

SUBJECT: Authorizing creation of a public improvement district in Bexar County

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 6 ayes — Puente, Callegari, Bonnen, Hardcastle, Hilderbran, Laney
0 nays
3 absent — Campbell, Geren, Hope

SENATE VOTE: On final passage, May 10 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Milton Guess, San Antonio Tourism Council; John T. Montford, Greater San Antonio Chamber of Commerce; Nelson W. Wolff, Bexar County Commissioners Court

Against — Richard Alles, Aquifer Guardians in Urban Areas; Amy Kastely; Michael Marínez; Mariana Ornelas; Elginio Rodriguez; René Saenz; Graciela Sánchez

BACKGROUND: The County Development District Act (Local Government Code, ch. 383) permits the commissioners court of a county with a population of 400,000 or less, on the petition of landowners in a proposed district, to create a county development district for the purpose of developing public improvements to attract visitors and tourists to the county.

The Public Improvement District Assessment Act (Local Government Code, ch. 372) provides that a municipality or a city may respond to a request to create a public improvement district.

Texas Constitution, Art. 3, sec. 52-a relates to the loan or grant of public money for economic development.

DIGEST: CSSB 1879 would allow a county with a population of 1 million or more that is within 200 miles of an international border (Bexar County) to establish a public improvement district. This public improvement district would be a political subdivision of the state and would be created as a program for economic development as provided in the Constitution. The

district, located in the extraterritorial jurisdiction of a municipality, would be created in response to a petition and by an order of the commissioners court, which would describe the territory, authorize the district to exercise the powers of the bill, and make statements related to how improvements would be financed.

Powers and duties. The bill describes the powers and duties of a district. A district would have the powers and duties of a county development district as described in the County Development District Act, with the exception of provisions governing the repayment of organizational expenses.

A district would also have the powers and duties of a road district created by a county under Texas Constitution, art. 3, sec. 52, which would allow local voters to approve the collection of an annual tax for not more than five years to create a road construction fund. The district could not exercise the powers of a road district or provide water, wastewater or drainage facilities unless both the city and county consented by resolution. The district would not have the power of eminent domain, nor would it have right-of-way management authority over public utilities.

A district would have the ability to make loans or grants of public money to stimulate business and commercial activity, including grants to induce the construction of a tourist destination. The district also could appropriate a fund for the purpose of advertising and promoting area growth.

If the property owners wished to create a district only to provide economic development grants or loans and road improvements, the district would not need to prepare the feasibility report, service plan, assessment plan or assessment roll required by Local Government Code sec. 372.

Governing body. The district's governing body would have a board of seven directors serving staggered terms of two years appointed to serve terms or fill vacancies by the commissioners court. A member would have to be at least 18 years old and, if the district contained more than 1,000 residents, also a resident of the district.

The director would take an oath of office and execute a bond at \$10,000, payable to the district and conditioned on the faithful performance of duties. A director would receive \$50 a day for the performance of duties.

Bonds and taxes. A district would, subject to the commissioners court approval, be able to issue bonds. If the district contained more than 1,000 residents, a bond issuance would have to be approved in a public election by the voters. A district would be able to issue promissory notes upon approval from the commissioners court.

A district could impose assessments, levy an ad valorem tax, impose a sales and use tax, or impose a hotel occupancy tax. Under certain circumstances, a district could impose an ad valorem tax, a hotel occupancy tax and a sales and use tax for the purposes of the Texas Constitution, art. 3, sec. 52a, including development and diversification of the economy of the state. The rate of such taxes first would have to be approved by the commissioners court.

A tax could be used for such purposes as improvement projects, road projects, economic development projects, and certain advertising projects.

The hotel occupancy tax would have guidelines as specified in certain sections of the Tax Code and Local Government Code. It would be imposed by the district and could be used for any district purpose. The tax rate would be the greater of 9 percent or the rate imposed by the city. The owner of a hotel would have to consent to the imposition of the tax, and such consent would be irrevocable.

The district would, upon approval of the commissioners court, be able to impose a sales and use tax up to the statutory maximum of 2 percent. An ad valorem tax could be imposed by the district in accordance with Transportation Code, ch. 257, related to road districts after approval from the commissioners court.

With the approval of the commissioners court, a district could borrow money. A district also would be able to secure the payment of such costs as contractual obligations by such methods as a user fee, rental or other revenue methods.

Annexation. If a city annexed the district territory, the city would succeed to the district's assets but would not be liable for the district's debt. If there was debt, the district would continue after annexation for the purpose of collecting taxes, which would satisfy the debt. When the debt was satisfied or when two years had passed since the annexation, the district would be dissolved and any outstanding debt would be extinguished.

