



# INTERIM REPORT

*to the 85<sup>th</sup> Texas Legislature*



HOUSE COMMITTEE ON  
SPECIAL PURPOSE DISTRICTS



DECEMBER 2016

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**HOUSE COMMITTEE ON SPECIAL PURPOSE DISTRICTS  
TEXAS HOUSE OF REPRESENTATIVES  
INTERIM REPORT 2016**

**A REPORT TO THE  
HOUSE OF REPRESENTATIVES  
85TH TEXAS LEGISLATURE**

**DOUG MILLER  
CHAIRMAN**

**COMMITTEE CLERK  
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Committee On  
Special Purpose Districts

December 5, 2016

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The Honorable Joe Straus  
Speaker, Texas House of Representatives  
Members of the Texas House of Representatives  
Texas State Capitol, Rm. 2W.13  
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Special Purpose Districts of the Eighty-fourth Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Eighty-fifth Legislature.

Respectfully submitted,

  
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# **SPECIAL PURPOSE DISTRICTS**

## **INTRODUCTION**

Special Purpose Districts were created in 1904, with the passage of Article 3, Section 52 of the Texas Constitution and were granted additional authority in 1917 when Texas authorized the creation of conservation and reclamation districts by passing Article 16, Section 59 of the Texas Constitution. It was this amendment that provided initial guidance between districts and the citizens who reside within the district. The amendment granted the district the ability to levy taxes and bonds but provided qualified voters of the district the ability to vote on the issued debt. Texas has continued to expand Special Purpose Districts to keep up with state growth without overburdening Texas taxpayers.

Texas has thousands of special purpose districts including 1,712 active districts reporting to the Texas Commission on Environmental Quality (TCEQ.) The Texas Legislature, the TCEQ, county commissioner's courts and municipalities can create various types of Special Purpose Districts which are political subdivisions of the state. The TCEQ or a commissioner's court creates "general law" water districts that have specific powers and authorities outlined in the Texas Water Code chapter for that district. The legislature can create or alter "special law" districts where the authority granted to each district is based on what is contained in the legislation.

## **INTERIM CHARGES**

In November 2015, Speaker of the House Joe Straus charged the House Committee on Special Purpose Districts to:

1. Study best practices in the creation, management, and expansion of Municipal Management Districts (MMD) and/or Improvement Districts in the state. Consider the economic impact of the taxation or assessment of local property owners through bonds issued by MMDs. The committee should specifically examine the mechanisms by which MMDs expand or limit their powers, MMD consistency in the use of eminent domain powers, transparency in MMD reporting requirements, and the mechanisms for voter approval of the creation and dissolution of MMDs. Develop and recommend standards for future district creation.
2. Conduct legislative oversight and monitoring of all special purpose districts under the committee's jurisdiction and the implementation of relevant legislation passed by the 84th Legislature. In conducting this oversight, the committee should:
  - a. consider any reforms to special district laws to make them more responsive to Texas taxpayers and citizens;
  - b. identify issues regarding special purpose districts that may be appropriate to investigate, improve, remedy, or eliminate;

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c. determine whether special purpose districts are operating in a transparent and efficient manner; and

d. identify opportunities to streamline the purpose of multiple districts created within the same area, while maintaining the mission of special purpose districts.

On August 23, 2016, the Committee heard public testimony on both interim charges. Both during that hearing and in the regular session, this Committee considered legislation and heard testimony almost exclusively regarding Municipal Management Districts and Municipal Utility Districts. Municipal Management Districts are the subject of this Committee's recommendations under Interim Charge No. 1. In response to Interim Charge No. 2 the Committee has provided a report regarding the legal and historical background and current status of Municipal Utility Districts in Texas.

A comprehensive report on the broad scope and types of districts that might be referred to as "special purpose districts" in Texas was the subject of a previous report to the Legislature, the Interim Report to the 82nd Texas Legislature by the House Select Committee on Special Purpose Districts.

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**INTERIM CHARGE NO. 1:** Study best practices in the creation, management, and expansion of Municipal Management Districts (MMD) and/or Improvement Districts in the state. Consider the economic impact of the taxation or assessment of local property owners through bonds issued by MMDs. The committee should specifically examine the mechanisms by which MMDs expand or limit their powers, MMD consistency in the use of eminent domain powers, transparency in MMD reporting requirements, and the mechanisms for voter approval of the creation and dissolution of MMDs. Develop and recommend standards for future district creation.

## **BACKGROUND**

Municipal Management Districts or “Improvement Districts” or “MMDs” (“Management Districts”) have been used since the 1980's as a means to allow commercial property owners to work together to supplement City and County services and improvements. The use of Management Districts started in the Houston area when property owners identified common problems and issues in their area and used their Management District to implement solutions to those problems. Management Districts provide flexibility and practicality in addressing solutions to a diverse set of issues, leading to a diverse set of goals and objectives that accompany their creation. Today, they are commonly utilized in three distinct contexts: (i) to support existing major activity centers; (ii) to promote neighborhood revitalization; and (iii) to provide utility infrastructure for raw land development. The extent of these uses has evolved over time, particularly in the context of raw land development.

A Management District is governed by a Board of Directors. Typically the initial directors are appointed in the creation legislation and all future directors are appointed by the city, the county, or the Texas Commission on Environmental Quality (the “TCEQ”) from nominations made by the district. The number of board members varies from district to district depending on the size and nature of the district. Generally, board positions are established in a manner that reflects the composition of the assessment-paying, commercial property owners of the district. Directors are usually a resident, landowner, or an agent, employee, or tenant of a landowner within the district.

Most Management Districts are authorized to develop a wide variety of improvements, including landscaping and beautification; banners, signs, and seasonal decorations; sidewalks and lighting; and parks and recreational areas. Management Districts are also authorized to provide supplemental services, including advertising, economic development, business recruitment and promotion, public security, trash pickup, street sweeping, and mitigating traffic congestion and promoting mobility. Each Management District's services and improvements are narrowly tailored to meet the goals and needs of the citizens in the specific district. In practice, a Management District typically acts as a "mini-chamber of commerce" for the area, promoting continued growth and assisting in branding their communities by erecting signs and landscaping to highlight the unique characteristics of the district.

When property owners propose the creation of a Management District, a city must consent to the creation of the district if any portion of the district is within the municipal boundaries or extraterritorial jurisdiction of the city. In addition to giving consent to the creation of a Management District, cities also typically maintain oversight over Management Districts by appointing those who serve on a Board of Directors or setting specific qualifications regarding

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who may serve on a board. Several other controls exist that help cities ensure fair and transparent administration of Management Districts. Statutes typically allow for a city council to dissolve a management district with a two-thirds vote. A similar mechanism exists for either board members or property owners of the district to dissolve a Management District.

Management Districts are governed by Chapter 375, Texas Local Government Code, and Chapter 49, Texas Water Code, as well as the applicable creation legislation. Management Districts are subject to all of the general laws relating to local governments, such as the Open Meetings Act, the Public Information Act, and the ethics and conflict of interest laws applicable to public officials. Management Districts are also subject to the continuing oversight of the TCEQ, including various organizational filing requirements, audit requirements, and ethics standards. Cities can also maintain oversight and control over Management Districts by approving improvements on City-owned lands or rights-of-way and retaining the right to approve any sort annexation of land into a district.

Management Districts may finance services and improvements through the levy of assessments on commercial property or the levy of ad valorem taxes, subject to following the appropriate procedures. Some Management Districts are able to levy sales and use taxes. Most Management Districts levy an assessment on commercial property. Generally, assessments cannot be levied on property used for single-family residential purposes. An assessment is the most common method of financing supplemental services and improvements in a Management District. Before a Management District may levy an assessment, it must propose a Service Plan that details the specific services and improvements to be provided, the estimates of the costs to provide such services and improvements, and the amount of assessments required. A Service Plan is for a finite period of time, often five or ten years. Then, the Management District must gather petitions in support of the District's Service Plan. The number of petitioners required to approve the levy of an assessment varies from district to district. Assessments can only be used to support the specific services and improvements delineated in the District's Service Plan. Only property benefitting from the services and improvements can be assessed. A Management District must notify every owner of property to be assessed within the district by publication and mail, and hold a public hearing before levying an assessment.

