

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 2561
By: Deuell
Intergovernmental Relations
5/14/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Dallas Area Rapid Transit Authority has recently broken ground on a mass transit light rail extension that will utilize a transit station in the central downtown area of the City of Rowlett (city). The city anticipates rapid growth to begin within the next two years. This unique growth opportunity should be managed so as to provide the greatest public benefit at the lowest cost.

C.S.S.B. 2561 will accomplish this goal by providing for the creation, financing, management, powers, operation, and control of a local municipal management district as a political subdivision of the state to facilitate the development of a planned mixed-use sustainable community.

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 3895, as follows:

CHAPTER 3895. ROWLETT PECAN GROVE MANAGEMENT DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3895.001. DEFINITIONS. Defines "board," "city," "director," "district," and "improvement project."

Sec. 3895.002. CREATION AND NATURE OF DISTRICT. Provides that the Rowlett Pecan Grove Management District (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. 3895.003. 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 and in authorizing the City of Rowlett, Texas (city) 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, 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 or Dallas County 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 city and county services provided in the district.

Sec. 3895.004. 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, eliminating unemployment and underemployment, and developing or expanding transportation and commerce.

(d) Provides that the district will:

(1) promote the health, safety, and general welfare of residents, employers, employees, potential employees, visitors, and consumer 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; and

(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 and aesthetic beauty.

(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 an improvement project that includes 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. 3895.005. DISTRICT TERRITORY. (a) Provides that the district is composed of the territory described by Section 2 of the Act creating this chapter, as that territory is authorized to have been modified under Section 3895.108 or other law.

(b) Provides that the boundaries and field notes of the district contained in Section 2 of the Act creating this chapter form a closure. Provides that a mistake in the field notes of the district contained in Section 2 of the Act creating this chapter or in copying the field notes in the legislative process does not in any way affect:

(1) the district's organization, existence, or validity;

(2) the district's right to contract, including the right to issue any type of bond or other obligation for a purpose for which the district is created;

(3) the district's right to impose or collect an assessment, tax, or any other revenue; or

(4) the legality or operation of the district's board of directors (board).

Sec. 3895.006. ELIGIBILITY FOR REINVESTMENT OR ENTERPRISE ZONES. (a) Provides that all or any part of the area of the district is eligible, regardless of other statutory criteria, to be included in a tax increment reinvestment zone created by the city under Chapter 311 (Tax Increment Financing Act), Tax Code; or a tax abatement reinvestment zone created by the city under Chapter 312 (Property Redevelopment and Tax Abatement Act), Tax Code.

(b) Provides that all or any part of the area of the district is eligible to be nominated for inclusion in an enterprise zone by the city under Chapter 2303 (Enterprise Zones), Government Code.

Sec. 3895.007. 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. 3895.008. LIBERAL CONSTRUCTION OF CHAPTER. Requires that this chapter be liberally construed in conformity with the findings and purposes stated in this chapter.

[Reserves Sections 3895.009-3895.050 for expansion.]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 3895.051. BOARD OF DIRECTORS. Provides that the district is governed by a board of five directors appointed under Section 3895.052 and three directors serving ex officio under Section 3895.053.

Sec. 3895.052. APPOINTMENT OF DIRECTORS; TERMS. (a) Requires the mayor and governing body of the city to appoint voting directors. Provides that a person is appointed if a majority of the members of the governing body, including the mayor, vote to appoint that person. Prohibits a member of the governing body of the city from being appointed to the board.

(b) Provides that Section 375.063 (Qualifications of Director), Local Government Code, does not apply to the district.

(c) Provides that the appointed directors serve staggered terms of four years, with two or three directors' terms expiring June 1 of each odd-numbered year.

(d) Prohibits a person from being appointed to the board if the appointment of that person would result in fewer than three of the directors residing in the city.

(e) Requires the governing body of the city to appoint a director to fill a vacancy that occurs on the board.

(f) Provides that district directors are public officials entitled to governmental immunity for their official actions.

Sec. 3895.053. NONVOTING DIRECTORS. (a) Provides that the following persons serve as nonvoting ex officio directors:

(1) the manager of the city;

(2) the financial director of the city; and

(3) the planning director of the city.

(b) Provides that if an office described by Subsection (a) is renamed, changed, or abolished, the governing body of the city is authorized to appoint another city

officer or employee who performs duties comparable to those performed by the officer described by Subsection (a).

Sec. 3895.054. CONFLICTS OF INTEREST. (a) Authorizes a director, except as provided by Section 3895.053 or this section, to participate in all board votes and decisions, and Chapter 171 (Regulation of Conflicts of Interest of Officers of Municipalities, Counties, and Certain Other Local Governments), Local Government Code, governs conflicts of interest of board members.

