

BILL ANALYSIS

Senate Research Center

S.B. 2467
By: Patrick, Dan, Hegar
Intergovernmental Relations
9/8/2009
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A special district is needed to finance and construct the utility infrastructure necessary to promote the development of the area within the district and to provide services to the property in the district. This bill creates Waller Town Center Management District (district) as a political subdivision of the state to administer and provide funding for improvement projects and services in the district, which is located within the extraterritorial jurisdiction of the City of Waller, Harris County. The district will be a municipal management district with power similar to those operating pursuant to Chapter 375 (Municipal Management Districts in General), Local Government Code, and Title 4 (Development and Improvement), Special District Local Laws Code.

S.B. 2467 relates to the creation of Waller Town Center Management District; provides authority to impose an assessment, impose a tax, and issue bonds; and grants a limited power of eminent domain.

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 Subtitle C, Title 4, Special District Local Laws Code, by adding Chapter 3877, as follows:

CHAPTER 3877. WALLER TOWN CENTER MANAGEMENT DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS.

Sec. 3877.001. DEFINITIONS. Defines "board," "director," and "district."

Sec. 3877.002. NATURE OF DISTRICT. Provides that the Waller Town Center Management District (district) is a special district created under Sections 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution.

Sec. 3877.003. PURPOSE; DECLARATION OF INTENT. (a) Provides that the creation of the district is essential to accomplish the purposes of Sections 52 (Counties, Cities, or Other Political Corporations or Subdivisions; Lending Credit; Grants; Bonds) and 52-a (Loan or Grant of Public Money for Economic Development), Article III (Legislative Department) and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this chapter. Provides that by creating the district and in authorizing the City of Waller, Harris County, and other political subdivisions to contract with the district, the legislature has established a program to accomplish the public purposes set out in Section 52-a, Article III (Legislative Department), Texas Constitution.

(b) Provides that the creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing,

tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the district.

(c) Prohibits this chapter and the creation of the district from being interpreted to relieve Harris County from providing the level of services provided, as of the effective date of the Act enacting this chapter, to the area in the district. Provides that the district is created to supplement and not supplant the county services provided in the area in the district.

Sec. 3877.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) Provides that the district is created to serve a public use and benefit.

(b) Provides that all land and other property included in the district will benefit from the improvements and services to be provided by the district 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 district is in the public interest and is essential to further the public purposes of developing and diversifying the economy of the state, eliminate unemployment and underemployment, and develop or expand transportation and commerce.

(d) Sets forth certain responsibilities of the district.

(e) Provides that pedestrian ways along or across a street, whether at grade or above or below the surface, and street lighting, street landscaping, parking, and street art objects are parts of and necessary components of a street and are considered to be a street or road improvement.

(f) Provides that the district will not act as the agent or instrumentality of any private interest even though the district will benefit many private interests as well as the public.

Sec. 3877.005. INITIAL DISTRICT TERRITORY. (a) Provides that the district is initially composed of the territory described by Section 2 of the Act enacting this chapter.

(b) Provides that the boundaries and field notes contained in Section 2 of the Act enacting this chapter form a closure. Provides that a mistake in the field notes or in copying the field notes in the legislative process does not affect the district's organization, existence, or validity; right to issue any type of bond for the purposes for which the district is created or to pay the principal of and interest on the bond; right to impose or collect an assessment or tax; or legality or operation.

Sec. 3877.006. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES. Provides that all or any part of the area of the district is eligible to be included in a tax increment reinvestment zone created under Chapter 311 (Tax Increment Financing Act), Tax Code; a tax abatement reinvestment zone created under Chapter 312 (Property Redevelopment and Tax Abatement Act), Tax Code; or an enterprise zone created under Chapter 2303 (Enterprise Zones), Government Code.

Sec. 3877.007. APPLICABILITY OF MUNICIPAL MANAGEMENT DISTRICTS LAW. Provides that Chapter 375 (Municipal Management Districts in General), Local Government Code, applies to the district, except as otherwise provided by this chapter.

