

BILL ANALYSIS

C.S.H.B. 2435
By: Wray
Urban Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note the use of public improvement districts as a method of financing public utility infrastructure and other necessities in areas of growth but contend that certain statutory changes are needed to expand the options available to local governments that wish to use such districts. C.S.H.B. 2435 provides for these changes by revising provisions of the Public Improvement District Assessment Act.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2435 amends the Local Government Code to revise the Public Improvement District Assessment Act. The bill includes as a public improvement project the establishment or improvement of recreational facilities and the acquisition, construction, or improvement of a facility related to a water feature, including a recreational lagoon or artificial body of water used for aesthetic purposes or for swimming, boating, or other aquatic recreational sports or activities. The bill specifies that a public improvement project for the acquisition of real property in connection with an authorized improvement includes the acquisition of a right-of-way. The bill replaces the authorization for payment of expenses incurred in the establishment, administration, and operation of a public improvement district to include expenses related to the operation and maintenance of mass transportation facilities with an authorization for payment of such incurred expenses to include expenses related to the operation and maintenance of a public improvement project.

C.S.H.B. 2435 exempts an improvement financed under provisions relating to the issuance of bonds to reimburse acquired public improvements from the prohibition against actual construction of an improvement beginning until after a 20-day period after the date the improvement district authorization takes effect. The bill authorizes the governing body of a municipality or county to call and hold a public hearing for the purpose of increasing the area of a public improvement district if an applicable petition requesting the increase is filed by the owners of property to be added to the district. The bill authorizes the governing body after the hearing by ordinance or order to increase the area of the district in accordance with the increase proposed in the hearing. The bill authorizes the governing body of a municipality or county to make a supplemental assessment or to reapportion an existing assessment after notice and a hearing if the governing body increases the area of a public improvement district and the

governing body has levied an assessment on property in the district before the increase. The bill authorizes the governing body of a municipality or county, after notice and a hearing, to make supplemental assessments to levy an assessment on property added to a public improvement district and authorizes the governing body of a municipality or county to make a reassessment or new assessment of a parcel of land if the governing body increases the area of a public improvement district.

C.S.H.B. 2435 changes one of the authorized uses of a special improvement district fund from payment of the initial cost of the improvement until temporary notes, time warrants, or improvement bonds have been issued and sold to payment of that initial cost until temporary notes, time warrants, or general obligation bonds or revenue bonds have been issued and sold. The bill expands the entities to whom or for the benefit of whom the dedication, conveyance, lease, or other provision of improvements triggers the authorization for the costs of the improvements to be paid or reimbursed by a combination of prescribed methods. The bill extends from five years to seven years the maximum period that the interest rate on unpaid amounts due under certain installment sales contracts, reimbursement agreements, temporary notes, and time warrants is prohibited from exceeding five percent above the highest reported average index rate for tax-exempt bonds and specifies such bonds as tax-exempt revenue bonds.

C.S.H.B. 2435 authorizes the governing body of a municipality to pledge tax increment revenue generated from property and sales taxes imposed in a reinvestment zone designated by the municipality under the Tax Increment Financing Act and located wholly or partly within the boundaries of a public improvement district for the payment of obligations and the payment of principal, interest, and any other amounts required or permitted in connection with the obligations. The bill includes a corporation created by any municipality or county under the Texas Constitution or other law, a local government corporation, and a political subdivision, instrumentality, or entity created and authorized to issue bonds secured by pledged revenue from a municipality or county as entities with which the governing body of a municipality or county may enter into an agreement that provides for payment of amounts pledged to the entities to secure indebtedness issued by the entities to finance an improvement project and makes related changes. The bill authorizes refunding bonds to be issued in a principal amount in excess of the bonds to be refunded. The bill removes the restriction that general obligation bonds or revenue bonds for the reimbursement of a developer for the cost of certain public improvements be issued and sold by the governing body of a municipality or county.

C.S.H.B. 2435 makes the competitive bidding and competitive proposal procedures prescribed by the County Purchasing Act inapplicable to contracts relating to a public improvement, including paving, drainage, or street widening, and matters related to the public improvement if at least one-third of the cost of the public improvement is to be paid by or through special assessments levied on property that will benefit from the improvement.

