

BILL ANALYSIS

Senate Research Center
83R3256 JXC-D

S.B. 280
By: Zaffirini
Intergovernmental Relations
3/20/2013
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Thousands of visitors tube on and otherwise use the San Marcos River each year. The number of visitors to the river, especially for tubing, has increased substantially in recent years as cities and local entities with authority over neighboring rivers (e.g. the Guadalupe River) have enacted laws that discourage certain types of behavior on the river.

One example is the "can ban" on the Guadalupe River. No longer allowed to bring disposable containers on to the river, visitors are now flocking to the unregulated San Marcos River in Caldwell and Guadalupe counties, specifically around the area of Martindale, to go tubing. Tubing is the recreational activity of floating down the river in a tube, usually drinking beer or other alcohol.

The increased activity is causing issues for residents of Caldwell and Guadalupe counties and the City of Martindale. Landowners along the public river are reporting problems with littering, trespassing, and public intoxication. In addition, the increased traffic, littering, and safety issues impact the local roadways. Because the counties do not have adequate funding to enforce existing laws and protect public safety, nor the authority to act on the river, which is public property, these problems are left unaddressed.

This legislation authorizes the creation of a parks and recreation district in Caldwell County, similar to the Comal Water Oriented Recreation District which regulates the use of Canyon Lake and portions of the Guadalupe River. If approved by the voters, the district would be authorized to levy a fee on water equipment rentals, pass ordinances applicable to littering and public safety, and fund litter cleanup and law enforcement efforts on the San Marcos River.

As proposed, S.B. 280 amends current law relating to the creation and operation of a park and recreation district in a county with frontage on the San Marcos River and to the authority of the district to collect fees, and provides penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 10, Local Government Code, by adding Chapter 324A, as follows:

CHAPTER 324A. PARK AND RECREATION DISTRICTS IN COUNTIES WITH FRONTAGE ON SAN MARCOS RIVER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 324A.001. **ELIGIBLE COUNTIES.** Authorizes a district, in a county that has river frontage on the San Marcos River and a population of more than 35,000 but not more than 100,000, to be created for all or part of the unincorporated area in the county to:

- (1) improve, equip, maintain, finance, and operate any public park located in the district and owned or leased by the county;
- (2) conserve the natural resources in the district; and
- (3) improve the public health, safety, and welfare in the district.

Sec. 324A.002. DEFINITIONS. Defines "board," "district," "district facility," and "fee" in this chapter.

[Reserves Sections 324A.003-324A.020 for expansion.]

SUBCHAPTER B. CREATION OF PARK AND RECREATION DISTRICT

Sec. 324A.021. ORDER OF ELECTION. (a) Authorizes the commissioners court of the county to order an election on the issue of the creation of a park and recreation district (district) under this subchapter:

- (1) on the commissioners court's own motion; or
 - (2) after the filing of a written petition signed by a number of the registered voters who reside in the county equal to at least five percent of the votes received in the county in the most recent gubernatorial general election.
- (b) Requires that the petition or commissioners court's motion include certain information relating to the proposed district.

Sec. 324A.022. NOTICE OF HEARING. (a) Requires the commissioners court, after the filing of the 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. 324A.023. 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 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 the creation of the district if the court finds that certain criteria have been met.

Sec. 324A.024. CREATION ELECTION. (a) Requires that the election be held 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 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 district created and to enter the results in the commissioners court's minutes at the commissioners court's next regularly scheduled meeting.

Sec. 324A.025. COSTS OF CREATION AND ORGANIZATION. Authorizes the costs necessarily incurred in the creation and organization of the district to be paid from the district's revenue from any source.

[Reserves Sections 324A.026-324A.040 for expansion.]

SUBCHAPTER C. BOARD OF DIRECTORS OF PARK AND RECREATION DISTRICT

Sec. 324A.041. COMPOSITION AND APPOINTMENT OF BOARD. Sets forth the composition of the board of directors of the district (board) and the appointment and terms of its members.

Sec. 324A.042. OATH AND BOND. (a) Requires a board member, not later than the 30th day after the date the member is appointed, to qualify by taking the official oath and by filing a good and sufficient bond with the county clerk.

(b) Requires that the bond meet certain criteria.

Sec. 324A.043. COMPENSATION AND REIMBURSEMENT. Provides that a board member is not entitled to compensation but is entitled to reimbursement for necessary expenses, including travel expenses, incurred in performing the duties of a board member. Requires that a board member's reimbursement for necessary expenses, in excess of \$250, be approved by the commissioners court. Requires that a board member's approved expense account be paid in due time by the board's check or warrant.

Sec. 324A.044. QUORUM; MAJORITY VOTE. Provides that four board members constitute a quorum of the board and authorizes the board to act on the majority of the vote of the assembled quorum.

