

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1693  
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Natural Resources  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Inland ports are areas with direct access to highway, rail, air transport, and/or inter-modal facilities that are located away from traditional coastal borders. They serve a purpose similar to port authorities that receive and dispatch water-borne freight, but do so primarily based on the movement of freight through a combination of air, rail, and trucking operations.

Creation of an inland port authority (IPA) would benefit certain communities by helping them compete in today's global economy, since so much of the competition is driven by the ability to process and deliver goods in an expeditious manner. In addition to attracting increased investment in the areas in which it is located, an IPA would complement existing port authorities servicing water-borne freights which often involve goods shipped internationally for further processing and distribution. The overall effect of creating an IPA would be to establish Texas as a desired point of entry for goods shipped from overseas, since the logistic facilities, equipment, and customs processing that would be possible are greatly desired by overseas businesses.

C.S.S.B. 1693 authorizes any combination of counties or municipalities or of counties and municipalities to agree, by ordinance, resolution, rule, order, or other means to establish an IPA. The bill sets forth the powers and duties of an IPA.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to an inland port authority created under Title 15 of the Business and Commerce Code in SECTION 1 (Sections 672.152, 672.160, 672.205, 672.354, and 672.357, Business & Commerce Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the Business & Commerce Code, by adding Title 15, as follows:

#### TITLE 15. CURRENCY AND TRADE

##### SUBTITLE A. CURRENCY

##### SUBTITLE B. PORT OF ENTRY AUTHORITIES

##### CHAPTER 672. INLAND PORT AUTHORITIES

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 672.001. DEFINITIONS. Defines "authority," "board," "bond," "inland port," and "participating entity."

Sec. 672.002. NATURE OF INLAND PORT AUTHORITY. Provides that an inland port authority (IPA) is a special district and a political subdivision of this state created under Section 59, Article XVI, Texas Constitution.

Sec. 672.003. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) Provides that an IPA is created to serve a public use and benefit.

(b) Provides that all land and other property to be included in an IPA will benefit from the works and projects to be provided by the IPA under powers conferred by Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other powers granted under this chapter.

(c) Provides that the creation of the IPA is in the public interest and is essential to further the public purposes of developing and diversifying the economy the state, promote homeland security and protection, eliminate unemployment and underemployment, and develop or expand transportation and commerce.

(d) Provides that this chapter furthers the public purposes of developing and diversifying the economy of this state by encouraging the establishment of inland ports to facilitate commerce through strategic investment in multi-modal transportation assets, and comprehensive planning development, management, and operation of facilities and supporting infrastructure for transportation; commercial processing, and domestic and international trade.

(e) Provides that the IPA will not act as the agent to instrumentality of any private interest even though the IPA will benefit many private interests as well as the public.

[Reserves Sections 672.004-672.050 for expansion.]

#### SUBCHAPTER B. CREATION OF AUTHORITY

Sec. 672.051. AREAS ELIGIBLE FOR CREATION OF AUTHORITY. Authorizes an IPA to be created only in a contiguous area located in not more than two adjacent counties that within its boundaries does not include any residential property; and includes a municipally owned airport with a runway at least 5,500 feet in length; a portion of a highway designated as a high priority trade corridor on the national highway system; and operating assets of at least one Class I railroad as classified by the federal Surface Transportation Board.

Sec. 672.052. ELIGIBILITY OF ENTITY TO CREATE AN AUTHORITY. Provides that a participating entity is eligible to create an IPA if the entity is wholly or partly located in the IPA's proposed boundaries.

Sec. 672.053. PROPOSAL TO CREATE. Provides that an IPA is proposed to be created when each participating entity by order, ordinance, or resolution authorizes the IPA's creation and executes an agreement to create the IPA.

Sec. 672.054. HEARINGS. (a) Requires the governing body, not earlier than the 60th day or later than the 30th day before the date the governing body of a participating entity proposes to create an IPA under Section 672.053, to hold two hearings to consider the creation of the proposed IPA.

(b) Requires the participating entity, not later than the seventh day before the date of each hearing, to publish notice of the hearing in a newspaper of general circulation in the area of the proposed IPA.

(c) Requires the notice to state certain information.

(d) Authorizes the required notice to be published, and authorizes the public hearings to be conducted, jointly by a municipality and a county in which the municipality is wholly or partly located.

