

BILL ANALYSIS

Senate Research Center
79R10104 MSE-F

H.B. 3514
By: Eissler (Staples)
Intergovernmental Relations
5/19/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

H.B. 3514 is an act relating to the amendment of the Southwest Montgomery County Improvement District (district), which was created by H.B. 3562 in the 78th Legislature. The changes proposed by H.B. 3514 allow district to operate in the same fashion as other successful improvement districts in the State of Texas and will help develop, encourage and maintain employment, commerce, economic development, enhance the quality of life and promote the public welfare in the district.

Montgomery County is the 28th fastest growing county in the United States, and the fifth fastest growing county in Texas. Southwest Montgomery County, including the Magnolia, Texas area, is the fastest growing region in Montgomery County. It is home to Magnolia Independent School District, which, with a growth rate of 10 to 12 percent per year, is the second fastest growing school district of its size in the State of Texas. The district has doubled in size in the last eight years, and expects to double again in the next five years.

This tremendous growth has put a strain on the resources of the School District, and Montgomery County's Precinct 2. The greatest challenges lie in mobility and infrastructure. The affected areas and the state are unable to meet the needs and expand essential services demanded by this dynamic growth.

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 Section 1(a), Chapter 323, Acts of the 78th Legislature, Regular Session, 2003, to provide that the Southwest Montgomery County Improvement District (district) is a special district in Montgomery County created under Sections 52 (Counties, Cities, or Other Political Corporations or Subdivisions; Lending Credit; Grants; Bonds) and 52-a (Loan or Grant of Public Money for Economic Development), Article III, and Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI, Texas Constitution.

SECTION 2. Amends Section 6(b), Chapter 323, Acts of the 78th Legislature, Regular Session, to provide that all land and other property in the district will benefit from the improvements and services to be provided by the district under powers conferred by Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other powers granted under this Act. Makes a conforming change.

SECTION 3. Amends Section 9, Chapter 323, Acts of the 78th Legislature, Regular Session, as follows:

Sec. 9. BOARD OF DIRECTORS. (a) Provides that the district is governed by a board of 11 directors (board) who serve staggered terms of four years, with five or six directors' terms expiring June 1 of each odd-numbered year. Deletes existing text relating to an exception provided by SECTION 14 (Initial Directors).

(b) Authorizes the board by resolution to increase or decrease the number of directors on the board, but only if a majority of the board votes to do so. Prohibits the board from increasing or decreasing the certain number of directors. Deletes existing text relating to specific composition of the directors.

(c) Requires the Montgomery County Commissioners Court to appoint the directors.

(d) Provides that Section 375.061 (Number of Directors; Terms), Local Government Code, does not apply to the district.

(e) Requires a person, to be eligible to serve as a director, to be at least 18 years old, a resident of the district, and a resident of Montgomery County Commissioners Court Precinct 2; an owner of at least 10 percent of the beneficial interest in a trust that leases real property in the district with a remaining lease term of five years or more measured from the date of appointment, excluding options; and a lessee of real property in the district with a remaining lease term of five years or more measured from the date of appointment, excluding options. Deletes existing text relating to a corporate lessee of real property in the district and leases of real property in the district under an original lease term of five years or more measured from the date of election. Makes conforming changes. Redesignates Subdivisions (1)-(6) as (2)-(7).

(f) Prohibits a person serving, rather than being appointed, as a director if the person's appointment would cause more than 20 percent, rather than three members, of the board to be an agent, employee, officer, or director of the same individual, corporation, trust, or partnership that owns or leases property in the district. Deletes existing text relating to Subsection (b) of this section. Creates this Subsection from existing Subsection (d).

(g) Prohibits a director from serving more than three consecutive terms.

SECTION 5. Amends Section 11, Chapter 323, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 11. New heading: RECOMMENDATIONS FOR SUCCEEDING BOARD.

(a) Requires the board to recommend to the Montgomery County Commissioners Court persons to serve on a succeeding board.

(b) Requires the Montgomery County Commissioners Court, after reviewing the recommendations, to approve or disapprove the directors recommended by the board.

(c) Requires the board, on the request of the commissioners court, if the Montgomery County Commissioners Court is not satisfied with the recommendations submitted by the board, to submit to the commissioners court additional recommendations.

(d) Requires the Texas Commission on Environmental Quality (commission), if any provision of Subsections (a) through (c) is found to be invalid, to appoint the board from recommendations submitted by the preceding board. Deletes existing text relating to the election of a director.

SECTION 6. Amends the heading Section 16, Chapter 323, Acts of the 78th Legislature, Regular Session, 2003, to read as follows:

Sec. 16. BORROWING MONEY FOR INITIAL DISTRICT OPERATIONS.