Some Management Districts levy an ad valorem (property) tax. A Management District may only levy an ad valorem tax if the tax is approved by the voters of the district at an election in the same manner as elections to approve taxes of other political subdivisions. In some instances, where there is room under the general law cap on local sales and uses taxes, Management Districts may be able to fund their programs through the levy of sales taxes. Management Districts must be authorized by special law to levy a sales tax.

Management Districts are a useful tool for property owners to improve the livability and economic vitality of a neighborhood. Management Districts add significant value to neighborhoods throughout the State of Texas and are a developmental tool that adds definitive value to the citizens of our State.

Management Districts have been used in the Greater Houston Area since the 1980s. Over time, the use and function of Management Districts has diversified. The initial Management



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Districts—such as Uptown, Downtown, Greenspoint, Westchase and the Energy Corridor—support major activity centers and hubs of business and commerce. Management Districts such as Spring Branch, Brays Oaks, East Aldine and Sharpstown were created to provide supplemental services and improvements to revitalize existing neighborhoods.

Many of the most recently created Management Districts are intended to provide the infrastructure needed to serve raw land, mixed-use development. In this manner, the Management District acts like a Municipal Utility District (MUD) to construct, finance and operate water, sewer, drainage, road, and park improvements. As development progresses, the Management District can then provide many of the supplemental services and improvements typical of traditional Management Districts.

During the interim hearing, the Committee heard testimony critical of MMDs from several resident property owners; however, it appears the vast majority of property owners in MMDs across the state support the efforts of their MMDs. MMDs work and work well when they are supported by the property owners. Accurate and constructive criticism should be considered and addressed.

With this in mind, the Committee submits three recommendations for improvement. The first two recommendations relate to the process and procedures by which future Committees consider the creation of new MMDs by special act. The third recommendation is for legislation that addresses all MMDs, existing or future. Implementation of these recommendations would provide real, meaningful, and immediate reform, while recognizing and maintaining the importance of MMDs.

## **RECOMMENDATIONS**

### **Recommendation No. 1. Notice of Legislative Creation**

Adequate notice of legislation relating to MMD creation or annexation is critical to protect the interests of property owners. Only with adequate notice can property owner support or opposition be accurately determined.

The Texas Constitution and various Texas statutes provide extensive requirements for notices of intent to introduce legislation regarding MMDs and other types of special purpose districts.

In general:

- 30 days prior to the introduction of legislation creating an MMD, a notice must be published in the newspaper (as required by Article XVI, Section 59, Texas Constitution and Chapter 313, Government Code);
- Prior to the introduction of legislation creating an MMD, a notice must be mailed to all cities and counties with jurisdiction and the Governor (as required by Article XVI, Section 59, Texas Constitution and Chapter 313, Government Code); and

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- 30 days prior to the introduction of legislation creating an MMD, a notice must be mailed to all landowners who would be subject to an assessment by the MMD (as required by Section 313.006, Government Code).

These notice requirements can and should be improved. There are four areas of improvement that were outlined in oral testimony to the Committee and oral and written testimony to the Senate Committee on Intergovernmental Relations. These additional notice requirements can be adopted by the Committee and enforced through Committee practices and procedures without changes to law.

The four recommendations are explained in detail in the attached Appendix 1. In summary, the Committee should:

1. Adopt policies that confirm that all required notices relating to the creation of MMDs have occurred prior to considering an MMD creation or annexation bill;
2. Adopt procedures to confirm that written notice has been provided to any and all special purpose districts within the boundaries of a proposed MMD or annexation;
3. Ensure that the same notices given to landowners for an MMD creation are given for a bill to annex land into an existing MMD; and
4. Ensure that in addition to the one required landowner notice, a second notice to landowners is mailed after a bill has been filed that includes the bill number(s) of the legislation proposing to create the MMD.

## **Recommendation No. 2. Committee Process and Procedures**

### *a. Use of MMD Standard Language*

Legislative committees have adopted “Standard Language” for many but not all of the provisions of a bill proposing to create an MMD. (See appendix H-2 of the Senate Committee on Intergovernmental Relations Interim Report to the 82nd Legislature.) For convenience, this MMD Standard Language is attached as Appendix 2. Consistent use of the MMD Standard Language would promote greater uniformity in MMD legislation and would make it easier for Legislators, legislative staff, landowners, and others to evaluate proposed MMDs.

### *b. Committee Checklist*

Historically, the Committee and other legislative committees have required the submission of various documents and information prior to hearing. In this way the Committee gathers information for its Chair and members that is relevant to a hearing and eventual vote on a bill.

For bills proposing the creation of a special purpose district or an amendment to an existing special purpose district, the Committee has historically required submission of a “Checklist.” This Committee Checklist elicits basic information about the bill, its proponents, and the proposed district.

The Committee Checklist should be updated and enhanced to provide additional information

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concentrated on the most important aspects to be considered. A proposed Committee Checklist is attached as Appendix 3.

The Committee Checklist can perform important functions in addition to gathering information, including:

1. Enforce existing and additional notice requirements outlined in Recommendation No. 1;
2. Enforce the use of the MMD Standard Language described in Recommendation No. 2a;
3. Clearly differentiate between the various types of special district legislation heard by the Committee and focus on the relevant questions and issues by type;
4. Document local support for the creation of an MMD; and
5. Confirm that a bill proposing to create an MMD does not contain provisions that the Committee or the Legislature generally consider unacceptable.

Historically, the Committee and other legislative committees and offices have taken the position that certain provisions require special explanation before they may be included in an MMD creation bill. It is reasonable to expect that this list may evolve over time. One of the benefits of a Committee Checklist is the ability to update it from session to session. An initial list of such provisions for MMD legislation could include:

1. The power of eminent domain;
2. Elections to be held on non-uniform election dates;
3. Levy of sales tax in excess of the maximum rate allowed by general law;
4. Issuance of water, sewer, and drainage bonds without TCEQ approval (as required by Section 375.208, Local Government Code);
5. Issuance of bonds secured by property taxes without an election; and
6. Levy of a property tax without an election.

Furthermore, a bill that proposes to annex land into an existing MMD is generally required to demonstrate notice to and support of landowners.

A Committee Checklist that focuses on these questions would serve as a substantive tool for the Chairman, Committee members, and staff.

### **Recommendation No. 3.      Legislation to Update Chapter 375, Local Government Code**

In the 84th Legislative Session, Representative Dennis Paul introduced HB 3097. A Committee Substitute was adopted by this Committee, testimony was taken, and CSHB 3097 was reported favorably to the House. Subsequently, a point of order was sustained and the bill did not pass.

CSHB 3097 proposed key and comprehensive reforms to Chapter 375, Local Government Code, the general law governing MMDs. The reforms proposed by CSHB 3097 address most, if not all, of the criticisms of MMDs that have been brought to the Committee. Key components of CSHB 3097 include:

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1. A majority-in-value of landowners requirement for petitions to create new MMDs through the TCEQ;
  2. The ability of the owners of a majority of the assessed value of property subject to assessment by the MMD to recommend the appointment of persons to the MMD board of directors; and
  3. A lowering of the threshold of landowner petitions required for dissolution of an MMD from “75% or more” to “at least two-thirds.”

The Committee should consider CSHB 3097 or similar legislation consistent with CSHB 3097 that enacts the three key points outlined above.

