

BILL ANALYSIS

Senate Research Center

S.B. 1685
By: Jackson
Natural Resources
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As Filed

DIGEST AND PURPOSE

As proposed, S.B. 1685 creates the Galveston Seawall Conservation District with the powers and duties to impose taxes and issue bonds.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of directors of the Galveston Seawall Conservation District in SECTION 24 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. LEGISLATIVE FINDINGS; PURPOSES. (a) Provides that the Galveston Seawall Conservation District is created as a special district under Section 59, Article XVI, Texas Constitution.

(b) Provides that the creation of the district is declared to be essential to the accomplishment of the purposes of Section 59, Article XVI, and Section 52-a, Article III, of the Texas Constitution, and to the accomplishment of the other public purposes stated in this Act.

(c) Provides that the creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, economic development, and the public welfare in the area of the district.

(d) Prohibits the creation of the district and this Act from being interpreted to relieve the county or any municipality within the county from providing services to the area of the district or to release the county or the municipality within the county from the obligation it has to provide services to the area. Provides that the district is created to supplement and not supplant the services of the county or any municipality within the county.

(e) Provides that all of the land and other property to be included within the boundaries of the district will be benefitted by the works and projects that are to be accomplished and the services to be provided by the district under powers conferred by Section 59, Article XVI, and Section 52-a, Article III, of the Texas Constitution, and other powers granted under this Act.

(f) Provides that the district is created to serve a public use and benefit.

(g) Provides that the creation of the district is essential to further the public purposes of development and diversification of the economy of the state, the elimination of unemployment and underemployment, and the development or expansion of commerce and is in the public interest.

(h) Provides that the creation of the district is necessary to protect the state's natural resources through restoration and protection of natural resources along the boundaries and within the district, including beach, sand dune and shore nourishment, shore protection, vegetation, stabilization, restoration and reclamation, circulation of sand, erosion abatement, construction

and maintenance of bulkheads, jetties, levees, breakwaters, barrier reefs, seawalls, geotubes, groins, t-heads, crossovers, and navigation projects, and provision of all other facilities, improvements, plants, works, appliances, equipment, measures and services that may protect beaches and shores of the district from erosion, promote use of the public beach, and protect and restore natural resources within the district.

(i) Provides that the creation of the district is necessary to promote, develop, and encourage navigation along the state's coastal waters, bays, and inlets, including the deepening and widening of navigation channels.

(j) Provides that each improvement project or service authorized by this chapter is found and declared to carry out a public purpose.

SECTION 2. CONSTRUCTION OF ACT. (a) Requires this Act to be liberally construed in conformity with the findings and purposes in Section 1.

(b) Provides that if any provision of general law is in conflict or inconsistent with this Act, this Act prevails. Provides that any general law not in conflict or inconsistent with this Act is adopted and incorporated by reference.

SECTION 3. DEFINITIONS. Defines "board," "bond," "commission," "county," and "district."

SECTION 4. GOVERNMENTAL AGENCY; TORT CLAIMS. (a) Provides that the district is a governmental agency, a body politic and corporate, and a political subdivision of the state.

(b) Provides that the district is a unit of government for purposes of Chapter 101 (Tort Claims), Civil Practice and Remedies Code, and operations of the district are considered to be essential governmental functions and not proprietary functions for all purposes, including the application of the Texas Tort Claims Act.

SECTION 5. BOUNDARIES OF THE DISTRICT. Sets forth the boundaries of the district.

SECTION 6. FINDINGS RELATING TO BOUNDARIES. Sets forth findings relating to the boundaries of the district.

SECTION 7. CONFIRMATION ELECTION. (a) Requires an election to be held within the boundaries of the district to determine if the district shall be created before issuing any bonds or other obligations or levying an assessment or ad valorem taxes or conducting any other activity.

(b) Requires notice of the confirmation election to state the day and place or places for holding the election and the propositions to be voted on.

(c) Requires the ballots for the confirmation election to be printed to provide for voting "For District" and "Against District."

