

BILL ANALYSIS

S.B. 978
By: West
Land & Resource Management
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Recent attempts to apply the Public Improvement District (PID) Assessment Act, Chapter 372, Improvement Districts in Municipalities and Counties, Local Government Code, to cities' current needs in the context of a growing capital market for PID-based public infrastructure financing has caused the attorney general, cities, and the capital markets to identify various technical corrections that need to be made in the current statute.

S.B. 978 amends current law relating to the creation and financing of public improvement districts.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Exercise of Powers

S.B. 978 amends the Local Government Code to clarify that a public improvement district created under the Public Improvement District Assessment Act is not a separate body politic or body corporate from the municipality or county that created the district. The bill provides that the powers granted to a municipality or county under the act may be exercised in an area comprising a public improvement district on or after the date the governing body of the municipality or county receives a petition requesting the establishment of such a district, rather than exercised by a municipality or county in which the governing body of the municipality or county initiates or receives a petition requesting the establishment of a district. The bill authorizes the governing body of any other political subdivision to exercise these powers if the law creating or governing the political subdivision grants the political subdivision such authority. The bill provides that the governing body of the political subdivision has the same powers and is subject to the same limitations as are applicable to the governing body of a municipality or a county under provisions for public improvement districts unless and except as modified by the law creating or governing the political subdivision.

S.B. 978 provides that public improvement projects undertaken by the governing body of a municipality or county may be services as well as improvements. The bill authorizes the governing body of a municipality or county to create one or more public improvement districts and undertake one or more, rather than only one, improvement projects conferring a special benefit on the property located in the public improvement district, rather than on a definable part of the municipality or county or the municipality's extraterritorial jurisdiction. The bill provides that a project may be undertaken within or outside the district in the municipality or county, rather than be undertaken in the municipality or county, and adds a condition to a project that is undertaken in the municipality's extraterritorial jurisdiction requiring the project to benefit the district.

S.B. 978 includes as a public improvement project the repairing, among other actions, of roads, highways, bridges, culverts, water retention walls, or related rights-of-way, rather than only streets or their rights-of-way, and requires these structures to be owned by or to be conveyed to the municipality, the county, the federal government, or another political subdivision or entity exercising powers granted under provisions for public improvement districts. The bill clarifies that a public improvement project for acquisition, construction, or improvement of mass transportation facilities includes light rail mass transit, streetcar, or similar systems, and related vehicle parking facilities; includes the establishment or improvement of playgrounds, lakes, and open spaces, including paths, trails, boat docks, and wharves, rather than only parks, as a public improvement project. The bill provides that a public improvement project includes special supplemental services relating to enhanced fire protection, police, sheriff, and other public safety and security.

S.B. 978 includes the following as authorized public improvement projects:

- acquisition, construction, or improvement of other public projects that are determined by the municipality or county to promote the interests of the municipality or county and to be of a special benefit to the public improvement district, including community centers, recreation centers, and recreation facilities; libraries; facilities for police, sheriffs, or firefighters; municipal or county administration centers; and other governmental buildings for the provision of governmental services;
- acquisition, construction, or improvement of other public projects, facilities, or services required by a development agreement, interlocal agreement, zoning regulation, or permit issued by a municipality or county having jurisdiction in the public improvement district;
- acquisition, construction, maintenance, or improvement of buildings and other facilities commonly used for teaching, research, or the preservation of knowledge by an institution of higher education or for auxiliary purposes of the institution, including administration, student services and housing, athletics, performing arts, and alumni support.

S.B. 978 removes provisions that designate the following as public improvement projects: rerouting of mass transit facilities; projects similar to others listed in current statute; and payment of expenses incurred in the establishment, administration, and operation of the district.

S.B. 978 authorizes a municipality that exercises powers under provisions for public improvement districts to establish a district in the corporate limits or the extraterritorial jurisdiction of the municipality. The bill authorizes a political subdivision, in addition to a county, that exercises powers under provisions for public improvement districts to establish a public improvement district in the county or the area of the political subdivision, including in the corporate limits or the extraterritorial jurisdiction of a municipality, unless within 30 days after the date notice is provided to the municipality of an action to approve a public improvement district, the municipality objects to the district's establishment within the municipality's corporate limits or extraterritorial jurisdiction.

