

BILL ANALYSIS

Senate Research Center

H.B. 4015
By: Otto (Williams)
Intergovernmental Relations
5/18/2007
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 4015 amends Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997, as amended by Chapter 136, Acts of 76th Legislature, Regular Session 1999, and Chapter 1379, Acts of the 77th Legislature, Regular Session 2001, relating to the creation and administration of East Montgomery County Improvement District, by making certain changes concerning the administration, powers, and indebtedness of the District.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 16(c), Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997, to prohibit the East Montgomery County Improvement District (district) from imposing ad valorem taxes on property in the district except as provide by Section 30 (Economic Development Zones) of this Act.

SECTION 2. Amends Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997, by adding Section 16A, to read as follows:

Sec. 16A. GENERAL AUTHORITY TO IMPOSE TAXES. Authorizes the district to impose for any district purpose any tax authorized by this Act.

SECTION 3. Amends Section 22(a), Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997, to prohibit the board of directors of the district (board) from calling an election to abolish a sales and use tax or to reduce the rate of the sales and use tax below the amount pledged to secure payment of any outstanding district debt or contractual obligation while any district debt or contractual obligation remains outstanding.

SECTION 4. Amends Section 23(a), Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997, to provide that Chapter 323 (Sales and Use Taxes for Special Purpose Taxing Authorities), Tax Code, to the extent not inconsistent with this Act, governs the application, collection, and administration of the sales and use tax under this Act, except that certain sections of the Tax Code do not apply. Provides that Subtitles A (General Provisions) and B (Enforcement and Collection), Title 2 (State Taxation), and Chapter 151 (Limited Sales, Excise, and Use Tax), Tax Code, govern the administration and enforcement of the sales and use taxes under this Act.

SECTION 5. Amends Section 24, Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997, as follows:

Sec. 24. EFFECTIVE DATE OF TAX OR TAX CHANGE. Provide that the adoption of a sales and use tax rate or a change in the sales and use tax rate takes effect after the expiration of the first complete calendar quarter occurring after the date on which the comptroller of public accounts receives a notice of the results of the election.

SECTION 6. Amends Section 26, Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997, as follows:

Sec. 26. ABOLITION OF TAX RATE. (a) Authorizes the board to abolish the local sales and use tax rate without an election, except as provided by Subsection (b).

(b) Prohibits the board from abolishing the local sales and use tax while any district debt or contractual obligation remains outstanding if any sales and use tax revenue is pledged to secure payment of the outstanding debt or obligation.

SECTION 7. Amends Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997, by adding Section 29, to read as follows:

Sec. 29. HOTEL OCCUPANCY TAX. (a) Defines "hotel" for the purposes of this section.

(b) Provides that for the purposes of this section a reference in Subchapter A (Imposition and Collection of Tax), Chapter 352 (County Hotel Occupancy Taxes), Tax Code, to a county is a reference to the district and a reference to the county's officers or governing body is a reference to the board.

(c) Provides that Chapter 352, Tax Code, governs a hotel occupancy tax authorized by this section including collection of the tax.

(d) Authorizes the board by order to impose, repeal, increase, or decrease the rate of a tax on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room that is in a hotel located wholly or partly in the district, costs \$2 or more each day, and is ordinarily used for sleeping.

(e) Prohibits the tax rate from exceeding the maximum rate allowed under Section 352.003 (Tax Rates), Tax Code.

(f) Provides that this section does not apply to a hotel located wholly or partly in the City of Splendora as the boundaries of that city existed on April 1, 2007.

SECTION 8. Amends Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997, by adding Section 29A, to read as follows:

Sec. 29A. USE OF HOTEL OCCUPANCY TAX. Authorizes the district to use the proceeds from a hotel occupancy tax imposed under Section 29 of this Act for any district purpose and for any purpose described by Section 351.101 (Use of Revenue in Populous Counties) or 352.1015 (Use of Revenue: General Provisions), Tax Code, to the extent the board considers appropriate.

(b) Prohibits the board from applying an annual average of more than 10 percent of the amount of tax collected under Section 29 (Hotel Occupancy Tax) of this Act, excluding any interest earnings or investment profits and after a deduction for the costs of imposing and collecting the taxes, for the administrative expenses of the district or a district purpose other than the costs of advertising; promoting tourism and business development and commerce including certain costs which are set forth in this subsection; encouraging and promoting arts including certain arts which are set forth in this subsection; historical restoration projects; and activities, advertising, solicitations, and promotional programs to encourage tourists to visit preserved historic sites or museums during each interval of three calendar years following the date on which a hotel occupancy tax is initially collected.

