

BILL ANALYSIS

Senate Research Center
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S.B. 420
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DIGEST AND PURPOSE

Currently, a county development district can be created without municipal consent, upon petition of all landowners in the proposed district to commissioners court, a public hearing, and a successful confirmation election. As proposed, S.B. 420 requires a proposed county development district to track the authorization processes used for the creation of municipal utility districts to ensure appropriate involvement of the impacted municipality in the creation of the county development district.

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. (a) Amends Section 383.022, Local Government Code, to require the petition of landowners requesting creation of a county development district to be accompanied by proof of written notice to a municipality of the district's proposed creation and boundaries, if the proposed district contains land in the extraterritorial jurisdiction of that municipality. Makes nonsubstantive changes.

(b) Makes application of the changes made to Section 383.022, Local Government Code, by this Act prospective.

SECTION 2. (a) Amends Chapter 383B, Local Government Code, by adding Section 383.0235, as follows:

Sec. 383.0235. CONSENT OF MUNICIPALITY. Authorizes land in the corporate limits of a municipality to be included in a district only if the municipality, by resolution or ordinance, grants its written consent to the inclusion of the land in the district.

(b) Authorizes a municipality to consent in writing to the inclusion in the district of land in the corporate limits of a municipality only if the municipality receives a petition requesting the municipality's consent to the inclusion of land signed by certain landowners who meet specific criteria.

(c) Requires the petition to describe the boundaries of the land to be included in the district by metes and bounds or lot and block number, if there is a recorded map or plat and survey of the area, and to state the general nature of the work proposed to be done by the district, the necessity for the work, and the cost of the project as then estimated by those filing the petition.

(d) Provides that the municipality may not condition its consent on a limitation of the amounts of the districts's bonds or require annexation as a condition to its consent.

(e) Authorizes a municipality, in its written consent to the inclusion of land in a district, to perform certain tasks.

(f) Provides that in addition to rights and remedies provided by other law, the municipality is entitled to injunctive relief or a writ of mandamus requiring the district and its officials to observe and comply with the terms prescribed in the municipality's written consent if a district violates the terms of a municipality's written consent.

(b) Makes application of Section 383.0235, Local Government Code, as added by this Act, prospective.

SECTION 3. (a) Amends Section 383.034, Local Government Code, by adding Subsection (e), to require the temporary board of directors to file an order canvassing the results of an election with the district records and the county clerk. Requires the order to describe the district's boundaries. Requires the county clerk to record the order.

(b) Makes application of the changes made to Section 383.034, Local Government Code, by this Act prospective.

SECTION 4. (a) Amends Section 383.043, Local Government Code, to provide that Section 49.052, rather than 50.026, Water Code, applies to a director of a district.

(b) Makes application of the changes made to Section 383.043, Local Government Code, by this Act prospective.

SECTION 5. Amends Section 383.053, Local Government Code, by amending Subsection (a) and adding Subsections (d) and (e), as follows:

(a) Authorizes the board of directors of the district (board) to designate one or more places inside or outside the district for conducting regular or special meetings.

(d) Authorizes the board, on written request of at least 25 qualified voters who reside in the district, to meet only in the district for the year after the date on which the board received the request.

(e) Requires the board to give notice of any meeting place outside the district by filing a resolution establishing the location of the meeting place with the commissioners court and by publishing notice of the location in a newspaper of general circulation in the district. Requires the board, if the location of the meeting changes, to give notice in the same manner.

SECTION 6. Amends Chapter 383D, Local Government Code, by adding Sections 383.067 and 383.068, as follows:

Sec. 383.067. **INFRASTRUCTURE FOR RESIDENTIAL SUBDIVISIONS; TOURISM.** Authorizes the district to construct, finance, or otherwise provide infrastructure for a residential subdivision only if the infrastructure serves the purpose of attracting visitors and tourists to the county.

Sec. 383.068. **AD VALOREM TAXES PROHIBITED.** Provides that the district may not impose an ad valorem tax.

SECTION 7. (a) Amends Chapter 383D, Local Government Code, by adding Section 383.069, as follows:

Sec. 383.069 **POSTING SIGNS IN THE DISTRICT.** (a) Requires the district, not later than the 30th day after the date the district is created, to post signs indicating the district's existence at two principal entrances to the district.

(b) Requires the board to determine the information on and the size and exact location of the signs.

(b) Provides that Section 383.069, Local Government Code, as added by this section, takes effect September 1, 2003.

