

BILL ANALYSIS

Senate Research Center

S.B. 2511
By: Williams
Intergovernmental Relations
9/10/2009
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 2511 creates the Chambers County Improvement District No. 2 (district), approximately 723 acres in western Chambers County, situated along FM 565, approximately 1/4 mile east of the intersection of FM 565 and FM 1405. The district is located in the extraterritorial jurisdiction of the City of Baytown and within Chambers County and will allow development of light industrial and commercial development, including a rail yard. The district will have the rights conferred by general law of a municipal management district under Chapter 375 (Municipal Management Districts in General), Local Government Code, and a municipal utility district under Chapters 49 (Provisions Applicable to All Districts) and 54 (Municipal Utility Districts), Water Code.

S.B. 2511 amends current law relating to the creation of Chambers County Improvement District No. 2; provides authority to levy 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 3872, as follows:

CHAPTER 3872. CHAMBERS COUNTY IMPROVEMENT DISTRICT NO. 2

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3872.001. DEFINITIONS. Defines "board," "director," and "district."

Sec. 3872.002. NATURE OF DISTRICT. Provides that the Chambers County Improvement District No. 2 (district) is a special district created under 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 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution.

Sec. 3872.003. CONFIRMATION AND DIRECTORS' ELECTION REQUIRED. Requires the temporary board of directors of the district (temporary directors) to hold an election to confirm the creation of the district and to elect five permanent directors as provided by Section 49.102 (Confirmation and Director Election), Water Code.

Sec. 3872.004. CONSENT OF MUNICIPALITY REQUIRED. Prohibits the temporary directors from holding an election under Section 3872.003 until each municipality in whose corporate limits or extraterritorial jurisdiction the district is located has consented by ordinance or resolution to the creation of the district and to the inclusion of land in the district.

Sec. 3872.005. PURPOSE; DECLARATION OF INTENT. (a) Provides that the creation of the district is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this chapter. Provides that by creating the district, the legislature has established a program to accomplish the public purposes set out in Sections 52 and 52-a, Article III, 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 the City of Baytown, Chambers County, or any other governmental entity from providing the level of services provided, as of the effective date of the Act creating this chapter, to the area in the district. Provides that the district is created to supplement and not to supplant the governmental services provided in the area in the district.

Sec. 3872.006. 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) Provides the district will:

(1) promote the health, safety, and general welfare of residents, employers, potential employees, employees, visitors, and consumers in the district, and of the public;

(2) provide needed funding for the district to preserve, maintain, and enhance the economic health and vitality of the district territory as a community and business center;

(3) promote the health, safety, welfare, and enjoyment of the public by providing pedestrian ways and by landscaping and developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of scenic beauty; and

(4) provide for water, wastewater, drainage, road, and recreational facilities for 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) Prohibits the district from acting as the agent or instrumentality of any private interest even though the district will benefit many private interests as well as the public.

Sec. 3872.007. INITIAL DISTRICT TERRITORY. (a) Provides that the district is initially composed of the territory described by Section 2 of this Act creating this chapter.

(b) Provides that the boundaries and field notes contained in Section 2 of the Act creating 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:

- (1) organization, existence, or validity;
- (2) 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;
- (3) right to impose or collect an assessment or tax; or
- (4) legality or operation.

Sec. 3872.008. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES. Authorizes all or any part of the area of the district to be included in certain zones.

Sec. 3872.009. APPLICABILITY OF MUNICIPAL MANAGEMENT DISTRICTS LAW. Provides that except as otherwise provided by this chapter, Chapter 375 (Municipal Management Districts in General), Local Government Code, applies to the district.

Sec. 3872.010. LIBERAL CONSTRUCTION OF CHAPTER. Requires that this chapter be liberally construed in conformity with the findings and purposes stated in this chapter.

[Reserves Sections 3872.011-3872.050 for expansion.]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 3872.051. GOVERNING BODY; TERMS. (a) Provides that the district is governed by a board of five directors elected or appointed as provided by this chapter and Chapter 49, Water Code.

(b) Provides that except as provided by Section 3872.052, directors serve staggered four-year terms.

Sec. 3872.052. TEMPORARY DIRECTORS. (a) Authorizes the owner or owners of a majority of the assessed value of the real property in the district, on or after the effective date of the Act creating this chapter, to submit a petition to the Texas Commission on Environmental Quality (TCEQ) requesting that TCEQ appoint as temporary directors the five persons named in the petition.

(b) Provides that temporary directors serve until the earlier of the date permanent directors are elected under Section 3872.003, or the fourth anniversary of the effective date of the Act creating this chapter.