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**INTERIM CHARGE NO. 2:** Conduct legislative oversight and monitoring of all special purpose districts under the committee’s jurisdiction and the implementation of relevant legislation passed by the 84th Legislature. In conducting this oversight, the committee should:

- a. consider any reforms to special district laws to make them more responsive to Texas taxpayers and citizens;
- b. identify issues regarding special purpose districts that may be appropriate to investigate, improve, remedy, or eliminate;
- c. determine whether special purpose districts are operating in a transparent and efficient manner; and
- d. identify opportunities to streamline the purpose of multiple districts created within the same area, while maintaining the mission of special purpose districts.

## **INTRODUCTION**

Both during the regular session and interim hearing, this Committee considered legislation and heard testimony almost exclusively regarding Municipal Management Districts and Municipal Utility Districts. Municipal Management Districts are the subject of this Committee's recommendations under Interim Charge No. 1 above. A comprehensive report on the broad scope and types of districts that might be referred to as "special purpose districts" in Texas was the subject of a previous report to the Legislature, the Interim Report to the 82nd Texas Legislature by the House Select Committee on Special Purpose Districts.

During the interim hearing the Committee heard generally favorable testimony on Municipal Utility Districts and the Committee has no specific recommendations at this time relating to Municipal Utility Districts. Additionally, the Committee heard testimony regarding an election conducted by a Road Utility District. The Committee finds it imperative that any election conducted by a special purpose district comply with all requirements of applicable state and federal law. As the Committee commonly hears bills related to Municipal Utility Districts during the legislative session, the Committee provides the following report on the legal and historical background and current status of Municipal Utility Districts in Texas.

## **BACKGROUND**

During the period from 2005 to 2013, Texas led the nation in population growth, averaging an increase of 460,251 residents annually.<sup>1</sup> As of April 2016, Texas added more than six million residents since 2000, with a “key source” of that growth being migration from other states and countries.<sup>2</sup> Between 2010 and 2015, Texas added more than 1.45 million jobs.<sup>3</sup> During 2016,

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1 [http://demographics.texas.gov/Resources/Publications/2016/2016\\_04-13\\_DomesticMigration.pdf](http://demographics.texas.gov/Resources/Publications/2016/2016_04-13_DomesticMigration.pdf)

2 Id.

3 *Texas Home Prices to Keep Rising Despite Energy Slowdown*, Southwest Economy, Q1 2016, at 8.

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Texas' unemployment rate was equal to or lower than all other states with a population of at least 10 million residents.<sup>4</sup>

During the recent economic downturn, Texas survived the national real estate crunch that enveloped and crippled so many other regions of the country. In 2013, Texas Metropolitan Statistical Areas saw an 11% gain in new home sales.<sup>5</sup> The positive trend of statewide home sales continued into 2014, with an increase in both the median and average price compared to 2013 and unit sales remaining consistent.<sup>6</sup> And despite significant fluctuations in the energy market, the Texas housing market continues to grow at a consistent pace. Home sales and the average price of homes grew for the sixth straight year in 2015, with 2016 mid-year numbers indicating similar growth.<sup>7</sup>

Affordability remains at the heart of the continued success of the healthy Texas housing market. Relatedly, Texas has avoided the volatility experienced by other high-growth, high-population states in real estate markets by avoiding restrictive housing and land use policies.<sup>8</sup> Compared with other large states, such as California, studies have shown that Texas has cheaper housing, more jobs and lower taxes.<sup>9</sup> During the period from 2000 to 2015, for Californians moving to Texas, the average median selling price in California was \$510,000 and the average median purchase price in Texas was \$307,663.<sup>10</sup> Housing affordability is one of the key ingredients to Texas' low cost of living, a key attractant to corporate CEOs and individuals looking to relocate to Texas. While state policy makers avoid micromanaging how and where home building and development occurs, they provide a critical tool to develop the necessary infrastructure: MUDs.

In commenting on Texas' ability to respond to demand in new home construction, James Gaines, chief economist of the Real Estate Center at Texas A&M University, stated "MUDs have been crucial in allowing an adequate housing supply and keeping home prices lower than in other high-growth states. Without MUDs, or some other means of financing local infrastructure to accommodate a rapidly expanding population and escalating housing demand, new-home construction would be severely limited and much more expensive."<sup>11</sup> Additionally, he specifically noted that "without MUDs or something like them, Houston would probably be another very-high-cost housing market similar to the major markets in California."<sup>12</sup> By allowing developers to appropriately respond to housing demand in an equitable regulatory environment, MUDs assist developers in providing a housing supply to properly accommodate housing demand in Texas markets.

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4 <http://www.bls.gov/web/laus/laumstrk.htm>

5 <http://www.governor.state.tx.us/files/ecodev/texas-economic-overview.pdf>

6 <https://www.texasrealestate.com/uploads/files/general-files/TQHR-2014-Q2.pdf>

7 <https://www.recenter.tamu.edu/data/housing-activity/#!/activity/State/Texas>

8 *Southwest Economy*, Id. at 8.

9 See <http://www.forbes.com/sites/trulia/2013/02/12/jobs-arent-leaving-california-for-texas-but-people-are/>, indicating for calendar year 2012 that Texas has a lower median home price per square foot (TX/\$84 vs. CA/\$229), a lower unemployment rate (TX/6.1% vs. CA/9.8%) and a lower percentage of state & local tax burdens (TX/8.96% vs. CA/11.04%).

10 *Homeowners on the Move Are Choosing More Affordable States*, Wall Street Journal, September 26, 2016, at A2.

11 Id. at 9.

12 Id.

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When the economy of a geographical area is booming it is essential that a sufficient housing supply exist to serve the population increase. However, the cost of infrastructure—water, sewer, drainage, roads and parks—can greatly curtail a local government’s ability to support necessary and desirable growth patterns. Additionally, existing residents of a community may not desire to pay the cost of extending utilities to make way for new populations. Providing this basic infrastructure is central to growth and development. Without public utility infrastructure, new home building simply cannot occur. In many cases, municipalities and other local governments are unable or unwilling to fund the infrastructure costs associated with new home construction.

Fortunately, legislators and citizens of the State of Texas have provided additional means to fund this infrastructure in the form of specially created local districts that serve to benefit their residents. Water districts exist throughout the State and have been specifically approved by Texas voters in the form of constitutional amendments and advanced by forward thinking Texas legislators over the course of a century. There are various types of water districts with different, specific purposes and functions. The subject of this report is the type of water district that finances and constructs utility infrastructure to serve new land development. This category of water district includes Water Control and Improvement Districts, Levee Improvement District, Fresh Water Supply Districts, some Municipal Management Districts, and others, but the most typical district is the Municipal Utility District (MUD).

### *The History of MUDs in Texas*

MUDs were first constitutionally authorized by Article III, Section 52 and later by Article XVI, Section 59 of the Texas Constitution, often referred to as the “Conservation Amendment.” Our current Texas Constitution derives from the Constitutional Convention of 1875.<sup>13</sup> At the time of its initial drafting, it recognized three entities that could tax and spend public money: the State, counties and municipalities. While this limitation matched the conservative fiscal notions of the period, it failed to account for the flexibility to fund necessary improvement projects throughout the State. Following both droughts and floods in the early portions of the 20<sup>th</sup> century, the public clamored for ways to publicly finance large scale drainage projects, irrigation systems and other related water conservation and reclamation projects. In 1904, Article III, Section 52 of the Constitution was approved by the voters and allowed for the creation of taxing districts to undertake qualified projects to be financed with the issuance of bonds. However, the limitations of that amendment led many citizens to call for another amendment to the constitution that would ultimately give political subdivisions more local control and flexibility in assessing their infrastructure needs.

