

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 2507
By: Jackson, Mike
Intergovernmental Relations
4/23/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This local bill creates the Harris County Improvement District No. 16 (district) as a municipal management district located within the corporate limits of the City of Houston. There are approximately 40 management districts in the greater Houston area. These districts promote the development of commercial areas and provide supplemental services required of such areas. Almost every existing major commercial area is supported by a management district. The creation of the district is being requested by the sole owner of the property proposed to be included in the district. The owner of the property is Almeda Mall, Ltd., a subsidiary of WCF Development, an active developer in the Houston region. The proposed district will serve commercial property in the Almeda Mall in southwest Houston. The district will provide services and amenities to the commercial property in the district, much like a commercial property owners association. The district would have typical management district powers, such as the power to levy an assessment on commercial property in the district.

C.S.S.B. 2507 creates the Harris County Improvement District No. 16, and provides authority to impose an assessment, impose a tax, and issue bonds.

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 Subtitle C, Title 4, Special District Local Laws Code, by adding Chapter 3890, as follows:

CHAPTER 3890. HARRIS COUNTY IMPROVEMENT DISTRICT NO. 16

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3890.001. DEFINITIONS. Defines "board," "city," "director," and "district."

Sec. 3890.002. NATURE OF DISTRICT. Provides that the Harris County Improvement District No. 16 (district) is a special district created under Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution.

Sec. 3890.003. PURPOSE; DECLARATION OF INTENT. (a) Provides that the creation of the district is essential to accomplish the purposes of 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 (Legislative Department), and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this chapter. Provides that by creating the district and in authorizing the City of Houston (city), Harris County, and other political subdivisions to contract with the district, the legislature has established a program to accomplish the public purposes set out in Section 52-a, Article III, Texas Constitution.

(b) Provides that the creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the district.

(c) Prohibits this chapter and the creation of the district from being interpreted to relieve the city or Harris County from providing the level of services provided, as of the effective date of the Act creating this chapter, to the area in the district. Provides that the district is created to supplement and not to supplant the city and county services provided in the area in the district.

Sec. 3890.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) Provides that the district is created to serve a public use and benefit.

(b) Provides that all land and other property included 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 chapter.

(c) Provides that the creation of the district is in the public interest and is essential to further the public purposes of developing and diversifying the economy of the state, eliminate unemployment and underemployment, and develop or expand transportation and commerce.

(d) Provides that the district will promote the health, safety, and general welfare of residents, employers, potential employees, employees, visitors, and consumers in the district, and of the public; provide needed funding for the district to preserve, maintain, and enhance the economic health and vitality of the district territory as a community and business center; promote the health, safety, welfare, and enjoyment of the public by providing pedestrian ways and by landscaping and developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of scenic beauty; and provide for water, wastewater, drainage, road, and recreational facilities for the district.

(e) Provides that pedestrian ways along or across a street, whether at grade or above or below the surface, and street lighting, street landscaping, parking, and street art objects are parts of and necessary components of a street and are considered to be a street or road improvement.

(f) Provides that the district will not act as the agent or instrumentality of any private interest even though the district will benefit many private interests as well as the public.

Sec. 3890.005. INITIAL DISTRICT TERRITORY. (a) Provides that the district is initially composed of the territory described by Section 2 of the Act enacting this chapter.

(b) Provides that the boundaries and field notes contained in Section 2 of the Act enacting this chapter form a closure. Provides that a mistake in the field notes or in copying the field notes in the legislative process does not affect the district's; organization, existence, or validity; right to issue any type of bond for the purposes for which the district is created or to pay the principal of and interest on the bond; right to impose or collect an assessment or tax; or legality or operation.

Sec. 3890.006. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES. Provides that all or any part of the area of the district is eligible to be included in a tax increment reinvestment zone created under Chapter 311 (Tax Increment Financing Act), Tax Code; a tax abatement reinvestment zone created under Chapter 312 (Property Redevelopment and Tax Abatement Act), Tax Code; or an enterprise zone created under Chapter 2303 (Enterprise Zones), Government Code.

