

BILL ANALYSIS

Senate Research Center

H.B. 3845
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Natural Resources
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Engrossed

DIGEST

Historically, the Southeast Texas agricultural economy has been dependent on rice and livestock production. Attempts at feed grain and oil crop production have not been successful. There is concern that by the year 2002, the Federal Farm Program may drop all subsidies, and that other major contributing agricultural products may not produce the required income per acre to maintain a sufficient agricultural base. In light of the current economic condition of agriculture production in the coastal area, agriculture stock holders and land owners are evaluating the viability and profitability of alternative agricultural enterprises. H.B. 3845 creates the Southeast Texas Agricultural Development District and sets forth its organization, duties, and powers, to promote and foster the growth of enterprises based on certain types of agriculture.

PURPOSE

As proposed, H.B. 3845 creates the Southeast Texas Agricultural Development District, and grants the district the right to issue bonds.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the board of directors of the Southeast Texas Agricultural Development District in SECTION 1 (Sections 384.084 and 384.101(c), Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 12, Local Government Code, by adding Chapter 384, as follows:

CHAPTER 384. SOUTHEAST TEXAS AGRICULTURAL DEVELOPMENT DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 384.001. DEFINITIONS. Defines "assessment," "board," "bond," "county," "director," "district," and "project."

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 384.021. CREATION. Provides that the Southeast Texas Agricultural Development District (district) is created as a special district and authorizes the district's board of directors (board) by resolution to change the district's name.

Sec. 384.022. PURPOSE AND NATURE OF DISTRICT. Sets forth the purpose of the district. Provides that the district exercises public and essential government functions and that creation of the district is essential to accomplish the purposes of enumerated state laws. Provides that Chapter 49, Water Code, does not apply.

Sec. 384.023. BOUNDARIES. Establishes that the district includes all of the territory of Chambers County that is east of the center line of the Trinity River and north of the center line of the Gulf Intracoastal Waterway, save and except all property located within the city limits of an incorporated municipality as of January 1, 1999.

Sec. 384.024. FINDING RELATING TO BOUNDARIES. Sets forth the findings of the

legislature relating to the boundaries of the district.

SUBCHAPTER C. DISTRICT POWERS AND DUTIES

Sec. 384.041. GENERAL POWERS AND DUTIES. Establishes that the district has the powers and duties that are prescribed by this chapter and that are necessary or desirable to carry out a power or duty expressly or implicitly granted under this chapter. Authorizes the district to perform acts necessary to carry out the purposes of this chapter. Prohibits the district from imposing an ad valorem tax.

Sec. 384.042. ECONOMIC DEVELOPMENT. Authorizes the district to encourage state economic development as provided by this chapter, including by making a loan or grant of public money for the purposes of this chapter. Authorizes the district to encourage the economic development of the area in which the district is located by taking certain actions.

Sec. 384.043. AGRICULTURAL DEVELOPMENT. Authorizes the district to promote all agricultural enterprises, facilities, and services of the district; and encourage the maintenance and conservation of soil in the district.

Sec. 384.044. AGRICULTURAL DEVELOPMENT. Authorizes the district to design, construct, and operate a sugar mill or other agricultural enterprise. Authorizes the district to acquire property necessary for a sugar mill or other agricultural enterprise.

Sec. 384.045. AGRICULTURAL PROJECTS. Authorizes the district to designate as an agricultural project a project that relates to the development of agriculture in the district and surrounding areas and the preservation and conservation of the soil in the district for agricultural purposes. Specifies that a project designated under this section is for a public purpose. Authorizes the cost of a project, including interest during construction and costs of issuance of bonds, to be paid from any source. Specifies that the implementation of a project is a governmental function or service for purposes of Chapter 791, Government Code.

Sec. 384.046. TRANSPORTATION DEVELOPMENT; NAVIGATION DISTRICT; LIMIT ON POWER. Authorizes the district to encourage the transportation and distribution of the district's agricultural products through the development and operation of transportation structures necessary to further the purposes of this chapter, including railroads and private roads. Authorizes the district to cooperate and contract with the Chambers-Liberty Counties Navigation District on any area of mutual interest. Provides that the authority granted to the district under this chapter is not intended to duplicate the authority granted to the Chambers-Liberty Counties Navigation District or to limit the authority or jurisdiction of the navigation district. Provides that to the extent the laws of this chapter conflict with the laws of that navigation district, the laws of the navigation district control over this chapter.

