to a district court in the county in which the district is located in the manner provided for the appeal of contested cases under Chapter 2001, Government Code. Provides that review by the district court is by trial de novo.

SUBCHAPTER G. EXEMPTIONS

Sec. 378.141. PUBLIC UTILITIES. Prohibits the district from imposing an assessment on the property, equipment, or facilities of a public utility.

Sec. 378.142. GOVERNMENTAL ENTITIES; ASSESSMENTS. Requires payment of assessments by municipalities, counties, other political subdivisions, and organizations exempt from federal income tax under Section 501(c)(3), Internal Revenue Code of 1986, to be established by contract. Authorizes municipalities, counties, and other political subdivisions to contract with the district under terms and conditions those entities consider advisable to provide for the payment of assessments.

SUBCHAPTER H. FUNDS; BONDS

Sec. 378.161. FUNDS AVAILABLE FOR PAYMENT OF PROJECTS AND SERVICES. Authorizes the cost of any improvement project or services, including interest during construction and costs of issuance of bonds, to be paid from general or available funds, assessments, or the proceeds of bonds payable from revenues, assessments, grants, gifts, contracts, leases, or any combination of those funds. Authorizes the board, during the progress of an improvement project or services, to issue temporary notes to pay the costs of the improvement project or services and issue bonds on completion. Authorizes the costs of more than one improvement project or service to be paid from a single issue and sale of bonds without other consolidation proceedings before the bond issue.

Sec. 378.162. BONDS. Authorizes the board, for the payment of all or part of the costs of an improvement project or services, to issue bonds in one or more series payable from and secured by assessments, revenues, grants, gifts, contracts, leases, or any combination of those funds. Authorizes bonds to be liens on all or part of the revenue derived from improvements authorized under this Act, including installment payments of special assessments or from any other source pledged to their payment. Requires the district to have the power to issue bonds in the manner set forth in Chapter 375J, Local Government Code, relating to bonds issued by municipal management districts. Requires bonds to be issued and approved by the board of directors of the district without the consent of the county, any municipality, or TNRCC.

SUBCHAPTER I. COMPETITIVE BIDDING

Sec. 378.181. COMPETITIVE BIDDING ON CERTAIN PUBLIC WORKS CONTRACTS. Provides that contracts of the district are subject to the competitive bidding requirements of Chapter 49, Water Code.

Sec. 378.182. SUPERSEDES OTHER LAW. Provides that this Act states the required procedures necessary for the district to award contracts and supersedes any law or other requirement with respect to award of contracts.

SUBCHAPTER J. BOND ELECTION

Sec. 378.201. ELECTION TO APPROVE ISSUANCE OF BONDS. Prohibits bonds secured by assessments from being issued unless approved by a majority of the qualified voters in the district voting at an election held for that purpose; or the district received a petition requesting the assessment and the issuance of bonds which is signed by the owners of 50 percent or more of the assessed value of the property in the district to be assessed as determined from the most recent certified county property tax rolls. Provides that bonds not secured by assessments are not subject to the requirement of an election and authorizes their issuance without an election. Requires an election required by this section to be conducted in accordance with Chapter 376, Local Government Code.

SUBCHAPTER K. DISSOLUTION

Sec. 378.221. DISSOLUTION BY BOARD VOTE. Authorizes the board of a district by majority vote to dissolve the district at any time.

Sec. 378.222. DISSOLUTION BY COUNTY ORDER. Authorizes the commissioners court of the county in which a district is located, by a vote of not less than two-thirds, to adopt a resolution dissolving the district.

Sec. 378.223. LIMITATION. Prohibits the dissolution of a district by its board or by a county if the district has any outstanding bonded indebtedness until that bonded indebtedness has been repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds.

SUBCHAPTER L. CONTRACTS WITH DISTRICT

Sec. 378.241. CONTRACTS WITH DISTRICT. Authorizes a municipality, county, or any other political subdivision of the state to contract with the district to implement a project of the district or aid and assist the district in providing the services authorized under this Act. Authorizes a contract under this section to be for a period on which the parties agree; include terms on which the parties agree; be payable from assessments or any other sources of revenue that may be available for such purpose; and provide that assessments or other revenue collected at a district project or from a person using or purchasing a commodity or service at a district project may be paid or rebated to the district under the terms of the contract. Authorizes the district to enter into a contract, lease, or agreement with or make or accept grants and loans to or from the United States, including federal departments and agencies; the state or a state agency; a county, municipality, or other political subdivision of the state; a public or private corporation; and any other person. Authorizes the district to perform all acts necessary for the full exercise of the powers vested in the district on terms and conditions and for the term the board is authorized to determine as advisable.

SECTION 2. Emergency clause.

Effective date: upon passage.