In 1917, the State formally adopted the Conservation Amendment, Article XVI, Section 59. In doing so it provided a better avenue for the creation of water districts. Over the years, lawmakers have recognized the importance of the role of the Conservation Amendment and the powers that districts created under the Amendment possess by advancing the statutory capabilities of such districts and providing additional options to local governments and their citizens. As water districts evolved, they were granted the ability to provide sewer services, construct roads, operate

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<sup>13</sup> See Interpretive Commentary, Vernon’s Annotated Statutes, Art. XVI, Sec. 59, Tex. Const.

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fire departments, and construct park and recreational facilities. The resulting evolution is the modern MUD.

As the Legislature provided additional ways for districts to serve the needs of their constituents, MUDs became more common throughout the State. By the 1950's and 1960's, the creation of MUDs became commonplace, often used as a short term tool to finance and construct quality infrastructure. This was often followed by annexation into a municipality. For example, hundreds of MUDs were annexed and incorporated into the City of Houston over past decades.

Over time, MUDs have provided growth and development in the form of high-quality, low-cost homes. As a developer needn't build into the price of the lot the costs of water, wastewater and drainage infrastructure, the homebuyer immediately realizes value upon purchase of the home. By reducing the initial cost of the home, the biggest impediment to home ownership is overcome. MUDs specifically contribute to the reduction in initial sale price by amortizing the cost of utility infrastructure over time. As high quality communities that are designed and built to city, county and Texas Commission on Environmental Quality (TCEQ) standards grow and prosper, the assessed value of property grows and the tax rates drop, resulting in value to the homeowner.

By enabling home building to occur in areas where the funding of infrastructure would not likely take place,<sup>14</sup> MUDs have greatly contributed to the inventory of new homes in the State of Texas. Additionally, by amortizing the cost of infrastructure associated with the construction of a new home, MUDs have greatly contributed to a low-cost housing market that has allowed more people to buy homes and contribute to our local economies. In expanding the supply of available homes and consistently providing affordable options to consumers, MUDs have proved invaluable in contributing to thousands of Texans realizing the American dream of home ownership.

Beyond providing opportunity to developer and homebuyer alike, MUDs provide additional layers of protection to consumers by allowing neighbors to work with neighbors to ensure transparency in a model of local control that assures compliance with a variety of state regulations.

*MUD Governance: Low Cost, Low Overhead and Local Control*

MUDs exist as an official political subdivision of the State of Texas with definitive geographic boundaries. Board members are initially appointed and then later elected. To be elected as a board member, a potential candidate must be a property owner or resident within the boundaries of the MUD. This results in neighbors serving together, sharing similar concerns and taking unified action on solutions that make the most sense for their constituents. Local accountability not only provides for an easy way for neighbors to work together to make logical and appropriate decisions, it also limits the existence of a bureaucracy that may be associated with larger political subdivisions.

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<sup>14</sup> See "Southwest Economy" at 8, stating that "During periods of rapid population growth the fuel the need for fast development of housing, counties and cities are often unable to keep pace to provide such services as roads and water/sewer capacity for new subdivisions."



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Board members represent the hub of decision making for a MUD. A typical MUD does not have any employees. As a result there are no pension, labor or healthcare costs to the MUD. Relatedly, as there is no office space to maintain, overhead costs are low or non-existent. Typically, the board of a MUD hires numerous professionals on a contract basis to execute the day to day operations of a district. These professionals, including utility operators, engineers, bookkeepers, auditors, financial advisors and attorneys, bring the expertise and productivity from the private sector and put it directly to work for the MUD. All contractors serve at the behest of the board and can be terminated at any time, yet another private sector advantage not held by political subdivisions that hire their own employees. The reality is, from an operational perspective, MUD boards are more likely to resemble a small business than they are a political subdivision.

In addition to resembling a small business in function, the nature in which private equity flows into a MUD for the construction of infrastructure is also quite similar to the private sector. When the supply and demand indicators of a local economy positively point towards investment, a developer assumes the risk of the MUDs' performance based reimbursement model. MUD financing of such infrastructure enables the developer to quickly recover infrastructure costs that would otherwise be recovered by raising the selling price of subdivided units. For example, during the first phase of a hypothetical 500 acre development using a MUD, the developer finances the build out of infrastructure for the first 100 acres. After construction of the first phase is complete and the TCEQ stringent feasibility standards are met, the MUD issues bonds to pay for the constructed facilities and reimburses the developer with the bond proceeds. The MUD levies an ad valorem tax on all taxable land, houses and other improvements in the District to support the bond issue. The developer uses the reimbursed funds to build out the second phase of development. This cycle is repeated until the entire development is built out.

MUD financing of utility improvements enables developer capital to be redeployed more quickly and less expensively than other methods, resulting in a higher quality development over a shorter development period. A MUD's cyclical reimbursement feature also lowers the barrier to entry for developers by reducing the amount of required capital necessary to begin development of new communities, thereby creating a more competitive housing market.

Developers choosing non-MUD financing will be subjected to higher private interest rates and longer reimbursement periods. Thus, if a developer privately finances infrastructure costs, the cost of the subdivided units will be inflated by the pro rata cost of the utility system and extra borrowing costs, resulting in significantly higher lot prices and higher housing costs. Moreover, private financing can slow the rate of development because traditional lenders will not finance a new development phase until the loans for the prior phase have been repaid. The context of the MUD performance-based reimbursement model encourages development and induces investment in our economy. This leads to infrastructure investment that would not otherwise occur.

### *The Regulation and Oversight of MUDs*

Some have described MUDs as the most strictly regulated political subdivisions in the State of Texas. Strong oversight and regulation applies to the action and orders that both a MUD and its board members issue. Starting from creation, a MUD must receive consent from a municipality if

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within its municipal boundaries or the extra territorial jurisdiction of the city. If a MUD exists in an unincorporated area of a county that it is not in the extra territorial jurisdiction of a city, the county can review the creation of the MUD. After receiving such consent, a MUD is created legislatively or administratively through the TCEQ, being subjected to various standards and reviews throughout. A MUD must comply with various statutes specific to MUDs, such as Chapters 49 and 54 of the Texas Water Code, as well as all of the statutes that generally apply to local governments.

Once a MUD is created and begins its existence, it is immediately subjected to various state standards that apply to all other political subdivisions in the State of Texas, including the Open Meetings Act, the Public Information Act, the Election Code, the Property Tax Code, and the Public Funds Investment Act. Additionally, beyond the parameters put into place by the Texas Constitution and various state statutes, MUDs are heavily regulated by the TCEQ. Chapter 293 of the Texas Administrative Code pertaining to the TCEQ provides 17 subchapters regulating the operations of MUDs, ranging in topics from their creation, to audit reports, to utility system rules and regulations, to the review and approval of the issuance of bonds.

A MUD must satisfy strict financial feasibility rules issued by TCEQ in order to issue utility bonds. Before a MUD can issue any utility bonds, the TCEQ rules require (i) the completion of all water, sewer, and drainage facilities to be financed with the proposed bond issue, (ii) the completion of all streets and roads that provide access to the areas served by the utility improvements, (iii) the completion of at least 25 percent of the projected value of houses, buildings and/or other improvements shown in the projected tax rate calculations used to support the bond issue, and (iv) a showing that the land values, existing improvements, and projected improvements will be sufficient to support a reasonable tax rate for debt service payments for existing and proposed bond indebtedness while maintaining competitive utility rates. More than just a legalized disclosure of the risks, these standards are designed to protect the consumer against excessive tax rates and maintain the integrity of MUD bonds, resulting in better interest rates for future MUD projects.

All MUD bonds must also be approved by the Attorney General of Texas. As part of the approval process, the Attorney General's (AG's) Office not only reviews the resolution of the MUD Board of Directors authorizing the issuance of the bonds, it also reviews various documents related to the financial transaction, including paying agent agreements and documents reflecting the initial sale of bonds. The AG's Office also examines evidence of publication requirements and confirms that all bond expenditures have been properly approved by TCEQ. Moreover, if a district has not issued bonds before, it must not only prove it has been properly created, but must also effectively demonstrate that bond elections were conducted within the parameters of state and federal law. Additionally, the AG's Office reviews annexation and exclusion orders, ensuring that all proper notifications have been filed with TCEQ or the local county deed records.