Sec. 672.055. CREATION BY ORDER, ORDINANCE, OR RESOLUTION. (a) Authorizes the governing bodies of the participating entities, after all hearings, to by concurrent order, ordinance, or resolution create an IPA.

(b) Requires the order, ordinance, or resolution to specify certain information.

[Reserves Sections 672.056-672.100 for expansion.]

#### SUBCHAPTER C. BOARD OF DIRECTORS; EMPLOYEES

Sec. 672.101. GOVERNING BODY. (a) Provides that the governing body of an IPA is a board of directors (board) with an odd number of directors agreed to by the participating entities when creating the IPA. Sets forth the composition of the board of directors.

(b) Requires the board to manage, operate, and control the IPA.

Sec. 672.102. TERMS. Requires the participating entities to appoint the directors to serve staggered four-year terms with as near as possible to one-half of the directors' terms expiring every two years.

Sec. 672.103. QUALIFICATIONS. (a) Requires a director to reside in the boundaries of one of the participating entities.

(b) Prohibits an individual to serve on the board if the individual is an elected official or an employee of a participating entity.

Sec. 672.104. MAJORITY VOTE; QUORUM. (a) Provides that the vote of a majority attending a board meeting is necessary for any action taken by the board.

(b) Provides that if a vacancy exists on a board, the majority of directors serving on the board is a quorum.

Sec. 672.105. OFFICERS. (a) Requires the board to elect a presiding officer and an assistant presiding officer.

(b) Provides that the assistant presiding officer presides in the absence of the presiding officer.

(c) Authorizes the board to elect other officers it considers appropriate.

Sec. 672.106. COMPENSATION; EXPENSES. Provides that a director serves without compensation but is entitled to reimbursement for actual and necessary expenses.

Sec. 672.107. PROHIBITED CONDUCTED FOR DIRECTORS AND EMPLOYEES. Prohibits an IPA director or employee from engaging in certain activities.

[Reserves Sections 672.108-672.150 for expansion.]

#### SUBCHAPTER D. POWERS AND DUTIES

Sec. 672.151. MUNICIPAL MANAGEMENT DISTRICT POWERS AND DUTIES. Provides that the IPA has the powers and duties applicable to a municipal management district under Subchapter E (Powers and Duties), Chapter 375, Local Government Code.

Sec. 672.152. RULES. Authorizes an IPA to adopt rules to govern the operation of the IPA, including rules relating to its employees; its facilities; health, safety, and general welfare of persons and property; and any other necessary matter concerning the purposes.

Sec. 672.153. INLAND PORTS FACILITATION. Requires an IPA to facilitate and process national and international trade through strategic investment in multi-modal transportation assets, logistics systems, security processes, customs facilities, and freight transfer equipment and by promoting value-added services as goods move through the supply chain and into national and international commerce.

Sec. 672.154. TRANSPORTATION PROJECTS; PUBLIC UTILITY FACILITIES.

(a) Defines "cogeneration facility," "inland port improvement or facility," "intermodal hub," "public utility facility," "spaceport," and "transportation project."

(b) Authorizes an IPA to take certain actions relating to the acquisition, construction, or improvement of a transportation project as necessary to ensure an adequate transportation or public utility infrastructure to support IPA facilities or operations.

(c) Authorizes an IPA to finance a transportation project or public utility facility or construction, acquisition, or improvement of a transportation project or public utility facility from money available to the IPA under this chapter.

Sec. 672.155. OWNERSHIP OF AUTHORITY PROJECTS. (a) Provides that a transportation project that is the subject of a development agreement with a private entity, including the facilities acquired or constructed on the project, is public property and belongs to the IPA that entered into the agreement.

(b) Authorizes an IPA to enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, concessions, licenses, or permits, or any lawful uses to enable a private entity to construct, occupy, operate, and maintain a transportation project, including supplemental facilities. Requires the transportation project including the facilities, at the termination of the agreement, to be in a state of proper maintenance as determined by the IPA and returned to the IPA in satisfactory condition at no further cost.

Sec. 672.156. PROPERTY. Authorizes an IPA to acquire, construct, complete, develop, finance, own, operate, maintain, lease, and sell any kind of property to any person for any IPA purpose, including transportation projects, office buildings, warehouses, passenger and freight terminals, container examination stations, and any other facility necessary or useful to fulfilling the purposes of the IPA.