S.B. 978 authorizes the governing body of a municipality or county that establishes a public improvement district for the financing of a public improvement project relating to facilities commonly used by an institution of higher education to enter into a memorandum of understanding with an institution of higher education that provides educational services in the municipality or county under which the municipality or county leases the public improvement project to the institution, at a nominal rate, for use by the institution in providing teaching, research, public service, or auxiliary enterprise activities to students of the institution. The bill requires such a memorandum of understanding to include adequate controls to ensure that the lease of the public improvement project promotes the municipality's or county's interests and provides a public benefit to the area served by the district. The bill defines "institution of higher education" for these provisions.

S.B. 978 modifies the information that is required to be in a petition for the establishment of a public improvement district, provides for the filing of the petition, and makes conforming changes. The bill clarifies the authorization of a governing body of a municipality or county to make findings as to the advisability of the proposed improvements, the estimated qualified costs of the proposed improvements, and the method of assessment and provides that the governing body's findings are conclusive. The bill removes a provision that authorizes a governing body of an improvement district to take certain preliminary steps before entering into a contract for the purpose of determining the feasibility and desirability of a public improvement district, and makes conforming changes to provisions relating to a feasibility report. The bill modifies provisions relating to the governing body's authority to appoint an advisory body by providing that the members of the advisory body serve at the will of the governing body of the municipality or county creating the public improvement district and may be removed at any time and by making nonsubstantive and conforming changes.

S.B. 978 requires the notice of the hearing that must be held on the advisability of improvements before a district is established or an improvement financed to be filed with the municipal secretary or other officer performing the duties of the secretary and makes conforming. The bill provides that acquisition of existing improvements may not occur until after the 20th day after the authorization of the district takes effect and makes procedural and conforming changes to provisions relating to an improvement order. The bill authorizes the property owners in the district who signed the original petition, before the levy of assessments, to petition the governing body to amend the resolution creating the district to amend the estimated qualified costs of the improvements, including adding or deleting improvement projects. The bill requires the governing body to provide notice of the owners' petition and hold a public hearing to make findings, by amended resolution, of the nature and estimated qualified costs of each improvement. The bill requires a county or other entity that proposes to amend a resolution in the corporate boundaries or extraterritorial jurisdiction of a municipality to provide notice to the municipality on or before the 30th day before the date the entity amends the resolution. The bill provides that a district may be dissolved at the discretion of the governing body without a petition only if no assessments have been levied on property in the district or if assessments previously levied have been paid in full and the district has no other outstanding obligations. The bill prohibits such a dissolution from occurring until after the governing body holds a hearing and gives notice in the manner required for a hearing for purposes of establishing a district. The bill makes conforming changes to these provisions.

S.B. 978 authorizes a public improvement district to include both contiguous and noncontiguous tracts of land. The bill authorizes a governing body to assign responsibility for an ongoing service plan to the employees of the governing body or an authorized instrumentality or to another entity instead of, rather than in the absence of, an advisory body. The bill requires, as part of the required annual review and update of the plan, a revised assessment roll to be prepared to reflect any division of parcels and any reallocation of assessments based on the division. The bill makes conforming changes to these provisions.

S.B. 978 authorizes the assessment plan to require the district to be divided into development phases and to levy assessments periodically in separate development phases or to stagger the collection of assessments, with different development phases in the district assigned different payment and collection dates. The bill provides that development phases and staggered collection dates may be coordinated with the installation of the improvements or with the maturity dates of installation purchase or reimbursement contract obligations or with temporary notes, time warrants, or bonds. The bill removes a provision stating that an assessment paid by the municipality or county is considered to have been paid by special assessment.

S.B. 978 provides that, in addition to being adjusted following the annual review of the service plan, the amount of assessment for each property owner may be reallocated, but not increased, if an assessed parcel has been divided. The bill requires notice of any reallocation of assessments to be given to the property owner of the divided parcel and establishes that the findings,

determinations, and assessments made by the governing body are conclusive.

