

BILL ANALYSIS

Senate Research Center

S.B. 2515
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Intergovernmental Relations
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In November, 2007, an election passed by an 87 percent approval margin to include all of the area known as The Woodlands in what is known now as The Woodlands Township in order to provide a single, consolidated local government in Montgomery County. The Woodlands Township and the Community Associations of The Woodlands subsequently entered into a transition agreement whereby the functions and responsibilities of the Association are to be consolidated with the functions of the Township to provide a single governmental services operation in The Woodlands. The legislation seeks to consolidate within the powers of The Woodlands Township many of the functions previously held among several different local entities in the area which are needed for the operation of this new local entity.

S.B. 2515 amends current law relating to the administration, powers and duties, operations, and financing of The Woodlands Township and provides authority to impose an events admission tax.

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 Section 1(c), Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, to provide that a reference in this Act to the Town Center Improvement District of Montgomery County, Texas (district) means the name of the district as changed.

SECTION 2. Amends Section 7, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, by adding Subsections (s)-(dd), as follows:

(s) Authorizes the district to make, enter into, and enforce tax abatement agreements in the same manner as other taxing units under Chapter 312 (Property Redevelopment and Tax Abatement Act), Tax Code. Authorizes a district, before an ad valorem tax is first imposed, to enter into a tax abatement agreement with the owner of the property subject to a tax abatement agreement with a county in which any part of the district is located. Authorizes the agreement to provide for the parties to be bound by the same terms as the county agreement for the remaining term of the county agreement and provide for the same share of the property exempted by the county agreement to be exempted from taxation by the district in each remaining year of the county agreement.

(t) Authorizes the district, in order to promote business retention, sustain employment, and prevent substandard and blighted housing conditions, to, except as otherwise provided by this subsection and in the same manner as a qualified association, assume, accept an assignment of, succeed to, or contract to undertake, exercise, or perform certain procedures; administer and perform procedures established in a community covenant or a related agreement for the selection or appointment of members or officers to committees, village association governing bodies, or similar positions; arrange or contract with one or more municipalities, political subdivisions, or nonprofit organizations for the provision of services and facilities to all or part of the territory in or adjacent to the district that are substantially equivalent to the services or facilities provided by the district or a qualified association in the district, provided that the district is prohibited from transferring,

assigning, or abrogating responsibility for the administration or enforcement of any land use restrictions or negative covenants included in a community covenant that apply to land in or adjacent to the district; own, acquire, construct, improve, repair, rehabilitate, operate, maintain, lease, purchase, sell, dispose of, encumber, abandon, or remove certain property; and assess, charge, collect, pledge, encumber, and apply any fees, rents, charges, or proceeds received for the use, enjoyment, or disposition of a building, improvement, facility, or property or for a service or facility.

(u) Provides that the actions and proceedings of the district and the board of directors of the district (board) under Subsection (t) of this section are governmental functions. Provides that Title 11 (Restrictive Covenants), Property Code, does not apply to the district. Prohibits this Act from being construed as constituting a waiver of governmental or sovereign immunity from suit, liability, or judgment.

(v) Defines "qualified association" and "community covenant" in this section.

(w) Authorizes the district to develop and maintain and to sell, lease, encumber, abandon, or dispose of recreational facilities, including an open space and a related street, sidewalk, path, building, structure, improvement, or appurtenance. Provides that Subchapter N (Recreational Facilities), Chapter 49 (Provisions Applicable to All Districts), Water Code, does not apply to the district, except that the terms "develop and maintain" and "recreational facilities" have the meanings assigned by Section 49.462 (Definitions) of that chapter.

(x) Provides that the district is a special district but is treated as a conservation and reclamation district that is entitled to participate in the election of the board of an appraisal district for the purposes of Section 6.03 (Board of Directors), Tax Code.