Sec. 384.047. AGREEMENTS; DONATIONS. Authorizes the district to make an agreement with any person for any district purpose, and to accept a donation, grant, or loan from any person. Authorizes the district, county, and any other political subdivision, without further authorization, to contract to implement a district project or assist the district in providing a service authorized by this chapter. Authorizes a contract under this subsection to provide for payment from a district assessment or other revenue and authorizes that an assessment or other revenue collected from a district project, or from a person using or purchasing a commodity or service from a district project, to be paid or rebated to the district.

Sec. 384.048. PROPERTY. Authorizes the district to acquire or dispose of property in any manner, including by conveyance, mortgage, or lease, as lessor or lessee.

Sec. 384.049. EMINENT DOMAIN. Prohibits the district from exercising the power of eminent domain.

Sec. 384.050. RESEARCH. Authorizes the district to conduct or pay for research for agricultural purposes.

Sec. 384.051. SUITS. Authorizes the district to sue and be sued. Authorizes process to be served

on a director or registered agent, in a suit against the district. Prohibits the district from being required to give a bond on an appeal or writ of error in a civil case that the district is prosecuting or defending. Authorizes the district to indemnify a director or district employee or a former director or district employee for reasonable expenses and costs if the claim relates to an act or omission of the person when acting in the scope of the person's board membership or district employment; and the person has not been found liable or guilty on the claim.

Sec. 384.052. ANNEXATION; EXCLUDING TERRITORY. Authorizes the district to annex land as provided by Section 49.301 or 49.302, Water Code, except that the references in those sections related to taxes do not apply. Authorizes the district to annex land that is not adjacent or contiguous to the district, as provided by those sections. Authorizes the board on its own motion to call a hearing on the question of the exclusion of land from the district in the manner provided by Section 49.304 or 49.307, Water Code, if the district does not have outstanding bonds, and the proposed exclusion is practicable, just, or desirable. Requires the board to call a hearing on the exclusion of land or other property from the district in the manner provided by Section 49.304 or 49.307, Water Code, if a property owner in the district files with the board secretary a written petition requesting the hearing before the issuance of a bond.

Sec. 384.053. POWERS BEYOND DISTRICT TERRITORY. Authorizes the district to exercise any of its powers outside the boundaries of the district if the board determines that there is a benefit to the district in exercising that power.

Sec. 384.054. OFFICIAL SEAL. Authorizes the district to adopt or alter an official seal for the district.

Sec. 384.055. LIMIT ON DISTRICT POWERS. Prohibits the district from exercising a power unless it furthers the purposes of this chapter.

SUBCHAPTER D. BOARD OF DIRECTORS

Sec. 384.081. BOARD OF DIRECTORS. Specifies that the district is governed by a board of nine directors. Authorizes the board to increase or decrease the number of directors on the board by resolution if the board finds that to do so is in the best interest of the district. Prohibits the board from having more than 15 directors. Requires the county commissioners court to appoint the directors to serve staggered four-year terms with as near as possible to one-half of the directors' terms expiring on June 1 of each odd-numbered year. Provides that at least five directors must reside in or own property in the county. Specifies that to serve as a director, a person must be at least 18 years old, and reside in the district, own property in the district, or be an agent, employee, or tenant of a district property owner. Requires the board to elect from among its members a president, vice president, and secretary. Authorizes the board of the district, by rule, to provide for the election of other officers.

Sec. 384.082. REMOVAL; VACANCIES. Specifies procedures for removal of a director for misconduct or failure to carry out the director's duties. Requires a vacancy in the office of a director because of the death, resignation, or removal of a director to be filled by the remaining directors by appointing a director for the unexpired term.

Sec. 384.083. BOARD MEETINGS. Requires the board to meet at least once every three months and at the call of the presiding officer or a majority of the directors.

Sec. 384.084. RULEMAKING. Authorizes the board to adopt rules necessary or convenient to carry out district powers and duties. Authorizes the board to adopt rules to govern its affairs. Authorizes the board to adopt rules to preserve the public health and welfare concerning the agricultural products submitted to the district for harvesting, processing, distributing, or transporting. Authorizes the board to adopt rules on the priority of the use of district property and services, including the payment of fees.

