

BILL ANALYSIS

Senate Research Center

H.B. 3223
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law authorizes cities and counties to create public improvement districts (district) upon the voluntary petition of landowners. However, that law has some ambiguities or absences relating to the addition or exclusion of certain land from a district or the purchasing of certain improvements. Statutory change may be necessary to properly address these concerns.

H.B. 3223 authorizes public improvements to be located inside or outside the district, to include facilities for police, fire, and municipal services, and to include any combination of improvements outlined in the petition for the creation of a district. This bill authorizes property in a district to be noncontiguous and for the boundaries of the district to be adjusted. This bill authorizes the reduction of assessments by means other than available revenues and the financing of public improvements from installment payments of assessments without the issuance of bonds.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 372.003(a), (b), and (d), Local Government Code, as follows:

- (a) Authorizes the undertaking of a public improvement project (project) that confers a special benefit on a definable part of the municipality, county, or municipality's extraterritorial jurisdiction, in the municipality or county or the municipality's extraterritorial jurisdiction or inside or outside the public improvement district (district).
- (b) Includes enhancements and public facilities for improvement and promotion of the district including services relating to advertising and promotion of the district, and public facilities that the governing body of the county meets certain goals, as an authorized aspect of a project.
- (d) Authorizes a county to establish a district except that if the proposed district includes territory in the corporate limits or extraterritorial jurisdiction of a home rule municipality, the district is prohibited from being established unless within 30 days after the date of a county's action to approve such a district, the county sends notice by certified mail of the proposed action to each home rule municipality in whose corporate limits or extraterritorial jurisdiction all or any part of the district is proposed to be established, and within 30 days after the date of the receipt of that notice, a home rule municipality does not object to such establishment.

SECTION 2. Amends Section 372.007(a), Local Government Code, to authorize a governing body to use the services of county employees or the governing body of a county or municipality to employ consultants, to prepare a report to determine whether an improvement or combination of improvements should be made by petition, rather than by petition or otherwise or in combination with other improvements. Makes a conforming change.

SECTION 3. Amends Subchapter A, Chapter 372, Local Government Code, by adding Section 372.0095, as follows:

Sec. 372.0095. PETITION; AMENDMENTS TO RESOLUTION CREATING DISTRICT. (a) Authorizes the real property owners in a district to file a petition requesting the governing body of the municipality or county to amend the resolution creating the district to increase or decrease the estimated cost of the improvements, to add or delete one or more improvements, or to revise the method of assessment before assessments have been levied to pay the costs of the improvements.

(b) Requires the petition to satisfy the requirements of Section 372.005 (Petition).

(c) Requires the appropriate governing body to hold a hearing in the same manner as a hearing under Section 372.009 (Hearing) before the resolution is amended. Authorizes that governing body, by majority vote of all members of the governing body, to amend the resolution creating the district if said body finds the amendment to be advisable.

(d) Requires the county, within 30 days after the date of a hearing under Subsection (c), to send notice by certified mail of the amendment to each home rule municipality in whose corporate limits or extraterritorial jurisdiction all or any part of the district is proposed to be established.

(e) Provides that the amendment takes effect only if it has been published in the manner provided by Subsection (f) and a home rule municipality to which notice has been sent under Subsection (d) does not object to the amendment within 30 days after the date of receipt of the notice.

(f) Sets forth requirements regarding the publication of the amendment in a newspaper of general circulation in the appropriate areas.

SECTION 4. Amends Sections 372.010(a) and (c), Local Government Code, as follows:

(a) Makes conforming changes.

(c) Prohibits actual construction of a new improvement from beginning, or acquisition of an existing improvement from occurring, until after the 20th day after the date the authorization of a district takes effect. Makes conforming changes.

SECTION 5. Amends Section 372.012, Local Government Code, as follows:

Sec. 372.012. New heading: AREA OF DISTRICT; ADDING OR EXCLUDING AREA. (a) Creates this subsection from existing text.

(b) Provides that a district is not required to be composed of contiguous territory.

(c) Authorizes the majority of owners of an area to file a petition to add or exclude an area unless the district has issued general obligation or revenue bonds that are secured by assessments, or an obligation exists in the district to pay the cost of improvements in installments. Requires such a petition to satisfy the requirements of Section 372.005. Requires the governing body of the municipality or county to hold a hearing in the same manner as a hearing under Section 372.009 before the area is authorized to be added or excluded. Provides that the area is added or excluded if the governing finds such an action advisable, except as provided by Subsection (d).

(d) Requires the county, within 30 days after the date of a hearing under Subsection (c), to send notice by certified mail of the petition to each home rule municipality in whose corporate limits or extraterritorial jurisdiction all or any part of the district is proposed to be added or excluded. Prohibits the addition of or exclusion of or an area if a home rule municipality objects to the petition within 30 days after the receipt of the notice.