(d) Requires the presiding judge, immediately after the confirmation election, to take returns of the results to the board. Requires the board to canvass the returns and declare the results at the earliest practicable time.

(e) Requires that if a majority of the votes cast by qualified voters within the district in the election favor the creation of the district, then the board declare that the district is created and enter the results in the minutes. Requires that if a majority of the votes cast in the election are against the creation of the district, the board declare that the district was defeated and enter the results in its minutes. Requires a copy of the order to be filed with the commission.

(f) Authorizes the board to call more than one confirmation election.

(g) Requires the order canvassing the results of the confirmation election to contain a description of the district's boundaries and to be filed with the executive director of the commission and in the deed records of the county.

SECTION 8. ANNEXATION. Authorizes the district to annex land as provided by Chapter 49J (Annexation of Exclusion of Land), Water Code, subject to the approval of the commissioners court of the county.

SECTION 9. EXCLUDING TERRITORY. (a) Authorizes the board, at any time during which the district does not have outstanding bonds, on its own motion to call a hearing on the question of the exclusion of land from the district in the manner provided by Chapter 49J, Water Code, if the exclusions are practicable, just, or desirable.

(b) Requires the board to call a hearing on the exclusion of land or other property from the district if a landowner or property owner in the district files with the secretary of the board a written petition requesting the hearing before the issuance of bonds.

SECTION 10. NUMBER OF DIRECTORS; TERMS. Provides that the district is governed by a board of five directors who serve staggered terms of four years, with three directors' terms expiring June 1 of an odd-numbered year and two directors' terms expiring June 1 of the following odd-numbered year.

SECTION 11. QUALIFICATIONS OF DIRECTORS. Provides that to be qualified to serve as a director, a person must be at least 18 years old and a resident of the district or an owner of property in the district.

SECTION 12. APPOINTMENT OF DIRECTORS. (a) Requires the commissioners court of the county to appoint directors from persons recommended by the board or by members of the commissioners court. Provides that a person is appointed if a majority of the commissioners of the county and the county judge vote to appoint that person.

(b) Authorizes a director to serve successive terms.

SECTION 13. REMOVAL OF DIRECTOR. Authorizes the commissioners court to remove a director for misconduct or failure to carry out the director's duties or for any other reason on petition by a majority of the remaining directors or a majority of the commissioners court and after notice and hearing.

SECTION 14. BOARD VACANCY. Requires a vacancy in the office of director to be filled by appointment by the remaining members of the board for the unexpired term.

SECTION 15. DIRECTOR'S BOND AND OATH. (a) Requires that, as soon as practicable after a director is appointed, the director execute a \$10,000 bond payable to the district and conditioned on the faithful performance of the director's duties.

(b) Requires each director's bond to be approved by the board, and each director to take the oath of office prescribed by the constitution for public officers.

(c) Requires the bond and oath to be filed with the district and retained in its records.

SECTION 16. OFFICERS. Requires that after directors are appointed and have qualified by executing a bond and taking the oath, they organize by electing a president, a vice president, a secretary, and any other officers the board considers necessary.

SECTION 17. COMPENSATION OF DIRECTORS; REIMBURSEMENT OF EXPENSES.

Entitles a director to compensation for service on the board and to be reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a director, in accordance with Section 49.060 (Fees of Office; Reimbursement), Water Code.

SECTION 18. QUORUM. Provides that one-half of the directors constitutes a quorum, and a concurrence of a majority of a quorum of directors is required for any official action of the district.

SECTION 19. GENERAL POWERS OF DISTRICT. (a) Provides that the district has the rights, powers, privileges, authority, and functions conferred by the general law of this state applicable to conservation and reclamation districts created under Section 59, Article XVI, of the Texas Constitution, including those conferred by Chapter 54 (Municipal Utility Districts), Water Code, with respect to the purposes for which it is created.

(b) Authorizes the district to contract and manage its affairs and funds for any corporate purpose in accordance with Chapter 54, Water Code.

