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S.B. 204
133rd General Assembly

Bill Analysis

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Version: As Passed by the Senate

Primary Sponsors: Sens. Schuring and Sykes

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SUMMARY

- Authorizes certain regional airport authorities, port authorities, and municipal corporations to create an airport development district (ADD) to generate revenue for airport infrastructure improvements and other expenditures that benefit a “qualifying airport.”
- Requires that the resolution proposing creation of an ADD include a development plan that describes the improvements and expenditures that will be undertaken, states the development charge that will be imposed, and provides for creation of the nonprofit corporation that will govern the ADD.
- Requires the regional airport authority, port authority, or municipal corporation to obtain the approval of the owners of at least 60% of the property and business located within the ADD, collectively, and the Director of Development Services before the ADD is operative.
- Prescribes procedures for organizing the nonprofit corporation, filing the articles of incorporation, appointing its board of directors, and amending the articles of incorporation or the development plan.
- Allows the board of directors to impose a development charge on real property located within the ADD in accordance with the development plan based on either (1) the square footage of buildings or other structures located on the property, or (2) profits, gross receipts, or other revenues of a business operating on the property.
- Caps the “rate” of the development charge at \$2 per square foot or 2% of profits, gross receipts, or other revenues.
- Requires that the base and rate of the development charge be the same for all property.
- Requires expenditures to be approved by the regional airport authority, port authority, or municipal corporation that created the ADD.

- Prescribes a procedure for dissolving an ADD or repealing the development plan.
- Terminates approval of new ADDs after December 31, 2023.

DETAILED ANALYSIS

Airport development districts (ADDs)

The bill authorizes airport development districts (ADDs) – a new economic development tool that may be used to generate revenue for airport infrastructure improvements and other types of expenditures meant to attract airlines, increase scheduled flights to and from an airport, or increase use of the airport by aircraft with greater passenger capacity or more first-class seating. An ADD must encompass or be adjacent to a “qualifying airport,” which the bill defines as an airport (including any adjacent airport facilities) that is:

- Owned, operated, or maintained by a regional airport authority and located in two counties, one of which has a population between 500,000 and 800,000;
- Owned, operated, or maintained by a port authority that was created by two counties, each having a population between 200,000 and 250,000; or
- Owned, operated, or maintained by a municipal corporation that is the most populous municipal corporation in a county having a population between 500,000 and 840,000.¹

Revenue for ADD projects is generated through the imposition of a development charge on real property located within the district. The amount of the development charge is determined in accordance with a development plan for the ADD that is proposed by the board of trustees of the regional airport authority, board of directors of the port authority, or legislative authority of the municipal corporation (referred to in this analysis as the “creating authority”) and approved by the owners of at least 60% of the property and businesses in the district. The charge may be based on the square footage of buildings and other structures located on the property or the profits, gross receipts, or other revenues of a business operating on the property. Similar to special improvement districts (SIDs) under continuing law, an ADD is governed by the board of trustees of a nonprofit corporation. The board of trustees of the ADD, referred to by the bill as the “board of directors,” must spend revenue derived from the development charge in the manner described in the development plan for the district. All expenditures are subject to the approval of the ADD’s creating authority.²

Creation

Creating an ADD is a three-step process initiated by resolution of the applicable creating authority. The resolution must include a development plan that describes the development charge that may be imposed on property within the ADD, establishes a plan for the

¹ R.C. 308.20.

² R.C. 308.21, *et. seq.*

infrastructure improvements and other expenditures that will be financed by the proceeds of the development charge, and specifies procedures for all of the following:

- Formation, operation, and organization of the nonprofit corporation that will govern the ADD;
- Appointment of the board of directors of that nonprofit corporation;
- Adding and removing territory from the ADD.³

After the resolution is adopted, it must be approved by the owners of at least 60% of the collective number of (1) parcels of real property located in the proposed ADD and (2) businesses operating within the proposed ADD. Property and business owners demonstrate their approval by signing a petition in support of the ADD. The petition must include the full text of the resolution and clearly indicate that, by signing, a property owner consents to the development charge described in the development plan.⁴

Once the requisite number of signatures is obtained, the creating authority must submit the resolution proposing the ADD and the petition signed by the property and business owners to the Director of Development Services for evaluation. If the Director determines that the resolution and the petition meet the requirements prescribed by the bill, the Director must send notice approving creation of the ADD to the creating authority. If the Director determines that either the resolution or the petition does not meet the bill's requirements, the Director must decline to approve the ADD and send notice stating the reason or reasons for that determination. If approval is declined, the creating authority may remedy the defects identified by the Director and resubmit the resolution and petition for re-evaluation at any time.