Of course, before MUD bonds can be issued, they must be authorized by the voters of the MUD at an election held in conformance with Texas Election Code requirements on a uniform election date.

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*MUDs and the Texas Commission on Environmental Quality (TCEQ)*

The Texas Commission on Environmental Quality (TCEQ) has a broad and extensive role in providing oversight of MUDs. Though the TCEQ is most commonly recognized for its role in approving the issuance of MUD bonds, the Agency has significant additional oversight of MUDs. In addition to MUDs, TCEQ's oversight authority extends to all types of water districts, including: Water Control and Improvement Districts, Fresh Water Supply Districts, Drainage Districts, Levee Improvement Districts, Irrigation Districts, Special Utility Districts and Municipal Management Districts.

The TCEQ is elemental in providing continuing oversight to MUDs and other water districts. This oversight is present regardless of whether a district issues bonds for water, sewer or drainage purposes. The TCEQ serves as a centralized repository for various documents that districts are required to execute and file as a result of various information reporting requirements.

In an attempt to ensure transparency and financial stability of districts, various standards have been enacted relating to audit requirements of water districts. The TCEQ figures very prominently into the standards for conducting said audits and the related reporting requirements. Water districts have a statutory duty to annually audit a district's financial accounts and to file such audits with the TCEQ.<sup>15</sup> Audits filed with the TCEQ include all financial aspects of the district, including any taxes, assessments or fees. In addition to requiring that audits conform to generally accepted auditing standards, statute also requires the TCEQ to establish accounting standards relating to the required audits.<sup>16</sup> The TCEQ has adopted a manual for the audit of water districts, including requirements for the format of audits and additional required information. Additional requirements exist requiring a board to file audits with TCEQ and the completion of a TCEQ-formatted affidavit relating to the sufficiency and accuracy of the audit.<sup>17</sup> The TCEQ is required to take affirmative action in reporting any district that has not complied with audit filing requirements to the Office of the Attorney General.<sup>18</sup> The TCEQ is also given authority to review audits to voice objections, determine any violations of standards and resolve any issues prior to certifying compliance with the filing requirements.<sup>19</sup>

In addition to administrative duties, the TCEQ's most important function may be their continuing right of supervision of water districts. All powers and duties constitutionally granted to water districts are subject to the continuing right of supervision of the State of Texas by and through the TCEQ.<sup>20</sup> This supervision includes, but is not limited to:

- inquiring into the competence, fitness and reputations of the officers of a district;
- requiring audits, financial information, inspections, evaluations, or engineering reports;
- instituting investigations and hearings; and

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<sup>15</sup> See generally Section 49.191, Water Code.

<sup>16</sup> See §49.192, Water Code.

<sup>17</sup> See generally 49.194, Water Code.

<sup>18</sup> See §49.194(f), Water Code.

<sup>19</sup> See generally 49.195, Water Code.

<sup>20</sup> See Title 30 Tex. Admin. Code Rule 293.3(a).

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- issuing rules necessary to supervise any specific district.<sup>21</sup>

The TCEQ makes all information collected by the agency available to the public. This can be accessed either by request or via the TCEQ's Water Utility Database.<sup>22</sup> Commonly accessed information includes:

- District information forms;
- District registration statements;
- Boundary maps and legal descriptions;
- Changes in district boundaries by annexation and exclusion; and
- Audits information.

From warehousing data to investigating fraud and misconduct, TCEQ is granted a myriad of responsibilities that help to ensure water districts of all varieties are functioning in an efficient and lawful manner.

#### *The Role of TCEQ in Approving MUD Utility Bonds*

Prior to utility bond issuance, the TCEQ undertakes a thorough review of the development of the district and the marketability of the bonds to be issued. The TCEQ serves an important role in assuring the quality of development in a district, the financial solvency of the district, and providing assurances to prospective bond buyers with regard to the marketability of bonds. Before a MUD can issue utility bonds, TCEQ rules require an extensive “feasibility review,” including: (i) the completion of all water, sewer, and drainage facilities to be financed with the proposed bond issue, (ii) the completion of all streets and roads that provide access to the areas served by the utility improvements, (iii) the completion of at least 25 percent of the projected value of houses, buildings, and/or improvements shown in the projected tax rate calculations used to support the bond issue, and (iv) a showing that the land values, existing improvements, and projected improvements will be sufficient to support a reasonable tax rate for debt service payments for existing and proposed indebtedness while maintaining competitive utility rates. On application to the TCEQ, a MUD must demonstrate that the proposed debt service of a utility bond issue and all existing outstanding bonds of the MUD can be paid by certain “growth” and “no-growth” tax rates. Additionally, when the territory of a MUD overlaps with another district—such as a levee improvement district or a drainage district—the TCEQ will assess the combined tax rate of the entities.

In order to obtain TCEQ approval for a bond issue, an applicant must demonstrate completed utilities. All permits for groundwater, surface water, waste discharge, or capacity needed to support the projected build-out must be obtained. All underwater, wastewater, and drainage facilities to be financed by the bonds or necessary to serve the projected build-out to support feasibility must be 95% complete. Sufficient lift station, water plant, and sewage treatment plant capacity to serve the connections projected for a period of not less than 18 months shall be either

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<sup>21</sup> See generally Title 30 Tex. Admin. Code Rule 293.3.

<sup>22</sup> See <http://www.tceq.state.tx.us/waterdistricts/iwdd.html>

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95% complete or available in existing plants. Additionally, all street and road construction to provide access to the areas provided with utilities financed by the bonds or necessary to serve the projected build-out to support feasibility must be 95% complete.

Generally speaking a MUD may reimburse a developer for water, sewer and drainage facilities that serve the property in the MUD. Certain expenses incurred by a developer are 100% reimbursable, including the costs of creating and organizing a district. Additionally, the costs of constructing wastewater treatment plant facilities, water supply and storage facilities, storm water pump stations associated with levee systems, regional water and wastewater lines, regional pump stations and alternate water supply interconnects with other water users are all eligible for 100% reimbursement. Several items are considered to be “developer contribution items,” which are reimbursed at 70%, unless the district qualifies for a waiver—based on the district’s financial strength—to be able to reimburse at 100%. These items include internal water distribution lines, internal wastewater collection lines and internal storm sewer lines.

All of the projects and their costs described above are meticulously reviewed by the TCEQ upon the submission of a bond application to the agency. This process starts when a MUD board passes a resolution to make application to the TCEQ for the issuance of a bond. The district’s engineer then works with the TCEQ staff to provide extensive engineering background on each project listed in a bond application. The TCEQ staff ultimately issues a technical memorandum, which is forwarded to the office of the Executive Director. After receipt and review by the Office of the Executive Director, an order is issued, usually approving the expenditures authorized under the technical memorandum and instituting certain terms and conditions relating to the issuance of the bonds. After this order is issued, a period of 23 days must pass before bonds may be issued. This enables the TCEQ to hear any objections that any party may have to the issuance of the bonds. The TCEQ technical memorandum and order from the Executive Director are both reviewed by the Public Finance Division of the Office of the Attorney General as part of the bond approval process.

Assuming the AG’s Office issues an opinion approving the issuance of the bonds, the bonds are registered with the Comptroller’s Office and sold a day or two later. As demonstrated, the TCEQ’s approval—from both a technical and financial perspective—is absolutely elemental to a MUD issuing utility bonds and reimbursing a developer for expenses incurred during the construction of a community. As a result of the stringent standards applied by the TCEQ, MUD utility bonds are used to reimburse a narrow class of developer expenditures for water, sewer, and drainage facilities that support the development of new housing, at affordable prices, for citizens throughout the State. Additionally, the TCEQ review ensures the market for MUD utility bonds is healthy by applying strict financial guidelines to each MUD utility bond issuance. There has not been a single default of a MUD bond issued in the State of Texas that was reviewed pursuant to this process at TCEQ that was implemented in the late 1980’s.