SECTION 20. SPECIFIC POWERS. (a) Provides that a district has the powers necessary or convenient to carry out and effect the purposes and provisions of this Act, including the powers granted in this section.

(b) Provides that the district has perpetual succession.

(c) Authorizes the district to sue and be sued in courts of competent jurisdiction, to institute and prosecute suits without giving security for costs, and to appeal from a judgment without giving a supersedeas or cost bond.

(d) Authorizes the district to incur liabilities, borrow money on terms and conditions the board determines, and issue notes, bonds, or other obligations.

(e) Authorizes the district to acquire by grant, purchase, gift, devise, lease, or otherwise, and to hold, use, sell, lease, or dispose of real and personal property, licenses, patents, rights, and interests necessary, convenient, or useful for the full exercise of any of its powers under this Act.

(f) Authorizes the district to acquire, construct, complete, develop, own, operate, and maintain permanent improvements and provide services inside and outside its boundaries.

(g) Authorizes the district to enter into agreements with a person or entity, public or private, for the joint use of facilities, installations, and property.

(h) Authorizes the district to enter contracts, leases, and agreements with and accept grants and loans from the United States and its departments and agencies, the state and its agencies, counties, municipalities, and political subdivisions, public or private corporations, and other persons and to perform all acts necessary for the full exercise of the powers vested in it on terms and conditions and for the term the board may determine to be advisable.

(i) Authorizes the district to acquire property under conditional sales contracts, leases, equipment trust certificates, or any other form of contract or trust agreement.

(j) Authorizes the district to sell, lease, convey, or otherwise dispose of any of its rights, interests, or properties that are not needed for or, in the case of leases, that are not consistent with, the efficient operation and maintenance of the district's improvements. Authorizes a district to sell, lease, or otherwise dispose of any surplus material or personal or real property

not needed for its requirements or for the purpose of carrying out its powers under this Act.

(k) Authorizes the district to procure and pay premiums to insurers for insurance of any type in amounts considered necessary or advisable by the board.

(l) Authorizes the district to do anything necessary, convenient, or desirable to carry out the powers expressly granted or implied by this Act.

SECTION 21. USE AND ALTERATION OF LAND AND PUBLIC WAYS. (a) Authorizes the district to construct all improvements and facilities necessary to accomplish the purposes for which it was created on lands, whether publicly or privately owned.

(b) Requires that before constructing an improvement or facility on lands owned by the county, the state, a municipality, or another political subdivision, the district obtain approval from the relevant government entity of the plans and specifications of such improvement or facility.

(c) Sets forth provisions requiring the district, in exercising any of the powers conferred by this Act, to take the burden of such powers.

SECTION 22. NO EMINENT DOMAIN POWER. Prohibits the district from exercising the power of eminent domain. Authorizes the county to exercise its power of eminent domain to implement a district facility or improvement.

SECTION 23. MANAGEMENT BY BOARD OF DIRECTORS. Provides that the responsibility for the management, operation, and control of the property belonging to the district is vested in the board.

SECTION 24. SPECIFIC POWERS AND DUTIES OF BOARD. (a) Authorizes the board to carry out certain duties.

(b) Sets forth provisions relating to money of the district.

(c) Authorizes the board to adopt and enforce reasonable rules and regulations governing the administration of the district and its programs and projects.

(d) Authorizes the name of the district to be established or changed by resolution of the board.

SECTION 25. HEARINGS EXAMINER; ADMINISTRATIVE PROCEDURE ACT.

(a) Authorizes the board to appoint a hearings examiner to conduct any hearing called by the board, including a hearing required by Chapter 395 (Financing Capital Improvements Required by New Development in Municipalities, Counties, and Certain Other Local Governments), Local Government Code. Authorizes the hearings examiner to be an employee of the district or a member of the board.

(b) Requires the hearing to be conducted in accordance with Chapter 2001 (Administrative Procedure), Government Code.

SECTION 26. GENERAL POWERS RELATING TO ASSESSMENTS. (a) Authorizes the board to levy and collect an assessment for any purpose authorized by this chapter only if the assessment is approved by the commissioners court.

