

BILL ANALYSIS

Senate Research Center
77R1933 MXM-F

S.B. 465
By: Shapleigh
Business & Commerce
3/5/2001
As Filed

DIGEST AND PURPOSE

Currently, Texas lacks a port authority to build and operate infrastructure and to expedite commerce within the nineteen counties adjacent with the Texas-Mexico border. As proposed, S.B. 465 allows communities within the nineteen counties adjacent to the Texas-Mexico border to create a border port authority to identify and meet the transportation infrastructure needs of the border region.

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 Title 12B, Local Government Code, by adding Chapter 386, as follows:

CHAPTER 386. BORDER PORT AUTHORITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 386.001. DEFINITIONS. Defines “authority,” “board,” “border region,” and “commissioner.”

[Sections 386.002-386.050 reserved for expansion]

SUBCHAPTER B. CREATION OF AUTHORITY

Sec. 386.051. CREATION. Authorizes a border port authority to be created as provided by this chapter. Provides that an authority created under this chapter is a political subdivision of this state and special district.

Sec. 386.052. AREA INCLUDED IN AUTHORITY. Authorizes an authority to be created in territory located in at least one but not more than three counties in the border region. Requires each of the counties to be contiguous to one of the other counties if the authority is created in more than one county. Requires an authority to include territory that borders Mexico.

Sec. 386.053. PETITION FOR CREATION. Requires the commissioners court of that county, before an authority that contains territory located in only one county is authorized to be created, to receive a petition signed by a number of residents if the territory of the proposed authority equal to at least five percent of the registered voters who reside in the territory of the proposed authority, with an exception. Requires the commissioners court of each county in which the proposed authority will be located, before an authority that contains territory located in more than one county is authorized to be created, to receive a petition signed by a number of residents of the territory of the proposed authority that is located in the county in which the commissioners court presides equal to at least five percent of the proposed district that is located in the county in which the commissioners court presides, with an exception. Requires

the petition, if there are fewer than 100 registered voters who reside in an area for which a petition is required to be filed, to be signed by a majority of the registered voters in the area.

Sec. 386.054. CONTENTS OF PETITION. Requires the petition prescribed by Section 386.053 to include certain information.

Sec. 386.055. FILING OF PETITION; HEARING. Provides that if the petition is in proper form, the commissioners court, on receipt of the petition, is required to file the petition with the county clerk and order a hearing to be held at a regular or special term of the commissioners court. Requires the hearing to be held not later than the 60th day after the date the petition is presented. Requires the commissioners court to consider the petition at the time and place set for the hearing. Authorizes any person who might be affected by creation of the authority to appear at the hearing and support or oppose creation of the proposed authority and offer testimony relating to certain matters.

Sec. 386.056. FINDINGS; ORDERING OF ELECTION. Requires the commissioners court, if it appears at the hearing that the proposed improvements or facilities, projects, or other structures, as appropriate, are feasible and would provide a public benefit to the residents of the proposed authority and that creation of the proposed authority is in the best interests of the county, to make those findings and enter the findings in its records. Requires the commissioners court if it is unable to make the findings under this section, to dismiss the petition at the cost of the petitioners. Provides that dismissal of the petition does not prevent presentation of another petition at a later date. Requires the commissioners court to grant the petition if the commissioners court makes the required findings. Requires the commissioners court, except as provided elsewhere in this section, to order an election to confirm the authority's creation if a petition is granted by the commissioners court. Prohibits the commissioners courts, if the petition indicates that the proposed authority will contain territory in more than one count, from ordering an election until the commissioners court of each county in which the authority will be located has granted the petition. Requires the elections to be held on the same day, which will be after the 45th and before the 61st day after the date the election is ordered. Provides that Section 41.001(a), Election Code, does not apply to an election ordered under this section.

Sec. 386.057. ELECTION ORDER. Requires that the order calling the election to state certain information.

Sec. 386.058. NOTICE. Requires the commissioners court to give notice of the election by publishing a substantial copy of the election order in a newspaper with general circulation in the proposed authority once a week for two consecutive weeks. Requires the publication to appear before the 35th day before the date set for the election.

