

S.B. No. 1012

AN ACT

relating to the establishment of regional participation agreements between certain municipalities and districts; authorizing the issuance of bonds.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 43, Local Government Code, is amended by adding Section 43.0754 to read as follows:

Sec. 43.0754. REGIONAL PARTICIPATION AGREEMENTS. (a) In this section:

(1) "District" means a political subdivision created by general or special law that has the powers of a municipal management district under Chapter 375 and a conservation and reclamation district under Chapters 49 and 54, Water Code, a majority by area of the territory of which is located within a planned community and within the extraterritorial jurisdiction of one or more municipalities.

(2) "Eligible municipality" means a municipality:

(A) that has a population of 1.5 million or more and that includes in its extraterritorial jurisdiction at least 90 percent by area of the territory of a district; or

(B) that includes in its extraterritorial jurisdiction not more than 10 percent of the territory of a

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district that has entered into a regional participation agreement with another eligible municipality under this section.

(3) "Party" means a district, eligible municipality, or person that is a party to a regional participation agreement approved and entered into under this section.

(4) "Planned community" means a planned community of 20 square miles or more with a population of 50,000 or more that is subject in whole or in part to a restrictive covenant that contains an ad valorem-based assessment on real property used or to be used, in any part, to fund governmental or quasi-governmental services and facilities within and for the planned community.

(5) "Regional participation agreement" means a contract or agreement entered into under this section or in anticipation of the enactment of this section and any amendment, modification, supplement, addition, renewal, or extension to or of the contract or agreement or any proceeding relating to the contract or agreement.

(b) Notwithstanding any contrary law or municipal charter provision, the governing body of an eligible municipality, the governing body of a district, and, if applicable, a person may approve and authorize execution and performance of a regional participation agreement to further regional participation in the funding of eligible programs or projects. A regional participation agreement must include as parties at least one eligible municipality and one district and may include as parties other eligible municipalities, districts, or persons.

(c) A regional participation agreement may provide or allow for:

(1) the establishment, administration, use, investment, and application of a regional participation fund, which shall be a special fund or escrow account to be used solely for funding the costs and expenses of eligible programs or projects;

(2) payments to be made by a party into the regional participation fund for application, currently or in the future, toward eligible programs or projects;

(3) the methods and procedures by which eligible programs or projects are prioritized, identified, and selected for implementation and are planned, designed, bid, constructed, administered, inspected, and completed;

(4) the methods and procedures for accounting for amounts on deposit in, to the credit of, or expended from the regional participation fund, as well as any related investment income or amounts due and owing to or from any party to the fund;

(5) credits against payments otherwise due by any party under the agreement resulting from taxes, charges, fees, assessments, tolls, or other payments in support of or related to the usage or costs of eligible programs or projects that are levied or imposed upon, assessed against, or made applicable to a party or its citizens, ratepayers, taxpayers, or constituents after the effective date of the agreement;

(6) any type of annexation of any part of the territory of a district to be deferred by an eligible municipality that is a

party for a mutually agreeable period;

(7) the release of all or part of the territory of a district from the extraterritorial jurisdiction of an eligible municipality that is a party at a specified time or upon the occurrence of specified events;

(8) the consent of an eligible municipality that is a party to the incorporation of, or the adoption of an alternate form of government by, all or part of the territory of a district at a specified time or upon the occurrence of specified events;

(9) remedies for breach of the agreement;

(10) the modification, amendment, renewal, extension, or termination of the agreement;

(11) other districts, eligible municipalities, or persons to join the agreement as a party at any time;

(12) third-party beneficiaries to be specifically designated and conferred rights or remedies under the agreement;

(13) the duration of the agreement, including an unlimited term;

(14) the creation and administration of a nonprofit corporation, joint powers agency, local government corporation, or other agency for the purpose of administration and management of a regional participation fund, program, or project under the agreement; and

(15) any other provision or term to which the parties agree.

