

BILL ANALYSIS

Senate Research Center
81R33444 SJM-D

C.S.H.B. 4789
By: Brown, Betty (Deuell)
Intergovernmental Relations
5/14/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The City of Forney built, owns, operates, and maintains six public parks, including two which have recently been improved significantly. In 2006, voters in Forney approved a \$14 million bond package to build a 127-acre community park which opened in March. In the last two fiscal years alone, the City of Forney has committed over \$16 million to recreational facility development.

Just outside the city limits of Forney, a large population lives in four large special utility districts. This population makes up the vast majority of the people who use the City of Forney parks. Current estimates show that over 70 percent of the park users live outside the city limits of Forney. This causes an inequitable burden for Forney taxpayers. The overwhelming majority of city park users are non-city resident, while Forney taxpayers' shoulder 100 percent of the cost of parks operations, maintenance, and capital.

C.S.H.B. 4789 amends current law relating to the creation of the Kaufman County Parks Improvement District, provides authority to impose a tax and issue bonds, and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Kaufman County Parks Improvement District board of directors in SECTION 1 (Section 3873.156, Special District Local Laws Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 4, Special District Local Laws Code, by adding Chapter 3873, as follows:

CHAPTER 3873. KAUFMAN COUNTY PARKS IMPROVEMENT DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 3873.001. DEFINITIONS. Defines "board," "city," "commissioners court," "county," "director," "district," and "park."

Sec. 3873.002. NATURE OF DISTRICT. Provides that the Kaufman County Parks Improvement District (district) is a special district created under Section 59 (Conservation and Development of Natural Resources and Parks and Recreational Facilities; Conservation and Reclamation Districts), Article XVI (General Provisions), Texas Constitution.

Sec. 3873.003. PURPOSE; DECLARATION OF INTENT. (a) Provides that the creation of the district is essential to accomplish the purposes of Sections 52 (Counties, Cities or Other Political Corporations or Subdivisions; Lending Credit; Grants; Bonds) and 52-a (Loan or Grant of Public Money for Economic Development), Article III (Legislative Department), and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this chapter. Provides that by creating the district and in authorizing the city, the county, and other political subdivisions to contract with the

district, the legislature has established a program to accomplish the public purposes set out in Section 52-a, Article III, Texas Constitution.

(b) Provides that the creation of the district is necessary to promote, develop, encourage, and maintain tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the district.

(c) Prohibits this chapter and the creation of the district from being interpreted to relieve the city or county from providing the level of services provided, as of the effective date of the Act enacting this chapter, to the area in the district. Provides that the district is created to supplement and not to supplant the city or county services provided in the area in the district.

Sec. 3873.004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) Provides that the district is created to serve a public use and benefit.

(b) Provides that all land and other property included in the district will benefit from the improvements and services to be provided by the district under powers conferred by Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other powers granted under this chapter.

(c) Provides that the creation of the district is in the public interest and is essential to further the public purposes of developing and diversifying the economy of the state and preserve and conserve the natural resources of the state.

(d) Provides that the district will promote the health, safety, and general welfare of residents, employers, employees, potential employees, visitors, and consumers in the district, and of the public; promote the health, safety, welfare, and enjoyment of the public by landscaping, developing, maintaining, financing, operating, and making capital improvements to parks in the district, which are necessary for the restoration, preservation, and enhancement of scenic beauty; conserve the natural resources of the district; and cooperate with the city in the furtherance of common purposes of the city and the district.

(e) Provides that the district will not act as the agent or instrumentality of any private interest even though the district will benefit many private interests as well as the public.

Sec. 3873.005. INITIAL DISTRICT TERRITORY. Provides that the district is initially composed of the territory described by Section 2 of the Act enacting this chapter.

Sec. 3873.006. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES. Provides that all or any part of the area of the district is eligible to be included in a tax increment reinvestment zone created under Chapter 311 (Tax Increment Financing Act), Tax Code; a tax abatement reinvestment zone created under Chapter 312 (Property Redevelopment and Tax Abatement Act), Tax Code; or an enterprise zone created under Chapter 2303 (Enterprise Zones), Government Code.