C.S.H.B. 2435 amends the Property Code to revise the written notice, with respect to the unpaid principal amount of an assessment levied against residential real property located in certain public improvement districts, that the seller of the property is required to give to the purchaser.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2435 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

SECTION 1. Sections 372.003(b), (b-1), and (c), Local Government Code, are amended to read as follows:

(b) A public improvement project may include:

- (1) landscaping;
- (2) erection of fountains, distinctive lighting, and signs;
- (3) acquiring, constructing, improving, widening, narrowing, closing, or rerouting of sidewalks or of streets, any other roadways, or their rights-of-way;
- (4) construction or improvement of pedestrian malls;
- (5) acquisition and installation of pieces of art;
- (6) acquisition, construction, or improvement of libraries;
- (7) acquisition, construction, or improvement of off-street parking facilities;
- (8) acquisition, construction, improvement, or rerouting of mass transportation facilities;
- (9) acquisition, construction, or improvement of water, wastewater, or drainage facilities or improvements;
- (10) the establishment or improvement of parks and recreational facilities;
- (11) acquisition, construction, or improvement of a facility related to the generation of renewable energy from wind, solar, geothermal, or other renewable sources of energy;
- (12) acquisition, construction, or improvement of a facility related to a water

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter C, Chapter 262, Local Government Code, is amended by adding Section 262.0242 to read as follows:

Sec. 262.0242. MANDATORY EXEMPTIONS: PUBLIC IMPROVEMENTS PARTIALLY FUNDED BY SPECIAL ASSESSMENTS.

The competitive bidding and competitive proposal procedures prescribed by this subchapter do not apply to contracts relating to a public improvement, including paving, drainage, or street widening, and matters related to the public improvement if at least one-third of the cost of the public improvement is to be paid by or through special assessments levied on property that will benefit from the improvement.

SECTION 2. Sections 372.003(b), (b-1), and (c), Local Government Code, are amended to read as follows:

(b) A public improvement project may include:

- (1) landscaping;
- (2) erection of fountains, distinctive lighting, and signs;
- (3) acquiring, constructing, improving, widening, narrowing, closing, or rerouting of sidewalks or of streets, any other roadways, or their rights-of-way;
- (4) construction or improvement of pedestrian malls;
- (5) acquisition and installation of pieces of art;
- (6) acquisition, construction, or improvement of libraries;
- (7) acquisition, construction, or improvement of off-street parking facilities;
- (8) acquisition, construction, improvement, or rerouting of mass transportation facilities;
- (9) acquisition, construction, or improvement of water, wastewater, or drainage facilities or improvements;
- (10) the establishment or improvement of parks and recreational facilities;
- (11) acquisition, construction, or improvement of a facility related to a water

feature, including a recreational lagoon or artificial body of water used for:

(A) aesthetic purposes; or

(B) swimming, boating, or other aquatic recreational sports or activities;

(13) projects similar to those listed in Subdivisions (1)-(12) [(1)-(10)];

(14) [(12)] acquisition, by purchase or otherwise, of real property, including a right-of-way, in connection with an authorized improvement;

(15) [(13)] special supplemental services for improvement and promotion of the district, including services relating to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and cultural enhancement;

(16) [(14)] payment of expenses incurred in the establishment, administration, and operation of the district; and

(17) [(15)] the development, rehabilitation, or expansion of affordable housing.

(b-1) Payment of expenses under Subsection (b)(16) [(b)(14)] may also include expenses related to the operation and maintenance of a public improvement project [mass transportation facilities].

(c) A public improvement project may be limited to the provision of the services described by Subsection (b)(15) [(b)(13)].

SECTION 2. Section 372.010(c), Local Government Code, is amended.

SECTION 3. Sections 372.012, 372.019, and 372.020, Local Government Code, are amended to read as follows:

Sec. 372.012. AREA OF DISTRICT; INCREASE OF AREA. (a) The area of a public improvement district to be assessed according to the findings of the governing body of the municipality or county may be less than the area described in the proposed boundaries stated by the notice under Section 372.009. The area to be assessed may not include property not described by the notice as being within the proposed boundaries of the district unless a hearing is held to include the property and notice for the hearing is given in the same manner as notice under Section 372.009.

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feature, including a recreational lagoon or artificial body of water used for:

(A) aesthetic purposes; or

(B) swimming, boating, or other aquatic recreational sports or activities;

(12) projects similar to those listed in Subdivisions (1)-(11) [(1)-(10)];

(13) [(12)] acquisition, by purchase or otherwise, of real property, including a right-of-way, in connection with an authorized improvement;

(14) [(13)] special supplemental services for improvement and promotion of the district, including services relating to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and cultural enhancement;

(15) [(14)] payment of expenses incurred in the establishment, administration, and operation of the district; and

(16) [(15)] the development, rehabilitation, or expansion of affordable housing.