Sec. 386.059. BALLOT PROPOSITION. Requires the ballot for the election to be printed to permit voting for or against the proposition, and sets forth the language for the ballot.

Sec. 386.060. ELECTION RESULT. Provides that an authority is created if a majority of the votes in the election favor creation of the authority, except as provided elsewhere in this section. Provides that an authority is created only if a majority of the votes cast in each county favor creation of the authority, if the proposed authority contains territory in more than one county. Prohibits another election on the question of creating an authority in the area proposed for the defeated authority from being held before the first anniversary of the most recent election concerning the creation of the authority, if the creation of the proposed authority is defeated.

[Sections 386.061-386.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY POWERS AND DUTIES

Sec. 386.101. **PURPOSES OF AUTHORITY; POWERS.** Authorizes an authority to perform certain duties to facilitate the transportation and other movement of goods through the district.

Sec. 386.102. **COMPREHENSIVE DEVELOPMENT PLAN.** Requires the board of border port commissioners (board), as soon as practicable after the creation of an authority, to conduct a thorough inspection of bridges and transportation-related facilities and industrial projects in the authority and prepare a comprehensive plan for the development or improvement of those structures for any purpose for which the authority was created. Requires the board to update the plan required by this section at least once in each two-year period.

Sec. 386.103. **ACQUISITION OF PROPERTY; EMINENT DOMAIN.** Authorizes an authority to perform certain actions and exercise the power of eminent domain to acquire property for any purpose authorized by this article, including the power to acquire fee title in land condemned or impose a reasonable restriction on using the property for mineral development if the authority does not own the mineral rights. Requires an authority, before exercising the power of eminent domain, to obtain a resolution approving the proposed condemnation from the governing body of a county or municipality in which the property is located. Provides that for purposes of this section, territory in the extraterritorial jurisdiction of a municipality is considered to be in the municipality. Provides that the exercise of the power of eminent domain by the authority is governed by Chapter 21 (Eminent Domain), Property Code.

Sec. 386.104. **ENTRY ON LAND.** Authorizes the board and any engineers employed by the authority to enter any land inside the authority to examine the land and to make plans, surveys, maps, and profiles without being subject to an action of trespass.

Sec. 386.105. **CONTRACTING AUTHORITY.** Authorizes an authority to contract with a domestic or foreign public or private entity for any purpose related to the authority's creation.

Sec. 386.106. **COMPETITIVE BIDS.** Requires an authority, before entering into a contract requiring the expenditure of more than \$15,000, to seek competitive bids for the contract. Requires the authority to advertise for bids in the manner provided by Chapter 262C.

Sec. 386.107. **BOND OF CONTRACTOR.** Requires person or entity to whom a contract is awarded by a board after a competitive bidding process to execute a bond, payable to the authority, for twice the amount of the contract price. Requires the bond to be approved by the board and conditioned of the faithful performance of the obligations under the contract and that in the event of default in the performance of its duties under the contract, the contractor will pay to the authority damages sustained as a result of the contractor's default.

Sec. 386.108. **ANNUAL REPORT.** Requires the board, before January 2 of each year, to make an annual report of its official acts and file the report with the clerk of the commissioners court of each of the counties creating the authority. Requires the report to include certain information.

Sec. 386.109. **GENERAL MANAGER; PERSONNEL.** Requires the board to employ a general manager for a term and salary set by the board. Provides that the general manager is responsible managing an authority's day-to-day operations and is authorized to employ other persons as necessary to carry out the authority's duties. Authorizes the general manager to perform any other duty assigned to the general manager by the board.

Sec. 386.110. **GENERAL MANAGER'S AND EMPLOYEES' BONDS.** Requires the general manager and each employee of the authority who is charged with the custody or payment of any of the authority's money to execute a surety bond. Requires the board to approve the form, amount, and surety of the bond.

Sec. 386.111. COURT ACTIONS. Authorizes an authority, through the authority's board, to sue and be sued in any court of this state in the name of the authority.