Sec. 672.157. PURCHASE OF REAL PROPERTY. Authorizes an IPA to purchase an interest in real property to acquire, construct, or operate an IPA facility on terms and at a price agreed to between the IPA and the owner.

Sec. 672.158. CONVEYANCE OF PROPERTY. Authorizes the governing body of a municipality, county, or other governmental entity to convey title or rights and easements to any property needed by the IPA to effect its purposes.

Sec. 672.159. NO EMINENT DOMAIN POWER. Prohibits an IPA from exercising the power of eminent domain.

Sec. 672.160. TRANSPORTATION PROJECT; CONSTRUCTION MANAGER-AT-RISK. (a) Authorizes an IPA to contract for the design and construction of a transportation project under Section 672.154 by a construction manager-at-risk procedure under which the construction manager-at-risk provides consultation to the IPA during the design of the transportation project in accordance with the IPA's specifications.

(b) Requires the IPA to select the construction manager-at-risk on the basis of criteria established by the IPA, and sets forth the criteria that may be included.

(c) Requires the IPA to adopt rules governing the award of contracts using construction manager-at-risk procedures under this section.

(d) Provides that to the extent of a conflict between this section and another law, this section controls.

Sec. 672.161. LEASES. Authorizes an IPA to lease the use of any of its facilities or equipment. Prohibits a lease term from exceeding 50 years.

Sec. 672.162. AGREEMENTS. Authorizes an IPA to enter into an agreement with any person, including with the United States or any other governmental entity, for any IPA purpose.

Sec. 672.163. JOINT ACTIONS. Authorizes an IPA to act jointly with any other person, private or public, inside or outside this state or the United States, in the performance of any power or duty under this chapter or other law.

Sec. 672.164. INSURANCE. (a) Authorizes an IPA to purchase and pay premiums to insurers for insurance of any type in amounts considered necessary or advisable by the board.

(b) Authorizes an IPA to purchase an additional insured provision to any liability insurance contract.

Sec. 672.165. PROMOTION AND ADVERTISING. Authorizes an IPA to promote the use of an IPA project, facility, or service, including a project, facility, or service that it operates on behalf of another entity or that another entity operates on behalf of the IPA, by appropriate means, including advertising or marketing as the IPA determines appropriate.

Sec. 672.166. SECURITY SERVICES. Authorizes an IPA to employ a security officer who holds a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education.

Sec. 672.167. GRANTS; LOANS; DONATIONS. Authorizes an IPA to accept a grant, loan, or donation from any person, including the United States, this state, or a political subdivision of this state.

Sec. 672.168. VENUE. Requires an action against the IPA to be brought in the county in which the principal office of the IPA is located.

Sec. 672.169. CONSENT REQUIRED FOR CERTAIN POWERS. Authorizes the IPA, with the consent of a municipality, county, or other political subdivisions, to use streets, alleys, roads, highways, and other public ways of the municipality, county, or other political subdivision; and relocate, raise, reroute, change the grade of, or alter, at the expense of the IPA, the construction of certain infrastructure.

Sec. 672.170. CONSENT OF TEXAS DEPARTMENT OF TRANSPORTATION REQUIRED FOR HIGHWAY WORK. Prohibits an IPA from altering a highway that is part of the state highway system without the consent of the Texas Department of Transportation.

Sec. 672.171. CONSENT OF RAILROAD REQUIRED. Prohibits an IPA from altering a railroad without consent of the railroad.

Sec. 672.172. NO RETAIL UTILITY SERVICES. Prohibits an IPA from providing retail utility services.

Sec. 672.173. NO DUPLICATION OF SERVICES OR FACILITY OF PUBLIC ENTITY. Prohibits an IPA from duplicating a service or facility of another public entity.

[Reserves Sections 672.174-672.200 for expansion.]

#### SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS

Sec. 672.201. RATES. Requires an IPA to establish and maintain commercially reasonable and nondiscriminatory rates, rentals, fees, charges, or other compensation for the use of facilities constructed, operated, regulated, or maintained by the IPA that are commercially reasonable and nondiscriminatory.

Sec. 672.202. REIMBURSEMENT TO AND PURCHASE FROM PRIVATE ENTITIES. (a) Authorizes an IPA to reimburse a private entity for money spent to improve facilities or other property in the IPA if the improvement will provide a public benefit or has been or will be dedicated or otherwise transferred to public use.