(d) A regional participation agreement may provide for the

funding of any program or project, whether individual, intermittent, or continuing and whether located or conducted within or outside the boundaries of a party, for the planning, design, construction, acquisition, lease, rental, installment purchase, improvement, provision of furnishings or equipment, rehabilitation, repair, reconstruction, relocation, preservation, beautification, use, execution, administration, management, operation, or maintenance of any works, improvements, or facilities, or for providing any functions or services, whether provided to, for, by, or on behalf of a party, that provide a material benefit to each party in the accomplishment of the purposes of each party, related to:

(1) mobility or transportation, including mass transportation, traffic circulation, or ground, air, rail, water, or other means of transportation or movement of people, freight, goods, or materials;

(2) health care treatment, research, teaching, or education facilities or infrastructure;

(3) parks or recreation, open space, and scenic, wildlife, wetlands, or wilderness areas;

(4) public assembly or shelter, including halls, arenas, stadiums or similar facilities for sporting events, exhibitions, conventions, or other mass assembly purposes;

(5) environmental preservation or enhancement, including air or water quality protection, improvement, preservation, or enhancement, and noise abatement;

(6) the supply, conservation, transportation, treatment, disposal, or reuse of water or wastewater;

(7) drainage, stormwater management or detention, and flood control or prevention;

(8) solid waste collection, transfer, processing, reuse, resale, disposal, and management; or

(9) public safety and security, including law enforcement, firefighting and fire prevention, emergency services and facilities, and homeland security.

(e) A regional participation agreement must be:

(1) in writing;

(2) approved by the governing body of each eligible municipality or district that is or that becomes a party to the agreement; and

(3) must be recorded in the deed records of any county in which is located any territory of a district that is or that becomes a party to the agreement.

(f) A district, eligible municipality, or person may join or become a party to a regional participation agreement in the manner authorized in the agreement.

(g) A regional participation agreement is not required to describe the land contained within the boundaries of a district that is a party to the agreement.

(h) A regional participation agreement binds each party to the agreement for the term specified in the agreement and each owner and future owner of land that is subject to the agreement

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during any annexation deferral period established in the agreement.

If a party, land, or landowner is excluded or removed from an agreement, the removal or exclusion is effective on the recordation of the amendment, supplement, modification, or restatement of the agreement implementing the removal or exclusion.

(i) A regional participation agreement may not require a district to make payments from any funds that are restricted, encumbered, or pledged for the payment of contractual obligations or indebtedness of the district. Otherwise, any party may commit or pledge or may issue bonds payable from or secured by a pledge of any available source of funds, including unencumbered sales and use taxes, to make payments due or to become due under an agreement.

(j) Notwithstanding any other law, a program or project to be funded and any bonds to be issued by a district to make payments under a regional participation agreement are not subject to review or approval by the Texas Commission on Environmental Quality.

(k) A regional participation agreement and any action taken under the agreement are not subject to any method of approval or appeal under the Water Code.

(l) After due authorization, execution, delivery, and recordation as provided by this section, a regional participation agreement, including any related amendment, supplement, modification, or restatement, and a pledge of funds to make payments under an agreement shall be final and incontestable in any court of this state.

(m) Notwithstanding any defect, ambiguity, discrepancy,

invalidity, or unenforceability of a regional participation agreement that has been voluntarily entered into and fully executed by the parties, or any contrary law, common law doctrine, or municipal charter provision, and for the duration of any annexation deferral period established in the agreement during which a district continues to perform its obligations under the agreement:

(1) Section 42.023 and any other law or municipal charter provision relating to the reduction of the extraterritorial jurisdiction of an eligible municipality that is a party do not apply, and Sections 42.041(b)-(e) do not apply to any land or owner of land within a district that is a party;

(2) the governing body of an eligible municipality that is a party may not initiate or continue an annexation proceeding relating to that area but may include the area covered by the agreement in a municipal annexation plan; and

(3) any area of a district that is a party to be released from the extraterritorial jurisdiction of an eligible municipality that is a party under an agreement, or that is to be incorporated or included within an alternate form of government with the consent of a municipality that is a party under an agreement, shall, by operation of law and without further action by a party or its governing body, be released from the extraterritorial jurisdiction, or consent of the municipality to the incorporation or adoption of an alternate form of government by the district shall be deemed to have been given, as appropriate under the agreement, at the time or upon the occurrence of the

events specified in the agreement.

