

- SUBJECT:** Authorizing MUDs to develop parks and recreational facilities
- COMMITTEE:** State Cultural and Recreational Resources — favorable, without amendment
- VOTE:** 5 ayes — Hilderbran, Geren, B. Cook, Kuempel, Phillips
0 nays
2 absent — Dukes, Bailey
- WITNESSES:** None
- BACKGROUND:** Texas Constitution, Art. 16, sec. 59(a) states that conservation and development of Texas’ natural resources are public rights and duties, and the Legislature must pass laws appropriate for this purpose. Sec. 59(b) allows the creation of conservation and reclamation districts as governmental agencies with power to incur debts as necessary. Water Code, ch. 54 authorizes the creation of a municipal utility district (MUD) under Art. 16, sec. 59. A district may include the area in all or part of any county or counties, including all or part of any cities and other public agencies.
- Since the 1970s, the Legislature has enacted several laws that would authorize a MUD to provide parks and recreational facilities. The most recent of these was SB 1444 by Brown, enacted by the 77th Legislature in 2001.
- A 1980 appeals court decision, *Harris County Water Control and Improvement District No. 110 v. Texas Water Rights Commission*, 593 S.W.2d 852 (Tex. Civ. App.-Austin), upheld a district court ruling that (1) the statute authorizing districts to “provide parks and recreational facilities” did not authorize the district to provide the facilities in question, and (2) the mere fact that the Constitution did not prohibit the district from providing the parks and recreational facilities did not establish the district’s authority to do so.
- DIGEST:** HB 2477 would amend the Water Code to allow a MUD to issue bonds for development and maintenance of recreational facilities if the bonds were authorized by a majority of voters in a district election. The bill would expand the purpose of a MUD to include financing recreational facilities in addition

to developing and maintaining them for people in the district. It would remove current language that refers to the Legislature's authority to permit MUDs to develop and maintain parks and recreational facilities.

A MUD could not issue bonds supported by ad valorem taxes to pay for the development and maintenance of recreational facilities unless the bonds were authorized by majority vote of the district's qualified voters in an election. The board could issue bonds payable solely from revenues by resolution or order, without an election. A district could not issue bonds supported by ad valorem taxes to pay for the development and maintenance of an indoor or outdoor swimming pool.

Not later than the 10th day before a bond election to authorize a recreational facility, the board would have to file for public review a park plan covering the land, improvements, facilities, and equipment to be bought or built and their estimated costs. The required park plan would have to include maps, plats, drawings, and data fully showing and explaining the park plan. The park plan would not be part of the voter proposition and would not create a contract with the voters.

The notice of a bond election would have to include the proposition to be voted on and an estimate of its costs. A district bond election for development of a recreational facility could be held on the same day as another MUD election. The board could call a bond election by a separate election order or as part of another election order. The board could submit multiple purposes in a single proposition at an election. Also, the board could call a bond election for a recreational facility as a result of an agreement to annex additional territory into the district.

The Texas Commission on Environmental Quality would have to adopt rules regarding the provision and financing of recreational facilities.

HB 2477 would repeal existing statutes relating to the authority of MUDs to develop and maintain recreational facilities.

This bill would take effect on the effective date of HJR 49, the proposed constitutional amendment authorizing development of parks and recreational facilities by certain conservation and reclamation districts, which would be

submitted to voters on November 4, 2003. If voters did not approve HJR 49, HB 2477 would not take effect.

**SUPPORTERS
SAY:**

HB 2477, the enabling legislation for HJR 49 by Callegari, would establish the statutory authority of water districts, including MUDS, to develop parks and recreational facilities. Unlike almost every other type of political subdivision, MUDs have no explicit authority to use tax dollars to develop parks and recreational projects. MUDS may build parks and recreational facilities only with surplus funds from water and sewer revenues. Approval of HB 2477 and HJR 49 would authorize MUDs to issue revenue bonds, if local voters approved, for the purpose of creating parks, rather than relying on surplus revenues alone.

While most people think of the state, counties, and cities as developing public parks and recreational facilities, these entities often cannot meet needs at the neighborhood level. Counties have established large parks, but they have fallen short in offering local soccer and Little League fields. This bill, in conjunction with the proposed amendment, would address the deficiency before desirable open lands are gone.

Some areas that have recreational needs include many housing developments. Outside of individual homeowners' associations, a MUD would be their only common link for a park or recreational facility, such as hike-and-bike trails.

Concerns have been stated about giving MUDs this authority even though they experience low voter turnout in bond elections, but that issue could cut both ways. People interested in acquiring parks in these districts could become involved actively in the elections and could have a large impact. HB 2477 would require notice of a bond election that must contain the proposition and an estimate of its costs.

Citizens across the state have expressed interest in this change, not merely around Harris County, where the greatest concentration of MUDs exists. Voter approval of the constitutional amendment and enactment of this bill would fill a need to acquire open spaces for small parks and recreational facilities while opportunities remain.

**OPPONENTS
SAY:**

MUDs run water and sewer systems, collect taxes, sell tax bonds, and build infrastructures. Most MUDs are too involved in kingdom-building already, and the last thing the Legislature should do is authorize them to build parks and recreational facilities. The state, counties, and cities have mechanisms in place to set up such facilities, and they should be adequate to meet public recreational needs without granting the same authority to MUDs.

Voter turnout in MUD elections traditionally has been very low — often as low as 1 percent. HB 2477 could enable 1 percent of a voter pool to commit the other 99 percent to paying for revenue bonds for parks.

Almost all MUDs are in unincorporated areas. More than 80 percent, or 500 MUDs, are in unincorporated areas in and around Houston. If a compelling need exists for park development in that area, the proposal could be bracketed to include only the Houston area or other large urban counties, without granting broader authority to other districts throughout Texas.

NOTES:

HJR 49 by Callegari, which would amend the Constitution to authorize water districts, including MUDs, to develop parks and recreational facilities, was set on the House Constitutional Amendments Calendar for April 24.

The companion measures, SJR 30 and SB 624 by Lindsay, passed the Senate April 23 with amendments that bracketed the provisions to counties in the Houston area and to Travis County. Additional amendments to SB 624 would prohibit use of MUD assessments to develop golf courses and would limit tax rates and bond amounts. SJR 30 passed by 26-5 (Bivins, Duncan, Fraser, Ogden, Staples), and SB 624 passed by voice vote (Fraser recorded nay). Both measures have been referred to the House State Cultural and Recreational Resources Committee.