

BILL ANALYSIS

Senate Research Center

H.B. 3647
By: Glaze (Cain)
Intergovernmental Relations
5/10/2001
Committee Report (Amended)

DIGEST AND PURPOSE

Current law authorizes counties to establish economic development districts to boost economic activity. H.B. 3647 establishes the Smith County Economic Development District to promote tourism and business development within a 127-acre development zone in northeastern Smith County.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Smith County Economic Development District in SECTION 1 (Section 385.034, Local Government Code) and to the board of directors of the Smith County Economic Development District in SECTION 1 (Section 385.037, Local Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 12B, Local Government Code, by adding Chapter 385, as follows:

CHAPTER 385. SMITH COUNTY ECONOMIC DEVELOPMENT DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 385.001. CREATION OF DISTRICT; LEGISLATIVE DECLARATION. (a) Provides that, notwithstanding any law relating to consent by political subdivisions to the creation of conservation and reclamation districts and the inclusion of land in those districts, the Smith County Economic Development District (district) is created as a special district under Section 59, Article XVI, Texas Constitution.

(b) Provides that the district is a unit of government for purposes of Chapter 101 (Texas Tort Claims Act), Civil Practice and Remedies Code, and operations of the district are considered to be essential governmental functions and not proprietary functions for all purposes, including the application of the Texas Tort Claims Act.

(c) Authorizes the board of the district (board) by resolution to change the district's name.

(d) Establishes legislative intent.

(e) Establishes legislative intent.

(f) Provides that, except as otherwise provided by this chapter, the district is not subject to the jurisdiction or supervision of the Texas Natural Resource Conservation Commission (commission) under Chapter 49, Water Code, or other law.

Sec. 385.002. DEFINITIONS. Defines "board," "commission," "district," and "improvement project."

Sec. 385.003. BOUNDARIES. Sets forth the geographic boundaries of the district.

Sec. 385.004. FINDINGS RELATED TO BOUNDARIES. Sets forth legislative findings regarding the boundaries of the district.

Sec. 385.005. FINDING OF BENEFIT AND PUBLIC PURPOSE. Sets forth legislative findings regarding the benefit and public purpose of the district.

Sec. 385.006. CONSTRUCTION OF CHAPTER. Requires this chapter to be liberally construed in conformity with the findings and purposes stated in this chapter.

[Reserves Sections 385.007-385.030 for expansion]

SUBCHAPTER B. POWERS AND DUTIES

Sec. 385.031. GENERAL POWERS AND DUTIES. (a) Sets forth powers and duties of the district provided by the general law of this state.

(b) Provides that if any provision of the general law is in conflict or inconsistent with this chapter, this chapter prevails. Provides that any general law that supplements the power and authority of the district, to the extent not in conflict or inconsistent with this chapter, is adopted and incorporated by reference.

Sec. 385.032. IMPROVEMENT PROJECTS. Authorizes the district to conduct or authorize certain types of improvement projects or activities in support of or incidental to improvement projects.

Sec. 385.033. POWERS RELATED GENERALLY TO FINANCIAL AND TERRITORIAL MATTERS. Sets forth certain powers related generally to financial and territorial matters.

Sec. 385.034. RULES AND REGULATIONS. Authorizes the district to adopt, amend, and enforce by ordinary civil remedies reasonable rules and regulations for the administration and operation of the district, for the use, enjoyment, availability, protection, security, and maintenance of the district's properties and facilities, and to provide for public safety and security within the district.

Sec. 385.035. SECURITY SERVICES. Prohibits the district from employing peace officers but authorizes it to contract for off-duty peace officers to provide public safety and security services as the board determines necessary.

Sec. 385.036. ECONOMIC DEVELOPMENT. Authorizes the district to exercise the economic development powers and authority that Chapter 380 provides to a municipality with a population of more than 100,000, and Chapter 1509, Government Code, provides to a municipality.

Sec. 385.037. ROADWAYS, PARKS, OTHER PUBLIC AREAS. (a) Authorizes the board by rule to regulate the private use of public roadways, open spaces, parks, sidewalks, and similar public areas within the district. Provides that, to the extent the rules of the district conflict with a rule, order, ordinance, or regulation of a county or municipality with jurisdiction in the district's territory, the rule, order, ordinance, or regulation of the county or municipality controls. Authorizes the rules to provide for the safe and orderly use of public roadways, open spaces, parks, sidewalks, and similar public areas or facilities.

(b) Authorizes the board to require a permit for a parade, demonstration, celebration,

entertainment event, or a similar nongovernmental activity in or on the public roadways, open spaces, parks, sidewalks, and similar public areas or facilities. Authorizes the board to charge a fee for the permit application and for public safety or security services in an amount the board considers necessary.

(c) Authorizes the board to require a permit or franchise agreement with a vendor, concessionaire, exhibitor, or similar private or commercial person or organization for the limited use of the area or facilities on terms and conditions and on payment of a permit or franchise fee the board may impose.