(c) Requires successor temporary directors, if permanent directors have not been elected under Section 3872.003 and the terms of the temporary directors have expired, to be appointed or reappointed as provided by Subsection (d) to serve terms that expire on the earlier of the date permanent directors are elected under Section 3872.003, or the fourth anniversary of the date of the appointment or reappointment.

(d) Authorizes the owner or owners of a majority of the assessed value of the real property in the district, if Subsection (c) applies, to submit a petition to TCEQ 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. 3872.053. COMPENSATION. Entitles a director to receive fees of office and reimbursement for actual expenses as provided by Section 49.060 (Fees of Office; Reimbursement), Water Code, for directors of a municipal utility district. 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 of directors of the district (board).

[Reserves Sections 3872.054-3872.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 3872.101. GENERAL POWERS. (a) Authorizes the district to purchase, construct, acquire, own, operate, maintain, improve, or extend, inside and outside the district, works, facilities, and improvements necessary or convenient to accomplish the purposes of the district authorized by Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution.

(b) Provides that the district has the rights, powers, privileges, authority, and functions conferred by the general law of this state applicable to a municipal management district, including Chapter 375, Local Government Code, and municipal utility districts, including Chapters 49 and 54, Water Code.

Sec. 3872.102. RECREATIONAL FACILITIES. Authorizes the district to develop or finance recreational facilities as authorized by Chapter 375, Local Government Code, and Sections 52 and 52-a, Article III, Texas Constitution, and any other law that applies to the district.

Sec. 3872.103. EVALUATION OF FEASIBILITY. Requires TCEQ, for purposes of any applicable evaluation by TCEQ of the economic feasibility of the district or its project and bonds, debt service tax rate, maintenance tax rate, or overlapping tax rate, to treat the district as a municipal utility district situated wholly within Harris County, Texas.

Sec. 3872.104. AUTHORITY FOR ROAD PROJECTS. Authorizes the district, under Section 52, Article III, Texas Constitution, to design, acquire, construct, finance, issue bonds for, improve, and convey to this state, a county, or a municipality for operation and maintenance macadamized, graveled, or paved roads or improvements, including storm drainage, in aid of those roads.

Sec. 3872.105. ROAD STANDARDS AND REQUIREMENTS. (a) Requires a road project to meet all applicable construction standards, zoning and subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the road project is located.

(b) Requires the road project, if a road project is not located in the corporate limits or extraterritorial jurisdiction of a municipality, to meet all applicable construction standards, subdivision requirements, and regulations of each county in which the road project is located.

(c) Requires the Texas Transportation Commission (TTC), if the state will maintain and operate the road, to approve the plans and specifications of the road project.

Sec. 3872.106. 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. 3872.107. 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 may implement any 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 a local government corporation created under Chapter 431, Transportation Code, except that a member of the corporation's board of directors is not required to reside in the district.

Sec. 3872.108. 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. 3872.109. AUTHORITY TO CONTRACT FOR LAW ENFORCEMENT. Authorizes the district, to protect the public interest, to contract with a qualified party, including Chambers County or the City of Baytown, for the provision of law enforcement services in the district for a fee.

Sec. 3872.110. 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. 3872.111. 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 of the powers of a municipality under Chapter 380 (Miscellaneous Provisions Relating to Municipal Planning and Development), Local Government Code.

Sec. 3872.112. STRATEGIC PARTNERSHIP AGREEMENT. Authorizes the district to negotiate and enter into a written strategic partnership with a municipality under Section 43.0751 (Strategic Partnerships for Continuation of Certain Districts), Local Government Code.

Sec. 3872.113. LIMITED EMINENT DOMAIN. (a) Authorizes the district to exercise the power of eminent domain only for the purposes, only to the extent, and subject to the limitations the general law provides for a municipal utility district.

(b) Prohibits the district from exercising the power of eminent domain outside the district to acquire a site or easement for a road project authorized by Section 3872.104, or a recreational facility as defined by Section 49.462 (Definitions), Water Code.

Sec. 3872.114. ANNEXATION OR EXCLUSION OF LAND. (a) Authorizes the district to annex land as provided by Subchapter J (Annexation or Exclusion of Land), Chapter 49, 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 authorizing the board to call a hearing on the exclusion of land from the district under certain conditions) does not apply to the district.

Sec. 3872.115. **FIREFIGHTING AND EMERGENCY MEDICAL SERVICES.** Provides that Subchapter L (Fire Departments), Chapter 49, Water Code, applies to the district.