(y) Authorizes the district and a county tax assessor-collector to contract for the collection of the delinquent assessments of a qualified association for which the district has been assigned and has assumed the duties, functions, and responsibilities. Authorizes the assessments to be collected through the use of the county's tax billing and collection procedures or other mutually agreeable means. Provides that a suit for collection of delinquent assessments under this subsection has the same priority and preference as a delinquent tax collection suit and is required to be conducted in the same manner as a delinquent tax collection suit.

(z) Provides that the district has the same rights and powers as a municipality annexing territory in a district that provides emergency services to cause all or part of the territory of the district to be removed from the district providing emergency services.

(aa) Authorizes the board by resolution to cause district territory described in the resolution to be removed from the boundaries and taxing jurisdiction of a transit authority whose territory overlaps the district's territory if the district and a municipality enter into a regional participation agreement under Section 43.0754 (Regional Participation Agreements), Local Government Code, that requires the district to deposit money into a regional participation fund for the purpose, among others, of funding mobility projects of mutual benefit to the district and municipality. Provides that a removal of territory under this subsection takes effect on the date the board provides a certified copy of the resolution to the transit authority and the comptroller of public accounts.

(bb) Authorizes the district by rule, order, or resolution, subject to approval by the county, in the same manner provided for a municipality by Chapter 393 (Outdoor Signs on Public Rights-of-Way), Transportation Code, and Section 216.901 (Regulation of Signs by Home-Rule Municipality), Local Government Code, to prohibit, regulate, or authorize placement of signs on the right-of-way of a road or highway maintained by the county within the district, other than standard traffic control or directional signs; or administer a kiosk program as provided by Section 393.0026 (Exception), Transportation Code.

(cc) Authorizes the district to enter into an interlocal agreement with the county under which the county grants the district permission to prohibit, regulate, or authorize placement of a specific type or class of sign on the right-of-way of a highway that is maintained by the county located within the district.

(dd) Provides that Subsections (bb) and (cc) do not apply to a sign regulated by another municipality, if all or part of the territory of the district is incorporated, that is located within the exclusive extraterritorial jurisdiction of that other municipality.

SECTION 3. Amends Section 7F, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, by amending Subsections (a) and (c) and adding Subsections (d), (e), (f), and (g), as follows:

(a) Defines "fire-fighting services" and redefines "fire protection personnel."

(c) Prohibits the district, before January 1, 2012, rather than 2010, from directly employing any fire protection personnel but is authorized to own, operate, or control a nonprofit corporation employing fire protection personnel and providing fire-fighting services. Provides that this subsection expires February 1, 2012, rather than January 1, 2010.

(d) Authorizes the district, except as provided by Subsection (c) of this section, to directly, or through a nonprofit corporation created, funded, owned, operated, or controlled by the district, establish, acquire, operate, and maintain a fire department to perform fire-fighting services in or adjacent to the district and issue public securities, including public securities approved by district voters and payable wholly or partly from ad valorem taxes, to finance the construction, acquisition, improvement, renovation, repair, or rehabilitation of any related buildings, facilities, interests in land, equipment, or supplies.

(e) Provides that Subchapter L (Fire Departments), Chapter 49, Water Code, does not apply to the district.

(f) Requires the district, unless other law requires a prior election, to hold an election to determine whether the district is required to adopt the provisions of Chapter 174 (Fire and Police Employee Relations), Local Government Code, if the district receives a timely petition signed by a majority of the fire protection personnel of the fire department of the district or of any nonprofit corporation owned, operated, or controlled by the district. Requires the district, on receipt and verification of the petition, to hold the election on a uniform election date that occurs not later than the date of the last authorized uniform election date in 2011 and to conduct the election in compliance with applicable law and Chapter 174, Local Government Code. Provides that this subsection expires January 1, 2012.