Sec. 3890.007. **APPLICABILITY OF MUNICIPAL MANAGEMENT DISTRICTS LAW.** Provides that Chapter 375 (Municipal Management Districts in General), Local Government Code, except as otherwise provided by this chapter, applies to the district.

Sec. 3890.008. **LIBERAL CONSTRUCTION OF CHAPTER.** Requires that this chapter be liberally construed in conformity with the findings and purposes stated in this chapter.

[Reserves Sections 3890.009-3890.050 for expansion.]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 3890.051. **GOVERNING BODY; TERMS.** (a) Provides that the district is governed by a board of five voting directors (board) who serve staggered terms of four years, with two or three directors' terms expiring June 1 of each odd-numbered year.

(b) Authorizes the board by resolution to change the number of voting directors on the board, but only if the board determines that the change is in the best interest of the district. Prohibits the board from consisting of fewer than five or more than 15 voting directors.

Sec. 3890.052. **APPOINTMENT OF DIRECTORS.** Requires the mayor and members of the governing body of the city to appoint voting directors from persons recommended by the board. Provides that a person is appointed if the majority of the members of the governing body, including the mayor, vote to appoint that person.

Sec. 3890.053. **INITIAL VOTING DIRECTORS.** (a) Sets forth the names of the initial board of voting directors.

(b) Provides that of the initial directors, the terms of directors appointed for positions one through three expire June 1, 2011, and the terms of directors appointed for positions four and five expire June 1, 2013.

(c) Provides that Section 3890.052 does not apply to this section.

(d) Provides that this section expires September 1, 2014.

Sec. 3890.054. **NONVOTING DIRECTORS.** Authorizes the board to appoint nonvoting directors to serve at the pleasure of the voting directors.

Sec. 3890.055. **QUORUM.** Provides that for purposes of determining the requirements for a quorum of the board, the following are not counted: a board position vacant for any reason, including death, resignation, or disqualification; a director who is abstaining from participation in a vote because of a conflict of interest; or a nonvoting director.

Sec. 3890.056. **COMPENSATION.** Entitles a director to receive fees of office and reimbursement for actual expenses as provided by Section 49.060 (Fees of Office; Reimbursement), Water Code. Provides that Sections 375.069 (Board Position Not Civil Office of Emolument) and 375.070 (Compensation of Directors; Reimbursement of Expenses), Local Government Code, do not apply to the board.

[Reserves Sections 3890.057-3890.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 3890.101. **DEVELOPMENT CORPORATION POWERS.** Authorizes the district to exercise the powers given to a development corporation under Chapter 505 (Type B Corporations), Local Government Code, including the power to own, operate, acquire, construct, lease, improve, or maintain a project described by that section.

Sec. 3890.102. 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 or providing a service authorized by this chapter.

(b) Provides that the nonprofit corporation has each power of and is considered for purposes of this chapter to be a local government corporation created under Chapter 431 (Texas Transportation Corporation Act), Transportation Code, and is authorized to implement any project and provide any service authorized by this chapter.

(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, Transportation Code, except that a board member is not required to reside in the district.

Sec. 3890.103. AGREEMENTS; GRANTS. (a) Authorizes the district to make an agreement with or accept a gift, grant, or loan from any person.

(b) Provides that the implementation of a project is a governmental function or service for the purposes of Chapter 791 (Interlocal Cooperation Contracts), Government Code.

Sec. 3890.104. AUTHORITY TO CONTRACT FOR LAW ENFORCEMENT SERVICES. Authorizes the district, to protect the public interest, to contract with a qualified person, including Harris County or the city, for the provision of law enforcement services in the district for a fee.

Sec. 3890.105. APPROVAL BY CITY. (a) Requires the district, except as provided by Subsection (c), to obtain approval from the city for: (1) the issuance of bonds; and (2) plans and specifications for an improvement project related to the use of land owned by the city, an easement granted by the city, or a right-of-way of a street, road, or highway.

(b) Requires the approval under Subsection (a)(1) to be by a resolution or ordinance adopted by the governing body of the city. Authorizes the approval under Subsection (a)(2) to be any form of official approval of the city, including approval by an administrative process that does not involve the city's governing body.