### *Open Government*

MUDs are subjected to significant standards relating to open government to ensure its residents can easily monitor the financial standing and legal actions of the district. Districts must keep a full and itemized account of district funds available for audit. The TCEQ shall have access to all

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district financial records as the TCEQ considers necessary. All district financial records shall be prepared on a timely basis in accordance with generally accepted accounting principles and be available for public inspection during regular business hours. Additionally, MUDs must engage a Certified Public Accountant to annually audit a district's fiscal accounts and records, unless the district is financially dormant or its finances are below certain de minimis amounts established by the Legislature (i.e., no bonds outstanding and gross receipts less than \$250,000). The routine filings that MUDs make with the TCEQ, relating to district information and audits, are all contained within TCEQ's Water District Database. The Database is stored online and is publicly accessible.

All MUD records are subject to the Public Information Act and open records requests. This applies to bookkeeper's reports, which are kept monthly and provide details on current financial information such as revenue and expenditures, funds on hand, current debt payments owed and the annual budget. It also applies to monthly tax assessor reports that detail current tax information such as revenue, collections and expenses.

Between the standards established in the Texas Constitution, various state statutes, the administrative codes of multiple state agencies, and federal law, MUDs exist in a highly regulated and open fashion. The continuing oversight of the TCEQ not only assures compliance with the vast array of regulatory measures, but also provides an avenue for residents to easily and efficiently follow the actions of locally elected board members. Such oversight, combined with locally controlled resident boards, make for highly accountable and effective neighborhood government, leading to millions of Texas residents deciding to make their homes in MUDs.

## **CONCLUSION**

For years, Texans have made the conscious decision to live and reside in MUDs. Most individuals did not accidentally purchase a home within a MUD—they made the intentional decision to live in a community with affordable housing costs and trustworthy infrastructure that is governed by their neighbors. Informed consumers choose to purchase homes in MUDs. Texas law requires potential homebuyers to receive multiple instances of notice before purchasing a home in a MUD. The first notice comes at the time a potential homebuyer signs an earnest money contract. A second notice is then provided to the homebuyer at closing. This notice contains information about the MUD's tax rate, voted bond authorization, and bonds that have been issued. No other form of government issues such a notice to its potential residents.

Moreover, in order to provide additional data to potential homebuyers, MUD taxes are typically levied on properties before houses are sold. This also informs mortgage companies. It ensures that MUD taxes are considered in qualifying the purchaser and in calculating the amounts to be properly escrowed through monthly mortgage payments. By providing for multiple disclosures and specific data on tax rates and bonds, potential homebuyers are assured of exactly what their financial obligations will be as a result of buying a home in a MUD.

Policy makers in the State of Texas have always valued development generated by the private sector, where ideas and innovations are quicker to the marketplace and financial liquidity is expeditiously unleashed. By utilizing the MUD model, developers have embraced this free

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market ethos, allowing for development and home building that would not otherwise occur. MUDs induce developers and homebuilders to lend and invest their private capital (from banks, investors, and Wall Street financiers) into public infrastructure. Along with the funding comes the private sector expertise and the influence of the profit motive on construction and project management. No other form of local government has so dramatically convinced the private sector to invest in public infrastructure. It is a true public/private partnership. The inducement is that if the developer invests -- and performs by building infrastructure and developing lots and building homes -- the developer is entitled to reimbursement of its investment in public utility infrastructure. Without the certainty of reimbursement upon performance, there would be no inducement for developers.

It is important to recognize that the performance-based reimbursement model embraced by MUDs requires developers to cover all costs relating to the initial build out of infrastructure. MUDs are a reimbursement model; the developer bears the financial risk. This stands in stark contrast to other models (common in other states) that allow for the issuance of “raw land” or “dirt” bonds. The upfront payment of utility costs ensures that the developer has “skin in the game” and the MUD model of performance-based-reimbursement shifts the financial risk from the taxpayer to the developer.

While the number of MUDs in Texas has grown over years, the growth is simply commensurate with the increased population and prosperity that our State has experienced. More than anything, market forces dictate the creation of a MUD. As such, when the supply of housing is low, demand grows for the creation of MUDs and the development of homes. The private market evaluates this supply and demand and assumes the risk of moving forward by injecting private capital. By reacting in real time to demands in the housing market, Texans enjoy a steady supply of housing, leading to a market that behaves rationally and avoids wild fluctuation in pricing. Not only does this provide predictability to potential buyers and those associated with the real estate market, it also assists existing homeowners by providing for regularity in year-to-year tax assessments.

MUDs have proven their utility and value to the citizens of Texas over the past several decades. Homes in MUDs are more affordable because the cost of infrastructure is removed from the initial purchase price. MUDs provide a locally elected form of governance that allows neighbors to work with neighbors in a fashion that more resembles a small business in terms of efficiency, but with the openness and accountability expected and required of a political subdivision. By encouraging the development of desirable communities with homes at affordable prices, MUDs have been and will continue to be an extremely attractive option for developers and homebuyers alike. By harnessing private capital and private sector expertise, MUDs have made considerable contributions to the free market economic ideals embraced by our State and have repeatedly added value to the Texas real estate market and economy as a whole.

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## APPENDIX 1

### Additional Notice of MMD Legislation

**Issue #1:** State law currently requires multiple forms of notice relating to the legislative creation of a municipal management district, including provisions contained in Article XVI, Section 59, Texas Constitution, and Section 313.006, Government Code.

**Recommendation:** The Committee should adopt policies that specifically confirm that all required notices relating to the creation of management districts have occurred prior to considering a creation or legislative annexation bill.

**Issue #2:** In some instances, legislative creations of management districts have been proposed that overlap with other existing special purpose districts. For example, a municipal management district might be proposed for creation with boundaries within which are contained one or more already existing municipal utility districts. Similar overlaps have occurred when legislation has been introduced that proposes to annex territory into an existing management district.

Overlapping districts are not necessarily bad: there may be very good and reasonable reasons for district overlap. Under Section 313.006, Government Code, written notice is required to be provided to landowners when a management district is being created over their land. However, this notice is not provided to existing special purpose districts that the management district may overlap, whether through legislative creation of new management districts or annexation of land into existing one.

**Recommendation:** When proposing the creation of a new management district or annexation of land into an existing management district, the committee should adopt procedures to confirm that if there are special purpose districts within the boundaries of the proposed district or the territory to be annexed, that written notice has been provided to the registered agent (as reflected in TCEQ's records) of any existing special purpose district.

**Issue #3:** Notice to existing land owners of inclusion of their property in a management district is of paramount importance. Section 313.006, Government Code, requires written notice be provided to property owners of a proposed management district that can or will be subject to an assessment by the proposed district. Similar notice is not provided to property owners where legislation is being introduced that would annex an owner's property into an existing management district.

**Recommendation:** The committee should ensure that the same notices given to land owners being included in a new management district are given when a land owner's property has been included in a proposed legislative annexation into an existing management district.

**Issue #4:** As previously noted, Section 313.006, Government Code, requires a single mailed notice to be provided to land owners that can or will be subject to an assessment by the proposed district. This notice is fundamental to the land owner's awareness of how his land could be affected by a district creation or annexation. That said, in order to comply with this statutory



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requirement, notice must be given before a bill is formally introduced in the legislature.

**Recommendation:** When proposing the creation of a new management district, the committee should ensure that, in addition to the initial notice required by Section 313.006, Government Code, a second written notice is given after a bill has been filed that includes the bill number(s) corresponding to the proposed district. In this way, the affected property owner(s) can more easily track the legislation and attend committee hearings or take any actions needed in regard to the legislation during the legislative process.