Sec. 324A.045. APPROVAL OF COMMISSIONERS COURT. (a) Provides that the board is subject to the supervision of the commissioners court in the exercise of all the board's rights, powers, and privileges and in the performance of the board's duties.

(b) Authorizes the commissioners court, not later than the 30th day after the date the board acts, to approve or disapprove the board's action. Provides that the act is ineffective if the court disapproves the act, and that the act, otherwise, becomes effective on the earlier of the date the commissioners court approves the act or the 31st day after the date the board acted.

Sec. 324A.046. ORGANIZATION; MEETINGS. (a) Requires the board, annually, to elect a president, a vice president, a secretary, and a treasurer, except that the first president is required to be designated by the commissioners court at the time of the appointment of the first board.

(b) Authorizes the offices of secretary and treasurer to be held by the same person, and authorizes the president, if either the secretary or the treasurer is absent or unavailable, to appoint another board member to act for and perform the duties of the absent or unavailable officer.

(c) Requires the board to set times for and hold regular meetings, and authorizes the board, on the request of two or more board members, to hold a special meeting at other times as necessary.

(d) Requires the board to hold meetings at a public place in a county in which at least part of the district is located.

[Reserves Sections 324A.047-324A.060 for expansion.]

SUBCHAPTER D. POWERS AND DUTIES

Sec. 324A.061. 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 board's minutes.

Sec. 324A.062. PERSONNEL. (a) Authorizes the board to employ certain persons the board considers necessary.

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

(c) Authorizes the board to call on the county attorney, district attorney, or criminal district attorney for the legal services the board requires and to contract for and compensate the board's own legal staff.

Sec. 324A.063. 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. 324A.064. 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 prescribed by Section 262.023 (Competitive Requirements for Certain Purchases), to enter into the contract without advertisement. Provides that the contract, if the contract is for more than that amount, is subject to the bidding provisions applicable to county contracts.

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

Sec. 324A.065. SUITS. Authorizes the board to sue and be sued in the board's own name.

Sec. 324A.066. DISTRICT RULES AND ORDINANCES; CRIMINAL PENALTY; CIVIL ENFORCEMENT. (a) Authorizes the board to adopt reasonable rules and ordinances applicable to:

(1) the administration, enforcement, and collection of district fees and the issuance, suspension, and cancellation of revenue permits;

(2) littering and litter abatement on public water in the district, including the possession and disposition of glass containers;

(3) activities that endanger the health and safety of persons or property on public water in the district, subject to the public's paramount right to navigate inland water; and

(4) tenants, business privileges, concessionaires, users, and activities affecting district property and facilities, including hunting, fishing,

boating, camping, tubing, swimming, and conservation of natural resources.

(b) Authorizes a police officer, constable, sheriff, or other law enforcement officer with jurisdiction in the county to arrest persons violating board rules or ordinances and carry out the prosecution of those persons in the proper court.

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

(d) Authorizes the county attorney, the district attorney, the 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 ordinances, and if the board authorizes, to seek damages and attorney's fees based on the violation, if the violation involves certain actions.

Sec. 324A.067. **BOND.** Provides that the board, if the board brings an action to enforce this subchapter or enjoin a violation of a rule or ordinance adopted by the board under this subchapter, is not required to post a bond.

Sec. 324A.068. **POWER TO ACQUIRE PROPERTY.** (a) Authorizes the board, for the conservation of the natural resources of the county, to acquire land in the county, in or outside the district, including a stream, a lake, submerged land, and swampland, 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 with or without 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 after August 31, 2013, and subsequently transferring by any means the land or control of the land to the board for park purposes or other purposes. Prohibits the court, if the commissioners court by eminent domain acquires land for purposes other than park purposes after August 31, 2013, from transferring by any means the land or control of the land to the board for park purposes or other purposes before the 10th anniversary of the date the court acquired the land.

Sec. 324A.069. **SALE OR LEASE OF LANDS.** (a) Authorizes the board, if the board determines that any 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 may be sold, once a week for four consecutive weeks in a newspaper of general circulation in the county, to publish a notice of the board's intention to sell the land. Requires that the notice include certain information.

Sec. 324A.070. **GRANTS AND GRATUITIES.** Authorizes the board, to promote, establish, or accomplish a purpose of this chapter, to:

(1) 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;

- (2) accept donations of money or other property; and
- (3) act as trustee of land, money, or other property.

Sec. 324A.071. COOPERATION WITH OTHER PUBLIC AUTHORITIES. Authorizes the district, under an agreement with a public authority in control of parkland in the county, to assume control of all or part of the parkland in the district or contiguous to the district or to contract or cooperate with the public authority in connection with the use, development, improvement, and protection of the parkland.