Sec. 385.038. **TERMS OF EMPLOYMENT; COMPENSATION.** Authorizes the board to employ and establish the terms of employment and compensation of a president, vice president, executive director, general manager, and any other operating officer of the district the board considers necessary.

Sec. 385.039. **PROHIBITION ON EMINENT DOMAIN.** Prohibits the district from exercising the power of eminent domain.

Sec. 385.040. **PROHIBITION ON IMPACT FEES AND ASSESSMENTS ON CERTAIN PROPERTY.** (a) Prohibits the district, because it is created in an area that is devoted primarily to commercial and business activity, from imposing an impact fee or assessment on a single family residential property or a residential duplex, triplex, quadriplex, or condominium.

(b) Prohibits the district from imposing an impact fee or assessment on the property, equipment, or facilities of a utility.

[Reserves Sections 385.041-385.070 for expansion]

SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 385.071. **BOARD OF DIRECTORS.** Provides for the governance of the district by a board of directors and the terms of the directors.

Sec. 385.072. **QUALIFICATIONS.** Sets forth qualifications to serve as an elected director.

Sec. 385.073. **INITIAL BOARD.** (a) Sets forth specific persons who will comprise the initial board of directors on the effective date of this Act.

(b) Provides for terms for the initial directors.

Sec. 385.074. **ELECTED BOARD.** Provides for the election of the board of directors.

Sec. 385.075. **VACANCY.** Provides for filling a vacancy in the office of director. Provides for the removal of a director.

Sec. 385.076. **DIRECTOR'S BOND.** Provides for a director's bond and oath of office.

Sec. 385.077. **OFFICERS; COMPENSATION; QUORUM.** (a) Provides for the election of officers of the board.

(b) Provides that a position on the board may not be construed to be a civil office of emolument for any purpose, including those purposes described in Section 40, Article XVI, Texas Constitution.

(c) Provides that a director is not entitled to compensation for service on the board but is entitled to be reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a director.

(d) Provides that three directors constitute a quorum for the consideration of matters pertaining to the district, and a concurrence of a majority of a quorum of directors shall be required for any official action of the district.

Sec. 385.078. COMMON LAW PRINCIPLES. Provides that a person who qualifies to serve on the board is qualified to serve as a director and participate in all votes pertaining to the business of the district regardless of any common-law doctrine or statute regarding conflict-of-interest, incompatibility, or similar matter to the contrary.

Sec. 385.079. CONFIRMATION AND DIRECTORS ELECTION. Provides for an election to confirm the establishment of the district, an election to authorize or to discontinue the imposition and assessment of taxes, and an election for directors.

Sec. 385.080. OPEN RECORDS AND MEETINGS. Provides that Chapters 551 and 552, Government Code, apply to the district.

[Reserves Sections 385.081-385.110 for expansion]

SUBCHAPTER D. TAXES; BONDS; CONTRACTS

Sec. 385.111. LIMITED SALES AND USE TAX. (a) Provides that words and phrases used in this section that are defined by Chapters 151 and 321, Tax Code, have the meanings assigned by Chapters 151 and 321, Tax Code.

(b) Provides that, except as otherwise provided in this section, Subtitles A and B, Title 2, Tax Code, and Chapter 151, Tax Code, apply to the taxes and to the administration and enforcement of the taxes imposed by the district in the same manner that those laws apply to state taxes.

(c) Authorizes the district to adopt, reduce, or repeal the limited sales and use tax authorized by this section at an election in which a majority of the qualified voters of the district voting in the election approve the adoption or the abolition of the tax, as applicable.

(d) Provides that the provisions of Chapters 323C, D, E, and F, Tax Code, relating to county sales and use taxes shall apply to the application, collection, and administration of a sales and use tax imposed under this section to the extent consistent with this chapter, as if references in Chapter 323, Tax Code, to a county referred to the district and references to a commissioners court referred to the board. Provides that Sections 323.401-323.404 and 323.505, Tax Code, do not apply to a tax imposed under this section.

(e) Provides that a tax imposed under this section or the repeal or reduction of a tax under this section takes effect on the first day of the calendar quarter occurring after the date on which the comptroller receives the copy of the resolution as required by Section 323.405(b), Tax Code.

(f) Provides that, on adoption of the tax authorized by this section, there is imposed a tax of two percent, or the maximum rate at which the combined tax rate of all local sales and use taxes in any location in the district does not exceed two percent, on the receipts from the sale at retail of taxable items within the district, and an excise tax on the use, storage, or other consumption within the district of taxable items purchased,

leased, or rented from a retailer within the district during the period that the tax is in effect. Provides that the rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sales price of the taxable item. Defines "use" with respect to a taxable service.

(g) Authorizes an election to authorize, reduce, or repeal a limited sales and use tax to be called by order of the board and requires it be held on the next available uniform election date established by Section 41.001, Election Code, that occurs 45 or more days after the date on which the order calling the election was passed. Requires notice of the election to be given and the election to be held and conducted in the manner prescribed by Chapter 54, Water Code, for bond elections for municipal utility districts. Requires the ballots to be printed to provide for voting for or against a certain proposition.