(b) Authorizes a director who has a beneficial interest in a business entity that will receive a pecuniary benefit from an action of the board to participate in discussion and vote on that action if a majority of the board has a similar interest in the same action or if all other similar business entities in the district will receive a similar pecuniary benefit.

(c) Prohibits a director who is also an officer or employee of a public entity from participating in a discussion of or vote on a matter regarding a contract with that same public entity.

Sec. 3895.055. DIRECTOR'S OATH OR AFFIRMATION. Requires a director's oath or affirmation of office to be filed with the district and requires the district to retain the oath or affirmation in the district records.

Sec. 3895.056. OFFICERS. Requires the board to elect from among the directors a chair, vice chair, and secretary.

Sec. 3895.057. COMPENSATION OF DIRECTORS; REIMBURSEMENT OF EXPENSES. Provides that a director is not entitled to compensation for service on the board but is entitled to be reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a director.

Sec. 3895.058. INITIAL DIRECTORS. (a) Provides that the initial board consists of certain directors.

(b) Provides that of the initial directors, the terms of directors appointed for positions one and two expire June 1, 2011, and the terms of directors appointed for positions three through five expire June 1, 2013.

(c) Provides that this section expires September 1, 2013.

Sec. 3895.059. QUORUM. Provides that for purposes of determining whether a quorum of the board is present, the following are not counted:

- (1) a board position vacant for any reason, including death, resignation, or disqualification;
- (2) a director who is abstaining from participation in a vote because of a conflict of interest; or
- (3) a nonvoting director.

[Reserves Sections 3895.060-3895.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 3895.101. GENERAL POWERS AND DUTIES. Provides that the district has the power and duties provided by:

- (1) the general laws relating to conservation and reclamation districts created under Section 59, Article XVI, Texas Constitution, including Chapters 49

(Provisions Applicable to All Districts) and 54 (Municipal Utility Districts), Water Code;

(2) the general laws relating to road districts and road utility districts created under Section 52(b) (relating to the issuance of bonds by a two-thirds majority) Article III, Texas Constitution, including Chapter 441 (Road Utility Districts), Transportation Code;

(3) Subchapter A (Public Improvement Districts), Chapter 372 (Improvement Districts in Municipalities and Counties), Local Government Code, in the same manner as a municipality or a county;

(4) Chapter 375 (Municipal Management Districts in General), Local Government Code; and

(5) Chapter 505 (Type B Corporations), Local Government Code, as if the district were a municipality to which that chapter applies.

Sec. 3895.102. IMPROVEMENT PROJECTS. (a) Authorizes the district to provide or enter into contracts with a governmental or private entity to provide certain types of improvement projects or activities in support of or incidental to those projects.

(b) Prohibits the district from undertaking a project under this section unless the board determines the project to be necessary to accomplish a public purpose of the district.

(c) Requires that an improvement project comply with any applicable city requirements, including codes and ordinances.

(d) Prohibits the district from providing, conducting, or authorizing any improvement project on the city streets, highways, rights-of-way, or easements without the consent of the governing body of the city.

(e) Requires the district to immediately comply with any city ordinance, order, or resolution that:

(1) requires the district to transfer to the city the title to all or any portion of an improvement project; or

(2) authorizes the district to own, encumber, maintain, and operate an improvement project, subject to the right of the city to order a conveyance of the project to the city on a date determined by the city.

(f) Provides that for the purposes of this section, planning, design, construction, improvement, and maintenance of a lake include work done for drainage, reclamation, or recreation.

Sec. 3895.103. GENERAL POWERS REGARDING CONTRACTS. (a) Authorizes the district to:

(1) contract with any person to accomplish any district purpose, including a contract for the payment, repayment, or reimbursement of costs incurred by that person on behalf of the district, including all or part of the costs of an improvement project and interest on the reimbursed cost, or the use, occupancy, lease, rental, operation, maintenance, or management of all or part of a proposed or existing improvement project; and

(2) apply for and contract with any person to receive, administer, and perform a duty or obligation of the district under a federal, state, local, or private gift, grant, loan, conveyance, transfer, bequest, or other financial assistance arrangement relating to the investigation, planning, analysis,

study, design, acquisition, construction, improvement, completion, implementation, or operation by the district or others of a proposed or existing improvement project.

(b) Authorizes a contract the district enters into to carry out a purpose of this chapter to be on any terms and for any period the board determines, including a negotiable or nonnegotiable note or warrant payable to the city, Dallas County, and any other person.

(c) Authorizes any person to contract with the district to carry out the purposes of this chapter without further statutory or other authorization.