(c) Provides that for purposes of this section a reference in Subchapter B (Use and Allocation of Revenue), Chapter 351 (Municipal Hotel Occupancy Taxes), Tax Code, to a municipality is a reference to the district and a reference to the municipality's officers or governing body is a reference to the board and in Subchapter B (Use and Allocation of Revenue), Chapter 352, Tax Code, a

reference to a county is a reference to the district and a reference to the county's officers or governing body is a reference to the board.

SECTION 9. Amends Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997, by adding Section 30, to read as follows:

Sec. 30. ECONOMIC DEVELOPMENT ZONES. (a) Defines "development zone," "governing body," and "project" for purposes of this section.

(b) Authorizes the board by resolution to create, designate, describe, assign a name to, and appoint the governing body for a development zone in the district to promote development or redevelopment of the area if the board finds that the creation of the zone will further certain public purposes on its own motion or on receipt of a petition signed by the owners of all real property in a defined area of the district consisting of 25 or more contiguous acres of land.

(c) Requires the board to prepare a preliminary financing plan for the zone that includes certain estimated project costs; a description of certain aspects of proposed improvement projects in the zone; the estimated amount of certain bond indebtedness and financial obligations; a description of the methods of financing and expected sources of revenue to pay for the costs of proposed improvement projects; and the projected duration of the zone.

(d) Prohibits a development zone from being created if more than 10 percent of the property in the proposed zone, other than property that is publicly owned, is used or planned for use for residential purposes. Provides that for purposes of this subsection property is used for residential purposes if the property is occupied by a house that has fewer than five living units.

(e) Sets forth certain guidelines required of a resolution designating an area as a development zone.

(f) Requires the district to call a confirmation election to confirm the establishment of the zone in the manner prescribed by Section 49.102 (Confirmation and Director Election), Water Code, upon approval by the board of a resolution designating an area as a development zone.

(g) Requires a member of the governing body who is not a district director to be appointed for a term of two years, except that the appointment of the initial members of the governing body is authorized to provide for some terms to be limited to one year in order to achieve staggered terms of office. Requires the district by appointment to fill a vacancy on the governing body of the zone for the unexpired portion of the term. Requires a member who is also a district director to serve a term concurrent with the director's term on the district board.

(h) Requires a member of a governing body to be at least 18 years of age, a citizen of the state, and a person described in Section 12(b) (providing that certain persons are considered to be an owner of real property for purposes of this section) of this Act. Authorizes a member of the board of directors of the district to be appointed to the governing body. Requires each member to qualify for office by subscribing to the constitutional oath of office for public officers and furnishing a fidelity bond issued by a responsible surety in the amount of \$10,000 in favor of the development zone to secure faithful performance of the member's duties.

(i) Requires the governing body of the development zone to meet and organize by electing a president, vice president, a secretary-treasurer, and other officers the governing body considers appropriate following appointment and qualifications. Provides that if the governing body of the development zone is composed entirely of directors of the district, each director of the development zone holds the same office the director holds as a director of the district.

(j) Authorizes the boundaries of a development zone to be reduced or enlarged in the manner provided by this section for creation of a zone, except that the boundaries are prohibited from being reduced to less than 25 contiguous acres. Provides that a confirmation election is not required for an enlargement if all landowners of the area proposed to be added consent to the enlargement and the tax authorization in the zone and the enlarged area does not have to have any registered voters who reside in the area.

(k) Provides that a development zone created by the district under this section is a political and corporate body and a political subdivision of the state, separate from the district. Authorizes the governing body of the zone to exercise or by order delegate to the district any powers and duties relating to the financing and implementation of the project plan for the zone, including the power and authority to issue certain bonds; impose certain ad valorem taxes, assessments, or other charges in the zone; and impose a sales and use tax that meets certain conditions.

(l) Authorizes the board and the governing body to each enter into any agreement considered necessary or convenient to implement a project plan and development zone financing plan and achieve their purposes. Authorizes an agreement to provide for the regulation or restriction of the use of land by imposing conditions, restrictions, or covenants that run with the land. Authorizes an agreement to provide that a restriction adopted by the governing body continues in effect after the termination of the development zone. Authorizes the district and the development zone to agree that the district will provide administration, management, investment, accounting, and other services for the zone in consideration for an administrative fee not to exceed five percent of the gross revenues of the development zone and for the benefits received by the district through the implementation of the project plan for the zone. Authorizes the district to pledge all or part of the proceeds of its sales and use tax to secure and pay any bonds or other financial obligations of a development zone on approval of the board subject to Section 30A of this Act.