(b) Authorizes an IPA to purchase any improvement to property that has been or will be constructed by a private entity, regardless of whether the construction occurs before or after the creation of the IPA.

Sec. 672.203. LIABILITIES. Authorizes an IPA to incur liabilities, borrow money on terms the board determines, enter into short-term borrowing and commercial paper transactions, and issue bonds.

Sec. 672.204. CREDIT AGREEMENTS. Authorizes an IPA to enter into credit agreements under Chapter 1371 (Obligations for Certain Public Improvements), Government Code.

Sec. 672.205. PROCUREMENT. (a) Authorizes the IPA to adopt rules governing the award of contracts through competitive processes for goods and services.

(b) Authorizes an IPA to procure goods and services, including materials, engineering, design, construction, operations, maintenance, and other goods and services, through any procedure authorized by this chapter.

(c) Provides that to the extent of a conflict between this section and another law, this section controls.

Sec. 672.206. DEPOSITORY OR TREASURER. (a) Requires the board to by resolution designate a bank or banks as the IPA's depository.

(b) Requires all IPA money to be secured in the manner provided for securing county funds.

[Reserves Sections 672.207-672.250 for expansion.]

#### SUBCHAPTER F. ASSESSMENTS AND IMPACT FEES

Sec. 672.251. GENERAL POWERS RELATING TO ASSESSMENTS AND IMPACT FEES. Authorizes an IPA to impose assessments and impact fees under Subchapters F (Assessments) and G (Imposition of Impact Fees), Chapter 375, Local Government Code.

Sec. 672.252. ADDITIONAL ASSESSMENT POWERS. Authorizes an improvement project undertaken by an IPA, in addition to the powers granted under Subchapter F, Chapter 375, Local Government Code, to include the financing of any of the improvements described in Section 375.112, Local Government Code, and the construction, financing, acquisition, improvement, relocation, operation, maintenance, or provision of an inland port facility or transportation project under Subchapter D.

[Reserves Sections 672.253-672.300 for expansion.]

#### SUBCHAPTER G. AD VALOREM TAXES AND BONDS

Sec. 672.301. GENERAL BOND AUTHORITY. (a) Authorizes the IPA to issue bonds as provided by Subchapter J (Bonds), Chapter 375, Local Government Code, except as otherwise provided by this subchapter.

(b) Provides that Sections 375.207 (Municipal Approval) and 375.208 (Commission Approval), Local Government Code, do not apply to an IPA.

Sec. 672.302. TAX AND BOND ELECTION. (a) Prohibits the IPA from issuing bonds secured by taxes unless the issuance of the bonds and the tax to source the bonds are approved at an election in the IPA held for that purpose.

(b) Authorizes the IPA to issue bonds not secured by taxes without an election.

(c) Requires that the proposition submitted in the election state certain information.

(d) Requires the IPA, in addition to the notice required by Section 4.003(c) (relating to a notice ordered by a commissioners court or by an IPA of a city or school district), Election Code, to provide notice of the election in a certain manner.

(e) Requires that the notice required by Subsection (d) (2) be published on the same day in each of two successive weeks. Requires the first publication to be not less than 14 days before the date of the election.

(f) Sets forth the required language for the ballot.

Sec. 672.303. AD VALOREM TAX AUTHORIZED; RATE. (a) Authorizes the IPA to impose an ad valorem tax for any IPA purpose if a majority of the IPA voters voting at an election called for that purpose vote in favor of the tax.

(b) Prohibits the IPA's tax rate from exceeding 10 cents on each \$100 valuation of all taxable property in the IPA; or the highest ad valorem tax rate imposed by any of the participating entities.

(c) Requires the IPA to publish notice and hold a hearing on the tax rate in the same manner as provided by Section 672.054.

(d) Provides that after setting the tax rate, the IPA is governed by the provision of the Tax Code governing ad valorem taxes of home-rule municipalities.

(e) Provides that the initial tax rate does not take effect until the tax year beginning on a date after the date of the initial meeting of the board or the tax year following the date the board sets the initial tax rate, whichever is later.

Sec. 672.304. CERTIFICATES OF OBLIGATION. Authorizes an IPA to issue certificates of obligation in the manner provided by Subchapter C (Certificate of Obligation Act), Chapter 271, Local Government Code.