Sec. 3877.008. LIBERAL CONSTRUCTION OF CHAPTER. Requires that this chapter be liberally construed in conformity with the findings and purposes stated in this chapter.

[Reserves Sections 3877.009-3877.050 for expansion.]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 3877.051. GOVERNING BODY; TERMS. (a) Provides that the district is governed by a board of five elected directors (board).

(b) Provides that, except as provided by Section 3877.052, directors serve staggered four-year terms, with two or three directors elected in even-numbered years on the uniform election date in May prescribed by the Election Code.

(c) Provides that Section 54.102 (Qualifications for Directors), Water Code, applies to directors, and provides that Section 375.063 (Qualifications of Director), Local Government Code, does not apply to directors.

Sec. 3877.052. TEMPORARY DIRECTORS. (a) Sets forth the directors of the initial temporary board.

(b) Requires the temporary directors to hold an election to elect five permanent directors.

(c) Provides that temporary directors serve until the earlier of the date permanent directors are elected under Subsection (b) or the fourth anniversary of the effective date of the Act enacting this chapter.

(d) Requires successor temporary directors, if the permanent directors have not been elected under Subsection (b) and the terms of the temporary directors have expired, to be appointed or reappointed as provided by Subsection (e) to serve terms that expire on the earlier of the date permanent directors are elected under Subsection (b) or the fourth anniversary of the date of the appointment or reappointment.

(e) Authorizes the owner or owners of a majority of the assessed value of the real property in the district to submit a petition to the Texas Commission on Environmental Quality (TCEQ), if Subsection (d) applies, requesting that TCEQ appoint as successor temporary directors the five persons named in the petition. Requires TCEQ to appoint as successor temporary directors the five persons named in the petition.

Sec. 3877.053. COMPENSATION. Provides that a director is entitled to receive fees of office and reimbursement for actual expenses as provided by Section 49.060 (Fees of Office; Reimbursement), Water Code. Provides that Sections 375.069 (Board Position Not Civil Office of Emolument) and 375.070 (Compensation of Directors; Reimbursement of Expenses), Local Government Code, do not apply to the board.

[Reserves Sections 3877.054-3877.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 3877.101. DEVELOPMENT CORPORATION POWERS. Authorizes the district to exercise the powers given to a development corporation under Chapter 505 (Type B Corporations), Local Government Code, including the power to own, operate, acquire, construct, lease, improve, or maintain a project described by that chapter.

Sec. 3877.102. NONPROFIT CORPORATION. (a) Authorizes the board by resolution to authorize the creation of a nonprofit corporation to assist and act for the district in implementing a project or providing a service authorized by this chapter.

(b) Provides that the nonprofit corporation has each power of and is considered for purposes of this chapter to be a local government corporation created under Chapter 431 (Texas Transportation Corporation Act), Transportation Code, and is authorized to implement and project and provide any service authorized by this chapter.

(c) Requires the board to appoint the board of directors of the nonprofit corporation. Requires the board of directors of the nonprofit corporation to serve in the same manner as the board of directors of a local government corporation created under Chapter 431, Transportation Code, except that a board member is not required to reside in the district.

Sec. 3877.103. AGREEMENTS; GRANTS. (a) Authorizes the district to make an agreement with or accept a gift, grant, or loan from any person.

(b) Provides that the implementation of a project is a governmental function or service for the purposes of Chapter 791 (Interlocal Cooperation Contracts), Government Code.

Sec. 3877.104. AUTHORITY TO CONTRACT FOR LAW ENFORCEMENT. Authorizes the district, to protect the public interest, to contract with a qualified party, including Harris County or the City of Waller, for the provision of law enforcement services in the district for a fee.