(h) Provides that if all or part of the territory of the district is annexed by a municipality that has adopted and is imposing a sales and use tax, the sales and use tax imposed by the district in the annexed territory shall be reduced, if required, in even multiples of one-eighth percent, and without the necessity for an election, so that the combined rate of all sales and use taxes imposed by the county, the annexing municipality, and all other political subdivisions within the annexed territory of the district will not exceed two percent, provided that a sales and use tax previously adopted by the district for the annexed territory shall not be reduced to less than one-half percent, and provided further that no reduction of the district's sales and use tax in the portions of the district not so annexed shall be required.

(i) Provides that a tax imposed under this section or the reduction or repeal of a tax under this section takes effect on the first day of the calendar quarter occurring after the date on which the comptroller receives the notice required by Section 323.405(b), Tax Code.

(j) Requires the board, not later than the 10th day after the date of the annexation or exclusion of territory by the district or the annexation of all or part of the territory of the district by a municipality requiring a reduction of the district's sales and use tax as provided by Subsection (h), to send to the comptroller, by certified or registered mail, certified copies of all resolutions, orders, or ordinances pertaining to the annexation or exclusion of the territory by a district or municipality.

(k) Authorizes the district to examine and receive information related to the imposition, assessment, and collection of sales and use taxes to the same extent as if the district were a municipality.

Sec. 385.112. HOTEL OCCUPANCY TAX. (a) Defines "hotel."

(b) Authorizes the board by order to impose, repeal, or 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 use or possess a room that is in a hotel located in the boundaries of the district, costs \$2 or more each day, and is ordinarily used for sleeping. Prohibits the amount of the tax from exceeding seven percent of the price paid for a room in a hotel.

(c) Provides that Chapter 352A, Tax Code, governs a hotel occupancy tax authorized under this section, including the collection of the tax, except as inconsistent with this section and Section 385.113, subject to the limitations prescribed by Sections 352.002(b) and (c), Tax Code.

(d) Authorizes the district to examine and receive information related to the imposition, assessment, and collection of hotel occupancy taxes to the same extent as if the district were a municipality.

(e) Provides that, for purposes of this section, a reference in Chapter 352A, Tax Code, to a county is a reference to the district and a reference in Chapter 352A, Tax Code, to the county's officers or governing body is a reference to the board.

Sec. 385.113. USE OF HOTEL OCCUPANCY TAX. (a) Requires the district to apply the proceeds from a hotel occupancy tax imposed under Section 385.112 for any of the district's purposes and for the purposes described by Section 352.1015, Tax Code, to the extent considered appropriate by the board.

(b) Prohibits the board, during each interval of three calendar years following the date on which a hotel occupancy tax imposed under Section 385.112 is initially collected, from applying an annual average of more than 10 percent of the amount of tax collected under that section, 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 certain expenses.

(c) Provides that, for purposes of this section, a reference in Chapter 352B, Tax Code, to a county is a reference to the district and a reference in Chapter 352B, Tax Code, to the county's officers or governing body is a reference to the board.

Sec. 385.114. BONDS. (a) Authorizes the district to issue bonds in the manner provided by Chapter 375J. Provides that Sections 375.207 and 375.208 do not apply to bonds issued under this section.

(b) Provides that if the district issues bonds for the primary purpose of providing water, sewage, or drainage facilities, the district is required to obtain the commission's approval in the manner provided by Section 49.181, Water Code.

(c) Provides that, in addition to the sources of money described by Chapter 375J, the bonds of the district may be secured and made payable, wholly or partly, by a pledge of any part of the net proceeds the district receives from the sales and use tax authorized by Section 385.111 and the hotel occupancy tax authorized by Section 385.112.

Sec. 385.115. CONTRACTS WITH DISTRICT. (a) Authorizes a contract the district enters into to carry out a purpose of this chapter to be on any terms and for any period of time as the board may determine.

(b) Provides that, notwithstanding any other law or charter provision, a state agency, municipality, county, other political subdivision, corporation, individual, or other entity is authorized to contract with the district to carry out the purposes of this chapter without any further authorization.

[Reserves Sections 385.116-385.130 for expansion]

SUBCHAPTER E. DISSOLUTION

Sec. 385.131. DISSOLUTION. Authorizes the board by majority vote to dissolve the district at any time. Requires the board to dissolve the district on written petition of the owners of 75 percent of the acreage of real property in the district.

Sec. 385.132. INDEBTEDNESS AND CONTRACTUAL OBLIGATIONS. Prohibits the board from dissolving the district until the district's outstanding indebtedness or contractual obligations have been repaid or discharged.

Sec. 385.133. TRANSFER OF PROPERTY AND ASSETS. Requires the board, after it elects to dissolve the district, to transfer ownership of all property and assets of the district to Smith County.

SECTION 2. Sets forth legislative findings regarding the fulfillment of the 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.

SECTION 3. Effective date: upon passage or September 1, 2001.