S.B. 978 requires the municipality or county to prepare a proposed assessment roll based on the estimated qualified costs of the improvements, rather than requiring the governing body of the municipality or county to prepare the roll after the total cost of an improvement is determined. The bill clarifies that the roll to state the assessment against each parcel of land in the district and the method of assessment. The bill requires the municipal secretary or other officer performing the functions of the municipal secretary or the county tax assessor-collector in a district formed by a county, when the assessment roll is filed, to publish notice of the governing body's intention to consider the proposed assessments at a public hearing and makes conforming changes to these provisions.

S.B. 978 authorizes the governing body of a municipality or county that hears and passes on any objection to a proposed assessment to provide, initially or by amendment, for reductions of the amount of the annual assessment installments if and to the extent other revenues of the municipality or county are pledged or become available to pay all or part of installment purchase or reimbursement contract obligations or temporary notes, time warrants, revenue bonds, special assessment bonds, or certificates of obligation that are payable in whole or in part from the assessment installments.

S.B. 978 clarifies that an assessment required to be levied by the governing body after all objections have been heard and the governing body has passed on the objections is an assessment in the amount required to pay qualified costs as a special assessment on the property. The bill provides that an assessment authorized by the governing body to be paid in installments may be in equal or different annual amounts, but must be in amounts each year necessary to meet annual qualified costs, rather than costs for improvements. The bill requires the installments to continue for a period and be in amounts necessary to retire any indebtedness or obligation to pay or reimburse for the qualified costs, including the proper administration of the district. The bill authorizes the obligation to pay installments to be conditioned on the occurrence of a future event or condition if the first periodic installment payment of the assessment occurs on a date not later than the fifth anniversary of the date the assessment was levied.

S.B. 978 provides that the governing body may levy multiple assessments on property in the district to finance all or part of public improvements and must comply with provisions relating to the assessment roll for each assessment. The bill authorizes the governing body to execute and deliver installment purchase or reimbursement contracts or temporary notes or time warrants or issue revenue bonds, special assessment bonds, or certificates of obligation to pay the qualified costs or to refund previously executed installment purchase or reimbursement contracts or temporary notes or time warrants, and to secure such obligations by pledging one or more of the assessments levied under provisions for public improvement districts.

S.B. 978 provides that an assessment bears interest at the rate and for the period specified by the governing body of the municipality or county, but may not exceed a rate that is one percent, rather than one-half of one percent, higher than the actual interest rate paid on any installment purchase or reimbursement contract obligation or temporary note or time warrant used to finance or to evidence an obligation to pay for the improvement. The bill provides that the annual interest rate is adjusted to a rate not to exceed one percent higher than the actual rate paid on the bonds or certificates, if the rate is lower than the rate on the obligations, and if revenue bonds, special assessment bonds, or certificates of obligation are issued to pay or refund any of the obligations described by provisions relating to public improvement districts. The bill authorizes added interest payable on an installment purchase or reimbursement contract or a temporary note, time warrant, or bond to be used by a municipality or county to pay qualified costs of improvements or the costs of administration of the district, including the enforcement of assessments or the payment or prepayment of obligations.

S.B. 978 establishes that a first and prior lien against the property assessed is superior to all other

liens and claims except those for county, special district, or municipal property taxes, rather than for state, county, school district, or municipal property taxes. The bill requires, on the sale of assessed property, any installment or portion of an assessment that is or will be payable for the property during the year of the sale to be prorated between the buyer and the seller in the same manner as property taxes are prorated between a buyer and seller. The bill removes the specification that the fees incurred by delinquent installments of the assessment are attorney's fees.

S.B. 978 establishes that a district assessment on property runs with the land; that any portion of an assessment payment obligation that is not yet due is not eliminated by the foreclosure of a property tax lien; and that any purchaser of property at a foreclosure sale under a property tax lien takes the property subject to any assessment payment obligation that is not yet due and to the terms of payment under the applicable assessment ordinance or order. The bill authorizes the owner of assessed property to pay at any time on any parcel or lot the entire assessment with interest that will accrue on the assessment until the next scheduled prepayment or redemption date on the installment purchase or reimbursement contract or temporary note, time warrant, revenue bond, special assessment bond, or certificate of obligation that secured the assessment.