(d) Requires that a contract payable from ad valorem taxes for a period longer than one year be approved by the governing body of the city.

Sec. 3895.105. ECONOMIC DEVELOPMENT. Authorizes the district to create economic development programs and exercise the economic development powers that Chapter 380 (Miscellaneous Provisions Relating to Municipal Planning and Development), Local Government Code, provides to a municipality with a population of more than 100,000, and Chapter 1509 (Obligations for Other Municipal Purposes), Government Code, provides to a municipality.

Sec. 3895.106. RULES; ENFORCEMENT. (a) Authorizes the district to adopt certain rules.

(b) Authorizes the district to enforce its rules by injunctive relief.

(c) Provides that to the extent a district rule conflicts with a city rule, order, or regulation, the city rule, order, or regulation controls.

Sec. 3895.107. NAME CHANGE. Authorizes the board by resolution to change the district's name. Requires the board to give written notice of the change to the city.

Sec. 3895.108. ADDING OR REMOVING TERRITORY. Authorizes the board to add or remove territory under Subchapter J (Annexation or Exclusion of Land), Chapter 49, and Section 54.016 (Consent of City), Water Code, except that:

(1) the addition or removal of the territory must be approved by the governing body of the city, and the owners of the territory being added or removed;

(2) a reference to a tax in Subchapter J, Chapter 49, or Section 54.016, Water Code, means an ad valorem tax; and

(3) territory may not be removed from the district if bonds or other obligations of the district payable wholly or partly from ad valorem taxes on the territory are outstanding.

Sec. 3895.109. NO EMINENT DOMAIN POWER. Prohibits the district from exercising the power of eminent domain.

Sec. 3895.110. DISTRICT EMPLOYEES; TERMS OF EMPLOYMENT; COMPENSATION. Authorizes the board to employ and establish the terms of employment and compensation of an executive director or general manager, or any other district employee the board considers necessary.

[Reserves Sections 3895.111-3895.150 for expansion.]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 3895.151. GENERAL POWERS REGARDING FINANCIAL MATTERS. Authorizes the district, except as provided by Section 3895.161, to engage in certain business activities.

Sec. 3895.152. BORROWING MONEY. Authorizes the district to borrow money for a district purpose by issuing or executing bonds, notes, credit agreements, or other obligations of any kind found by the board to be necessary or appropriate for the district purpose. Requires the bond, note, credit agreement, or other obligation to be secured by and payable from ad valorem taxes, assessments, or other district revenue.

Sec. 3895.153. IMPACT FEES AND ASSESSMENTS; EXEMPTION. (a) Authorizes the district to impose an impact fee or assessment on property in the district, including an impact fee or assessment on residential or commercial property, only in the manner provided by Subchapter A, Chapter 372, or Subchapter F (Assessments), Chapter 375, Local Government Code, for a municipality, county, or public improvement district, according to the benefit received by the property.

(b) Requires that an impact fee for residential property be for the limited purpose of providing capital funding for public water and wastewater facilities, drainage and storm-water facilities, and streets and alleys.

(c) 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, or an expense of collection of an assessment, including reasonable attorney's fees, incurred by the district is a first and prior lien against the property assessed, and is superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes.

(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.

(e) Prohibits the district from imposing an impact fee on the property, including equipment and facilities, of a public utility provider in the district.

Sec. 3895.154. CERTAIN RESIDENTIAL PROPERTY NOT EXEMPT. Provides that Section 375.161, Local Government Code, does not apply to the district.

Sec. 3895.155. MAINTENANCE AND OPERATION TAX; ELECTION. (a) Authorizes the district, except as provided by Section 3895.161, to impose a tax for maintenance and operation purposes, including for:

(1) planning, constructing, acquiring, maintaining, repairing, and operating all improvement projects, including land, plants, works, facilities, improvements, appliances, and equipment of the district; and

(2) paying costs of services, engineering and legal fees, and organization and administrative expenses.

(b) Prohibits the district from imposing a maintenance and operation tax unless the maximum tax rate is approved by the governing body of the city and a majority of the district voters voting at an election held for that purpose. Authorizes the board, if the maximum tax rate is approved, to impose the tax at any rate that does not exceed the approved rate.

(c) Authorizes a maintenance and operation tax election to be held at the same time and in conjunction with any other district election. Authorizes the election to be called by a separate election order or as part of any other election order.

(d) Authorizes the proposition in a maintenance and operation tax election to be for a specific maximum rate.

Sec. 3895.156. **USE OF SURPLUS MAINTENANCE AND OPERATION MONEY.** Authorizes the money, if the district has surplus maintenance and operation tax money that is not needed for the purposes for which it was collected, to be used for any authorized purpose.