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## APPENDIX 2

### TYPICAL SUBCHAPTERS FOR A BILL CREATING A MUNICIPAL MANAGEMENT DISTRICT - FORMAT AND STANDARD PROVISIONS TO BE USED IN PROPOSED MMD LEGISLATION DURING THE 82ND LEGISLATIVE SESSION

The headings for subchapters listed below are typical for bills creating municipal management districts and represent the appropriate format of MMD proposals. The noted sections represent the standardized language.

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 38\_\_ . ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES.

#### SUBCHAPTER B. BOARD OF DIRECTORS

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 38\_\_.101. GENERAL POWERS AND DUTIES.

Sec. 38\_\_.102. IMPROVEMENT PROJECTS AND SERVICES.

Sec. 38\_\_.103. DEVELOPMENT CORPORATION POWERS.

Sec. 38\_\_.104. NONPROFIT CORPORATION.

Sec. 38\_\_.105. AGREEMENTS; GRANTS.

Sec. 38\_\_.106. AUTHORITY TO CONTRACT FOR LAW ENFORCEMENT.

Sec. 38\_\_.107. MEMBERSHIP IN CHARITABLE ORGANIZATIONS.

Sec. 38\_\_.108. ECONOMIC DEVELOPMENT PROGRAMS.

Sec. 38\_\_.109. NO EMINENT DOMAIN.

Sec. 38\_\_.110. TAX AND ASSESSMENT ABATEMENTS.

Sec. 38\_\_.111. PARKING FACILITIES.

Sec. 38\_\_.112. APPROVAL BY THE CITY.

#### SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS; ASSESSMENTS

#### SUBCHAPTER E. TAXES AND BONDS

#### SUBCHAPTER F. DEFINED AREAS

#### SUBCHAPTER G. MUNICIPAL ANNEXATION AND DISSOLUTION

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**ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES**

Sec. 38. . . . ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES.

All or any part of the area of the district is eligible to be included in:

(1) a tax increment reinvestment zone created under Chapter 311, Tax Code;

(2) a tax abatement reinvestment zone created under Chapter 312, Tax Code;

(3) an enterprise zone created under Chapter 2303, Government Code; or

(4) an industrial district created under Chapter 42, Local Government Code.

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**IMPROVEMENT PROJECTS AND SERVICES**

Sec. 38\_\_102. IMPROVEMENT PROJECTS AND SERVICES. The district may provide, design, construct, acquire, improve, relocate, operate, maintain, and finance using any funds available to the district, or contract with a governmental or private entity to provide, design, construct, acquire, improve, relocate, operate, maintain, and finance any improvement or service authorized under this chapter or Chapter 375, Local Government Code.

*[In lieu or in addition to the above Section 102, some bills may include a more detailed listing of services and improvements. Such lists are sometimes requested by local officials and constituents seeking greater specificity of the district's proposed activities.]*

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**DEVELOPMENT CORPORATION POWERS**

Sec. 38.103. DEVELOPMENT CORPORATION POWERS. The district, using funds available to the district, may exercise the powers given to a development corporation under Chapter 505, Local Government Code, including the power to own, operate, acquire, construct, lease, improve, or maintain a project that may be undertaken in accordance with that chapter.

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**NONPROFIT CORPORATION**

Sec. 38.104. NONPROFIT CORPORATION. (a) The board by resolution may authorize the creation of a nonprofit corporation to assist and act for the district in implementing a project or providing a service authorized by this chapter.

(b) The nonprofit corporation:

(1) has each power of and is considered to be a local government corporation created under Subchapter D, Chapter 431, Transportation Code; and

(2) may implement any project and provide any service authorized by this chapter.

(c) The board shall appoint the board of directors of the nonprofit corporation. The board of directors of the nonprofit corporation shall serve in the same manner as the board of directors of a local government corporation created under Subchapter D, Chapter 431, Transportation Code, except that a board member is not required to reside in the district.

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**AGREEMENTS; GRANTS**

Sec. 38\_\_105. AGREEMENTS; GRANTS. (a) As provided in Chapter 375, Local Government Code, the district may make an agreement with or accept a gift, grant, or loan from any person.

(b) The implementation of a project is a governmental function or service for the purposes of Chapter 791, Government Code.

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**AUTHORITY TO CONTRACT FOR LAW ENFORCEMENT**

Sec. 38\_\_106. AUTHORITY TO CONTRACT FOR LAW ENFORCEMENT.

As provided in Chapter 375, to protect the public interest, the district may contract with a qualified party, including \_\_\_\_\_ County or the City, for the provision of law enforcement services in the district for a fee.



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**MEMBERSHIP IN CHARITABLE ORGANIZATIONS**

Sec. 38\_\_107. MEMBERSHIP IN CHARITABLE ORGANIZATIONS. The district may join and pay dues to a charitable or nonprofit organization that performs a service or provides an activity consistent with the furtherance of a district purpose.

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**ECONOMIC DEVELOPMENT PROGRAMS**

Sec. 38\_\_108. ECONOMIC DEVELOPMENT PROGRAMS. (a) The district may engage in activities that accomplish the economic development purposes of the district.

(b) The district may establish and provide for the administration of one or more programs to promote state or local economic development and to stimulate business and commercial activity in the district, including programs to:

- (1) make loans and grants of public money; and
- (2) provide district personnel and services.

(c) The district may create economic development programs and exercise the economic development powers that:

- (1) Chapter 380, Local Government Code, provides to municipalities; and
- (2) Subchapter A, Chapter 1509, Government Code, provides to municipalities.

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**NO EMINENT DOMAIN**

Sec. 38\_\_109. NO EMINENT DOMAIN. The district may not  
exercise the power of eminent domain.

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**TAX AND ASSESSMENT ABATEMENTS**

Sec. 38.110. TAX AND ASSESSMENT ABATEMENTS. The district may designate reinvestment zones and may grant abatements of district taxes or assessments on property within such zones.

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**PARKING FACILITIES**

Sec. 38\_\_ .111. PARKING FACILITIES. (a) The district may acquire, lease as lessor or lessee, construct, develop, own, operate, and maintain parking facilities or a system of parking facilities, including lots, garages, parking terminals, or other structures or accommodations for parking motor vehicles off the streets and related appurtenances.

(b) The district's parking facilities serve the public purposes of the district and are owned, used, and held for a public purpose even if leased or operated by a private entity for a term of years.

(c) The district's parking facilities are necessary components of a street and are considered to be a street or road improvement. The development and operation of the district's parking facilities may be considered an economic development program.

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## APPENDIX 3

### House Committee on Special Purpose Districts *Special Purpose District Checklist*

**Instructions:**

Submit this document along with the Background Information and Hearing Request to the House SPD Committee.

#### **District/Bill Overview**

**Bill Number:** [Click here to enter text.](#)      **Author /Sponsor:** [Click here to enter text.](#)

**Companion Bill:** [Click here to enter text.](#)      **Sponsor:** [Click here to enter text.](#)

**Name of (Proposed) District:** [Click here to enter text.](#)

**Where is the (Proposed) District located?**

County: [Click here to enter text.](#)

Is the (proposed) district located within the jurisdiction of a city?

- Yes
- No

If yes, City: [Click here to enter text.](#)

- In-City
- ETJ

**Approximate Acreage:** [Click here to enter text.](#)

**Purpose of Bill:**       Water District Creation (Section A below)  
    Municipal Management District Creation (Section B below)  
    Amendment to Existing District (Section C below)

**INSTRUCTIONS:** Complete Section A for the creation of a water district, Section B for the creation of a municipal management district, or Section C for an amendment to an existing district.