S.B. 978 provides the option that a municipality or county that intends to create a public improvement district may by ordinance or order, as an alternative to establishing a special improvement district fund in the municipal or county treasury, establish a fund in a bank designated by the municipality or county to serve as a depository bank for the district's funds. The bill authorizes the fund to be used to pay the initial qualified costs of improvements until installment purchase contracts or reimbursement contracts are entered into, until temporary notes or time warrants are issued, or until revenue bonds, special assessment bonds, or certificates of obligation, but not improvement bonds, are issued and sold. The bill removes authorization for a grant-in-aid or contribution made to the municipality or county for the planning and preparation of plans for an improvement authorized under provisions for public improvement districts to be credited to the special improvement district fund.

S.B. 978 requires the following revenues to be deposited to the public improvement district fund: special assessments; money, if any, contributed by the municipality or county to pay qualified costs; proceeds from the sale of revenue bonds, if payable in part from special assessments; proceeds from the sale of special assessment bonds or certificates of obligation, and certain other funds. The bill removes from revenues required to be deposited to the fund proceeds from the sale of temporary notes and time warrants. The bill provides that the fund may be used solely to pay the following to costs: any qualified costs of improvements, amounts due on an installment purchase contract or reimbursement amounts owed under a reimbursement contract, temporary note, or time warrant, or any revenue bonds, special assessment bonds, or certificates of obligation that are payable in whole or in part from special assessments levied under provisions for public improvement districts, rather than assessments incurred in making an improvement.

S.B. 978 provides that when an improvement is completed and all of the obligations are paid in full, the balance on deposit in the special improvement district fund that was derived from special assessments, if any, rather than the balance of the part of the assessment that is for improvements, shall be transferred to a fund established for the retirement of bonds that are payable in whole or in part from assessments.

S.B. 978 clarifies the method by which the qualified costs of an improvement may be paid. The bill authorizes the municipality or county, on its own or under an installment purchase, reimbursement, or other contract with a third party, to erect, acquire, construct, improve, repair, establish, install, or equip improvements, and to pay all or part of the qualified costs of the improvements from general funds or other revenues available for that purpose from special assessments or from the issuance and sale of general obligation bonds, certificates of obligation, revenue bonds, or special assessment bonds, rather than authorizing a cost payable by the municipality or county as a whole to be paid from general funds available for the purpose or from

other available general funds.

S.B. 978 authorizes a municipality or county to enter into and execute an installment purchase or reimbursement contract with or to deliver a nonnegotiable but transferable temporary note or time warrant to a third party under which the third party agrees to erect, acquire, construct, improve, repair, establish, install, or equip public improvements and to dedicate or sell the improvements to the municipality, county, or authorized instrumentality; and the municipality, county, or authorized instrumentality agrees to pay or reimburse the third party for the qualified costs by paying accumulated amounts due under the installment purchase or reimbursement contract, temporary note, or time warrant from any and all of the sources described by these provisions. The bill removes the requirement that a cost payable from a special assessment that has been paid in full be paid from that assessment.

S.B. 978 authorizes an installment purchase or reimbursement contract, temporary note, or time warrant to bear interest at a rate and for a period determined by the governing body of the municipality or county. The bill removes the requirement that a cost payable from a special assessment that is to be paid in installments and a cost payable by the municipality or county as a whole but not payable from available general funds or other available general improvement funds be paid by the issuance and sale of revenue or general obligation bonds.