Sec. 3877.105. MEMBERSHIP IN CHARITABLE ORGANIZATIONS. Authorizes the district to join and pay dues to a charitable or nonprofit organization that performs a service or provides an activity consistent with the furtherance of a district purpose.

Sec. 3877.106. ECONOMIC DEVELOPMENT PROGRAMS. (a) Authorizes the district to establish and provide for the administration of one or more programs to promote state or local economic development and to stimulate business and commercial activity in the district including programs to make loans and grants of public money and provide district personnel and services.

(b) Provides that the district has all the powers of a municipality under Chapter 380 (Miscellaneous Provisions Relating to Municipal Planning and Development), Local Government Code.

Sec. 3877.107. STRATEGIC PARTNERSHIP AGREEMENT. Authorizes the district to negotiate and enter into a written strategic partnership with the City of Waller under Section 43.0751 (Strategic Partnerships for Continuation of Certain Districts), Local Government Code.

Sec. 3877.108. LIMITED EMINENT DOMAIN. (a) Provides that Section 375.094 (No Eminent Domain Power), Local Government Code, does not apply to the district.

(b) Authorizes the district to exercise the power of eminent domain in accordance with Section 49.222 (Eminent Domain), Water Code.

(c) Prohibits the district from exercising the power of eminent domain outside the district boundaries to acquire a site for a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant, a recreational facility as defined by Section 49.462 (Definitions), Water Code, or a site for a road project.

Sec. 3877.109. ANNEXATION OR EXCLUSION OF LAND. (a) Authorizes the district to annex land as provided by Subchapter J (Annexation or Exclusion of Land), Chapter 49 (Provisions Applicable to All Districts), Water Code.

(b) Authorizes the district to exclude land as provided by Subchapter J, Chapter 49, Water Code. Provides that Section 375.044(b) (relating to a hearing on the exclusion of land or other property from the district), Local Government Code, does not apply to the district.

[Reserves Sections 3877.110-3877.150 for expansion.]

SUBCHAPTER D. PUBLIC PARKING FACILITIES

Sec. 3877.151. **PARKING FACILITIES AUTHORIZED; OPERATION BY PRIVATE ENTITY.** (a) Authorizes the district to acquire, lease as lessor or lessee, construct, develop, own, operate, and maintain parking facilities or a system of parking facilities including certain accommodations.

(b) Authorizes a parking facility of the district to be leased to, or operated for the district by, an entity other than the district.

(c) Provides that the district's parking facilities are a program authorized by the legislature under Section 52-a, Article III, Texas Constitution.

(d) Provides that the district's parking facilities serve the public purposes of the district and are owned, used, and held for a public purpose even if leased or operated by a private entity for a term of years.

Sec. 3877.152. **RULES.** Authorizes the district to adopt rules covering its public parking system.

Sec. 3877.153. **FINANCING OF PARKING FACILITIES.** (a) Authorizes the district to use any of its resources, including revenue, assessments, taxes, or grant or contract proceeds, to pay the cost of acquiring or operating public parking facilities.

(b) Authorizes the district to set, charge, impose, and collect fees, charges, or tolls for the use of the public parking facilities; and issue bonds or notes to finance the cost of these facilities.

[Reserves Sections 3877.154-3877.200 for expansion.]

SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS

Sec. 3877.201. **DISBURSEMENTS AND TRANSFERS OF MONEY.** Requires the board by resolution to establish the number of directors' signatures and the procedure required for a disbursement or transfer of the district's money.

Sec. 3877.202. **MONEY USED FOR IMPROVEMENTS OR SERVICES.** Authorizes the district to acquire, construct, finance, operate, or maintain any improvement or service authorized under this chapter or Chapter 375 (Municipal Management Districts In General), Local Government Code, using any money available to the district.

Sec. 3877.203. **PETITION REQUIRED FOR FINANCING SERVICES AND IMPROVEMENTS WITH ASSESSMENTS.** (a) Prohibits the board from financing a service or improvement project with assessments under this chapter unless a written petition requesting that service or improvement has been filed with the board.