Sec. 384.085. HEARINGS. Authorizes the board to conduct hearings and take evidence on any matter before the board. Authorizes the board to appoint a hearings examiner to conduct a hearing called by the board. Authorizes the hearings examiner to be a district employee or director. Sec.

384.086. EMPLOYEES; EXECUTIVE DIRECTOR. Authorizes a board to employ an executive director to manage the district's day-to-day operations, and other persons necessary to carry out the district's duties.

Sec. 384.087. COMPENSATION AND EXPENSES. Requires a director to serve without compensation but to be reimbursed for a reasonable and necessary expense incurred in performing an official duty.

Sec. 384.088. DIRECTOR'S BOND. Requires the director, as soon as practicable after being appointed, to execute a \$10,000 bond payable to the district and conditioned on the faithful performance of the director's duties. Provides that each director's bond must be approved by the board. Requires the bond to be filed with and retained by the district.

Sec. 384.089. CONFLICTS OF INTEREST; ONE-TIME AFFIDAVIT. Authorizes a director to participate in all board votes and decisions and provides that Chapter 171 governs conflicts of interest for directors, except as provided in this section. Provides that Section 171.004 does not apply to the district. Requires a director who has a substantial interest in a business or charitable entity that will receive a pecuniary benefit from a board action to file a one-time affidavit declaring the interest. Authorizes the director to participate in a discussion or vote on that action if a majority of the directors have similar interests in the same entity, or all similar business or charitable entities in the district will receive a similar pecuniary benefit. Prohibits a director who is also an officer or employee of a public entity from participating in the discussion of or vote on a matter regarding a contract with that same public entity. Provides that for purposes of this section, a director has a substantial interest in a charitable entity in the same manner that a person would have a substantial interest in a business entity under Section 171.002.

SUBCHAPTER E. FINANCES; BONDS

Sec. 384.101. MISCELLANEOUS FINANCIAL POWERS AND DUTIES. Authorizes the district to perform specified financial duties. Requires the district to endeavor to raise revenue sufficient to pay its debts. Requires the board, by rule, to establish the procedure and number of directors' signatures required to disburse or transfer district money.

Sec. 384.102. BONDS. Authorizes the district to issue any type of bond for any district purpose. Authorizes a bond to be issued under Chapter 656, Acts of the 68th Legislature, Regular Session, 1983, Article 717g, V.T.C.S. Authorizes the district to also authorize the later issuance of a parity or subordinate lien bond, when authorizing the issuance of a bond. Provides that a district bond must mature not later than 40 years after its date of issuance, and state on its face that the bond is not an obligation of the state. Authorizes a district bond to be payable from or secured by any source of money, including district revenue, loans, or assessments, or a lien, pledge, mortgage, or other security interest on district revenue or property. Authorizes the district to use bond proceeds for any purpose. Authorizes the district to contract with a bondholder to impose an assessment to pay for the operation of a sugar mill or other agricultural enterprise.

Sec. 384.103. APPROVAL OF ASSESSMENT BONDS. Prohibits a bond secured by an assessment from being issued unless the district receives a written petition requesting the assessment and the issuance of bonds that is signed by each owner of the property being assessed.

SUBCHAPTER F. ASSESSMENTS

Sec. 384.111. GENERAL POWERS. Authorizes the board to impose an assessment for a district expense, to finance a project or district service, or for any other purpose authorized by this chapter. Prohibits money derived from an assessment for one purpose from being borrowed to be used for another purpose for which an assessment is imposed. Requires the board shall establish a procedure for the distribution or use of money derived from an assessment that exceeds the amount of money necessary to accomplish the purpose for which the assessment was collected.

Sec. 384.112. AREA TO BE ASSESSED; LIMITS. Authorizes the board to impose an assessment only on property included in a petition for assessment. Authorizes the owner of an improvement constructed in the district, or of land annexed to the district, after the district imposed an assessment to waive the right to notice and an assessment hearing and agree to the

imposition of the assessment on the improvement or land and payment of the assessment at an agreed rate. Prohibits the district from imposing an assessment on a utility's property. Defines "utility" for the purposes of this section.

Sec. 384.113. HEARING AND PETITION REQUIRED. Authorizes the board to impose an assessment only if certain procedures are performed.

Sec. 384.114. APPORTIONMENT OF COST. Requires the board to apportion the cost of an assessment to property according to the special benefits accruing to the property because of the project or service to be financed by the assessment. Authorizes the cost to be assessed in the manner provided.