(c) Requires a county development district created under Chapter 383, Local government Code, before the effective date of this section, to comply with Section 383.069, Local Government Code, as added by this section, not later than January 1, 2004.

SECTION 8. (a) Amends Section 383.084, Local Government Code, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Deletes existing language in text related to the issuance of bonds.

(c) Requires the commissioners court to file the order adding or excluding land with the county clerk. Requires the county clerk to record the order.

(d) Provides that the commissioners court may not add or exclude land under this section unless certain criteria are met.

(b) Makes application of Section 383.084, Local Government Code, as amended by this Act, prospective.

SECTION 9. (a) Amends Chapter 383, Local Government Code, by adding Subchapter I, as follows:

SUBCHAPTER I. AUDIT OF DISTRICT ACCOUNTS AND RECORDS

Sec. 383.141. DUTY TO AUDIT. Requires the board to have the district's fiscal accounts and records audited annually at the expense of the district.

(b) Requires the audit to be performed by a certified public accountant or public accountant certified or licensed under Chapter 901, Occupations Code (Accountants).

(c) Requires the audit to be completed not later than the 120th day after the last day of the district's fiscal year.

Sec. 383.142. FORM OF AUDIT. Requires the district audit to be performed according to the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants as of January 1, 2003, or later standards adopted by the board under this section. Requires financial statements to be prepared in accordance with the generally accepted accounting principles adopted by the American Institute of Certified Public Accountants as of January 1, 2003, or later principles adopted by the board under this section. Requires the board to consider later changes to the standards or principles adopted by the institute and authorizes the board to adopt a standard or principle if the board considers it reasonable.

Sec. 383.143. FINANCIAL REPORTS. (a) Requires any depository, treasurer, or bookkeeper who receives or has control over any district money to keep a full and itemized account of that money.

(b) Requires the depository, treasurer, and bookkeeper to make the itemized accounts available for audit.

Sec. 383.144. FILING OF AUDITS, AFFIDAVITS, AND FINANCIAL REPORTS. (a) Requires the board, after the board approves the audit and not later than the 135th day after the

last day of the districts' fiscal year, to file a copy of the audit report to the commissioners court and the comptroller.

(b) Requires the board, if the board refuses to approve the audit report, to file a copy of the of the report to the commissioners court and the comptroller not later than the 135th day after the last day of the district's fiscal year. Requires the report to be accompanied by a statement from the board explaining the reasons for its failure to approve the report.

(c) Requires a district to file a copy of each audit in the district office.

(d) Requires the board, when the audit report is filed with the comptroller under Subsection (a), to file with the comptroller an annual filing affidavit in a format prescribed by the comptroller. Requires the affidavit to be executed by an authorized representative of the board and to state that all copies of the audit report have been filed as required by this section.

Sec. 383.145. NONCOMPLIANCE; DUTY OF COMPTROLLER. Requires the comptroller to file with the attorney general the names of any districts that do not comply with this subchapter.

(b) Requires a county development district to have an annual audit performed as required by Chapter 383I, Local Government Code, as added by this section, only for the fiscal year that begins on or after the effective date of this section.

SECTION 10. (a) Amends Chapter 383, Local Government Code, by adding Subchapter J, as follows:

SUBCHAPTER J. NOTICE OF DISTRICT TO PURCHASERS OF REAL PROPERTY; FILING OF INFORMATION

Sec. 383.161. NOTICE TO PURCHASERS. (a) Requires a person, if a person proposes to sell real property located in a district that is acquiring or planning to acquire a project that has been financed or is proposed to be financed with district bonds payable wholly or partly from district taxes, to give to the purchaser written notice as prescribed by this section. Provides that an executory contract that has a performance period of more than six months is considered a sale of real property under this section.

(b) Provides that this section does not apply to a transfer of title under certain conditions.

(c) Requires the notice to be executed by the seller and read with certain applicable language.

(d) Requires the notice, if the district is located wholly or partly in the extraterritorial jurisdiction of one or more home-rule municipalities and not in the corporate boundaries of a municipality, to include certain applicable language.

(e) Requires the notice, if the district is located wholly or partly in the corporate boundaries of a municipality, to include certain applicable language.

(f) Requires the district, if the law relating to annexation or district dissolution is amended and causes inaccuracies in the content of the notice prescribed by this section, to revise the content of the notices to accurately reflect the changes in the law.