S.B. 978 clarifies that an installment purchase or reimbursement contract, temporary note, or time warrant that is payable from installments of assessments is subject to prepayment and redemption at any time from the proceeds of prepayment of assessments made by a property owner under the bill's provisions. The bill removes a provision authorizing the governing body of the municipality or county, while an improvement is in progress, to issue temporary notes or time warrants to pay for the costs of the improvement and, on completion of the improvement, issue revenue or general obligation bonds. The bill removes a provision establishing that the cost of more than one improvement may be paid from a single issue and sale of bonds without other consolidation proceedings before the bond issue. The bill removes a provision establishing that costs of any improvement include all costs incurred in connection with the issuance of bonds and may be included in the assessments against the property in the improvement district.

S.B. 978 authorizes the governing body of a municipality or county to issue general obligation bonds under Government Code general provisions for public securities and provisions applicable to securities issued by more than one type of local government; revenue bonds or special assessment bonds in one or more series; and certificates of obligation under the Certificate of Obligation Act of 1971. The bill authorizes such a bond or obligation to be issued to pay qualified costs, including the costs of issuing bonds and to pay or refund obligations executed or issued under provisions for certain arrangements entered into between a municipality or county and a third party. The bill establishes that certificates of obligation may be payable from and secured by installment payments of special assessments levied under provisions for public improvement districts. The bill authorizes the governing body of the municipality or county or the authorized instrumentality to include any term or provision consistent with provisions for public improvement districts in a revenue bond or a special assessment bond issued. The bill authorizes the governing body of the municipality or county to incorporate an authorized instrumentality to act on its behalf to issue revenue bonds or special assessment bonds. The bill authorizes the governing body to enter into agreements and contracts with the authorized instrumentality to transfer pledged revenues, funds, and special assessments to or for the account of the authorized instrumentality at the times and as required by the terms of the resolution authorizing the issuance of the revenue bonds or special assessment bonds. The bill requires any bonds issued by an authorized instrumentality to be approved by the governing body of the municipality or county before issuance and delivery to the purchaser. The bill requires an authorized instrumentality to issue revenue bonds or special assessment bonds under either the Public Facility Corporation Act if the authorized instrumentality is a public facility corporation or under the Texas Transportation Corporation Act in the Transportation Code if the authorized instrumentality is a local government corporation.

S.B. 978 removes provisions authorizing revenue bonds issued to pay costs under provisions relating to interest on an installment purchase or reimbursement contract, temporary note, or time warrant, to be issued from time to time in one or more series, and establishing that such revenue bonds are to be payable from and secured by liens on all or part of the revenue derived from improvements authorized under provisions for public improvement districts, including revenue derived from installment payments of special assessments.

S.B. 978 authorizes the governing body of a municipality or county to develop, adopt, and amend a special assessment public improvement district management policy. The bill authorizes the policy to establish the general requirements and standards for and the preconditions to the creation of a public improvement district; to the execution and issuance of installment purchase or reimbursement contracts or temporary notes or time warrants; and to the issuance of any bonds or certificates of obligation payable in whole or in part from special assessments. The bill clarifies that compliance with the terms of a management policy, if adopted, including any amendments to the policy, is required for the execution of any installment purchase or reimbursement contracts or temporary notes or time warrants; the issuance of any revenue bonds or special assessment bonds by the municipality or county or by an authorized instrumentality; and the issuance of any certificates of obligation by a municipality or county.

S.B. 978 requires revenue bonds and special assessment bonds to be authorized by ordinance, if issued by a municipality; by order, if issued by a county; and by resolution, if issued by an authorized instrumentality. The bill authorizes special assessment bonds, in addition to revenue bonds, to be issued to mature serially or in any other manner. The bill provides that additional parity bonds or subordinate lien bonds subsequently issued are secured in whole or in part by any assessments or any other revenues authorized by provisions for public improvement districts. The bill authorizes revenue bonds, special assessment bonds, and certificates of obligation to be subject to redemption before maturity at the option of the issuer and at the times and in the manner provided by the ordinance, order, or resolution authorizing the issuance. The bill provides that revenue bonds and certificates of obligation that are secured in part by a pledge of special assessments and all special assessment bonds are subject to mandatory redemption at least semiannually from funds provided by assessed parties, if any, as prepayment of installments of special assessments. The bill requires revenue bonds and special assessment bonds to be executed in the manner and by the persons required by the ordinance, order, or resolution authorizing the issuance.