Sec. 324A.072. IMPROVEMENT OF PUBLIC HIGHWAY. Authorizes the board to enter into an agreement with a public authority in control of a highway in a park area or connecting two or more park areas to make alterations in the route or width of the highway or to grade, drain, pave, or otherwise improve the highway.

Sec. 324A.073. 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.

Sec. 324A.074. PERMANENT IMPROVEMENTS ON LAND WITH RIVER FRONTAGE. (a) Prohibits the district from purchasing a river access location except for certain uses as set forth.

- (b) Prohibits the district, at a river access location permitted under this section, from engaging in any activity that competes with private enterprise except for the provision and operation of a permanent improvement permitted under this section.
- (c) Authorizes the district, subject to the restrictions provided by Section 324A.068(d), to accept as a grant, gratuity, gift, or devise land with river access and any improvement that may exist on the land at the time of the gift.

[Reserves Sections 324A.075-324A.090 for expansion.]

SUBCHAPTER E. FEES AND FINANCIAL PROVISIONS

Sec. 324A.091. NO AD VALOREM TAXES OR BONDS. Prohibits the district from imposing an ad valorem tax or issuing a bond.

Sec. 324A.092. FEES FOR USE OF DISTRICT FACILITY. (a) Authorizes the board to charge or require the payment of a fee for the use of a district facility except a drinking water or sanitary facility.

- (b) Requires that a fee assessed under this section be equal and uniform within classes defined by the board.
- (c) Authorizes the board, except as provided by a contract entered into by the board, to determine the rate of fees charged for the use, operation, or lease of district facilities, services, or equipment. Requires that the fees be in amounts that

will produce revenue at least sufficient to pay the expenses of operating and maintaining district facilities.

Sec. 324A.093. FINANCIAL STATEMENT; BUDGET. (a) Requires the board, on or before February 1 of each year, to prepare and file with the officer responsible for the county budget a complete financial statement showing the financial status of the district and the district's properties, funds, and indebtedness.

(b) Requires that the financial statement be prepared in accordance with standards adopted by the Governmental Accounting Standards Board and to show separately all information concerning leases, promissory notes, and other indebtedness of the district, and fee revenue of the district.

(c) Requires the board, at the time the financial statement is filed, to file with the commissioners court a proposed budget of the board's needs for the next fiscal year. Requires that the proposed budget include items that the board is unable to finance from the district's revenues, and the board requests purchase of with county funds.

(d) Requires the officer responsible for the county budget to include the district's proposed budget on the calendar for the next regularly scheduled meeting of the commissioners court. Provides that the items certified by the board, as part of the county's tentative budget, are subject to state law relating to county budgets.

(e) Authorizes the county auditor to conduct a general audit and issue a financial statement of the district at times the auditor considers appropriate.

(f) Requires the board to operate the parks and facilities under the board's control in a manner that will produce revenue at least sufficient to pay the expenses of operating and maintaining the district's parks and facilities without seeking from the commissioners court the appropriation of additional money for those expenses.

Sec. 324A.094. IMPOSITION AND COLLECTION OF FEES; CRIMINAL PENALTY. (a) Authorizes the district to collect fees and issue revenue permits within the district to carry out any purposes prescribed by this chapter and to pay the obligations of the district.

(b) Authorizes the district to collect only the following fees:

(1) a fee, at a rate not greater than five percent established by board resolution, imposed on each person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays \$1 or more for certain rentals, services, or membership fees; and

(2) a fee imposed by board resolution at a rate not greater than \$2 a person for certain rentals or services.

(c) Provides that a fee imposed under this section is payable by the purchaser or consumer of the item subject to the fee except that if the person responsible for collecting the fee does not comply with this chapter by collecting and remitting the fee to the district, the person responsible for collecting the fee is liable for the fee.

(d) Prohibits a person who does not hold a revenue permit issued by the board from providing or offering for remuneration a service, a use of a facility, or a rental of an item if the price paid for the service, use, or rental is subject to a fee under this section. Requires a person who holds a revenue permit issued by the district to collect the fees imposed under this section and to report and remit the collected fees to the district as the district requires.

(e) Requires the revenue permit holder, if a revenue permit holder remits fees after the due date but on or before the 30th day after the due date, to pay the district a penalty of five percent of the amount of fees due. Requires the revenue permit holder, if the revenue permit holder remits the fees after the 30th day after the due date, to pay the district a penalty of 10 percent of the amount of fees due.

(f) Provides that delinquent fees and accrued penalties draw interest at the rate of 10 percent a year beginning on the 60th day after the date the fees were due.

(g) Authorizes the board, if a revenue permit holder does not collect and remit a fee imposed, to suspend, revoke, or cancel the holder's revenue permit and pursue any other remedy the district may have to collect the fee under civil or criminal law.