(b-1) Payment of expenses under Subsection (b)(15) [(b)(14)] may also include expenses related to the operation and maintenance of a public improvement project [mass transportation facilities].

(c) A public improvement project may be limited to the provision of the services described by Subsection (b)(14) [(b)(13)].

SECTION 3. Same as introduced version.

SECTION 4. Sections 372.012, 372.019, and 372.020, Local Government Code, are amended to read as follows:

Sec. 372.012. AREA OF DISTRICT; INCREASE OF AREA. (a) The area of a public improvement district to be assessed according to the findings of the governing body of the municipality or county may be less than the area described in the proposed boundaries stated by the notice under Section 372.009. The area to be assessed may not include property not described by the notice as being within the proposed boundaries of the district unless a hearing is held to include the property and notice for the hearing is given in the same manner as notice under Section 372.009.

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(b) The governing body of the municipality or county may call and hold a public hearing in the same manner as a hearing under Section 372.009 for the purpose of increasing the area of a public improvement district if a petition requesting the increase is filed as provided by Section 372.005. After the hearing, the governing body may by ordinance or order increase the area of the district in accordance with the increase proposed in the hearing.

(c) If the governing body of the municipality or county increases the area of a public improvement district under Subsection (b) and the governing body has levied an assessment on property in the district before the increase, the governing body may:

- (1) make a supplemental assessment under Section 372.019; or
- (2) reapportion the existing assessment in a manner consistent with Section 372.015 after notice is given and a hearing is held in the same manner as required by Sections 372.016 and 372.017.

Sec. 372.019. SUPPLEMENTAL ASSESSMENTS. (a) After notice and a hearing in accordance with Subsection (b), the governing body of the municipality or county may make supplemental assessments to:

- (1) correct omissions or mistakes in the assessment relating to the total cost of the improvement; or
- (2) levy an assessment on property added to the public improvement district under Section 372.012.

(b) Notice must be given and the hearing held under this section in the same manner as required by Sections 372.016 and 372.017.

Sec. 372.020. REASSESSMENT. (a) The governing body of the municipality or county may make a reassessment or new assessment of a parcel of land if:

- (1) a court of competent jurisdiction sets aside an assessment against the parcel;
- (2) the governing body determines that the original assessment is excessive; [ø]
- (3) on the written advice of counsel, the governing body determines that the original

(b) The governing body of the municipality or county may call and hold a public hearing in the same manner as a hearing under Section 372.009 for the purpose of increasing the area of a public improvement district if a petition requesting the increase is filed by the owners of property to be added to the district in the manner provided by Section 372.005, considering only the area to be added for the purposes of Sections 372.005(b) and (b-1). After the hearing, the governing body may by ordinance or order increase the area of the district in accordance with the increase proposed in the hearing.

(c) If the governing body of the municipality or county increases the area of a public improvement district under Subsection (b) and the governing body has levied an assessment on property in the district before the increase, the governing body may:

- (1) make a supplemental assessment under Section 372.019; or
- (2) reapportion the existing assessment in a manner consistent with Section 372.015 after notice is given and a hearing is held in the same manner as required by Sections 372.016 and 372.017.

Sec. 372.019. SUPPLEMENTAL ASSESSMENTS. (a) After notice and a hearing in accordance with Subsection (b), the governing body of the municipality or county may make supplemental assessments to:

- (1) correct omissions or mistakes in the assessment relating to the total cost of the improvement; or
- (2) levy an assessment on property added to the public improvement district under Section 372.012.

(b) Notice must be given and the hearing held under this section in the same manner as required by Sections 372.016 and 372.017.

Sec. 372.020. REASSESSMENT. The governing body of the municipality or county may make a reassessment or new assessment of a parcel of land if:

- (1) a court of competent jurisdiction sets aside an assessment against the parcel;
- (2) the governing body determines that the original assessment is excessive; [ø]
- (3) on the written advice of counsel, the governing body determines that the original

assessment is invalid; or
(4) the governing body increases the area of the public improvement district under Section 372.012.