Sec. 3873.007. LIBERAL CONSTRUCTION OF CHAPTER. Requires that this chapter be liberally construed in conformity with the findings and purposes stated in this chapter.

[Reserves Sections 3873.008-3873.050 for expansion.]

SUBCHAPTER B. CONFIRMATION OF CREATION OF DISTRICT

Sec. 3873.051. CONFIRMATION ELECTION. (a) Authorizes the commissioners court to order an election on the issue of confirming the creation of a district on the commissioners court's own motion or after the filing of a written petition signed by a number of the registered voters who reside in the area of the proposed district equal to at least five percent of the votes received in that area in the most recent gubernatorial general election.

(b) Requires that the petition or commissioners court's motion include the name of the district; an accurate description of the area included in the district by any appropriate method, including by metes and bounds and by public roads or rights-of-way; and an accurate plat of the area included in the district.

Sec. 3873.052. NOTICE OF HEARING. (a) Requires the commissioners court, if a petition is filed under Section 3873.051(a)(2) (relating to after the filing of a written petition), to set a date for a hearing on the petition that is after the 20th day but on or before the 40th day after the date the petition is filed.

(b) Requires the commissioners court to publish notice of the petition and the hearing date in a newspaper of general circulation in the county.

(c) Requires that the notice be published once each week for a period of two weeks before the hearing date.

Sec. 3873.053. HEARING. (a) Requires that evidence at the hearing be taken as in civil cases in the county court. Requires the commissioners court to hear all arguments for and against confirming the creation of the district.

(b) Authorizes the hearing to be adjourned from time to time on good cause shown.

(c) Requires the commissioners court to grant the petition and order the election on the issue of confirming the creation of the district if the commissioners court finds that the petition is signed by the required number of registered voters; the district will serve the purposes prescribed by Sections 3873.003 and 3873.004; and the district includes any area within the boundaries of the city.

Sec. 3873.054. CONFIRMATION ELECTION. (a) Requires that the election be held in the area of the proposed district on the date of the first regularly scheduled countywide election that follows the date of the order of the election and for which there is sufficient time to comply with other requirements of law.

(b) Requires that the returns on the election be certified and canvassed and the results declared, in the same manner as provided for other county elections. Requires the commissioners court, if a majority of the votes received on the issue favor creation of the district, to declare the creation of the district confirmed and to enter the results in its minutes at its next regularly scheduled meeting.

Sec. 3873.055. COSTS OF CREATION, CONFIRMATION, AND ORGANIZATION. Authorizes the costs necessarily incurred in the creation, confirmation, and organization of the district to be paid from the district's tax revenue or from revenue from bond anticipation notes, the first revenue bonds issued by the district, or any other source.

[Reserves Sections 3873.056-3873.100 for expansion.]

SUBCHAPTER C. BOARD OF DIRECTORS

Sec. 3873.101. GOVERNING BODY; TERMS. Provides that the district is governed by a board of directors (board) of five directors who serve staggered terms of four years, with two or three directors' terms expiring June 1 of each odd-numbered year.

Sec. 3873.102. ELECTION DATE. Requires the board to hold elections for directors on the uniform election date in May in odd-numbered years. Requires that the elections of the first directors under this section be held on the first uniform election date in May that occurs in the years in which initial directors' terms expire under Section 3873.107.

Sec. 3873.103. ELIGIBILITY. (a) Requires a director to be a citizen of the United States and reside in the district.

(b) Prohibits a director from being an officer or employee of the county or the city.

(c) Prohibits a director from serving more than four consecutive full terms.

Sec. 3873.104. VACANCY. Requires the board, if a vacancy occurs on the board, to appoint a person to fill the vacancy for the remainder of the unexpired term.

Sec. 3873.105. QUORUM. Provides that three directors constitute a quorum of the board. Authorizes the board to act on the majority of the vote of the assembled quorum.

Sec. 3873.106. COMPENSATION AND REIMBURSEMENT. Provides that a director is not entitled to compensation but is entitled to reimbursement for necessary expenses, including travel expenses, incurred in performing the duties of a director. Requires the board, if the amount of a director's reimbursement for necessary expenses exceeds \$250, to approve the reimbursement.