(g) Requires that the provisions of Chapter 174, Local Government Code, if an election is called under Subsection (f) of this section and a majority of the voters voting in the election approve the adoption by the district of the provisions of that chapter, be binding on the district when the district, or any municipality or other form of local government succeeding to the principal assets, functions, and liabilities of the district, directly employs fire protection personnel. Requires that the results of the election continue in effect unless the adoption of Chapter 174, Local Government Code, is repealed in the manner provided by that chapter. Requires that a collective bargaining agreement made and entered into by the district under Chapter 174, Local Government Code, be binding on a successor municipality or local government.

SECTION 4. Amends Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, by adding Section 7H, as follows:

Sec. 7H. EVENT ADMISSIONS TAX. (a) Defines "cultural education," "event," "venue," and "venue user" in this section.

- (b) Authorizes the district by order to impose a tax on each ticket sold as admission to an event held at a venue.
- (c) Authorizes that the amount of the tax be imposed at any uniform percentage not to exceed five percent of the price of the ticket sold as admission to an event held at a venue.
- (d) Authorizes the district by order to increase, repeal, or decrease the rate of the tax imposed under this section.
- (e) Authorizes the district by order to require the venue user to collect the tax for the benefit of the district.
- (f) Requires a venue user required to collect the tax under this section to add the tax to the admissions price, and the tax is a part of the admissions price, is a debt owed to the venue user by the person admitted, and is recoverable at law in the same manner as the admissions price.
- (g) Provides that the tax imposed by this section is not an occupation tax imposed on the venue user.
- (h) Provides that a tax imposed under this section or a change in a tax rate takes effect on the date prescribed by the order imposing the tax or changing the rate.
- (i) Requires a person required to collect a tax imposed under this section to report and remit the taxes to the district as provided by order of the district.
- (j) Authorizes the district by order to prescribe penalties and interest charges for failure to keep records required by the district, to report when required, or to fully and timely collect or remit the tax. Authorizes the district to bring suit against a person who fails to collect a tax under this section or to fully and timely remit the tax to the district.
- (k) Authorizes the district by order to permit a person who is required to collect a tax under this section to retain a percentage of the amount collected and required to be reported as reimbursement to the person for the costs of collecting the tax. Authorizes the district to provide that the person is authorized to retain the amount only if the person pays the tax and files reports as required by the district.
- (l) Authorizes the district and any venue user to enter into an agreement for a term of not more than 20 years providing for the payment or reimbursement, or the reservation of tax proceeds for the payment or reimbursement, to the venue user of all or any agreed portion of the venue user's actual costs of operations, maintenance, management, financing, funding development, capital costs, debt services, or other actual costs of the production, promotion, or presentation of a cultural education event at the venue and containing any other terms, conditions, and provisions as may be considered necessary and appropriate to support cultural education in the district.
- (m) Authorizes the proceeds received by the district from the tax authorized by this section to be used only to support cultural education in the district.
- (n) Authorizes the district to continue to impose the tax authorized by this section after any contractual obligations have been fulfilled if the tax revenue is used to support cultural education.
- (o) Provides that an agreement entered into in anticipation of this section taking effect that otherwise meets the requirements of this section is not invalid because it was authorized, executed, or entered into before the effective date of this section.

SECTION 5. Amends Section 8(j), Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, to provide that a majority of the total authorized number of directors, rather than four directors, except as provided by Subsection (e) of this section, constitutes a quorum for the consideration of all matters pertaining to the business of the district, and requires a concurrence of a majority of a quorum of directors for any official action of the district. Makes nonsubstantive changes.

SECTION 6. Amends Section 9, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, by amending Subsection (g) and adding Subsection (l), as follows:

(g) Requires that an election, after passage of the propositions in the confirmation election, as required by Subsection (e) of this section and Section 7-a of this Act, be called for the uniform election date in May of the next succeeding even-numbered year after the election held under Subdivision (1) of this subsection, for the election of four directors by position, rather than four directors at large. Requires each of the four candidates elected to serve for a term of two years and that an election be called annually thereafter for the uniform election date in May of each year for the election by position of either three or four directors, as appropriate, to serve two-year terms. Deletes existing text requiring the four candidates receiving the highest number of votes to be elected for a term of two years.