SECTION 7. Amends Section 16, Chapter 323, Acts of the 78th Legislature, Regular Session, 2003 by amending Subsections (a) and (b) and adding Subsection (d), as follows:

(a) Authorizes the board, before levying an assessment, to borrow money to hire employees, obtain office space and pay other costs and expenses reasonably necessary to prepare for commencement of operation. Makes conforming changes.

(b) Provides that funds borrowed for a purpose described by Subsection (a) of this section are repayable by the district only if an assessment is levied as required by Chapter 375 (Municipal Management Districts in General), Local Government Code. Makes a conforming change.

(d) Provides that this section does not impair or invalidate any action taken by the board to borrow money that occurred before September 1, 2005.

SECTION 8. Amends Section 28, Chapter 323, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 28. New heading: BONDS AND OTHER OBLIGATIONS. (a) Authorizes the district to issue bonds or other obligations payable wholly or partly from taxes, assessments, impact fees, revenue, grants, or other money of the district, or any combination of those sources of money, to pay for any authorized purpose of the district.

(b) Authorizes the district to issue a bond or other obligation in the form of a bond, note, certificate of participation or other instrument evidencing a proportionate interest in payments to be made by the district, or other type of obligation. Redesignates Subsection (a)-(c) as Subsection (c)-(e).

SECTION 9. Amends Section 30, Chapter 323, Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 30. DISSOLUTION. (a) Authorizes the Montgomery County Commissioners Court to dissolve the district by unanimously voting to adopt an ordinance dissolving the district, except as provided by Section 375.264 (Limitation), Local Government Code. Deletes existing text relating to the dissolution of the district governed by a certain subchapter.

(b) Requires Montgomery County to assume all bonds, debts, obligations, and liabilities of the district, and the board, on dissolution of the district, to transfer ownership of all property and assets of the district to Montgomery County. Deletes existing text relating to the dissolution of the district.

(c) Provides that Section 375.263 (Dissolution by Municipal Ordinance), Local Government Code, does not apply to the district.

SECTION 10. Amends Section 30, Chapter 323, Acts of the 78th Legislature, Regular Session, 2003, by adding Section 33, 34, 35, and 36, as follows:

Sec. 33. PETITION REQUIRED FOR FINANCING SERVICES AND IMPROVEMENTS. (a) Prohibits the board from financing a service or improvement project under this Act unless a written petition requesting that service or improvement has been filed with the board.

(b) Requires a petition filed under Subsection (a) of this section to be signed by certain persons.

Sec. 34. NONPROFIT CORPORATION. (a) Authorizes the board by resolution to authorize the creation of a nonprofit corporation to assist and act for the district in implementing a project, providing residential housing, or providing a service authorized by this Act.

(b) Provides that the nonprofit corporation has certain powers and may implement certain projects.

(c) Requires the board to appoint the board of directors of the nonprofit corporation. Requires the board of directors of the nonprofit corporation to serve in the same manner as the board of directors of a local government corporation created under Chapter 431 (Texas Transportation Corporation Act), Transportation Code, except that a board member is not required to reside in the district.

Sec. 35. ASSESSMENTS; LIENS FOR ASSESSMENTS. (a) Authorizes the board by resolution to impose an assessment.

(b) Provides that an assessment, a reassessment, or an assessment resulting from an addition to or correction of the assessment roll by the district, penalties and interest on an assessment or reassessment, an expense of collection, and reasonable attorney's fees incurred by the district are a first and prior lien against the property assessed; are superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes; and are the personal liability of and a charge against the owners of the property even if the owners are not named in the assessment proceedings.

(c) Provides that the lien is effective from the date of the board's resolution imposing the assessment until the date the assessment is paid. Authorizes the board to enforce the lien in the same manner that the board may enforce an ad valorem tax lien against real property.

Sec. 36. REMOVAL OF DIRECTOR FOR CAUSE. (a) Authorizes the board, after notice and hearing, on petition by a majority of directors, to remove a director for misconduct or failure to carry out the director's duties.

(b) Provides that Section 375.065 (Removal of Director), Local Government Code, does not apply to the district.

SECTION 11. Repealer Sections 10(a) and (c) (Vacancy), 15 (Confirmation Election), 25(b), (c) and (d) (Change in District Territory), and 26 (Limited Sales and Use Tax), Chapter 323, Acts of the 78th Legislature, Regular Session.

SECTION 12. (a) Makes application of this Act prospective.

(b) Requires a person serving as a member of the board of district on the effective date of this Act to continue to serve until the appointment of a new director for that position.

(c) Requires the Montgomery County Commissioners Court, not later than June 1, 2006, to appoint directors to the board of the district to replace a director appointed or elected before the effective date of this Act. Requires the commissioners court to appoint five members with terms expiring June 1, 2007, and six members with terms expiring June 1, 2009.

SECTION 13. Effective date: September 1, 2005.