(h) Provides that a person who violates Subsection (d) commits an offense if the person rents or offers for rent an item subject to a fee under this section. Provides that each provision or offer for remuneration of the service, use, or rental is a separate offense. Provides that an offense under this subsection is a Class C misdemeanor, unless it is shown at the trial of the defendant that the defendant has previously been convicted of an offense under this subsection, in which case the offense is a Class B misdemeanor.

(i) Provides that this section, in the same manner that this section applies to a person who provides or offers a service, a use of a facility, or a rental of an item in the district, applies to a person who resides or does business outside the district but:

(1) provides or offers recreational guide or shuttle services or the rental of water-oriented recreational equipment in the district; and

(2) regularly transports customers into or out of the district for river or parking access.

(j) Authorizes the board to settle a claim for a penalty or interest accrued on a fee imposed by this chapter if the board finds that the revenue permit holder exercised reasonable diligence to comply with this chapter.

(k) Authorizes the district to impose different fee rates for different types of services or rental items described by Subsection (b)(2). Prohibits a fee rate from exceeding the maximum rate provided by that subdivision.

Sec. 324A.095. FEE EXEMPTION. Prohibits the district from collecting a fee on a transaction between a person and an interest operated by the United States in the district or a state park in the district.

Sec. 324A.096. DISPOSITION OF REVENUE. Authorizes a district, in addition to any other purpose or obligation of a district, to use district fee revenue and other revenue for certain tasks as set forth.

Sec. 324A.097. REPLACEMENT FUND. (a) Authorizes the board to establish a replacement fund. Authorizes the board to deposit in the fund any amounts from board revenue that the board considers appropriate.

(b) Authorizes the replacement fund to be used to rebuild, restore, repair, or improve district property that is destroyed or injured or as necessary to expand, improve, demolish, repair, or replace district property because of unfitness.

(c) Authorizes the board to invest the replacement fund in bonds of the United States, this state, or a county, municipal corporation, or school district of this state.

[Reserves Sections 324A.098-324A.120 for expansion.]

SUBCHAPTER F. ANNEXATION; INCORPORATION; DISSOLUTION

Sec. 324A.121. ANNEXATION. (a) Authorizes the voters of an unincorporated area that is contiguous to a district to file a petition with the board to annex the area to the district.

(b) Requires that the petition contain an accurate description of the area proposed for annexation, accompanied by an accurate map or plat of the area.

(c) Requires that the petition be signed by at least one percent of the registered voters in the area proposed for annexation.

(d) Requires the board, if the board considers the proposed annexation desirable, to file the petition with the commissioners court with a statement of the reasons the board favors the annexation.

(e) Requires the commissioners court to give notice of a hearing on the petition and hold a hearing in the manner prescribed by Sections 324A.022 and 324A.023 for a petition for creation of a district.

(f) Authorizes the commissioners court to grant the petition if the commissioners court finds the petition meets the requirements of this section and the annexation promotes the purposes for which the district was created.

Sec. 324A.122. EFFECT OF INCORPORATION OR ANNEXATION. Provides that the incorporation of a political subdivision or the annexation of any part of a park and recreation district by a political subdivision does not affect the district's boundaries.

Sec. 324A.123. DISANNEXATION. (a) Authorizes the voters of or county commissioners for any area in a district to file a petition with the board to disannex the area from the district.

(b) Requires that the petition contain an accurate description of the area proposed for disannexation, accompanied by an accurate map or plat of the area.

(c) Requires that the petition be signed by at least one percent of the registered voters in the area proposed for disannexation or by each county commissioner for the area proposed for disannexation.

(d) Requires the board to file the petition with the commissioners court under certain circumstances.

(e) Requires the commissioners court to give notice of a hearing on the petition and hold a hearing in the manner prescribed by Sections 324A.022 and 324A.023 for a petition for creation of a district.

(f) Authorizes the commissioners court by order to grant the petition if the commissioners court finds that certain requirements are met.

(g) Provides that the disannexation takes effect on the date stated by the order or, if the order does not state a date, on the date the order is issued.

Sec. 324A.124. DISSOLUTION OF DISTRICT. (a) Authorizes the commissioners court by order to dissolve a district. Authorizes the order to be adopted if certain conditions are met.

(b) Requires the commissioners court to give notice of a hearing on the petition and hold a hearing in the manner prescribed by Sections 324A.022 and 324A.023 for a petition for creation of a 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 county's best interests.

(d) Provides that the county, on dissolution of the district, assumes the district's property and other assets, debts and other liabilities, and obligations.

[Reserves Sections 324A.125-324A.900 for expansion.]

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 324A.901. REQUIREMENTS FOR RENTAL OF WATER-ORIENTED RECREATIONAL EQUIPMENT. (a) Provides that this section applies only to the rental of water-oriented recreational equipment in a 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:

(1) 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

(2) each person who will use the equipment, regardless of age, is listed on the agreement.

SECTION 2. Effective date: September 1, 2013.