[Reserves Sections 3872.116-3872.150 for expansion.]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 3872.151. **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. 3872.152. **MONEY USED FOR IMPROVEMENTS OR SERVICES.** Authorizes the district to acquire, construct, finance, operate, maintain, or provide any works, facilities, improvements, or services authorized under this chapter, Chapter 375, Local Government Code, or Chapters 49 and 54, Water Code, using any money available to the district.

Sec. 3872.153. **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 a petition filed under Subsection (a) to 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 Chambers County, or at least 25 persons who own real property in the district subject to assessment, if more than 25 persons own real property in the district subject to assessment as determined by the most recent certified tax appraisal roll for Chambers County.

Sec. 3872.154. **METHOD OF NOTICE FOR HEARING.** Authorizes the district to mail the notice required by Section 375.115(c) (relating to written notice containing certain information required to be mailed by certified mail, return receipt requested, not later than the 30th day before the date of the hearing), Local Government Code, by certified or first class United States mail. Requires the board to determine the method of notice.

Sec. 3872.155. **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:

(1) a first and prior lien against the property assessed;

(2) superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes; and

(3) 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 the lien in the same manner that the board is authorized 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. 3872.156. **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 service providers.

Sec. 3872.157. **OPERATION AND MAINTENANCE TAX.** (a) Authorizes the district, if authorized at an election held in accordance with Section 3872.161, 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 tax rate from exceeding the rate approved at the election.

Sec. 3872.158. **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 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 is authorized to be modified or amended by the board without further voter approval.

Sec. 3872.159. **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), 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, 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.

Sec. 3872.160. **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 annual 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 Sections 54.601 (Tax Levy for Bonds) and 54.602 (Establishment of Tax Rate in Each Year), Water Code.

Sec. 3872.161. **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 3872.158.

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

(c) Prohibits the district from issuing bonds payable from ad valorem taxes to finance a road project unless the issuance is approved by a vote of a two-thirds majority of the district voters voting at an election held for that purpose.

(d) Prohibits at the time of issuance, the total principal amount of bonds or other obligations issued or incurred to finance road projects and payable from ad

valorem taxes from exceeding one-fourth of the assessed value of the real property in the district.

Sec. 3872.162. **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 Contracts) and 375.223 (Supersedes Other Law), Local Government Code, do not apply to the district.

Sec. 3872.163. **TAX AND 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 3872.164-3872.200 for expansion.]

SUBCHAPTER E. TAXES FOR CERTAIN DEFINED AREAS AND DESIGNATED PROPERTY

Sec. 3872.201. **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. 3872.202. **PROCEDURE FOR ELECTION.** (a) Requires the board, before the district is authorized to impose an ad valorem tax or issue bonds payable from ad valorem taxes of the defined area or designated property, to call and hold an election in the defined area or within the boundaries of the designated property only.

(b) Requires that the election be conducted as provided by Section 3872.161.

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

Sec. 3872.203. **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 of discretion.

Sec. 3872.204. **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 3872.203, 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. 3872.205. **ISSUANCE OF BONDS FOR DEFINED AREA OR DESIGNATED PROPERTY.** Authorizes the district, after the order under Section 3872.203 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 3872.206-3872.250 for expansion.]

SUBCHAPTER F. MUNICIPAL ANNEXATION AND EFFECT ON MUNICIPAL POWERS

Sec. 3872.251. MUNICIPAL ANNEXATION OF THE DISTRICT. Authorizes a municipality, notwithstanding Chapter 43 (Municipal Annexation), Local Government Code, in whose extraterritorial jurisdiction the district is located to annex all or part of the district. Provides that municipal annexation of all or part of the district has no effect on the validity of the district and the district is required to continue to exist and exercise the powers granted by this Act. Provides that municipal annexation does not result in total or partial dissolution of the district or an assumption by the annexing municipality of any of the district's obligations or indebtedness.

Sec. 3872.252. EFFECT ON MUNICIPAL POWERS. (a) Provides that the creation of the district does not affect the power of a municipality in whose extraterritorial jurisdiction the district or part of the district lies to:

- (1) designate all or part of the district as an industrial district;
- (2) limit a power of the municipality conferred by Chapter 42 (Extraterritorial Jurisdiction of Municipalities), Local Government Code; or
- (3) provide municipal services to any area in the municipality or its extraterritorial jurisdiction that is also in the district.

(b) Provides that the creation of the district does not affect the power the municipality had before the district was created to spend money or provide services.

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

SECTION 3. (a) Provides that the legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313 (Notice for Local and Special Laws), Government Code.

(b) Provides that the governor, one of the required recipients, has submitted the notice and Act to the TCEQ.

(c) Provides that TCEQ has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(d) Provides that the general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with.

(e) 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 have been fulfilled and accomplished.

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