(c) Authorizes the district, if the district obtains approval of the city's governing body for a capital improvements plan for a period not to exceed 10 years, to finance the capital improvements and issue bonds specified in the plan without further city approval.

Sec. 3890.106. MEMBERSHIP IN CHARITABLE ORGANIZATIONS. Authorizes the district to join and pay dues to a charitable or nonprofit organization that performs a service or provides an activity consistent with the furtherance of a district purpose.

Sec. 3890.107. ECONOMIC DEVELOPMENT PROGRAMS. (a) Authorizes the district to establish and provide for the administration of one or more programs to promote state or local economic development and to stimulate business and commercial activity in the district, including programs to make loans and grants of public money and provide district personnel and services.

(b) Provides that the district has all of the powers of a municipality under Chapter 380 (Miscellaneous Provisions Relating to Municipal Planning and Development), Local Government Code.

Sec. 3890.108. NO EMINENT DOMAIN. Prohibits the district from exercising the power of eminent domain.

Sec. 3890.109. ANNEXATION OR EXCLUSION OF LAND. (a) Authorizes the district to annex land as provided by Subchapter J (Annexation of Exclusion of Land), Chapter 49 (Provisions Applicable to All Districts), Water Code.

(b) Authorizes the board by resolution, in addition to the authority to annex provided by Subsection (a), to annex territory if the city's governing body by ordinance or resolution consents to the annexation, the board holds a hearing to consider the annexation, and the board determines that the annexation is practicable and in the best interest of the district.

(c) Provides that an election is required for an annexation under Subsection (b) or Section 49.302 (Adding Land by Petition of Less than All the Landowners), Water Code, only if before the annexation the district held an election at which the voters approved the imposition of an ad valorem tax or the issuance of bonds payable wholly or partly from ad valorem taxes.

(d) Authorizes the district to exclude land as provided by Subchapter J, Chapter 49, Water Code. Provides that Section 375.044(b) (relating to requiring the board of directors of a district to call a hearing on the exclusion of land or other property from the district), Local Government Code, does not apply to the district.

[Reserves Sections 3890.110-3890.150 for expansion.]

SUBCHAPTER D. PUBLIC TRANSIT SYSTEM AND PARKING FACILITIES

Sec. 3890.151. PUBLIC TRANSIT SYSTEM. Authorizes the district to acquire, lease as lessor or lessee, construct, develop, own, operate, and maintain a public transit system to serve the area in the district.

Sec. 3890.152. PARKING FACILITIES AUTHORIZED; OPERATION BY PRIVATE ENTITY; TAX EXEMPTION. (a) Authorizes the district to acquire, lease as lessor or lessee, construct, develop, own, operate, and maintain parking facilities or a system of parking facilities, including lots, garages, parking terminals, or other structures or accommodations for parking motor vehicles off the streets and equipment, entrances, exits, fencing, and other accessories necessary for safety and convenience in parking vehicles.

(b) Authorizes a parking facility of the district to be leased to or operated on behalf of the district by an entity other than the district.

(c) Provides that the district's parking facilities are a program authorized by the legislature under Section 52-a, Article III, Texas Constitution.

(d) Provides that the district's parking facilities serve the public purposes of the district and are owned, used, and held for a public purpose even if leased or operated by a private entity for a term of years.

Sec. 3890.153. RULES. Authorizes the district to adopt rules governing the district's public transit system or public parking facilities.

Sec. 3890.154. FINANCING OF PUBLIC PARKING FACILITIES. (a) Authorizes the district to use any of its resources, including revenue, assessments, taxes, or grant or contract proceeds, to pay the cost of acquiring or operating the district's public transit system or public parking facilities.

(b) Authorizes the district to set, charge, impose, and collect fees, charges, or tolls for the use of the district's public transit system or public parking facilities and issue bonds or notes to finance the cost of the district's public transit system or public parking facilities.

[Reserves Sections 3890.155-3890.200 for expansion.]

SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS

Sec. 3890.201. **DISBURSEMENTS AND TRANSFERS OF MONEY.** Requires the board by resolution to establish the number of directors' signatures and the procedure required for a disbursement or transfer of the district's money.

Sec. 3890.202. **MONEY USED FOR IMPROVEMENTS OR SERVICES.** Authorizes the district to acquire, construct, finance, operate, or maintain any improvement or service authorized under this chapter or Chapter 375, Local Government Code, using any money available to the district.

Sec. 3890.203. **PETITION REQUIRED FOR FINANCING SERVICES AND IMPROVEMENTS WITH ASSESSMENTS.** (a) Prohibits the board from financing a service or improvement project with assessments under this chapter unless a written petition requesting that service or improvement has been filed with the board.

(b) Requires that a petition filed under Subsection (a) be signed by the owners of a majority of the assessed value of real property in the district subject to assessment according to the most recent certified tax appraisal roll for Harris County.

Sec. 3890.204. **METHOD OF NOTICE FOR HEARING.** Authorizes the district to mail the notice required by Section 375.115(c) (relating to requiring a certain written notice to be mailed by certified mail), Local Government Code, by certified or first class United States mail. Requires the board to determine the method of mailing notice.

Sec. 3890.205. **ASSESSMENTS; LIENS FOR ASSESSMENTS.** (a) Authorizes the board by resolution to impose and collect an assessment for any purpose authorized by this chapter in all or any part of the district.

(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.

(d) Authorizes the board to make a correction to or deletion from the assessment roll that does not increase the amount of assessment of any parcel of land without providing notice and holding a hearing in the manner required for additional assessments.

Sec. 3890.206. **UTILITY PROPERTY EXEMPT FROM IMPACT FEES AND ASSESSMENTS.** Prohibits the district from imposing an impact fee or assessment on the property, including the equipment, rights-of-way, facilities, or improvements, of an electric utility or a power generation company as defined by Section 31.002 (Definitions), Utilities Code; a gas utility as defined by Section 101.003 (Definitions) or 121.001 (Definition of Gas Utility), Utilities Code; a telecommunications provider as defined by Section 51.002 (Definitions), Utilities Code; or a person who provides to the public cable television or advanced telecommunications services.

Sec. 3890.207. **OPERATION AND MAINTENANCE TAX.** (a) Authorizes the district, if authorized at an election held in accordance with Section 3890.210, to impose an

annual operation and maintenance tax on taxable property in the district in accordance with Section 49.107 (Operation and Maintenance Tax), Water Code, for any district purpose, including to maintain and operate the district, construct or acquire improvements, or provide a service.

(b) Requires the board to determine the tax rate. Prohibits the rate from exceeding the rate approved at the election.

(c) Provides that Section 49.107(h) (relating to an operation and maintenance tax to be used for recreational facilities), Water Code, does not apply to the district.

Sec. 3890.208. **AUTHORITY TO BORROW MONEY AND TO ISSUE BONDS.** (a) Authorizes the district to borrow money on terms and conditions as determined by the board. Provides that Section 375.205 (Approval by Attorney General; Registration), Local Government Code, does not apply to a loan, line of credit, or other borrowing from a bank or financial institution secured by revenue other than ad valorem taxes.

(b) Authorizes the district to issue by competitive bid or negotiated sale bonds, notes, or other obligations payable wholly or partly from ad valorem taxes, assessments, impact fees, revenue, contract payments, grants, or other district money, or any combination of those sources of money, to pay for any authorized district purpose.

(c) Provides that the limitation on the outstanding principal amount of bonds, notes, and other obligations set forth in Section 49.4645 (District in Certain Counties: Bonds for Recreational Facilities), Water Code, does not apply to the district.

Sec. 3890.209. **TAXES FOR BONDS.** Requires the board, at the time the district issues bonds payable wholly or partly from ad valorem taxes, to provide for the annual imposition of a continuing direct annual ad valorem tax, without limit as to rate or amount, while all or part of the bonds are outstanding as required and in the manner provided by Sections 54.601 (Tax Levy for Bonds) and 54.602 (Establishment of Tax Rate in Each Year), Water Code.