(l) Authorizes that an election held on the proposition of incorporating all or part of the territory of the district under Subsection (h)(2) be held regardless of population or area limits described by Section 5.901 (Territorial Requirements for Incorporation As General-Law Municipality), Local Government Code, or other law, if the area to be incorporated has a population of 5,000 or more inhabitants according to the most recent federal decennial census or other credible population records.

SECTION 7. Amends Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, by adding Section 11B-1, as follows:

Sec. 11B-1. SUPPLEMENTAL HOTEL OCCUPANCY TAX. (a) Authorizes the board by order, in addition to the tax authorized by Section 11A of this Act, but Subject to Subsection (c), to impose, repeal, increase, or decrease a supplemental hotel occupancy tax in the same manner as the tax authorized by Section 11A of this Act. Prohibits the rate of the supplemental tax from exceeding two percent of the price paid for a room in a hotel.

(b) Requires the district to apply the proceeds from the supplemental tax imposed under Subsection (a) of this section solely for the purposes described by Sections 352.101(a) (relating to authorizing certain uses for the revenue from a tax imposed by a county having a population of more than 3.3 million) and 352.1015 (Use of Revenue; General Provisions), Tax Code, provided that at least 75 percent of the proceeds from the supplemental tax, as determined on an annual average basis, must be used for the purpose of establishing, operating, and maintaining a convention and visitors bureau within or adjacent to the district. Provides that for the purposes of this subsection, a reference in Section 352.101(a) or 352.1015, Tax Code, to a county, county officer, or commissioners court means the district, a district officer, or the board, as appropriate.

(c) Prohibits the board from imposing the supplemental tax authorized by Subsection (a) of this section before January 1, 2011. Authorizes the board to impose the tax rate at a rate not to exceed one percent until December 31, 2011. Authorizes the board, on or after January 1, 2012, to impose the tax at a rate not to exceed two percent.

SECTION 8. Amends Section 11C, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, by amending Subsections (g), (k), and (p) and adding Subsections (g-1) and (s), as follows:

(g) Requires members of the governing body to be appointed for a term of two years, except that the board by resolution is authorized to extend the terms of office of members

of the governing body beyond two years to the extent necessary to coordinate those terms with the next election of members of the board of directors or provide for one-year terms of office for members of a subsequent governing body. Makes nonsubstantive changes.

(g-1) Creates this subsection from existing text.

(k) Authorizes the board by order, in addition to the powers granted to the governing body by this section, to delegate, subject in whole or in part to final approval by the board, any powers and duties relating to the financing and implementation of the project plan for the zone, including the power and authority to issue tax increment bonds or notes for and in the name of the zone in the same manner as Section 311.015 (Tax Increment Bonds and Notes), rather than Section 311.010 (Powers and Duties of Board of Directors), Tax Code, provides for a municipality, except that tax increment bonds or notes of the zone are required to mature in not more than 30 years, to fund any project of the zone and pay any related bond issuance and bond reserve costs or to refund any bonds, notes, contractual obligations, commitments, or undertakings of the zone, including the reimbursement to any person for project costs and related interest for which the zone would have been authorized to issue its bonds or notes.

(p) Provides that Sections 311.002 (Definitions), 311.014 (Tax Increment Fund), 311.015, 311.016 (Annual Report by Municipality or County), and 311.017 (Termination of Reinvestment Zone), Tax Code, apply to the district, except that for purposes of this subsection a development zone created without a duration or date of termination is authorized to be dissolved by a two-thirds vote of the board of directors of the district or of the governing body of a municipality or other form of local government succeeding to the principal assets, powers, functions, and liabilities of the district, but only if the development zone has no outstanding indebtedness or other obligations or the assets, powers, functions, and liabilities, and any outstanding indebtedness or obligations of the development zone are expressly assumed by the district or the succeeding municipality or local government. Makes a nonsubstantive change.