Sec. 3873.107. INITIAL VOTING DIRECTORS. (a) Provides that the initial board consists of five voting directors who meet the eligibility requirements described by Section 3873.103 and are appointed by the commissioners court.

(b) Provides that of the initial directors, the terms of directors appointed for positions 1 through 3 expire June 1, 2011, and the terms of directors appointed for positions 4 and 5 expire June 1, 2013.

(c) Provides that Section 3873.102 does not apply to this section.

(d) Requires the commissioners court, if permanent directors have not been elected under Section 3873.102 and the terms of the temporary directors expire, to appoint successor initial directors to serve four-year terms.

[Reserves Sections 3873.108-3873.150 for expansion.]

SUBCHAPTER D. POWERS AND DUTIES

Sec. 3873.151. DEPOSITORIES AND DISBURSEMENTS. (a) Provides that money and other funds belonging to or under control of the board are public funds.

(b) Requires the board to select depositories for the money.

(c) Requires that a warrant or check for the withdrawal of money be signed by two persons authorized to sign a warrant or check by resolution entered in the minutes of the board.

Sec. 3873.152. PERSONNEL. (a) Authorizes the board to employ managers, secretaries, stenographers, bookkeepers, accountants, technical experts, and any other support personnel or agents the board considers necessary.

(b) Requires the board to determine the qualifications and set the duties of employees.

(c) Authorizes the board to call on the county attorney, district attorney, or criminal district attorney of the county for the legal services it requires. Authorizes the board, in addition, or in the alternative, to contract for and compensate its own legal staff.

Sec. 3873.153. SEAL. Requires the board to adopt a seal to place on each lease, deed, or other instrument usually executed under seal and on other instruments as the board requires.

Sec. 3873.154. **CONTRACTS.** (a) Authorizes the board to enter into any contract that the board considers necessary or convenient to carry out the purposes and powers granted by this chapter, including a lease or other contract connected with, incident to, or affecting the acquisition, financing, construction, equipment, maintenance, renovation, repair, improvement, or operation of real property or facilities.

(b) Authorizes the board, if the contract is for an amount less than or equal to the amount provided by Section 262.023 (Competitive Requirements for Certain Purchases), Local Government Code, to enter into the contract without advertisement. Provides that if the contract is for more than that amount, the contract is subject to the bidding provisions for contracts applicable to a county under that section.

(c) Requires that a contract, to be effective, be approved by resolution of the board; executed by the president or vice president; and attested by the secretary or treasurer.

Sec. 3873.155. **SUITS.** Authorizes the board to sue and be sued in its own name.

Sec. 3873.156. **DISTRICT RULES AND ORDERS; CRIMINAL PENALTY; CIVIL ENFORCEMENT.** (a) Authorizes the board to adopt reasonable rules and orders applicable to the administration, enforcement, and collection of district taxes; littering and litter abatement in the parks in the district, including the possession and disposition of glass containers; activities that endanger the health and safety of persons or property in parks in the district; tenants, business privileges, concessionaires, users, and activities affecting district property and facilities, including any provision necessary to protect and conserve natural resources; and a road that borders or runs through a park, subject to an applicable municipal ordinance.

(b) Authorizes a police officer, constable, sheriff, or other law enforcement officer with jurisdiction in the county to arrest a person violating rules or orders of the board and carry out the prosecution of a person arrested under this subsection in the proper court.

(c) Provides that a person who violates a rule or order adopted under this section commits an offense. Provides that an offense under this section is a Class C misdemeanor.

(d) Authorizes the county attorney, district attorney, and criminal district attorney or an attorney retained by the board for this purpose to bring an action to enjoin a violation of board rules or orders.

Sec. 3873.157. **BOND NOT REQUIRED.** Provides that if the board brings an action to enforce this subchapter or enjoin a violation of a rule or order adopted by the board under this subchapter, the board is not required to post a bond.

Sec. 3873.158. **POWER TO ACQUIRE PROPERTY.** (a) Authorizes the board, for the conservation of the district's natural resources, to acquire land in the county, inside or outside the district, including streams, lakes, submerged lands, and swamplands, to create parks. Authorizes the board to develop, improve, protect, and promote the land in a manner the board considers conducive to the general welfare.