SECTION 6. Amends Section 372.013(b), Local Government Code, to require a service plan to define the annual indebtedness and the projected costs for the improvement or combination of improvements found advisable in a resolution authorizing the district under Section 372.006 (Findings).

SECTION 7. Amends Section 372.015, Local Government Code, by adding Subsection (b-1) and amending Subsection (c), as follows:

(b-1) Authorizes the reduction or elimination of the amount of an assessment under Subsection (b) (regarding assessment of cost of an improvement) or the amount of an installment payment to the extent other revenue is available to pay for the improvements under Section 372.026(e).

(c) Authorizes the governing body of the municipality or county to establish by ordinance or order a method of allocating assessments that is used if an assessed parcel is subdivided and that does not increase the total assessment on any assessed parcel.

SECTION 8. Amends Section 372.016, Local Government Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires the governing body of the municipality or county to prepare a proposed assessment roll after the total cost of an improvement, or combination of improvements, to be paid from assessments is determined.

(d) Requires a revised assessment roll to be included as part of the service plan under Section 372.013 (Service Plan) to reflect the subdivision of assessed parcels and the resulting allocation of the assessments against each parcel on subdivision. Requires the allocation to be consistent with the methodology established in the service plan, including the assessment plan under Section 372.014 (Assessment Plan; Payment By Exempt Jurisdictions) and prohibits the allocation from increasing the total assessment on the parcel.

SECTION 9. Amends Section 372.017(b), Local Government Code, as follows:

(b) Authorizes the governing body of the county or municipality to provide that assessments be paid in periodic installments and at an interest rate and for a period approved by the governing body. Authorizes, but does not require, that such installments result in level annual installment payments. Requires the installments to be in amounts necessary to meet annual costs for improvements and to continue for the period necessary to retire the indebtedness on the improvements or the period approved by the governing body for the payment of the installments.

SECTION 10. Amends Section 372.018, Local Government Code, as follows:

Sec. 372.018. INTEREST ON ASSESSMENT; LIEN. (a) Provides that an assessment bears interest at the rate specified by the governing body of the municipality or county beginning at the time or times or on the occurrence of one or more events specified by the governing body. Prohibits the interest rate for the assessment financed with general obligation bonds, revenue bonds, time warrants, or temporary notes, from exceeding a rate that is one-half of one percent higher than the actual interest paid on the debt, rather than the public debt used to finance the improvement.

(b) Makes nonsubstantive changes.

(c) Redesignates text from existing Subsection (b).

(d) Provides that the lien runs with the land and that portion of an assessment payment that has not yet come due is not eliminated by foreclosure of an ad valorem tax lien.

(e) Redesignates text from existing Subsection (b). Authorizes the enforcement of the assessment lien by the governing body in the same manner that an ad valorem tax lien against real property is enforced by the governing body. Provides that foreclosure of accrued installments does not eliminate the outstanding principal balance of the assessment. Provides that any purchaser of the property in foreclosure takes property subject to the assessment lien and any associated obligations.

(f) Redesignates text from existing Subsection (b). Authorizes the owner of assessed property to pay all or any part of the assessment, rather than the entire assessment, at any time.

SECTION 11. Amends Section 372.022, Local Government Code, to authorize, rather than require, the creation of a separate district fund to be created in the municipal or county treasury for each district.

SECTION 12. Amends Section 372.023, Local Government Code, by amending Subsections (d) through (g) and adding Subsection (h), as follows:

(d) Requires a cost payable from a special assessment that is to be paid in installments and a cost payable by the municipality or county as a whole but not payable from available general funds or other available general improvement funds to be paid through certain methods set forth in this section.

(e) Prohibits the net effective interest rate for a public security under Section 1204.005 (Computation of Net Effective Interest Rate), Government Code, on money owed or paid under Subsection (d) from exceeding one-half of one percent above the highest average interest rate reported by a newspaper in a weekly bond index in the month before the date of the contract or agreement or the issuance of the bond, temporary note, or time warrant. Requires the newspaper to specialize in bonds and be acceptable as a reliable source for bond interest rates to the governing body of the municipality or county that enters into contract or agreement or that issues the bond, temporary note, or time warrant.

(f) Redesignates text from existing Subsection (e). Authorizes the governing body of a county or municipality, while improvement is in progress, to issue temporary notes for money advanced or time warrants to pay for work performed in connection with the improvement to pay the costs of the improvement, and to issue revenue or general obligation bonds on completion of the improvement. Authorizes the bond proceeds to be used to repay the obligations incurred under this subsection.