Sec. 3895.157. **BOND ISSUANCE PLAN REQUIRED BEFORE ISSUING BONDS.** Prohibits the district from issuing bonds until the governing body of the city approves a bond issuance plan authorizing and setting forth limitations on the issuance of the bonds.

Sec. 3895.158. **BONDS AND OTHER OBLIGATIONS; MUNICIPAL APPROVAL.** (a) Authorizes the district, except as provided by Sections 3895.157 and 3895.161, to issue, by competitive bid or negotiated sale, bonds, notes, or other obligations payable wholly or partly from ad valorem taxes or assessments in the manner provided by Subchapter A, Chapter 372, or Subchapter J, Chapter 375, Local Government Code.

(b) Authorizes the district, in exercising the district's borrowing power, to issue a bond or other obligation in the form of a bond, note, certificate of participation or other instrument evidencing a proportionate interest in payments to be made by the district, or other type of obligation.

(c) Authorizes the district bonds, in addition to the sources of money described by Subchapter A, Chapter 372, and 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 any other district revenue.

Sec. 3895.159. **BOND MATURITY.** Authorizes bonds to mature not more than 40 years from their date of issue.

Sec. 3895.160. **TAXES FOR BONDS AND OTHER OBLIGATIONS.** (a) Provides that at the time bonds or other obligations payable wholly or partly from ad valorem taxes are issued:

(1) the board is required to impose a continuing direct annual ad valorem tax, without limit as to rate or amount, for each year that all or part of the bonds are outstanding; and

(2) the district annually is required to impose an ad valorem tax on all taxable property in the district in an amount sufficient to:

(A) pay the interest on the bonds or other obligations as the interest becomes due;

(B) create a sinking fund for the payment of the principal of the bonds or other obligations when due or the redemption price at any earlier required redemption date; and

(C) pay the expenses of imposing the taxes.

(b) Prohibits bonds or other obligations that are secured by and payable from ad valorem taxes from being issued unless the bonds and the imposition of the taxes are approved by:

(1) a majority of the district voters voting at an election held for that purpose; and

(2) the governing body of the city.

(c) Requires the district to hold an election required by this section in the manner provided by Chapter 54 , Water Code.

Sec. 3895.161. PROJECT DEVELOPMENT AGREEMENT REQUIRED TO IMPOSE TAXES OR BORROW MONEY, INCLUDING BONDS. Requires the district and the city, before the district is authorized to issue bonds, impose taxes, or borrow money, to negotiate and execute a mutually approved and accepted interlocal project development agreement regarding the development plans and rules for:

- (1) the development and operation of the district; and
- (2) the financing of improvement projects.

Sec. 3895.162. CITY NOT REQUIRED TO PAY DISTRICT OBLIGATIONS. Provides that except as provided by Section 375.263 (Dissolution by Municipal Ordinance), Local Government code, the city is not required to pay a bond, note, or other obligation of the district.

[Reserves Sections 3895.163-3895.200 for expansion.]

SUBCHAPTER E. DISSOLUTION

Sec. 3895.201. DISSOLUTION BY CITY ORDINANCE. (a) Provides that the district is dissolved, if the city by ordinance adopts by a two-thirds vote of its governing body an ordinance to dissolve the district.

(b) Prohibits the district from being dissolved until the district's outstanding indebtedness or contractual obligations payable from ad valorem taxes have been repaid or discharged.

(c) Prohibits the district from being dissolved until the agreement under Section 3895.161 has been executed and the district's performance under the agreement has been fulfilled, including any right or obligation the district has to reimburse a developer or owner for the costs of improvement districts.

Sec. 3895.202. COLLECTION OF ASSESSMENTS AND OTHER REVENUE. (a) Provides that if the dissolved district has bonds or other obligations outstanding secured by and payable from assessments or other revenue, other than ad valorem taxes, the city succeeds to the rights and obligations of the district regarding enforcement and collection of the assessments or other revenue.

(b) Provides that the city has and is authorized, if the district is dissolved, to exercise all district powers to enforce and collect the assessments or other revenue to pay:

- (1) the bonds or other obligations when due and payable according to their terms; or
- (2) special revenue or assessment bonds or other obligations issued by the city to refund the outstanding bonds or obligations.

Sec. 3895.203. ASSUMPTION OF ASSETS AND LIABILITIES. (a) Prohibits the district from being dissolved by the city unless the city assumes the obligations of the district, including any bonds or other indebtedness payable from assessments or other district revenue.

(b) Requires the board, if the city dissolves the district, to transfer ownership of all district property to the city.

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.