(b) Requires that a petition filed under Subsection (a) be signed by the owners of a majority of the assessed value of real property in the district subject to assessment according to the most recent certified tax appraisal roll for Harris County.

Sec. 3877.204. **METHOD OF NOTICE FOR HEARING.** Authorizes the district to mail the notice required by Section 375.115(c) (relating to written notice of a hearing), Local Government Code, by certified or first class United States mail. Requires the board to determine the method of notice.

Sec. 3877.205. **ASSESSMENTS; LIENS FOR ASSESSMENTS.** (a) Authorizes the board by resolution to impose and collect an assessment for any purpose authorized by this chapter in all or any part of the district.

(b) Provides that an assessment, a reassessment, or an assessment resulting from an addition to or correction of the assessment roll by the district, penalties and

interest on an assessment or reassessment, an expense of collection, and reasonable attorney's fees incurred by the district are the 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 a charge against the owners of the property even if the owners are not named in the assessment proceedings.

(c) Provides that the lien is effective from the date of the board's resolution imposing the assessment until the date the assessment is paid. Authorizes the board to enforce an ad valorem tax lien against real property.

(d) Authorizes the board to make a correction to or deletion from the assessment roll that does not increase the amount of assessment of any parcel of land without providing notice and holding a hearing in the manner required for additional assessments.

Sec. 3877.206. UTILITY PROPERTY EXEMPT FROM IMPACT FEES AND ASSESSMENTS. Prohibits the district from imposing an impact fee or assessment on the property, including the equipment, rights-of-way, facilities or improvements of certain utilities, providers, or persons.

Sec. 3877.207. RESIDENTIAL PROPERTY. Provides that Section 375.161 (Certain Residential Property Exempt), Local Government Code, does not apply to a tax imposed by the district or a requirement for payment for a service provided by the district, including water and sewer services.

Sec. 3877.208. OPERATION AND MAINTENANCE TAX. (a) Authorizes the district, if authorized at an election held in accordance with Section 3877.212, to impose an operation and maintenance tax on taxable property in the district in accordance with Section 49.107 (Operation and Maintenance Tax), Water Code, for any district purpose including to maintain and operate the district, construct or acquire improvements, or provide a service.

(b) Requires the board to determine the tax rate. Prohibits the rate from exceeding the rate approved at the election.

(c) Provides that Section 49.107(h) (relating to prohibiting a maintenance and operation tax that exceeds 10 cents per \$100 of assessed valuation), Water Code, does not apply to the district.

Sec. 3877.209. CONTRACT TAXES. (a) Authorizes the district, in accordance with Section 49.108 (Contract Elections), Water Code, to impose a tax other than an operation and maintenance tax and to use the revenue derived from the tax to make payments under a contract after the provisions of the contract have been approved by a majority of the district voters voting at an election held for that purpose.

(b) Authorizes a contract approved by the district voters to contain a provision stating that the contract may be modified or amended by the board without further voter approval.

Sec. 3877.210. AUTHORITY TO BORROW MONEY AND TO ISSUE BONDS. (a) Authorizes the district to borrow money on terms and conditions as determined by the board. Provides that Section 375.205 (Approval by Attorney General; Registration), Local Government Code, does not apply to a loan, line of credit, or other borrowing from a bank or financial institution secured by revenue other than ad valorem taxes.

(b) Authorizes the district to issue bonds, notes, or other obligations payable wholly or partly from ad valorem taxes, sales and use taxes, assessments, impact fees, revenue, contract payments, grants or other district money, or any combination of those sources of money, to pay for any authorized district purpose.

(c) Provides that the limitation on the outstanding principal amount of bonds, notes, and other obligations provided by Section 49.4645 (District in Certain Counties; Bonds for Recreational Facilities), Water Code, does not apply to the district.