Sec. 384.115. ASSESSMENT TO FINANCE A PROJECT OR SERVICE. Requires the board, if the board determines the total cost of an assessment to finance a project or service, to impose the assessment against each parcel of land against which an assessment may be imposed in the district. Authorizes the board to impose an annual assessment for a service. Provides that the amount of an annual service assessment may vary from year to year, but may not be higher than the initial assessment.

Sec. 384.116. ASSESSMENT ROLL. Requires the board to prepare and maintain an assessment roll showing the assessment against each property and the board's basis for the assessment. Requires the board to allow the public to inspect the assessment roll.

Sec. 384.117. INTEREST ON ASSESSMENTS; LIEN. Provides that an assessment is a first and prior lien against the property assessed, superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes, and the personal liability of and charge against the owners of the property, even if the owners are not named in an assessment proceeding. Provides that the lien is effective from the date of the order imposing the assessment until the assessment is paid.

Sec. 384.118. MISTAKES. Authorizes the board, after notice and hearing in the manner required for an original assessment, to impose an assessment to correct a mistake in the assessment relating to the total cost of the assessment, or covering a delinquency or collection costs.

Sec. 384.119. NOTICE OF HEARING. Requires the board to provide notice of a hearing in a newspaper with general circulation in the county. Requires the publication to be made not later than the 30th day before the date of the hearing. Sets forth the required content of the notice. Requires the board, not later than the 30th day before the date of the hearing, to mail written notice containing the information required by this section to each property owner in the district that will be subject to the assessment at the current address of the owner of the property to be assessed, as reflected on the tax rolls.

Sec. 384.120. CONDUCT OF HEARING. Authorizes a hearing on a proposed assessment to be adjourned from time to time. Requires the examiner, if a hearings examiner conducts the hearing, to file with the board a report on the examiner's findings under Subsection (d). Requires the board or hearings examiner to hear and rule on all objections to a proposed assessment. Requires the board or hearings examiner to make certain findings relating to the assessment. Requires the board by order, after receiving or issuing the findings required by Subsection (d), to impose the assessment as a special assessment on the property and specify the method of payment on the assessment. Authorizes the board to perform specified procedures. Provides that if the board orders that an assessment may be paid in periodic installments, the installments must be in amounts sufficient to meet the annual costs of the project or service for which the assessment is imposed, and continue for the number of years required to retire the indebtedness or pay for the project or service for which the assessment is imposed.

Sec. 384.121. REHEARING. Specifies that Section 2001.146, Government Code, applies to a motion for rehearing except that the property owner must file the motion for rehearing not later than the 30th day after the date on which the assessment order is issued.

Sec. 384.122. FILING OF NOTICE OF ASSESSMENT. Requires the district to file a notice of the assessment in the deed records of the county in which the property to be assessed is located

not later than the 30th day after the date on which an assessment order is issued. Requires the notice to provide a legal description of the property that is subject to the assessment, state the name of the owner of the property that is subject to the assessment, and describe how to contact the district for further information about the assessment.

Sec. 384.123. APPEAL TO COURT. Authorizes a property owner against whom an assessment is imposed to appeal the assessment to a district court in the county in which the property is located in the manner provided for the appeal of a contested case under Chapter 2001, Government Code. Requires the owner to file the notice of appeal with the court not later than the 30th day after the board decision becomes final. Requires the court to review the appeal by trial de novo.

Sec. 384.124. ASSESSMENT AFTER APPEAL. Authorizes the board to impose a new assessment in accordance with the procedures provided by this subchapter, if the board determines or a court holds that an assessment is invalid.

SUBCHAPTER G. DISSOLUTION

Sec. 384.141. Provides that the district dissolves if a majority of the board votes for dissolution and all district debts and obligations have been discharged.

SECTION 2. Requires the commissioners court of Chambers County, not later than December 1, 1999, to appoint nine members to the initial board of directors of the Southeast Texas Agricultural Development District. Requires Chambers County to designate four members whose terms expire on June 1, 2001, and five members whose terms expire on June 1, 2003.

SECTION 3. Provides that the proper and 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 by the constitution and other laws of this state, including the governor, who has submitted the notice and Act to the Texas Natural Resource Conservation Commission. Provides that the Texas Natural Resource Conservation Commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time. Specifies 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: September 1, 1999.

SECTION 5. Emergency clause.