S.B. 978 provides that revenue bonds and special assessment bonds and any interest coupons appertaining to the bonds are negotiable instruments within the meaning and for all purposes of the Uniform Commercial Code. The bill includes the payment of any other qualified costs as determined by the governing body of the municipality or county or by the authorized instrumentality under ways that the ordinance, order, or resolution authorizing the issuance of the bonds may specify that the proceeds from the sale of the bonds be used.

S.B. 978 authorizes the governing body of the municipality or county to pledge, for the payment of principal, interest, and any other amounts payable on or with respect to any bonds issued by a municipality or county under provisions for public improvement districts all or part of the income from improvements financed under provisions for public improvement districts, including income received in installment payments from special assessments and, if the payment is for the payment of revenue bonds, authorizes the governing body to pledge any other revenue described by provisions for payment of certificates of obligation and revenue bonds. The bill authorizes the authorized instrumentality to pledge, for the payment of principal, interest, and any other amounts payable on or with respect to bonds issued by an authorized instrumentality, all or part of the assessments or other revenues, if any, that are to be transferred and paid to the authorized instrumentality by the municipality or county under an agreement entered into between the parties.

S.B. 978 authorizes the governing body to authorize the execution of trust indentures, mortgages,

deeds of trust, or other forms of encumbrances as evidence of the security interest of the holders of the bonds in the related property, rather than as evidence of indebtedness. The bill authorizes the governing body to pledge to the payment of certificates of obligation issued by the governing body or to the payment of revenue bonds issued by the governing body or by an authorized instrumentality all or part of a grant, donation, revenue, or income received or to be received from certain entities, including impact fees and incremental property tax revenues collected by a municipality or by another taxing unit and municipal sales tax collected by a municipality from all or part of a tax increment reinvestment zone created under the Tax Increment Financing Act.

S.B. 978 authorizes special assessment bonds and certificates of obligation payable solely from special assessments, in addition to revenue bonds, to be refunded or refinanced by the issuance of refunding bonds. The bill provides that its provisions applying generally to revenue bonds and special assessment bonds apply to refunding bonds of like kind.

S.B. 978 adds special assessment bonds as bonds that must be submitted to the attorney general for examination. The bill requires certificates of obligation to be approved and registered along with general obligation bonds as required by law and makes conforming changes to these provisions and to the provisions relating to authorized investments and security.

S.B. 978 clarifies that the Public Improvement District Assessment Act is an alternative to other methods by which a municipality may finance public improvements under applicable law, rather than by which a municipality may finance public improvements by assessing property owners.

S.B. 978 amends the Education Code to establish that approval of the Texas Higher Education Coordinating Board is not required for buildings or other facilities financed by a public improvement district under the bill. The bill provides that provisions for new construction and repair and rehabilitation projects do not apply to construction, repair, or rehabilitation of buildings or other facilities financed by a public improvement district under the Public Improvement District Assessment Act.

S.B. 978 amends the Local Government Code to redefine "extraterritorial jurisdiction" to clarify that it means the extraterritorial jurisdiction of a municipality and defines "special assessment bonds" and "special district." The bill defines:

- "authorized instrumentality" to mean a public facility corporation created by the governing body of a municipality or county under the Public Facility Corporation Act or a local government corporation created by the governing body of a municipality or county under provisions in the Transportation Code;
- "public improvement district" or "district" to mean an area defined by the governing body of a municipality or county that consists of one or more contiguous or noncontiguous tracts of land, and that will be specially benefited as determined by the municipality or county by any or all of the public improvements or services;
- "qualified costs" to mean the costs and expenses incurred in establishing, administering, managing, and operating a public improvement district, including specified costs; and
- "revenue bonds" to mean bonds, notes, or other securities issued by a municipality, county, or authorized instrumentality that are payable from and secured by liens on all or part, or a combination of, the revenue derived from installment payments of special assessments plus any other revenues, donations, grants, or income described by provisions in the bill relating to a pledge for payment of certificates of obligation or revenue bonds.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.