(b) Authorizes the board to undertake an improvement project or service that confers a special benefit on all or a definable part of the district. Authorizes the board to impose and collect a special assessment on property in that area, based on the benefit conferred by the improvement project or service, to pay all or part of the cost of the project or service. Authorizes the district to provide an improvement or service to an area outside the boundaries of the district if the board determines that there is a benefit to the district.

SECTION 27. SPECIFIC POWERS RELATING TO ASSESSMENTS. Authorizes an improvement project or service provided by the district to include the construction, acquisition, improvement, relocation, operation, maintenance, or provision of certain projects or services.

SECTION 28. PROPOSED ASSESSMENTS. Authorizes an improvement project or service to be financed under this Act after notice of a hearing is given as required by Section 30 and the board holds a public hearing on the advisability of the improvement project or service and the proposed assessment.

SECTION 29. PETITION REQUIRED. Prohibits the board from financing an improvement project or service under this chapter unless a written petition has been filed with the board requesting the improvement project or service. Requires the petition to be signed by at least 25 persons who own real property in the district if more than 25 persons own real property in the district according to the most recent certified property tax rolls.

SECTION 30. NOTICE OF HEARING. (a) Requires notice of the hearing to be given 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.

(b) Requires the notice to include certain information.

(c) Requires written notice containing the information required by this section to be mailed by certified mail, return receipt requested, not later than the 30th day before the date of the hearing. Requires the notice to be mailed to each property owner in the district who will be subject to assessment at the current address of the property to be assessed as reflected on the tax rolls.

SECTION 31. CONCLUSION OF HEARING; FINDINGS. (a) Authorizes a hearing on the improvement project or service, whether conducted by the board or a hearings examiner, to be adjourned from time to time.

(b) Requires that at the conclusion of the hearing, the board make findings by resolution or order relating to the advisability of the improvement project or service, the nature of the improvement project or service, the estimated cost, the area benefitted, the method of assessment, and the method and time for payment of the assessment.

(c) Requires that if a hearings examiner is appointed to conduct the hearing, after conclusion of the hearing, the hearings examiner file with the board a report stating the examiner's findings and conclusions.

SECTION 32. AREA TO BE ASSESSED. (a) Authorizes the area of the district to be assessed according to the findings of the board to be the entire district or any part of the district and to be less than the area proposed in the notice of the hearing.

(b) Prohibits the area to be assessed, except as provided by Subsection (c), from including property that is not within the district boundaries at the time of the hearing unless there is an additional hearing preceded by the required notice.

(c) Authorizes the owner of improvements constructed or land annexed to the district after the district has imposed an assessment to waive the right to notice and an assessment hearing and to agree to the imposition and payment of an assessment at an agreed rate for improvements constructed or land annexed to the district.

SECTION 33. OBJECTIONS; LEVY OF ASSESSMENT. (a) Requires that at a hearing on proposed assessments, at any adjournment of the hearing or after consideration of the hearings

examiner's report, the board hear and rule on all objections to each proposed assessment.

- (b) Authorizes the board to amend a proposed assessment for any parcel.
- (c) Requires that after all objections have been heard and action has been taken with regard to those objections, the board, by order or resolution, levy the assessment as a special assessment on the property and specify the method of payment of the assessment and authorizes the board to provide that the assessment be paid in periodic installments, including interest.
- (d) Requires periodic installments to be in amounts sufficient to meet annual costs for services and improvements as provided by this chapter and continue for the number of years required to retire indebtedness or pay for the services to be rendered. Authorizes the board to provide interest charges or penalties for failure to make timely payment and also to impose an amount to cover delinquencies and expenses of collection.
- (e) Authorizes the board, if an assessment is imposed for more than one service or improvement project, to provide that an assessment collected for one improvement project or service may be borrowed to be used for another improvement project or service.
- (f) Requires the board to establish a procedure for the distribution or use of any assessment in excess of those necessary to finance the improvement project or service for which the assessment was collected.

