

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 Texas Constitution did not prohibit the district from providing the park and recreational facilities did not establish the district’s authority to do so.

**DIGEST:** HJR 49 would amend Texas Constitution, Art. 16, sec. 59(a) to include the development of parks and recreational facilities among the public rights and duties for which the Legislature must pass appropriate laws related to conserving and developing natural resources.

The resolution would state the Legislature's intent to expand the authority of conservation and reclamation districts with respect to parks and recreational facilities and that HJR 49 should not be construed as limiting the powers of a conservation and reclamation district as those powers existed immediately before the proposed amendment took effect.

The proposal would be presented to voters at an election on Tuesday, November 4, 2003. The ballot proposal would read: "The constitutional amendment relating to the provision of parks and recreational facilities by certain conservation and reclamation districts."

**SUPPORTERS SAY:** HJR 49 would establish that the development of parks and recreational facilities as a constitutionally authorized power of water districts, including MUDs. Unlike almost every other type of political subdivision, MUDs have no explicit constitutional 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. HJR 49 would allow 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 proposed amendment would address the deficiency before 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 a public swimming pool or tennis court.

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.

Citizens across the state have expressed interest in this constitutional change, not merely around Harris County, where the greatest concentration of MUDs exists. Voter approval of this amendment 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. The proposed amendment 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 Legislature could bracket this proposal to Harris County without granting broader authority to other districts throughout Texas.

**NOTES:**

The enabling bill, HB 2477 by Callegari, would authorize a MUD to issue tax-supported bonds to pay for development and maintenance of recreational facilities. HB 2477 was reported favorably, without amendment, by the State Cultural and Recreational Resources Committee on April 1.

The companion measures, SJR 30/SB 624 by Lindsay, passed the Senate on 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.