(g) Redesignates text from existing Subsection (f). Authorizes the cost of more than one improvement to be paid from a single issue and sale of bonds without other consolidation proceedings or under an agreement with a person who contracts to install or construct the improvement and who sells the improvement to the municipality or county.

(h) Redesignates text from existing Subsection (f). Makes a conforming change.

SECTION 13. Amends Section 372.026, Local Government Code, as follows:

Sec. 372.026. PLEDGES. (a) Defines "obligation."

(b) Redesignates text from existing Subsection (a). Authorizes the governing body of the municipality or county to pledge all or part of the income from improvements financed under this subchapter for the payment of obligations, rather than bonds, issued or agreed to under this subchapter. Makes conforming changes.

(c) Redesignates text from existing Subsection (b). Makes conforming changes.

(d) Redesignates text from existing Subsection (c). Makes conforming and nonsubstantive changes.

- (e) Redesignates text from existing Subsection (d). Makes a conforming change.
- (f) Authorizes the governing body to enter into an agreement with a corporation created by the municipality or county under the Texas Constitution or other law that provides for payment of amounts pledged under this section to the corporation to secure indebtedness issued by the corporation to finance a project, including certain types of indebtedness. Authorizes that agreement to provide that the corporation is responsible for managing the district or title to one or more improvements will be held by the corporation.

SECTION 14. Amends Section 372.102, Local Government Code, as follows:

Sec. 372.102. New heading: NATURE OF DISTRICT; PURPOSE. (a) Provides that a district is created under Section 52 (Counties, Cities, or Other Political Corporations or Subdivisions; Lending Credit; Grants; Bonds), Article III, and Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI, Texas Constitution.

- (b) Creates this subsection from existing text.

SECTION 15. Amends Sections 372.126(a) and (c), Local Government Code, as follows:

- (a) Deletes existing text prohibiting the issuance of bonds from a district if the population in the district is more than 1,000, unless approved by voters.
- (c) Authorizes the securing of certain obligations by district revenue or any type of district taxes or assessments, or any combination of taxes and revenue pledged to the payment of bonds.

SECTION 16. Amends Section 372.130, Local Government Code, by amending Subsection (b) and adding Subsections (c) and (d), as follows:

- (b) Requires the imposition of a sales and use tax in accordance with Chapter 383 (County Development Districts), Local Government Code, or, rather than and, Chapter 323 (County Sales and Use Tax Act), Tax Code.
- (c) Sets forth the required ballot language for a sales tax election to vote for or against the proposition to impose a sales and use tax.
- (d) Authorizes the imposition of a tax authorized at an election held under this section at a rate less than or equal to the rate printed in the ballot proposition.

SECTION 17. (a) Provides that all acts and proceedings related to the authorization of any taxes or bonds, including acts and proceedings related to an election, by a district created under Subchapter C (Improvement Projects in Certain Counties), Chapter 372, Local Government Code, before the effective date of this Act are validated, ratified, and confirmed in all respects as if the acts and proceedings occurred as authorized by law.

- (b) Provides that this section does not apply to any matter that, if on the effective date of this Act, is involved in litigation if the litigation ultimately results in the matter being held invalid by a final court judgment or has been held invalid by such a judgment.

SECTION 18. (a) Provides that an installment sales contract made or attempted to be made by a county or municipality with the party constructing an improvement relating to an improvement district is validated as of the date the contract was made or attempted to be made if that date came before the effective date of this Act and if the contract complies with Section 372.023, Local Government Code, as amended by this Act.

(b) Provides that this section does not apply to any matter that, if on the effective date of this Act, is involved in litigation if the litigation ultimately results in the matter being held invalid by a final court judgment or has been held invalid by such a judgment.

SECTION 19. (a) Provides that the creation of a district by a municipality under Subchapter A (Public Improvement District), Chapter 372, Local Government Code, that contains multiple tracts of noncontiguous land is validated as of the date of the adoption of the resolution by the governing body of the municipality required by Section 372.010, Local Government Code. Provides that the resolution, any improvements authorized by the resolution, any ordinance levying assessments by the municipality in the district, and any related service and assessment plan, including any temporary notes referred to in the plan and any security for the notes, are validated as of the date of the municipality's adoption of the ordinance if such adoption occurred before the effective date of this act and if the resolution and ordinance were approved and accepted in writing by the owners of 100 percent of the taxable property in the district before the effective date of this Act.

(b) Provides that this section does not apply to any matter that, if on the effective date of this Act, is involved in litigation if the litigation ultimately results in the matter being held invalid by a final court judgment or has been held invalid by such a judgment.

SECTION 20. Effective date: upon passage or September 1, 2007.