(m) Requires the governing body to prepare and adopt, and authorizes the governing body to amend, a project plan and a development zone financing plan for the development zone subject to approval by resolution of the district board.

(n) Authorizes the governing body to adopt or repeal a sales and use tax approved by the district voters under Section 21 (Sales and Use Tax; Excise Tax) of this Act if approved at an election by a majority of the voters in the development zone voting in an election held for that purpose. Authorizes an election on the adoption or repeal of the maximum rate of sales and use tax to be held by the governing body as provide by Section 22 (Tax Election Procedures) of this Act as applied to a development zone. Authorizes an election to adopt the sales and use tax authorized by this section to be held in conjunction with the confirmation election described by Subsection (f) of this section. Authorizes the governing body to impose any portion of the sales and use tax, in increments of not less than one-eighth of one percent, for the benefit of the zone, by order of the governing body, after adoption at an election. Provides that the sales and use tax is in addition to the limited sales and use tax authorized and imposed by the district under Section 21 of this Act. Provides that if a political subdivision, including a municipality, imposes a sales and use tax in the development zone, the sales and use tax authorized by this section is reduced as of the date the development zone authorized the sales and use tax so that the combined total of all local sales and use taxes imposed in the development zone does not exceed two percent. Provides that the sales and use tax becomes effective on the first day of the calendar quarter following the date the comptroller receives written notice of the imposition of the tax.

(o) Authorizes the governing body to authorize a tax on all taxable property in a development zone created wholly or partly in the boundaries of East Montgomery

County Utility District No. 5, 6, or 7, or Valley Ranch Municipal Utility District No. 1 at a rate not to exceed 10 cents on each \$100 valuation as determined by the Montgomery County Appraisal District if approved at an election by a majority of the voters in the development zone voting in an election held for that purpose. Authorizes the election to be held in conjunction with the confirmation election held under Subsection (f) of this section.

SECTION 10. Amends Section 30A(b), Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997, to authorize the bonds issued by the district to be secured and made payable, wholly or partly, by a pledge of all or part, rather than of any part, of the net proceeds the district receives from certain taxes or any other district revenue.

SECTION 11. Amends Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997, by adding Section 33, as follows:

Sec. 33. COMMUNITY VENUES. (a) Defines "venue" and "community venue project" or "venue project" for the purposes of this section and Sections 33A (Event Admissions Tax) and 33B (Event Parking Tax) of this Act.

(b) Authorizes the district by resolution to provide for the planning, acquisition, establishment, development, construction, or renovation of a venue project.

(c) Requires the resolution to designate each venue project and each method of financing authorized by this Act that the district intends to use to finance a project. Authorizes a resolution to designate more than one method of financing.

(d) Authorizes the district to contract with a public or private person to plan, acquire, establish, develop, construct, or renovate a venue project.

(e) Requires the district to establish by resolution a fund known as the community venue project fund. Requires the district to establish separate accounts in the fund for the various revenue sources.

(f) Requires the district to deposit into the community venue fund the proceeds of any tax imposed by the district under Sections 33A and 33B of this Act; all revenue from the sale of bonds or other obligations by the district under this Act; and any other money required by law to be deposited in the fund.

(g) Authorizes the district to use money in the community venue project fund to reimburse or pay certain costs.

(h) Provides that money deposited into the community venue project fund is the property of the district.

(i) Authorizes the district to issue bonds, including revenue bonds and refunding bonds, or other obligations to pay the costs of the venue project.

SECTION 12. Amends Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997, by adding Section 33A, to read as follows:

Sec. 33A. EVENT ADMISSIONS TAX. (a) Authorizes the district by order to impose a tax on each ticket sold as admission to an event held at a venue project in the district for which the district has issued bonds or undertaken a contractual obligation to reimburse costs expended to plan, acquire, establish, develop, construct, or renovate the venue project.

(b) Prohibits the district from imposing the tax under this section for admission to an event at a venue that is not a community venue project or for which the district has not issued bonds or entered into a contractual obligation to reimburse costs expended to plan, acquire, establish, develop, construct, or renovate the venue project.

(c) Authorizes the district to impose a tax under this section only if a venue project is or will be located in the district.

(d) Provides that a tax authorized by this section is imposed at the tax rate on each ticket sold as admission to an event held at a venue.

(e) Authorizes the amount of the tax to be imposed at any uniform percentage not to exceed 10 percent of the price of the ticket sold as admission to an event held at a venue.