If a district was annexed for limited purposes, the district could continue to levy taxes only to the extent that the total level of taxation of the limited purpose area would not exceed the level of taxation of a fully annexed area. If a district was annexed, it could not impose specific taxes in the area that overlapped the city, except in the case of satisfying debt or in a limited-purpose annexation.

A district would be able to continue to impose a tax for limited purposes where the city did not impose taxes. If a city annexed an area for limited purposes and imposed only some of the taxes that the district levied, the district could levy taxes to the point where the level of taxation was equal to or less than the tax level of the city

Agreements and contracts. The board of directors would set the term, not to exceed 30 years, and conditions for any development agreements with landowners in the district. A district could contract with another entity for such purposes as paying from tax proceeds any costs incurred for an improvement project. A district also could contract for materials in the same manner that a county local government corporation can contract with the Texas Transportation Commission to build roads.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSSB 1879 would facilitate the construction of a major residential and resort complex in northern Bexar County that would bring substantial economic benefits to the area. The planned 2,855-acre development would feature at least two Professional Golf Association (PGA) Tour golf courses, a 1,000-room hotel, and several thousand homes worth an average of \$250,000. These plans would create 4,000 new jobs and would strengthen the tax base in the school district and the county while putting San Antonio firmly on the map as a golf tourist destination.

No tax burdens would be placed on the general public in the region or the state to develop this project. In fact, this resort project would generate an estimated \$250 million in direct revenue to the state over 25 years.

The bill would vest authority in public bodies, not private entities. It would not create the district but rather would grant the authority to the commissioners court to determine whether to create one. The taxes would have to be approved by commissioners court, which would assure a

significant measure of accountability. The taxing district proposed in this bill is different from the district proposed a few years ago, which was the subject of a petition opposing its creation. If San Antonio wished to annex this area at some point in the future, the city would not assume any of the district's debt.

The proposed project would be the most environmentally sensitive development ever undertaken over the Edwards Aquifer recharge zone in Bexar County. In fact, this development would protect the aquifer, when compared with the environmental impact that other projects, such as residential projects, would have on this water source. For example, the resort would recycle much of its irrigation water and impervious cover will be built on no more than 15 percent of the property. Residential projects would create more traffic and more environmental damage than this resort project. There already are eight golf courses operating over the aquifer, and there is no evidence that any of the chemicals used to maintain the courses have adversely affected the water quality. This bill offers a fair balance between economic development and environmental protection.

OPPONENTS
SAY:

The people of San Antonio have spoken against the creation of a special taxing district in Bexar County. In 2001, when the original proposal emerged to create a special taxing district in the area, more than 77,000 area voters signed a petition requesting a public election to address the issue. Eventually, the City of San Antonio struck an agreement with the original developer that took the taxing district off the table in exchange for a 29-year non-annexation agreement. Now it appears this bill would facilitate the efforts of a new group of developers to receive local tax dollars to subsidize a development in an area that the city cannot annex for 29 years, which represents the loss of a great deal of potential revenue over the next three decades. The Legislature should not interfere in this local issue. Instead, the people of San Antonio and Bexar County should have the opportunity to vote on this measure in a public election.

This bill has its roots in agreements that should be ruled invalid. For example, the San Antonio city council did not post adequate public notice in January when the issue of a special taxing district came up for discussion and a vote. Because the agreement to authorize a special taxing district is invalid, this bill should not go forward.

The Edwards Aquifer is the major source of water for more than 1.5 million people in the San Antonio area. The runoff from fertilizers and other chemicals used on the golf courses will introduce pollution to the water with unknown and potentially dangerous consequences. State officials need to protect the state's land and water resources instead of giving tax breaks to developers who pollute its water.

This bill is not in keeping with the intent of economic development statutes, which normally is to spur economic activity in small counties and rural areas. San Antonio is a large city and a major tourist attraction. It has economic advantages not available to smaller communities and therefore should not benefit from economic development tools intended for them.

NOTES:

The committee substitute would make a number of changes to SB 1879, including:

- limiting the provisions of the bill to Bexar County;
- specifying that the board of directors would have seven members and changing eligibility requirements for board service;
- granting the district the powers of a county development district, rather than the powers delineated in Transportation Code, ch. 257;
- specifying that a district could enter into a development agreement for a term of up to 30 years;
- specifying that a district would not have right-of-way management authority over public utilities.
- requiring prior approval from the commissioners court for a district to issue bonds and notes and impose taxes;
- allowing the district to impose taxes not levied by the municipality after limited purpose or partial annexation to prohibit double taxation inside the district; and
- specifying that the district would not have eminent domain authority.