Sec. 383.162. TIMING OF NOTICE. (a) Requires the notice required by Section 383.161 to be given to the prospective purchaser before the execution of the contract. Authorizes the notice to be given separately or as an addendum or paragraph to the contract.

(b) Authorizes the purchaser, if the seller fails to provide the notice required by Section 383.161 (Notice To Purchasers), to terminate the contract.

(c) Provides that if the seller provides the notice at or before the closing of the contract and the purchaser elects to close even though the notice was not timely provided before the execution of the contract, it is conclusively presumed that the purchaser has waived all rights to terminate the contract and recover damages or pursue other remedies or rights under this subchapter.

Sec. 383.163. SIGNATURE OF PURCHASER. Requires the purchaser to sign the notice required by Section 383.161 (Notice To Purchasers) or the contract that includes the notice to evidence the purchaser's receipt of the notice.

Sec. 383.164. RECORDING OF NOTICE. (a) Requires the seller and purchaser, at the closing of the contract, to execute and acknowledge a separate copy of the notice required by Section 383.161 containing information that is accurate at the time of the closing and to record the copy of the notice in the county deed records.

(b) Authorizes a seller, title company, real estate broker, or examining attorney, and any agent, representative, or person acting on behalf of the seller, company, broker, or attorney, in completing the notice to be executed by the seller and purchaser at the closing of the contract, to rely on the accuracy of the information form and map or plat that is last filed by the district under Section 383.170 (Filing Information; Penalties).

(c) Provides that any information taken from the information form and map or plat filed by the district under Section 383.170 is conclusively presumed to be correct as a matter of law for purposes of this section.

Sec. 383.165. MODIFICATION OF NOTICE. (a) Authorizes a seller and any agent, representative, or person acting on the seller's behalf to modify the notice presented by Section 383.161 by substituting the words "January 1, ___" for the words "this date" and placing the correct calendar year in the appropriate space.

(b) Provides that except as otherwise provided in Section 383.164 (Record of Notice), any information taken from the information form and map or plat filed by the district in effect as of January 1 of each year is conclusively presumed as a matter of law to be correct for the period beginning January 1 and ending December 31 of the same calendar year, for purposes of the notice to be given to the prospective purchaser before the execution of the contract.

(c) Authorizes a seller and any person completing the prescribed notice on the seller's behalf to provide on the prescribed notice form any available information that is more recent than the information contained in the information form and map or plat filed of record by the district under Section 383.170 (Filing Information; Penalties) in effect as of January 1 of each year.

(d) Provides that Subsection (c) does not create an affirmative duty on the part of a seller or any person completing the prescribed notice on the seller's behalf to provide on the prescribed notice form more recent information than the information taken from the information form and map or plat filed of record by the district in effect as of January 1 of each year.

Sec. 383.166. RELIANCE ON INFORMATION FORM AND MAP OR PLAT FILED BY DISTRICT. (a) Authorizes a seller, title insurance company, examining attorney, vendor of property and tax information, real estate broker, or lienholder, and any agent, representative, or

person acting on behalf of the seller, company, attorney, vendor, broker, or lienholder, in completing the notice required to be given to a prospective purchaser before the execution of the contract, to rely on the information contained in the information form and map or plat filed of record by the district in effect as of January 1 of each year. Authorizes any seller, purchaser, title insurance company, real estate broker, examining attorney, or lienholder to rely on the information form and map or plat filed by the district.

(b) Prohibits a purchaser, or the purchaser's heirs, successors, assigns, if the notice is not given at closing as provided by this subchapter, from maintaining an action, including an action for damages, against a seller, title insurance company, real estate broker, or lienholder, or any agent, representative, or person acting on behalf of the seller, company, broker, or lienholder, because of the seller's use of the information filed of record by the district or the seller's reliance on the filed plat and filed legal description of the district to determine whether the property to be purchased is in the district.

(c) Provides that an action may not be maintained against a title company for the failure to disclose that the described real property is included in a district if the district did not file for record the information form and map or plat with the county clerk.

Sec. 383.167. WAIVER OF DAMAGES. Provides that a purchaser who purchases real property in a district and who later sells the property is conclusively considered on the closing of the sale to have waived any prior right to damages under this subchapter.

Sec. 383.168. SUIT FOR DAMAGES. (a) Authorizes the purchaser, except as otherwise provided in Section 383.169, if a sale of real property in a district fails to comply with this subchapter, to file suit for certain amounts.