SECTION 34. APPORTIONMENT OF COST. Requires the portion of the cost of an improvement project or service to be assessed against the property in the district to be apportioned by the board based on the special benefits accruing to the property because of the improvement project or service. Authorizes the cost to be assessed in a certain manner.

SECTION 35. ASSESSMENT ROLL. Sets forth provisions relating to the board imposing an assessment against each parcel of land against which an assessment may be imposed in the district.

SECTION 36. SUPPLEMENTAL ASSESSMENTS. Authorizes the board, after notice and hearing in the manner required for original assessments, to make supplemental assessments to correct omissions or mistakes in the assessment relating to the total cost of the improvement project or service or covering delinquencies or costs of collection.

SECTION 37. APPEAL. (a) Authorizes a property owner, after determination of an assessment, to appeal the assessment to the board. Requires the property owner to file a notice of appeal with the board not later than the 30th day after the date that the assessment is adopted. Requires the board to set a date to hear the appeal.

- (b) Authorizes the property owner to appeal the board's decision on the assessment to a court of competent jurisdiction. Requires the property owner to file notice of the appeal with the court of competent jurisdiction not later than the 30th day after the date of the board's final decision with respect to the assessment.
- (c) Provides that failure to file either of the notices in the time required by this section results in a loss of the right to appeal the assessment.
- (d) Authorizes the board to make a reassessment or new assessment of the parcel if an assessment against a parcel of land is set aside by a court of competent jurisdiction, found excessive by the board, or determined to be invalid by the board.

SECTION 38. APPROVAL OF COMMISSIONERS COURT. Requires that no assessment or ad valorem tax, or a combination thereof, including any apportionment of any assessment, be valid or

enforceable unless approved by the commissioners court.

SECTION 39. APPEAL OF ORDER. Authorizes a person against whom an assessment is made by board order, if notice has been given as required by this subchapter, to appeal the assessment to a district court in the county in the manner provided for the appeal of contested cases under Chapter 2001, Government Code. Provides that review by the district court is by trial de novo.

SECTION 40. EXEMPTIONS, PUBLIC UTILITIES. Prohibits the district from imposing an assessment on the property, equipment, or facilities of a public utility. Provides that for purposes of this subsection, "utility" means a person that provides to the public gas, electricity, telephone, sewage, or water service.

SECTION 41. EXEMPTIONS: GOVERNMENTAL ENTITIES; ASSESSMENTS. Requires payment of assessments by municipalities, counties, other political subdivisions, and organizations exempt from federal income tax under Section 501(c)(3), Internal Revenue Code of 1986, to be established by contract. Authorizes municipalities, counties, and other political subdivisions to contract with the district under terms and conditions those entities consider advisable to provide for the payment of assessments.

SECTION 42. TAX LEVY FOR BONDS. Requires the board, at the time bonds payable in whole or in part from taxes are issued, to levy a continuing direct annual ad valorem tax for each year while all or part of the bonds are outstanding on all taxable property within the district in sufficient amount to pay the interest on the bonds as it becomes due and to create a sinking fund for the payment of the principal of the bonds when due or the redemption price at any earlier required redemption date and to pay the expenses of assessing and collecting the taxes.

SECTION 43. ESTABLISHMENT OF TAX RATE IN EACH YEAR. Requires the board to consider certain things in determining the actual rate to be levied in each year.

(b) Authorizes the board, in determining the amount of anticipated taxes which should be levied each year, to consider whether proceeds from the sale of bonds have been placed in escrow to pay interest during construction and whether the board reasonably expects to have revenue or receipts available from other sources which are legally available to pay principal of or interest or redemption price on the bonds. Requires the board to levy a tax in the first full year after issuance of its first series of bonds.

SECTION 44. OPERATION AND MAINTENANCE TAX. (a) Authorizes the district to levy and collect a tax for operation and maintenance purposes, including certain funds.

(b) Prohibits an operation and maintenance tax from being levied by the district until it is approved by a majority of the qualified voters within the district voting at an election held for that purpose. Requires that after such a tax has been authorized by the district's voters, the board be authorized to levy the tax and have it assessed and collected as other district taxes.