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**A. WATER DISTRICT CREATION**

**1. Type of Water District (check the appropriate box):**

- Municipal Utility District (MUD)
- Water Control & Improvement District (WCID)
- Other: [Click here to enter text.](#)

**2. Proposed Bill (check the appropriate boxes):**

**A. Template**

- This bill follows the Template without deviation, including (check box for type of road powers):
  - Broad Road Powers
  - Narrow Road Powers
- This bill follows the Template in all regards, except for (check all that apply):
  - The addition of division power
  - The addition of navigation powers
  - Necessary, non-substantive revisions to make applicable for a WCID
  - Necessary, non-substantive revisions to make applicable for another type of water district. Please explain: [Click here to enter text.](#)

**B. Non-Template**

- This bill requests other powers not included in the Template or listed above.
- This bill does not follow the template.

If Non-Template, please provide detailed explanation and justification: \_\_\_\_\_

**3. Local Notice**

- a. Notice of this bill, as required by Article XVI, Section 59(e) of the Texas Constitution, was provided to the city or cities within the boundaries in which the proposed district is to be wholly or partially located.
  - Yes
  - No
  - N/A (None of the land in the proposed district is located wholly or partially within the boundaries of a city or cities)
- b. Notice of this bill, as required by Article XVI, Section 59(e) of the Texas Constitution, was provided to the county or counties within the boundaries in which the proposed district is to be wholly or partially located.
  - Yes
  - No

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**4. Local Support (complete applicable section below)**

- a. For a proposed district located wholly or partially within the corporate limits or ETJ of a city:
- i. This bill has the support of all municipal governments within the boundaries in which the proposed district is to be wholly or partially located.<sup>1</sup> *If currently available, submit resolutions or letters of support from municipal officials to the House SPD Committee along with the Hearing Request Form.*  
 Yes  
 No
  - ii. This bill follows the Template to provide for consent from all municipal governments within the boundaries in which the proposed district is to be wholly or partially located, *i.e. that consent must be obtained before the creation of the district can be confirmed*, and such consent is expected to be obtained following passage of this bill.<sup>2</sup>  
 Yes  
 No
  - iii. Notes (if any): [Click here to enter text.](#)
- b. For a proposed district NOT located wholly or partially within the corporate limits or ETJ of a city:
- i. This bill is not opposed by the county or counties within the boundaries in which the proposed district is to be wholly or partially located.<sup>3</sup>  
 Yes  
 No
  - ii. Notes (if any): [Click here to enter text.](#)

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<sup>1</sup> Consistent with Section 42.042, Local Government Code

<sup>2</sup> Consistent with Section 42.042, Local Government Code and see relevant section of the Template

<sup>3</sup> Consistent with Section 54.0161, Texas Water Code, as it would apply to a general law MUD



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**B. MUNICIPAL MANAGEMENT DISTRICT (MMD) CREATION**

**1. THIS DISTRICT WILL BE CREATED AS A DISTRICT SUBJECT TO CHAPTER 375, LOCAL GOVERNMENT CODE, FOR:**

- Supplemental services and improvements for an existing commercial or mixed use activity center
- Redevelopment or revitalization of a commercial or mixed use area
- Raw land development
- Other: \_\_\_\_\_

Notes (if any): [Click here to enter text.](#)

**2. PROPOSED BILL**

**a. THIS BILL USES THE "STANDARD" LANGUAGE ADOPTED BY THE COMMITTEE<sup>4</sup>.**

- Yes
- No

**b. DESCRIBE ANY DEVIATION FROM THE "STANDARD" LANGUAGE:**

**3. THIS BILL REQUESTS THE AUTHORITY OF EMINENT DOMAIN.**

- Yes
- No

If Yes, does the language follow the MUD Template?

- Yes
- No

Notes (if any): [Click here to enter text.](#)

**4. NOTICE OF THIS BILL WAS GIVEN TO ALL OWNERS OF REAL PROPERTY WITHIN THE PROPOSED DISTRICT PURSUANT TO SECTION 313.006, GOVERNMENT CODE.**

- Yes
- No

Notes (if any): \_\_\_\_\_

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<sup>4</sup> See appendix H-2 of the Senate Committee on Intergovernmental Relations Interim Report to the 82<sup>nd</sup> Legislature

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**5. Local Notice**

- a. Notice of this bill, as required by Article XVI, Section 59(e) of the Texas Constitution, was provided to the city or cities within the boundaries in which the proposed district is to be wholly or partially located.
- Yes
  - No
  - N/A (None of the land in the proposed district is located wholly or partially within the boundaries of a city or cities)
- b. Notice of this bill, as required by Article XVI, Section 59(e) of the Texas Constitution, was provided to the county or counties within the boundaries in which the proposed district is to be wholly or partially located.
- Yes
  - No

**6. Local Support (complete applicable section below)**

- a. For a proposed district located wholly or partially within the corporate limits or ETJ of a city:
- i. This bill has the support of all municipal governments within the boundaries in which the proposed district is to be wholly or partially located.<sup>5</sup> *If currently available, submit resolutions or letters of support from municipal officials to the House SPD Committee along with the Hearing Request Form.*
    - Yes
    - No
  - ii. Notes (if any): [Click here to enter text.](#)
- b. For a proposed district NOT located wholly or partially within the corporate limits or ETJ of a city:
- i. This bill is not opposed by the county or counties within the boundaries in which the proposed district is to be wholly or partially located.<sup>6</sup>
    - Yes
    - No
  - ii. Notes (if any): [Click here to enter text.](#)

**7. THE FOLLOWING PROVISIONS ARE GENERALLY CONSIDERED UNACCEPTABLE TO THE COMMITTEE. DOES THIS BILL ALLOW FOR ANY OF THE FOLLOWING? (CHECK ALL THAT APPLY)**

- Elections to be held on non-uniform election dates
- Levy of sales tax in excess of the maximum rate allowed by general law
- Issuance of water, sewer, and drainage bonds without TCEQ approval (as required by Section 375.208, Local Government Code)
- Issuance of bonds secured by property taxes without an election
- Levy of a property tax without an election

If yes, please provide detailed explanation and justification: \_\_\_\_\_

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<sup>5</sup> Consistent with Section 42.042, Local Government Code

<sup>6</sup> Consistent with Section 54.0161, Texas Water Code, as it would apply to a general law MUD

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**C. DISTRICT AMENDMENT**

1. **Name of District:** [Click here to enter text.](#)
2. **Type of District:**
- Municipal Utility District (MUD)
  - Water Control & Improvement District (WCID)
  - Municipal Management District (MMD)
  - Other: [Click here to enter text.](#)
3. **Method of Creation:**
- Legislature      Legislative act/local laws code: [Click here to enter text.](#)
  - TCEQ              TCEQ Creation Date: [Click here to enter text.](#)
4. **This bill requests the following amendment(s) (check all that apply):**
- Addition of road powers
  - Addition of division power
  - Addition of navigation powers
  - Annexation of land into the district
  - Extension of confirmation election date
  - "Harmonizing" of general and special law
  - Conversion of a MUD to a MMD or addition of MMD powers to a MUD (Please complete Section B)
  - Changing the name of the district
  - Addition of sales tax authority
  - Other: [Click here to enter text.](#)

**If applicable, MUD Template/Standard MMD language used for above?**

- Yes
- No
- N/A

Notes (if any): \_\_\_\_\_

5. **THE FOLLOWING PROVISIONS ARE GENERALLY CONSIDERED UNACCEPTABLE TO THE COMMITTEE. DOES THIS BILL ALLOW FOR ANY OF THE FOLLOWING? (CHECK ALL THAT APPLY)**

- Elections to be held on non-uniform election dates
- Levy of sales tax in excess of the maximum rate allowed by general law
- Issuance of water, sewer, and drainage bonds without TCEQ approval (as required by Section 375.208, Local Government Code)
- Issuance of bonds secured by property taxes without an election
- Levy of a property tax without an election
- Annexation of land into the district without notice to and support of landowners

If yes, please provide detailed explanation and justification: \_\_\_\_\_