Sec. 672.305. NO MUNICIPAL OR COUNTY OBLIGATION. Provides that except as provided by Section 672.402, a participating entity is not obligated to pay any IPA bonds.

Sec. 672.306. BONDS EXEMPT FROM TAXATION. Provides that bonds issued under this chapter, the transfer of the bonds, and income from the bonds, including profits made on the sale of the bonds, are exempt from taxation in this state.

Sec. 672.307. APPLICATION OF OTHER LAW. Provides that Chapter 2007 (Governmental Action Affecting Private Property Rights), Government Code, does not apply to a tax imposed by an IPA.

[Reserves Sections 672.308-672.350 for expansion.]

#### SUBCHAPTER H. COMPREHENSIVE DEVELOPMENT AGREEMENTS

Sec. 672.351. COMPREHENSIVE DEVELOPMENT AGREEMENT DEFINED. Describes the components of a comprehensive development agreement (CDA).

Sec. 672.352. USE OF AGREEMENT. Authorizes an IPA to use a CDA to construct, maintain, repair, operate, extend, or expand an IPA project.

Sec. 672.353. PROFESSIONAL AND CONSULTING SERVICES. (a) Authorizes an IPA to negotiate provisions relating to professional and consulting services provided in connection with a CDA.

(b) Provides that Chapter 2254 (Professional and Consulting Services), Government Code, does not apply to a CDA entered into under this subchapter.

Sec. 672.354. PROCESS; BEST VALUE; RULES. (a) Requires the IPA, if it enters into a CDA, to use a competitive procurement process that provides the best value for the IPA.

(b) Requires an IPA to adopt rules, procedures, and other guidelines governing selection and negotiations to promote fairness, obtain private participants in IPA projects, and promote confidence among those participants.

(c) Requires the rules to contain criteria relating to the qualifications of the participants and the award of the contracts. Requires an IPA to make those rules or policies publicly available prior to commencing any procurement.

Sec. 672.355. CONFIDENTIALITY OF NEGOTIATIONS FOR COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) Sets forth the information that is confidential, is not subject to disclosure, inspection, or copying under Chapter 552 (Public Information), Government Code, and is not subject to discovery, subpoena, or other means of legal compulsion for its release until a final agreement, until a final agreement for a proposed project is entered into.

(b) Provides that after an IPA completes its final ranking of proposals, the final rankings of each proposal under each of the published criteria are not confidential.

Sec. 672.356. PERFORMANCE AND PAYMENT SECURITY. (a) Requires an IPA to require a private entity entering into a CDA under this subchapter to provide a performance and payment bond or an alternative form of security in an amount sufficient to ensure the proper performance of the agreement, and protect the IPA and payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

(b) Requires a performance and payment bond to be in an amount equal to the cost of constructing or maintaining the project.

(c) Requires the IPA, if it determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), to set the amount of the bonds or the alternative forms of security.

(d) Provides that a payment or performance bond or alternative form of security is not required for the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(e) Requires the amount of the payment to be not less than the amount of the performance security.

Sec. 672.357. ALTERNATIVE SECURITY. (a) Authorizes an IPA, in addition to performance and payment bonds, to require certain other alternative forms of security in an amount equal to the cost of constructing or maintaining the project.

(b) Provides that an alternative form of security is not required for the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.



(c) Requires an IPA by rule to prescribe requirements for alternative forms of security provided under this section.

Sec. 672.358. PROHIBITION ON TOLL ROAD OR TURNPIKE. Prohibits an IPA from using a CDA to develop a toll road or turnpike.

[Reserves Sections 672.359-672.400 for expansion.]

#### SUBCHAPTER I. WITHDRAWAL AND DISSOLUTION

Sec. 672.401. WITHDRAWAL. Authorizes a participating entity to withdraw from the IPA provided certain conditions are met.

Sec. 672.402. DISSOLUTION. Provides that an IPA is dissolved if the dissolution is approved by the board, the governing body of each participating entity agrees, all debts and other liabilities of the IPA have been paid and discharged or adequate provision has been made for the payment of all debts and other liabilities, there are no suits pending against the IPA, or adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in any pending suit, and the IPA has commitments from other governmental entities to assume jurisdiction of all IPA property, including facilities and equipment.

SECTION 2. Effective date: upon passage or September 1, 2007.