Sec. 3877.211. TAXES FOR BONDS. Requires the board, at the time the district issues bonds payable wholly or partly from ad valorem taxes, to provide for the annual imposition of a continuing direct ad valorem tax, without limit as to rate or amount, while all or part of the bonds are outstanding as required and in the manner provided by Section 54.601 (Tax Levy for Bonds) and 54.602 (Establishment of Tax Rate in Each Year), Water Code.

Sec. 3877.212. ELECTIONS REGARDING TAXES AND BONDS. (a) Authorizes the district to issue, without an election, bonds, notes, and other obligations secured by revenue other than ad valorem taxes or contract payments described by Section 3877.209.

(b) Requires the district to hold an election in the manner provided by Subchapter L (Elections), Chapter 375, Local Government Code, to obtain voter approval before the district may impose an ad valorem tax or sales and use tax or issue bonds payable from ad valorem taxes.

(c) Provides that Section 375.243 (Petition Required for Bond Election), Local Government Code, does not apply to the district.

(d) Authorizes all or any part of any facilities or improvements that may be acquired by a district by the issuance of district bonds to be included in one single proposition to be voted on at the election or the bonds to be submitted in several propositions.

Sec. 3877.213. COMPETITIVE BIDDING. Provides that Subchapter I (Construction, Equipment, Materials, and Machinery Contracts), Chapter 49, Water Code, applies to the district. Provides that Sections 375.221 (Competitive Bidding on Certain Public Works Projects) and 375.223 (Supersedes Other Law), Local Government Code, do not apply to the district.

Sec. 3877.214. TAX ASSESSMENT ABATEMENTS. Authorizes the district to grant in the manner authorized by Chapter 312 (Property Redevelopment and Tax Abatement Act), Tax Code, an abatement for a tax or assessment owed to the district.

[Reserves Sections 3877.215-3877.250 for expansion.]

SUBCHAPTER F. TAXES FOR CERTAIN DEFINED AREAS AND DESIGNATED PROPERTY

Sec. 3877.251. AUTHORITY TO ESTABLISH DEFINED AREAS OR DESIGNATED PROPERTY. Authorizes the district to define areas or designate certain property of the district to pay for improvements, facilities, or services that primarily benefit that area or property and do not generally and directly benefit the district as a whole.

Sec. 3877.252. PROCEDURE FOR ELECTION. (a) Requires the board to hold an election in the defined area or within the boundaries of the designated property only before the district may impose an ad valorem tax or issue bonds payable from ad valorem taxes of the defined area or designated property.

(b) Requires that the election be conducted as provided by Section 3877.212.

(c) Authorizes the board to submit the issues to the voters on the same ballot to be used in another election.

Sec. 3877.253. DECLARING RESULT AND ISSUING ORDER. (a) Requires the board, if a majority of the voters voting at the election approve the proposition or

propositions, to declare the results and, by order, to establish the defined area and describe it by metes and bounds or designate the specific property.

(b) Provides that the board's order is not subject to judicial review except on the ground of fraud, palpable error, or arbitrary and confiscatory abuse discretion.

Sec. 3877.254. TAXES FOR IMPROVEMENTS AND FACILITIES IN DEFINED AREAS OR DESIGNATED PROPERTY. Authorizes the district, on voter approval and adoption of the order described in Section 3877.253, to apply separately, differently, equitably, and specifically its taxing power and lien authority to the defined area or designated property to provide money to construct, administer, maintain, and operate services, improvements, and facilities that primarily benefit the defined area or designated property.

Sec. 3877.255. ISSUANCE OF BONDS AND LEVY OF TAXES FOR DEFINED AREA OR DESIGNATED PROPERTY. Authorizes the district, after order under Section 3877.253 is adopted, to issue bonds to provide for any land, improvements, facilities, plants, equipment, and appliances for the defined area or designated property.

[Reserves Sections 3877.256-3877.300 for expansion.]