(b) Authorizes the land to be acquired by gift or devise; lump-sum payment; or installment payments regardless of an option to purchase.

(c) Provides that the district does not have the power of eminent domain.

(d) Prohibits the commissioners court by eminent domain from acquiring land for park purposes and subsequently transfer by any means the land or control of the land to the board for park purposes. Prohibits the court, if the commissioners court by eminent domain acquires land for purposes other than park purposes,

from subsequently transferring by any means the land or control of the land to the board for park purposes unless at least 10 years have expired after the date of the acquisition by the court. Provides that this subsection applies only to land that the commissioners court acquires by eminent domain.

Sec. 3873.159. SALE OR LEASE OF LANDS. (a) Authorizes the board, if the board determines that land owned by the district is not necessary for the purposes for which the land was acquired, to sell and dispose of the land on terms the board considers advisable.

(b) Authorizes the board to lease or permit the use of land for purposes consistent with the purposes for which the land was acquired and on terms the board considers advisable.

(c) Requires the board, before land owned by the district is authorized to be sold, once a week for four consecutive weeks in a newspaper of general circulation in the county, to publish a notice of its intention to sell the land. Requires that the notice include an accurate description of the land, the time of a public hearing that is before the 10th day before the disposition date, and the time and place at which sealed bids will be received.

Sec. 3873.160. ACCEPTANCE OF GRANTS AND GRATUITIES. Authorizes the board, to promote, establish, or accomplish a purpose of this chapter, to accept grants and gratuities in any form from any source, including the United States government, this state, any state or federal agency, any private or public corporation, or any other person; accept donations of money or other property; and act as trustee of land, money, or other property.

Sec. 3873.161. COOPERATION WITH OTHER PUBLIC AUTHORITIES. Authorizes the district, under an agreement with a public authority, including the city, in control of parkland in the county, to assume control of all or part of the parkland in or contiguous to the district or to contract or cooperate with the authority in connection with the use, development, improvement, and protection of the parkland.

Sec. 3873.162. REQUIREMENTS FOR RENTAL OF WATER-ORIENTED RECREATIONAL EQUIPMENT. (a) Provides that this section applies only to the rental of water-oriented recreational equipment in the district.

(b) Prohibits a person from renting water-oriented recreational equipment to a person younger than 18 years of age.

(c) Authorizes a person to rent water-oriented recreational equipment to a person who is at least 18 years of age only if each person who is at least 18 years of age who will use the equipment signs a written agreement for the rental of that equipment and each person who will use the equipment, regardless of age, is listed on the agreement.

Sec. 3873.163. PLAN FOR DEVELOPMENT OF PARKS; ANNUAL BUDGET; FILING. (a) Requires the board to develop and approve a three-year master plan for capital development and the development of parks and district facilities.

(b) Requires the board to annually review and revise the master plan during the budget process and to file a copy of the master plan and revisions with the county clerk.

(c) Requires the board to annually develop and approve a one-year budget that is required to include the suggested revisions and additions to the master plan.

(d) Requires the board to submit the annual budget to the commissioners court for approval and to file a copy with the county clerk.

[Reserves Sections 3873.164-3873.200 for expansion.]

SUBCHAPTER E. GENERAL FINANCIAL PROVISIONS

Sec. 3873.201. DISBURSEMENTS AND TRANSFERS OF MONEY. Requires the board by resolution to establish the number of directors' signatures and the procedure required for a disbursement or transfer of the district's money.

Sec. 3873.202. GENERAL OBLIGATION AND REVENUE BONDS. Authorizes the board, for the payment of all or part of the costs of a park improvement project or park services, to issue bonds in one or more series payable from and secured by ad valorem taxes, revenues, grants, gifts, contracts, leases, or any combination of those funds. Authorizes bonds to be liens on all or part of the revenue derived from park improvements or services authorized under this chapter.

Sec. 3873.203. TERMS AND CONDITIONS OF BONDS. (a) Authorizes bonds to be issued to mature serially or otherwise not more than 40 years from their date of issue.