The creating authority is required to notify every property and business owner within the proposed ADD, including owners that did not sign the petition in support, when the ADD is approved by the Director.⁵

Territory

All property in an ADD must be contiguous. No church property or publicly owned property may be included in an ADD unless the church or government owner of the property requests in writing that the property be included. The territory of an ADD must either encompass, or be adjacent to, a qualifying airport.⁶

Governance

An ADD is governed by the board of trustees of a nonprofit corporation, which is referred to by the bill as the "board of directors." The nonprofit corporation and the board of

³ R.C. 308.21(A).

⁴ R.C. 308.21(C).

⁵ R.C. 308.21(D)(1) and (2).

⁶ R.C. 308.21(B).

directors are generally organized and empowered in the same manner as more traditional, private nonprofit corporations under general state nonprofit corporation law. However, the bill prescribes several exceptions to the general rule which are summarized below.

Articles of incorporation

The articles of incorporation for the nonprofit corporation governing an ADD must, in addition to the contents required under existing nonprofit corporation law, include the following:

- The name of the district (which must include the name of the qualifying airport);
- A description of the territory included in the ADD;
- The full text of the resolution creating the ADD, the development plan included therein, and any subsequently adopted amendments to that plan;
- The procedures by which the articles of incorporation and the development plan may be amended;
- The reasons for creating the ADD;
- An explanation of how the ADD will be conducive to the public health, safety, peace, convenience, and welfare.

The articles of incorporation and a copy of the Director of Development Service's notice approving the district must be filed with the Secretary of State. The Secretary of State must verify that the articles meet the requirements of the bill before accepting them.⁷

Board of directors

The board of directors of an ADD must consist of seven members. Four members are appointed by the owners of property and businesses within the ADD and three members are appointed by the ADD's creating authority. All appointments to the board of directors must be made in accordance with applicable rules, regulations, and guidelines of the Federal Aviation Administration (FAA).

The board of directors must elect a chairperson, vice-chairperson, secretary, and treasurer from among its membership. The member who is elected as treasurer may not hold any other office of the board but, otherwise, one member may hold more than one of the offices. Decisions of the board of directors are effectuated by majority vote of the members present at the meeting. Decisions involving expenditures are subject to the approval of the creating authority.

Each member of the board of directors is entitled to written notice of the time, place, and agenda of any board meeting. The notice must be transmitted by certified mail, personal

⁷ R.C. 308.23(B) and (C).

service, or electronic device. If possible, notice should be served at least one week before the meeting.⁸

Powers and duties

The nonprofit corporation governing an ADD, in addition to the general powers granted nonprofit corporation law, may do any or all of the following:

- Develop and implement plans for public infrastructure improvements that benefit the qualifying airport;
- Make expenditures to attract airlines to that airport, retain airlines that already have a presence at the airport, increase the number of scheduled flights to and from the airport, or increase use of the airport by aircraft with greater passenger capacity or more first-class seating;
- Contract with persons, state agencies, political subdivisions, or community improvement corporations to develop, manage, or implement plans for the improvements or expenditures described above or to otherwise assist in carrying out the development plan for the ADD;
- Impose a development charge on the owners of property located within the ADD in accordance with the development plan;
- Contract and pay for insurance for directors, officers, agents, contractors, employees, or members of the ADD or for the ADD itself.⁹

The board of directors of an ADD is subject to the same competitive bidding and prevailing wage rules and procedures that apply to its creating authority.¹⁰ The treasurer of the board of directors is required to issue an annual report of the board's activities and financial condition to each owner of property within the ADD.¹¹

Changing plans

The procedure for amending the development plan for an ADD and the articles of incorporation of the governing nonprofit corporation is described in the articles of incorporation. At minimum, the procedure must include obtaining the approval of all of the following:

- The majority of the membership of the board of directors;
- The owners of 60% of all parcels of real property located, and businesses operating within the ADD;

⁸ R.C. 308.22(A) and (C).

⁹ R.C. 308.23(A).

¹⁰ R.C. 308.25(C).

¹¹ R.C. 308.22(D).

- The majority of the membership of the creating authority.¹²

All amendments to the articles of incorporation and, consequently, all amendments to the development plan for the ADD¹³ must be filed with the Secretary of State along with documentation sufficient to prove that this minimum procedural threshold has been met.¹⁴

Applicability of other state laws

The bill specifies that the nonprofit corporation governing an ADD is not a political subdivision and that membership on the board of directors does not constitute holding a public office. Therefore, membership on the board does not activate the financial disclosure obligations that generally apply to public office-holders.¹⁵ However, officers and employees of an ADD are otherwise subject to public ethics law¹⁶ and are entitled to certain immunities that are generally reserved for public officials.¹⁷ Furthermore, the board is subject to open meetings law¹⁸ and public records law,¹⁹ except that records of organizations contracting with an ADD are not considered public records solely by reason of that contract. Rules adopted by the board of directors are not subject to review through the common sense initiative²⁰ process.²¹

Development charge

The amount of the development charge imposed on property located within an ADD is determined based on (1) the square footage of buildings or other structures located on the property, or (2) profits, gross receipts, or other revenues of a business operating on the property, including rents received from leasing the property. The maximum “rate” of an ADD development charge is \$2 per square foot or 2% of profits, gross receipts, or other revenues, whichever is applicable. The development charge must be determined in the same manner and at the same rate for all property located within the ADD.