(c) Authorizes an operation and maintenance 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 an operation and maintenance tax election to be for a specific maximum rate or for an unlimited rate.

(e) Authorizes the funds to be used for any lawful purpose if the district has any surplus operation and maintenance tax funds that are not needed for the purposes for which they were collected.

SECTION 45. FUNDS AVAILABLE FOR PAYMENT OF PROJECTS AND SERVICES.

(a) Authorizes the cost of any improvement project or service, including interest during construction and costs of issuance of bonds, to be paid from certain funds.

(b) Authorizes the board, during the progress of an improvement project or service, to issue temporary notes to pay the costs of the improvement project or service and issue bonds on completion.

(c) Authorizes the costs of more than one improvement project or service to be paid from a single issue and sale of bonds without other consolidation proceedings before the bond issue.

SECTION 46. BONDS, NOTES, OR OTHER OBLIGATIONS. (a) Authorizes the board, for the payment of all or part of the costs of an improvement project or service, to issue bonds, notes or other obligations in one or more series payable from and secured by assessments, ad valorem taxes, revenues, grants, gifts, contracts, leases, or any combination of those funds. Authorizes bonds, notes, or other obligations to be liens on all or part of the revenue derived from improvements authorized under this chapter, including installment payments of special assessments, ad valorem taxes, or from any other source pledged to their payment.

(b) Provides that the district shall have the power to issue bonds and they shall be approved in the manner set forth in Chapter 375J (Bonds), Local Government Code.

(c) Requires bonds, notes, or other obligations to be issued and approved by the board of directors of the district without the consent of the county, any municipality, or the Texas Natural Resource Conservation Commission.

SECTION 47. ELECTION TO APPROVE ISSUANCE OF BONDS. (a) Prohibits bonds secured by assessments or ad valorem taxes, or a combination thereof from being issued unless the bonds are approved by a majority of the qualified voters in the district voting at an election held for that purpose.

(b) Provides that bonds that are not secured by assessments or ad valorem taxes, or a combination thereof, are not subject to the requirement of an election and may be issued without an election.

(c) Requires an election required by this section to be conducted in accordance with Chapter 375 (Municipal Management Districts in General), Local Government Code.

SECTION 48. COMPETITIVE BIDDING ON CERTAIN PUBLIC WORKS CONTRACTS.

Provides that construction contracts of the district are subject to the competitive bidding requirements of Chapter 49I (Construction, Equipment, Materials, and Machinery Contracts), Water Code.

SECTION 49. SUPERSEDES OTHER LAW. Provides that this Act states the required procedures necessary for the district to award contracts and supersedes any law or other requirement with respect to award of contracts.

SECTION 50. DISSOLUTION BY BOARD VOTE. Authorizes the board of the district by majority vote to dissolve the district at any time, except as provided by SECTION 53.

SECTION 51. DISSOLUTION BY COUNTY ORDER. Authorizes the commissioners court of the county by a vote of not less than two-thirds, to adopt a resolution dissolving the district, except as provided by SECTION 53.

SECTION 52. LIMITATION. Prohibits the district from being dissolved if the district has any outstanding bonded indebtedness until that bonded indebtedness is repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds.

SECTION 53. CONTRACTS WITH DISTRICT. (a) Authorizes a municipality, county, or other political subdivision of the state, without further authorization, to contract with the district to implement a project of the district or aid and assist the district in providing the services authorized under this chapter. Authorizes a contract under this section to meet certain requirements.

(b) Authorizes the district to enter into a contract, lease, or agreement with or make or accept grants and loans to or from certain organizations or groups.

(c) Authorizes the district to perform all acts necessary for the full exercise of the powers vested in the district on terms and conditions and for the term the board may determine to be advisable.

SECTION 54. Sets forth legislative findings.

SECTION 55. Sets forth the composition of the initial board of directors of the Bolivar Conservation District.

SECTION 56. EFFECTIVE DATE. Effective date: upon passage or September 1, 2001.