SUBCHAPTER G. SALES AND USE TAX

Sec. 3877.301. MEANINGS OF WORDS AND PHRASES. Provides that words and phrases used in this subchapter that are defined by Chapters 151 (Limited Sales, Excise, and Use Tax) and 321 (Municipal Sales and Use Tax Act), Tax Code, have the meanings assigned by Chapters 151 and 321, Tax Code.

Sec. 3877.302. APPLICABILITY OF CERTAIN TAX CODE PROVISIONS. (a) Provides that, except as otherwise provided by this subchapter, Subtitles A (General Provisions) and B (Enforcement and Collection), Title 2 (State Taxation), Tax Code, and Chapter 151, Tax Code, apply to taxes imposed under this subchapter and to the administration and enforcement of those taxes in the same manner that those laws apply to state taxes.

(b) Provides that Chapter 321, Tax Code, relating to municipal sales and use taxes, applies to the application, collection, change, and administration of a sales and use tax imposed under this subchapter to the extent consistent with this chapter, as if references in Chapter 321, Tax Code, to a municipality referred to the district and references to a governing body referred to the board.

(c) Provides that Sections 321.106 (Fire Control District Tax), 321.401 (Calling of Election), 321.402 (Deadlines after Petition), 321.403 (Time of Election), 321.404 (Ballot Wording), 321.406 (Frequency of Election), 321.409 (Combined Municipal Sales Tax Ballot Propositions), 321.506 (Use of Tax Revenue by Municipality), 321.507 (Use of Additional Municipal Sales and Use Tax), and 321.508 (Pledge of Tax Revenue), Tax Code, do not apply to a tax imposed under this subchapter.

Sec. 3877.303. AUTHORIZATION; ELECTION. (a) Authorizes the district to adopt a sales and use tax to serve the purposes of the district after an election in which a majority of the voters of the district voting in the election authorize the adoption of the tax.

(b) Authorizes the board by order to call an election to authorize a sales and use tax. Authorizes the election to be held with any other district election.

(c) Requires the district to provide notice of the election and to hold the election in the manner prescribed by Section 3877.212.

(d) Requires that the ballots be printed to provide for voting for or against the proposition with certain language.

Sec. 3877.304. ABOLISHING SALES AND USE TAX. (a) Authorizes the board to abolish the sales and use tax without an election, except as provided by Subsection (b).

(b) Prohibits the board from abolishing the sales and use tax if the district has outstanding debt secured by the tax.

Sec. 3877.305. SALES AND USE TAX RATE. (a) Provides that on adoption of the tax authorized by this subchapter there is imposed a tax on the receipts from the sale at retail of taxable items within the district and an excise tax on the use, storage, or other consumption in the district of taxable items purchased, leased, or rented from a retailer in the district during the period that the tax is in effect.

(b) Requires the board to determine the rate of the tax, which is authorized to be in one-eighth of one percent increments not to exceed the maximum rate authorized by the district voters at the election. Authorizes the board to lower the tax rate to the extent it does not impair any outstanding debt or obligations payable from the tax.

(c) Provides that the rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sales price of the taxable item.

[Reserves Sections 3877.306-3877.350 for expansion.]

SUBCHAPTER H. MUNICIPAL ANNEXATION AND DISSOLUTION

Sec. 3877.351. MUNICIPAL ANNEXATION; DISSOLUTION. (a) Provides that Section 43.071 (Authority to Annex Water or Sewer District), Local Government Code, applies to the district and the district is a "water sewer district" for purposes of that section.

(b) Provides that Section 43.075 (Abolition of, or Division of Functions of, Water-Related Special District That Becomes Part of Not More Than One Municipality), Local Government Code, applies to the district.

(c) Provides that Section 375.264 (Limitation), Local Government Code, does not apply to the dissolution of the district by a municipality.

SECTION 2. Sets forth the initial boundaries of the district.

SECTION 3. Provides that all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 4. Effective date: upon passage or September 1, 2009.