[Sections 386.112-386.150 reserved for expansion]

SUBCHAPTER D. BOARD ORGANIZATION

Sec. 386.151. APPOINTMENT AND TERM OF COMMISSIONERS. Provides that an authority is governed by a board of six commissioners. Requires the commissioners court of the county, for an authority created in a single county, to appoint the members of the board. Requires the commissioners court of each county, for an authority created in two counties, to appoint three members to the board. Requires the commissioners court of each county, for an authority created in three counties, to appoint two members to the board. Requires a person reside in the district and be a qualified voter to be eligible to serve as a commissioner. Authorizes an employee or member of the commissioners court of a county that establishes an authority to serve as a commissioner of the authority.

Sec. 386.152. TERM OF COMMISSIONER. Provides that each commissioner serves for a two-year term.

Sec. 386.153. ORGANIZATION; MEETINGS, VACANCIES. Requires a board to elect a presiding officer from among its members. Authorizes the board to provide for the election of other officers as necessary. Requires the board to meet at least once in each four-month period and at the call of certain persons. Requires a vacancy in the office of commissioner to be filed for the unexpired term by the commissioners court that appointed the commissioner whose office is vacant.

Sec. 386.154. COMPENSATION AND EXPENSES. Provides that a commissioner serves without compensation but is authorized to be reimbursed for reasonable and necessary expenses incurred in the performance of official duties.

[Sections 386.155-386.200 reserved for expansion]

SUBCHAPTER E. FINANCIAL PROVISIONS

Sec. 386.201. GENERAL FINANCIAL POWERS. Authorizes an authority to perform certain actions and invest money under its control in an investment authorized by Chapter 2256 (Public Funds Investment), Government Code.

Sec. 386.202. AUTHORITY DEVELOPMENT FUND. Requires a board to establish and maintain an authority development fund. Requires the fund to include certain criteria.

Sec. 386.203. SELECTION OF DEPOSITORY. Requires the board to select a depository for the authority in the same manner and to the same extent as a county establishes a depository under Chapter 116. Requires the board, in selecting the depository, to act in the same capacity and perform the same duties as the county judge and commissioners court in selecting a county depository.

Sec. 386.204. AUTHORITY TO ISSUE REVENUE BONDS. Requires a board by ordinance to issue revenue bonds to provide all or part of the money to establish, acquire, construct, improve, or repair a facility, bridge, project, or other structure described by Section 386.101.

Sec. 386.205. PLEDGE OF REVENUE. Requires bonds issued under this chapter to be secured by a pledge of and be payable from all or a designated part of the revenue from the

facility, bridge, or other structure for which the bonds are issued, as provided in the ordinance authorizing the issuance of the bonds. Provides that the pledge securing the bonds is inferior to any previous pledge of the revenue for the payment of revenue bonds or revenue bonds that are outstanding. Authorizes a board that leases as lessee a facility described by Section 386.101 to pledge all or part of the revenue from the facility to the lease payments the authority is required to take.

Sec. 386.206. LIEN ON FACILITY. Requires a board to impose and collect charges for the use of a facility the revenue of which is pledged to secure bonds issued under this chapter, and for services provided in connection with that use, in amounts at least sufficient to comply with each covenant or provision in the ordinance authorizing the issuance of the bonds.

[Sections 386.208-386.250 reserved for expansion]

SUBCHAPTER F. DISSOLUTION

Sec. 386.251. LIMITATION. Authorizes an authority to be dissolved under this chapter only after all debts or obligations of the authority have been satisfied.

Sec. 386.252. DISSOLUTION BY BOARD VOTE. Authorizes the board to dissolve an authority at any time.

Sec. 386.253. DISSOLUTION BY COMMISSIONERS COURT. Requires the board to dissolve an authority if a majority of the commissioners court of the counties in which the authority is located agree by order to dissolve the authority.

Sec. 386.254. DISSOLUTION BY VOTER PETITION. Requires the board to dissolve an authority on written petition filed with the board by more than 50 percent of the registered voter in the authority.

Sec. 386.255. PROPERTY. Provides that property that remains after dissolution is conveyed to the county in which the property is located.

SECTION 2. Effective date: September 1, 2001.