All details of the development charge – including how it is computed, the terms by which it is collected, and the termination date – must be described in the development plan for the ADD. If the development plan does not specify a method of collecting an unpaid development charge, the board of directors of the ADD may certify the overdue amount to the

¹² R.C. 308.23(D).

¹³ The development plan must be fully transcribed in the articles of incorporation. R.C. 308.23(B)(3).

¹⁴ R.C. 308.23(D).

¹⁵ R.C. 102.02, not in the bill.

¹⁶ R.C. Chapter 102., not in the bill.

¹⁷ R.C. 2744.03(A)(6), not in the bill.

¹⁸ R.C. 121.22, not in the bill.

¹⁹ R.C. 149.43, not in the bill.

²⁰ R.C. 121.81 to 121.83, not in the bill.

²¹ R.C. 308.21(E) and 308.22(E) and (F).

county auditor for collection. The county auditor must then enter the unpaid charge on the tax list and collect it in the same manner as real property taxes. The charge is a lien on the property from the date it is entered on the tax list. All development charges collected in this manner must be paid immediately to the ADD.

A development charge is a covenant running with the land and, therefore, is enforceable against current and future owners of the property. The bill requires owners of property within an ADD to notify prospective purchasers of the property about the development charge before conveyance. A purchase agreement involving property within an ADD that does not reference the development charge is not enforceable against the purchaser. However, the purchaser remains liable for the development charge. The purchaser's course of legal action is against the seller of the property, not the ADD board of directors.

The proceeds of a development charge must be used exclusively for the purposes of the ADD. A development charge cannot be collected after the ADD expires under the terms of the development plan or after it is dissolved.²²

Expenditures

The board of directors of an ADD may spend revenue derived from the development charge for any of the following purposes:

- Costs of creating and operating the district, including the costs of employees, professional services, insurance, office space, and equipment;
- Costs associated with planning, designing, and implementing public infrastructure improvements that benefit the qualifying airport, including architectural, engineering, legal, appraisal, insurance consulting, energy auditing, and planning fees and, for public services, the management, protection, and maintenance costs of public or private facilities;
- Costs of airport advertising, airline recruitment, market research, ticket purchase guarantees, and incentives designed to attract or retain airlines, increase the number of scheduled flights to and from the qualifying airport, or increase use of the airport by aircraft with greater passenger capacity or more first-class seating;
- Court costs;
- Damages resulting from implementing the development plan for the ADD.²³

Each proposed expenditure of the board of directors of an ADD must first be approved by resolution of the creating authority. No ADD funds may be used to finance the acquisition of an interest in property using the power of condemnation or eminent domain.²⁴

²² R.C. 308.21(A)(5) and 308.24.

²³ R.C. 308.25(A).

²⁴ R.C. 308.22(B) and 308.25(B).

Dissolution

The process of dissolving an ADD or repealing the associated development plan is initiated by filing with the ADD board of directors a petition signed by the owners of at least 20% of the collective number of (1) parcels of real property located within the ADD and (2) businesses operating within the ADD. The board of directors must organize a meeting to consider the petition within 45 days after it is filed. The board must send notice of the time, place, and subject of the meeting to each property and business owner within the ADD at least two weeks before the meeting is held. Dissolving the ADD or repealing the development plan requires an affirmative vote of the owners of more than 50% of the collective number of parcels of real property and businesses within the ADD.

In the event of a vote to dissolve an ADD, the board must begin the dissolution process, but the process may not be finalized until all debts and obligations of the ADD are paid in full. No contractual rights or obligations of the ADD are excused due to a vote for dissolution except by consent of all parties to the contract or by court order. Once an ADD is dissolved and all debts and obligations are paid, remaining assets are returned to the property owners, prorated to reflect the amount of development charges collected on each owner's property in the preceding 12 months.

In the event of a vote to repeal the development plan, all obligations of the ADD associated with the plan must be paid in full.²⁵

Sunset

No new ADDs may be approved by the Director of Development Services after December 31, 2023.²⁶

HISTORY

Action	Date
Introduced	09-30-19
Reported, S. Finance	06-03-20
Passed Senate (33-0)	06-03-20

S0204-PS-133/ec

²⁵ R.C. 308.26.

²⁶ R.C. 308.21(D)(3).