Sec. 3890.210. **ELECTIONS REGARDING TAXES AND BONDS.** (a) Authorizes the district to issue, without an election, bonds, notes, and other obligations secured by revenue other than ad valorem taxes.

(b) Requires the district to hold an election in the manner provided by Subchapter L (Elections), Chapter 375, Local Government Code, to obtain voter approval before the district is authorized to impose an ad valorem tax or issue bonds payable from ad valorem taxes.

(c) Provides that Section 375.243 (Petition Required for Bond Election), Local Government Code, does not apply to the district.

(d) Provides that all or any part of any facilities or improvements which may be acquired by a district by the issuance of its bonds may be included in one single proposition to be voted on at the election or the bonds may be submitted in several propositions.

Sec. 3890.211. **CITY NOT REQUIRED TO PAY DISTRICT OBLIGATIONS.** Prohibits the city, except as provided by Section 375.263 (Dissolution by Municipal Ordinance), Local Government Code, from being required to pay a bond, note, or other obligation of the district.

Sec. 3890.212. **COMPETITIVE BIDDING.** Provides that Subchapter I (Construction, Equipment, Materials, and Machinery Contracts), Chapter 49, Water Code, applies to the district. Provides that Sections 375.221 (Competitive Bidding on Certain Public Works

Contracts) and 375.223 (Supersedes Other Law), Local Government Code, do not apply to the district.

Sec. 3890.213. TAX AND ASSESSMENT ABATEMENTS. Authorizes the district to grant in the manner provided by Chapter 312, Tax Code, an abatement for a tax or assessment owed to the district.

[Reserves Sections 3890.214-3890.250 for expansion.]

SUBCHAPTER F. TAXES FOR CERTAIN DEFINED AREAS AND DESIGNATED PROPERTY

Sec. 3890.251. AUTHORITY TO ESTABLISH DEFINED AREAS OR DESIGNATED PROPERTY. Authorizes the district to define areas or designate certain property of the district to pay for improvements, facilities, or services that primarily benefit that area or property and do not generally and directly benefit the district as a whole.

Sec. 3890.252. PROCEDURE FOR ELECTION. (a) Requires the board, before the district may impose an ad valorem tax or issue bonds payable from ad valorem taxes of the area defined or property designated under Section 3890.251, to call and hold an election as provided by Section 3890.210 only in the defined area or in the boundaries of the designated property.

(b) Authorizes the board to submit the proposition to the voters on the same ballot to be used in another election.

Sec. 3890.253. DECLARING RESULT AND ISSUING ORDER. (a) Requires the board, if a majority of the voters voting at the election approve the proposition or propositions, to declare the results and by order establish the defined area and describe it by metes and bounds or designate the specific property.

(b) Prohibits a court from reviewing the board's order except on the ground of fraud, palpable error, or arbitrary and confiscatory abuse of discretion.

Sec. 3890.254. TAXES FOR SERVICES, IMPROVEMENTS, AND FACILITIES IN DEFINED AREAS OR DESIGNATED PROPERTY. Authorizes the district, on voter approval and adoption of the order described in Section 3890.253, to apply separately, differently, equitably, and specifically, its taxing power and lien authority to the defined area or designated property to provide money to construct, administer, maintain, and operate services, improvements, and facilities that primarily benefit the defined area or designated property.

Sec. 3890.255. ISSUANCE OF BONDS AND IMPOSITION OF TAXES FOR DEFINED AREA OR DESIGNATED PROPERTY. Authorizes the district, after the order under Section 3890.253 is adopted, to issue bonds to provide for any land, improvements, facilities, plants, equipment, and appliances for the defined area or designated property.

SECTION 2. Sets forth the district's initial territory.

SECTION 3. (a) Provides that the 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 under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) Provides that the governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality (TCEQ).

(c) Provides that TCEQ has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(d) Provides that the general law relating to consent by political subdivisions to the creation of districts with conservation reclamation, and road powers and the inclusion of land in those districts has been complied with.

(e) Provides 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 have been fulfilled and accomplished.

SECTION 4. Effective date: upon passage or September 1, 2009.