(b) Authorizes a suit for damages under Subsection (a)(1) to be filed jointly or severally against the individual or entity that sold the property to the purchaser. Requires the amount of damages, following the recovery of damages under Subsection (a)(1), to be paid first to satisfy all unpaid obligations on each outstanding lien on the property and requires the remainder of the damage amount to be paid to the purchaser. Requires the purchaser, on payment of all damages recovered under Subsection (a)(1) to each lienholder and the purchaser, to reconvey the property to the seller.

(c) Provides that a purchaser may not recover damages under both Subsections (a)(1) and (a)(2). Provides that an entry of a final decision awarding damages to the purchaser under either Subsection (a)(1) or (a)(2) precludes the purchaser from recovering damages under the other subsection.

(d) Sets forth that the relief provided under Subsection (a) provides the exclusive remedies for a purchaser aggrieved by the seller's failure to comply with this subchapter.

(e) Provides that an action for damages under this section does not change the validity of any existing vendor's lien, mechanic's lien, or deed of trust lien on the property.

(f) Requires a suit for damages under this section to be filed on or before the fourth anniversary of the date on which the property is sold to the purchaser. Provides that if a purchaser does not bring suit on or before that anniversary, the purchaser may not recover damages under this section.

(g) Provides that a purchaser may not recover damages under this section if the person meets certain criteria.

Sec. 383.169. EXEMPTION FROM DAMAGES. Provides that a seller, title company, real

estate broker, or examining attorney, and an agent, representative, or person acting on behalf of the seller, company, broker, or attorney, is not liable for damages under Section 383.168 or liable for any other damages to any person for not complying with certain factors.

Sec. 383.170. FILING INFORMATION; PENALTIES (a) Requires the board to file with the county clerk an affirmed and acknowledged information form that includes the information required in Subsection (b) and a complete map or plat that describes the district boundaries.

(b) Requires the information form filed by a district under this section to include certain information.

(c) Requires the district, if a district has not imposed taxes when the district files the information form under this section, to substitute for Subsections (b)(3) and (b)(5) a statement that the district has not imposed taxes at the time of filing that includes the district's most recent projected rate of debt service tax.

(d) Requires the information form and map or plat required by this section to be signed by a majority of the directors and affirmed and acknowledged by each director who signed the form and map or plat before it is filed with the county clerk. Requires each amendment made to an information form, map, or plat to be signed by the directors and affirmed and acknowledged by each director who signed the form and map or plat before it is filed with the county clerk.

(e) Requires the information form required by this section to be filed with the county clerk not later than the second day after the date on which the results of the conformation election are declared.

(f) Requires the district, if there is a change in any of the information contained in the district information form, map, or plat to file an amendment to the information form, map, or plat setting forth the changes made not later than the seventh day after the change in information.

(g) Provides that a person commits an offense if the person affirms the accuracy of and acknowledges an information form, map, or plat or any amendment to an information form, map, or plat that includes inaccurate information. Provides that an offense under this subsection is a Class C misdemeanor.

(h) Authorizes the attorney general or the district or county attorney, if a district fails to timely file the information required by this section, to seek a writ of mandamus to require the board to prepare and file the necessary information.

(i) Provides that a director commits an offense if the director wilfully fails to join in filing an information form, map, or plat or an amendment to an information form, map, or plat under this section. Provides that an offense under this subsection is a Class C misdemeanor. Provides that a director is presumed to have wilfully failed to join in the filing of an information form, map, or plat or an amendment to an information form, map, or plat if that director was present at the meeting at which the information included in the information form, map, or plat or an amendment to an information form, map, or plat or amendment to the information form, map, or plat was adopted and the director did not sign the information map, or plat or an amendment to an information form, map, or plat.

Sec. 383.171. ADDITIONAL FILING ON DISSOLUTION. (a) Requires the board, if a district is dissolved, annexed to another local government, or consolidated with another district, to file with the information form a statement that the district is being dissolved, annexed, or consolidated that includes the effective date of the dissolution, annexation, or consolidation.

(b) Provides that after a district is dissolved and the statement is filed under this section, a person who sells property in the dissolved district is not required to give notice under this subchapter.

(b) Makes application of Chapter 383J, Local Government Code, as added by of this Act, prospective.

(c) Requires a county development district created before the effective date of this section to file an information form as required by Section 383.170 (Filing Information; Penalties), Local Government Code, as added by this section, not later than September 3, 2003.

SECTION 11. Effective date: upon passage or September 1, 2003.