(b) The governing body of the municipality or county may only make a reassessment or new assessment under Subsection (a)(4) for the purpose of reducing the overall principal amount of a prior assessment.

SECTION 4. Section 372.021(c), Local Government Code, is amended.

SECTION 5. Section 372.022, Local Government Code, is amended.

SECTION 6. Subchapter A, Chapter 372, Local Government Code, is amended by adding Section 372.0225 to read as follows:
Sec. 372.0225. TRANSFER OF PROJECT FOR OPERATION AND MAINTENANCE. The governing body of the municipality or county may transfer a public improvement project, for the purpose of operation and maintenance of the project for the benefit of the municipality or county, to:
(1) an entity created or operating under Section 52(b)(1) or (2), Article III, or Section 59, Article XVI, Texas Constitution;
(2) a district created and operating under Chapter 65, Water Code; or
(3) an entity regulated by the Public Utility Commission of Texas.

SECTION 7. Section 372.023(e), Local Government Code, is amended to read as follows:

(See SECTION 6 above.)

assessment is invalid; or
(4) the governing body increases the area of the public improvement district under Section 372.012.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

No equivalent provision. *(But see SECTION 7 below.)*

SECTION 7. Sections 372.023(a) and (e), Local Government Code, are amended to read as follows:

(a) Costs of improvements may be paid or reimbursed by any combination of the methods described by this section if the improvements are dedicated, conveyed, leased, or otherwise provided to or for the benefit of:

- (1) a municipality or county;
- (2) this state, a political subdivision of this state, or other entity exercising the powers granted under this subchapter as authorized by other law; [ø]
- (3) an entity created or operating under Section 52(b)(1) or (2), Article III, or

Section 59, Article XVI, Texas Constitution;
(4) a district created and operating under
Chapter 65, Water Code;

(5) an entity otherwise authorized under the
laws of this state to own the improvements,
operate the improvements, and, as
applicable, provide services using the
improvements; or

(6) an entity that:

(A) is approved by the governing body of
an entity described by Subdivision (1), ~~(2)~~
(2), (3), (4), or (5); and

(B) is authorized by order, ordinance,
resolution, or other official action to act for
an entity described by Subdivision (1), ~~(2)~~
(2), (3), (4), or (5).

(e) The interest rate on unpaid amounts due under an installment sales contract, reimbursement agreement, temporary note, or time warrant described by Subsection (d):
(1) may not exceed, for a period of not more than seven ~~[five]~~ years, as determined by the governing body of the municipality or county, five percent above the highest average index rate for tax-exempt revenue bonds reported in a daily or weekly bond index approved by the governing body and reported in the month before the date the obligation was incurred; and
(2) after the period described by Subdivision (1), may not exceed two percent above the bond index rate described by Subdivision (1).

(e) The interest rate on unpaid amounts due under an installment sales contract, reimbursement agreement, temporary note, or time warrant described by Subsection (d):
(1) may not exceed, for a period of not more than seven ~~[five]~~ years, as determined by the governing body of the municipality or county, five percent above the highest average index rate for tax-exempt revenue bonds reported in a daily or weekly bond index approved by the governing body and reported in the month before the date the obligation was incurred; and
(2) after the period described by Subdivision (1), may not exceed two percent above the bond index rate described by Subdivision (1).

SECTION 8. Section 372.026, Local Government Code, is amended by amending Subsections (a), (b), and (f) and adding Subsection (g) to read as follows:

(a) In this section, "obligation" means bonds, temporary notes, time warrants, or an obligation under:

(1) an installment sale contract or reimbursement agreement; or

(2) an agreement entered into under Subsection (f).

(b) For the payment of obligations issued or agreed to under this subchapter and the payment of principal, interest, and any other amounts required or permitted in connection with the obligations, the governing body of the municipality or county may pledge:

(1) all or part of the income from improvements financed under this subchapter, including income received in

SECTION 8. Section 372.026, Local Government Code, is amended by amending Subsections (a), (b), and (f) and adding Subsection (g) to read as follows:

(a) In this section, "obligation" means bonds, temporary notes, time warrants, or an obligation under:

(1) an installment sale contract or reimbursement agreement; or

(2) an agreement entered into under Subsection (f).

