

SUBJECT: Authorizing MUDs to develop recreational facilities in Hays County

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 8 ayes — Oliveira, Otto, Bohac, Hartnett, P. King, Paxton, Peña, Villarreal

1 nay — C. Howard

2 absent — Hilderbran, Taylor

WITNESSES: None

BACKGROUND: Under Texas Constitution, Art. 16, sec. 59(a), 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 the 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.

In 2003, voters approved Proposition 4 (SJR 30 by Lindsay), amending Art 16, sec. 59 to include the development of parks and recreational facilities among the public rights and duties for which the Legislature may pass appropriate laws for conserving and developing natural resources. Proposition 4, which added Art. 16, sec. 59(c-1), permitted the Legislature to authorize certain districts to issue bonds for development and maintenance of recreational facilities. The amendment allowed districts wholly or partly in certain specified counties to issue bonds for these purposes. The bonds could take the form of a lien on property assessed for the payment of the bonds. The amendment also allowed the Legislature to authorize the districts to levy taxes to pay interest and create a sinking fund for the bonds. The Legislature could not authorize bonds without first providing for a proposition to be submitted to voters in the affected district.

The Legislature in 2003 enacted SB 624 by Lindsay, which substantially implemented the provisions of Proposition 4. The bill required a district board to file a public park plan covering the proposed improvements and estimated cost at least 10 days before a bond election. The bill restricted the outstanding principal amount of bonds, notes, and other obligations issued to finance parks and recreational facilities to the lesser of one percent of the value of the taxable property in the district or an amount sufficient to cover the estimated cost provided in the park plan.

Under SB 624, districts may not issue bonds for the development and maintenance of indoor or outdoor swimming pools or golf courses. The bill charged the Texas Commission on Environmental Quality with adopting rules for financing recreational facilities funded through the issuance of bonds, emphasizing the primary goal of financing water, sewer, and drainage facilities to serve the districts and the secondary goal of financing recreational facilities.

DIGEST: HJR 83 would authorize the Legislature to enact legislation adding Hays County to the counties in which certain districts could issue bonds for recreational facilities under Art. 16, sec 59(c-1) of the Texas Constitution.

The proposal would be presented to the voters at an election on Tuesday, November 3, 2009. The ballot proposal would read: “The constitutional amendment authorizing the legislature to permit conservation and reclamation districts in Hays County to issue bonds supported by ad valorem taxes to fund the development and maintenance of parks and recreational facilities.”

SUPPORTERS SAY: HJR 83 would extend to Hays County the development of parks and recreational facilities as a constitutionally authorized power of certain districts, primarily municipal utility districts (MUDs). Unlike most other political subdivisions, 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 83, along with the necessary enabling legislation, would allow MUDs in Hays County to issue revenue bonds — if local voters approved — for the purpose of creating parks, rather than relying on surplus revenues alone.

Almost all MUDs are in unincorporated areas. Hays County, which has seen rapid population growth in recent years, has an increasing number of

residents living in unincorporated areas. The county has a compelling need for park development, which this proposal would address, without granting broader authority to other districts outside the county.

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 been able to establish large parks, but they often fall short in offering neighborhood-level recreation opportunities. This proposed amendment would address this deficiency in Hays County while open land remains. Many housing developments also have recreational needs that MUDs could fill. Outside of individual homeowners' associations, MUDs may be the only viable option for providing a park or other facility, such as a hike-and-bike trail.

Some have expressed concerns about giving MUDs this authority due to low voter turnout in bond elections, but that issue could cut both ways. People interested in acquiring parks or those in opposition to additional bonds in these districts could become involved actively in the elections and could have a large impact. HJR 83 would retain current notice requirements that would have to contain the proposition and an estimate of its costs, which would allow residents to make an informed vote.

**OPPONENTS
SAY:**

HJR 83 would expand to another county the broad authority to grant to districts should focus on managing water and sewer systems, collecting taxes, selling tax bonds, and building infrastructure additional authority to tax for purposes unrelated to their core purpose. Many 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. This amendment could enable a tiny fraction of a voter pool in Hays County to commit the other 99 percent to paying for revenue bonds for parks.

NOTES

The enabling bill, HB 2441 by Rose, which would add Hays County to the list of counties where conservation and reclamation are authorized to issue bonds for recreational facilities, is on the May 8 General State Calendar.