(f) Authorizes the district by order to increase, repeal, or decrease the rate of the tax imposed under this section.

(g) Authorizes the district by order to require the owner or lessee of a venue project in the district to collect the tax for the benefit of the district.

(h) Requires an owner or lessee required to collect the tax under this section to add the tax to the admissions price, and the tax is a part of the admissions price, a debt owed to the owner or lessee of a venue project by the person admitted, and recoverable at law in the same manner as the admissions price.

(i) Provides that the tax imposed by this section is not an occupation tax imposed on the owner or lessee of the venue project.

(j) Provides that a tax imposed under this section or a change in a tax rate takes effect on the date prescribed by the order imposing the tax or changing the rate.

(k) Authorize the district to impose a tax under this section only if the district issues bonds or enters into a contractual obligation under Section 33 (Community Venues) of this Act, except as provided by Subsection (l).

(l) Authorizes the district to continue to impose the tax after any financial obligations have been fulfilled if the tax revenue is used as authorized by Section 6(c) (relating to promoting the health, safety, welfare, public transportation, and education of the public) or 33(g) of this Act.

(m) Requires a person required to collect a tax imposed under this section to report and send the taxes to the district as provided by the district.

(n) Authorizes the district by order to prescribe penalties, including interest charges, for failure to keep records required by the district, to report when required, or to pay the tax when due. Authorizes the district to bring suit against a person who fails to collect a tax under this section and to pay it over to the district as required.

(o) Authorizes the district by order to permit a person who is required to collect a tax under this section to retain a percentage of the amount collected and required to be reported as reimbursement to the person for the costs of collecting the tax. Authorizes the district to provide that the person is authorized to retain the amount only if the person pays the tax and files reports as required by the district.

SECTION 13. Amends Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997, by adding Section 33B, to read as follows:

Sec. 33B. EVENT PARKING TAX. (a) Authorizes the district by order to impose a tax on each motor vehicle parking in parking facility of a community venue project.

(b) Authorizes the district to impose the tax during any time the parking facility is being used.

(c) Authorizes the district by order to provide that the tax is imposed at a flat amount on each parked motor vehicle or is imposed as a percentage of the amount charged for event parking by the owner or lessee of the parking facility.

(d) Prohibits the amount of the tax from exceeding the amount allowed by Section 334.202(b) (prohibiting the amount of tax for each motor vehicle from exceeding \$3), Local Government Code, regardless of the method of imposition.

(e) Authorizes the district by order to increase, repeal, or decrease the rate of the tax imposed under this section.

(f) Authorizes the district by order to require the owner or lessee of a parking facility to collect the tax for the benefit of the district.

(g) Requires an owner or lessee required to collect the tax under this section to add the tax to the parking charge, and the tax is a part of the parking charge, a debt owed to the parking facility owner or lessee by the person parking, and recoverable at law in the same manner as the parking charge.

(h) Provides that the tax imposed by this section is not an occupation tax imposed on the owner or lessee of the parking facility.

(i) Provides that a tax imposed under this section or a change in the tax rate takes effect on the date prescribed by the order imposing the tax or changing the rate.

(j) Authorizes the district to impose a tax under this section only if the district issues bonds or enters into other contractual obligations under Section 33 (Dissolution by Petition of Owners) of this Act, except as provided by Subsection (k).

(k) Authorizes the district to continue to impose the tax after any financial obligations have been fulfilled if the tax revenue is used as authorized by Section 6(c) (relating to promoting the health, safety, welfare, public transportation, and education of the public) or 33(g) of this Act.

(l) Requires a person required to collect a tax imposed under this section to report and send the taxes to the district as provided by the district.

(m) Authorizes the district by order to prescribe penalties, including interest charges, for failure to keep records required by the district, to report when required, or to pay the tax when do. Authorizes the district to bring suit against a person who fails to collect a tax under this section and to pay it over to the district as required.

(n) Authorizes the district by order to permit a person who is required to collect a tax under this section to retain a percentage of the amount collected and required to be reported as reimbursement to the person for the costs of collecting the tax. Authorizes the district to provide that the person is authorized to retain the amount only if the person pays the tax and files reports as required by the district.

SECTION 14. Repealer: Section 22(b) (relating to the date an election the board is required to hold to adopt, change the rate of, or abolish a sales and use tax must be held), Chapter 1316, Acts of the 75th Legislature, Regular Session, 1997.

SECTION 15. Provides that all requirements of the constitution and the laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 16. Effective date: upon passage or September 1, 2007.