(b) For the payment of obligations issued or agreed to under this subchapter and the payment of principal, interest, and any other amounts required or permitted in connection with the obligations, the governing body of the municipality or county may pledge:

(1) all or part of the income from improvements financed under this subchapter, including income received in

installment payments under Section 372.023; or

(2) for a municipality, ~~undicated~~ tax increment revenue generated from ad valorem and sales taxes imposed in a reinvestment zone;

(A) designated by the municipality under Chapter 311, Tax Code; and

(B) located wholly or partly within the boundaries of the public improvement district.

(f) The governing body may enter into an agreement with an entity described by Subsection (g) [a corporation created by the municipality or county under the Texas Constitution or other law] that provides for payment of amounts pledged under this section to the entity [corporation] to secure indebtedness issued by the entity [corporation] to finance an improvement project, including indebtedness to pay capitalized interest and a reserve fund permitted by this subchapter for revenue or general obligation bonds issued under this subchapter and indebtedness issued to pay the entity's [corporation's] costs of issuance. In addition, the agreement may [provide that]:

(1) for an agreement with a corporation, provide that the corporation is responsible for managing the district; or

(2) designate the entity that will hold title to the [one or more] improvements under the agreement, which may include an entity described by Section 372.0225 [will be held by the corporation].

(g) The governing body of the municipality or county may enter into an agreement described by Subsection (f) only with:

(1) a corporation created by the municipality or county under the Texas Constitution or other law;

(2) a corporation created under Subchapter D, Chapter 431, Transportation Code; or

(3) a political subdivision or instrumentality created and authorized to issue bonds secured by pledged revenue from a municipality or county.

SECTION 9. Section 372.027(a), Local Government Code, is amended.

SECTION 10. Section 372.152(a), Local

installment payments under Section 372.023; or

(2) for a municipality, tax increment revenue generated from ad valorem and sales taxes imposed in a reinvestment zone;

(A) designated by the municipality under Chapter 311, Tax Code; and

(B) located wholly or partly within the boundaries of the public improvement district.

(f) The governing body may enter into an agreement with an entity described by Subsection (g) [a corporation created by the municipality or county under the Texas Constitution or other law] that provides for payment of amounts pledged under this section to the entity [corporation] to secure indebtedness issued by the entity [corporation] to finance an improvement project, including indebtedness to pay capitalized interest and a reserve fund permitted by this subchapter for revenue or general obligation bonds issued under this subchapter and indebtedness issued to pay the entity's [corporation's] costs of issuance. In addition, the agreement may [provide that]:

(1) for an agreement with a corporation, provide that the corporation is responsible for managing the district; or

(2) designate the entity that will hold title to the [one or more] improvements under the agreement, which may include an entity described by Section 372.023(a) [will be held by the corporation].

(g) The governing body of the municipality or county may enter into an agreement described by Subsection (f) only with:

(1) a corporation created by a municipality or county under the Texas Constitution or other law;

(2) a corporation created under Subchapter D, Chapter 431, Transportation Code; or

(3) a political subdivision, instrumentality, or entity created and authorized to issue bonds secured by pledged revenue from a municipality or county.

SECTION 9. Same as introduced version.

SECTION 10. Section 372.152(a), Local

Government Code, is amended to read as follows:

(a) ~~The governing body of a municipality or county may issue and sell general obligation bonds or revenue bonds to reimburse a developer for the cost of a public improvement if:~~

(1) the public improvement is located in a public improvement district created on or after January 1, 2005;

(2) the public improvement is ~~is~~ ~~has been~~ dedicated to and accepted by the municipality, ~~or~~ county, or entity to which the improvement will be transferred under Section 372.0225; and

(3) before the public improvement was dedicated to and accepted by the municipality or county, the governing body of the municipality or county entered into an agreement with the developer to pay for the public improvement.

SECTION 11. Section 5.014(a), Property Code, is amended.

SECTION 12. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

Government Code, is amended to read as follows:

(a) General ~~[The governing body of a municipality or county may issue and sell general]~~ obligation bonds or revenue bonds to reimburse a developer for the cost of a public improvement may be issued and sold in accordance with this chapter if:

(1) the public improvement is located in a public improvement district created on or after January 1, 2005;

(2) the public improvement is ~~is~~ ~~has been~~ dedicated to and accepted by the municipality, ~~or~~ county, or entity designated to receive the improvement under Section 372.023(a); and

(3) before the public improvement was dedicated to and accepted by the municipality or county, the governing body of the municipality or county entered into an agreement with the developer to pay for the public improvement.

SECTION 11. Substantially the same as introduced version.

SECTION 12. Same as introduced version.