(s) Authorizes the district or a municipality or other local government succeeding to the principal assets, powers, functions, and liabilities of the district to assume, exercise, perform, and discharge the assets, powers, functions, and liabilities of a development zone in the same manner, to the same extent, and for the same purposes as a development zone created under this section.

SECTION 9. Amends the heading to Section 12A, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, to read as follows:

Sec. 12A. PUBLIC SECURITIES.

SECTION 10. Amends Section 12A, Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993, by amending Subsections (a) and (c) and adding Subsections (d), (e), and (f) as follows:

(a) Authorizes the board to issue, sell, and deliver the public securities, rather than issue bonds, of the district in the manner provided by this section or other applicable law, including Chapter 1371 (Obligations for Certain Public Improvements), Government Code, and Subchapter J (Bonds), Chapter 375 (Municipal Management Districts in General), Local Government Code, for any district purpose or to finance or pay for any district facilities, programs, or improvement projects, including for the purpose of making or providing for payment of any amount due or to become due from the district under a regional participation agreement authorized by this Act or other law, to refund or refinance any public security or other contract, agreement, commitment, or undertaking of the district in payment of which the district could have issued its public securities, or to fund or pay for any reserve fund or issuance expenses related to the public securities. Requires that the public securities be deemed to be in furtherance of a program authorized pursuant to Section 52-a, Article III, Texas Constitution. Deletes existing text requiring that bonds be deemed to be in furtherance of a program authorized pursuant to

Section 52-a, Article III, Texas Constitution, in the manner provided by Subchapter J, Chapter 375, Local Government Code. Makes conforming and nonsubstantive changes.

(c) Authorizes the public securities of the district, in addition to the sources of money described by Subchapter J, Chapter 375, Local Government Code, to be secured and made payable, wholly or partly, by a pledge of any part of the net proceeds the district receives from:

(1) a specified portion, but not more than one-half of one percent, of the sales and use tax authorized by Section 11 of this Act;

(2) the hotel occupancy tax authorized by Section 11A of this Act;

(3) an ad valorem tax approved by the voters of the district at an election called for that purpose;

(4) any revenues, receipts, fees, charges, income, funds, or proceeds received or to be received by the district from refunding public securities, contracts, agreements or other sources, rather than other lawful sources, including a contract with a development zone to facilitate an improvement project or project plan of the district or the development zone; or

(5) any combination of revenues, taxes, or proceeds from one or more of the sources described by Subdivisions (1)-(4), rather than Subdivisions (1)-(5), of this subsection.

Deletes existing text authorizing the public securities of the district to be secured and made payable, wholly or partly, by a pledge of any part of the net proceeds the district receives from any other revenues, income, or proceeds that in accordance with this Act or other law may be pledged or used for purposes described by Subdivision (4) of this subsection. Makes conforming and nonsubstantive changes.

(d) Authorizes the board of directors or an officer or employee of the district to whom the board delegates authority to sell a district public security at a public or private sale in the form, at the price, on the terms and conditions, at the interest rate or rates, whether fixed, variable, floating, adjustable, or otherwise, as the board determines appropriate. Prohibits the net effective interest rate of the public securities under this subsection from exceeding the maximum rate allowed by law.

(e) Authorizes the board to secure a district public security with a security agreement, credit agreement, or both, with the security interest or interests, other than a mortgage interest in real property, and with the parity or priority of pledge and lien as the board determines appropriate.

(f) Defines "public security," "credit agreement," "security agreement," and "security interest" in this section.

SECTION 11. (a) Provides that the legislature ratifies and confirms all governmental acts and proceedings of The Woodlands Township and its board and The Woodlands Township Economic Development Zone and its governing body before the effective date of this Act, in certain functions.

(b) Provides that Subsection (a) of this section does not apply to a matter that 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 a final court judgment.

SECTION 12. Severability clause.

SECTION 13. Sets forth legislative findings and 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 14. Effective date: upon passage or September 1, 2009.