(b) Authorizes the proceeds from the sale of bonds, if provided by the bond order or resolution, to be used to pay interest on the bonds during and after the period of the acquisition or construction of any park improvement project to be provided through the issuance of the bonds, to administrative and operation expenses to create a reserve fund for the payment of the principal of and interest on the bonds, and to create any other funds.

Sec. 3873.204. PLEDGES. (a) Authorizes the board to pledge all or part of the income from park improvement projects financed under this chapter or from any other source to the payment of the bonds, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds. Requires that the pledged income be set and collected in amounts that will be at least sufficient, with any other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds and, to the extent required by the order or resolution authorizing the issuance of the bonds, to provide for the payment of expenses in connection with the bonds and to pay operation, maintenance, and other expenses in connection with the improvement projects authorized under this chapter.

(b) Authorizes bonds to be additionally secured by a mortgage or deed of trust on real property relating to the facilities authorized under this chapter owned or to be acquired by the district and by chattel mortgages, liens, or security interests on personal property appurtenant to that real property. Authorizes the board to authorize the execution of trust indentures, mortgages, deeds of trust, or other forms of encumbrance to evidence the indebtedness.

(c) Authorizes the board to pledge to the payment of the bonds all or any part of any grant, donation, revenue, or income received or to be received from the United States government or any other public or private source.

Sec. 3873.205. MUNICIPAL APPROVAL. (a) Requires a district to obtain the approval of the governing body of the city before issuing bonds for a park improvement project and for the plans and specifications of a park improvement project financed by the bond issuance.

(b) Authorizes the district before finally approving a capital improvements budget, instead of approval of bonds by the city, to obtain approval from the governing body of the city of a capital improvements budget for a period not to exceed five years. Authorizes a district, if a district obtains approval of a capital improvements budget, to finance the capital improvements and issue bonds specified in the budget without further approval from the city.

(c) Requires the district to obtain approval from the city of the plans and specifications of any park improvement project that involves the use of the rights-

of-way of streets, roads, or highways or the use of city land or any easements granted by the city.

(d) Provides that the city is not obligated to pay any bonds, notes, or other obligations of the district.

Sec. 3873.206. AD VALOREM TAX; ELECTION. (a) Requires the district to hold an election in the manner provided by Subchapter L (Elections), Chapter 375 (Municipal Management Districts in General), Local Government Code, to obtain voter approval before the district imposes an ad valorem tax.

(b) Authorizes the district, if authorized at an election under Subsection (a) and subject to Subsection (c), to impose an annual ad valorem tax on taxable property in the district to maintain and operate the district; construct or acquire park improvements; or provide a park service.

(c) Requires the board to determine the tax rate. Prohibits the tax rate from exceeding 35 cents per \$100 valuation.

[Reserves Sections 3873.207-3873.250 for expansion.]

SUBCHAPTER F. DISSOLUTION

Sec. 3873.251. DISSOLUTION. (a) Authorizes the commissioners court by order to dissolve the district. Authorizes the order to be adopted on the commissioners court's own motion or after the filing of a written petition signed by a number of the registered voters who reside in the district equal to at least 10 percent of the votes received in the district in the most recent gubernatorial general election.

(b) Requires the commissioners court to give notice of a hearing on the petition and hold a hearing in the manner prescribed by Sections 3873.052 and 3873.053 for a petition for confirming the creation of the district.

(c) Requires the commissioners court to grant the petition and order the dissolution of the district if the court finds that the petition meets the requirements of this section and that the dissolution is in the best interest of the county.

(d) Provides that on dissolution of the district, the property and other assets, the debts and other liabilities, and the obligations of the district that are not related to city property become those of the county. Provides that the property and other assets, the debts and other liabilities, and the obligations of the district that are related to city property become those of the city.

SECTION 2. Provides that the district initially includes all territory contained in Forney Independent School District that is not included in the boundaries of the City of Forney as it exists on the effective date of this Act.

SECTION 3. (a) Provides that the legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) Provides that the governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality (TCEQ).

(c) Provides that TCEQ has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(d) Provides that the general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with.

(e) Provides that all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act have been fulfilled and accomplished.

SECTION 4. Effective date: upon passage or September 1, 2009.