(n) Notwithstanding the provisions of any municipal charter or other law, a district or an eligible municipality is not required to hold an election to authorize a regional participation agreement. As long as such funds remain restricted for use under an agreement, payments to or income from a regional participation fund shall not be deemed revenues to an eligible municipality for purposes of any law or municipal charter provision relating to revenue or property tax caps or limits.

(o) This section is cumulative of all other authority to make, enter into, and perform a regional participation agreement. In case of any conflict or ambiguity between this section and any other law or municipal charter provision, this section shall prevail and control.

(p) This section shall be liberally construed so as to give effect to its legislative purposes and to sustain the validity of a regional participation agreement if the agreement was entered into under or in anticipation of enactment of this section.

SECTION 2. The legislature finds and determines that the financial burdens of implementing essential economic development programs and related regional public improvement projects, including programs and projects located inside or outside municipal boundaries that are of substantial benefit to areas within a municipality and its extraterritorial jurisdiction, or to the state as a whole, often are borne by large municipalities in the state; that there exists insufficient legislative authority to promote and

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facilitate regional participation in the funding and implementation of such programs and projects; that annexation of adjacent areas by large municipalities in many instances does not provide a satisfactory means of apportioning such financial burdens and may create or exacerbate public service delivery and financial burdens of municipalities; that financial participation in such programs or projects by populous, defined communities in close proximity to large municipalities by mutual agreement provides an equitable, material, and effective alternative means of addressing such circumstances without resort to municipal annexation; that to prevent the fragmentation of, or nonuniform allocation of costs to, participating defined communities, provision should also be made for similar agreements with other municipalities with extraterritorial jurisdiction over insubstantial portions of such defined communities; and that implementation of the provisions of this Act will be of substantial benefit to participating communities and municipalities, to the regions of the state that include such participants, and to the state as a whole as a program for promoting and facilitating regional governmental cooperation and the funding of essential economic development and public improvement projects under Section 52-a, Article III, Texas Constitution, thereby accomplishing the public purposes of promoting and advancing employment and economic diversification and development and stimulating business within the state, conserving and preserving the natural resources of the state, permitting the improvement of traffic circulation, the movement of people,

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freight, goods, and materials, mass transportation, and health care facilities and infrastructure within the state, promoting the enhancement and improvement of air and water quality and noise abatement measures within the state, promoting the development of parks, recreational facilities, and public assembly facilities within the state, and encouraging the preservation and protection of scenic, wildlife, wetlands, and wilderness areas in the state, and other purposes beneficial to the state.

SECTION 3. The provisions of this Act are severable. If any word, phrase, clause, sentence, section, provision, or part of this Act is held invalid or unconstitutional, it shall not affect the validity of the remaining portions, and it is declared to be the legislative intent that this Act would have been passed as to the remaining portions regardless of the invalidity of any part.

SECTION 4. A regional participation agreement entered into in anticipation of this Act is not invalid because of the agreement's authorization, execution, or delivery before the effective date of this Act.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

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President of the Senate

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Speaker of the House

I hereby certify that S.B. No. 1012 passed the Senate on April 4, 2007, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendment on May 1, 2007, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

I hereby certify that S.B. No. 1012 passed the House, with amendment, on April 27, 2007, by the following vote: Yeas 133, Nays 0, two present not voting.

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Chief Clerk of the House

Approved:

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Date

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Governor