

# Memorandum



DATE April 12, 2019

TO The Honorable Members of the Economic Development & Housing Committee:  
Tennell Atkins (Chair), Rickey D. Callahan (Vice-Chair), Lee M. Kleinman,  
Scott Griggs, Casey Thomas, II, B. Adam McGough, Mark Clayton, Kevin Felder,  
Omar Narvaez

SUBJECT **Municipal Management Districts**

## Summary

On April 15, 2019, the Committee will be briefed on Municipal Management Districts (MMDs). Specifically, staff will review three pending MMD bills, and propose modifications to the bills to allow for more City oversight.

## Background

In 2018, the Texas House Committee on Special Purpose Districts issued an Interim Report proposing “template language” for future MMD bills. The template is missing many of the City approval rights and protections contained in the legislation that created our existing MMDs.

Three MMD bills have been filed this legislative session utilizing the template form, and more are expected in the future. The briefing is intended to review the template, propose Dallas-specific amendments to the template, and establish a staff directive regarding City of Dallas support for pending and future MMD creation bills.

## Financing

There is no City financing associated with this matter.

## Recommendation

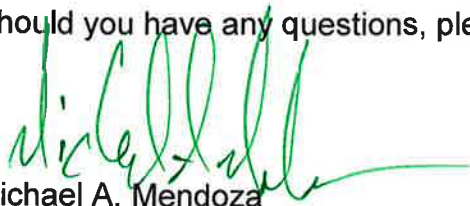
Staff recommends modifications to the MMD bill template for proposed and future MMDs in the City of Dallas to allow for municipal oversight.

**Municipal Management Districts**

April 12, 2019

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Should you have any questions, please contact me at (214) 671-5257.



**Michael A. Mendoza**

**Chief of Economic Development and Neighborhood Services**

- c: Chris Caso, City Attorney (Interim)  
Carol A. Smith, City Auditor (Interim)  
Billerae Johnson, City Secretary  
Preston Robinson, Administrative Judge  
Kimberly Bizer Tolbert, Chief of Staff to the City Manager  
Majed A. Al-Ghafry, Assistant City Manager
- Jon Fortune, Assistant City Manager  
Joey Zapata, Assistant City Manager  
Nadia Chandler Hardy, Assistant City Manager and Chief Resilience Officer  
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Laila Aleqresh, Chief Innovation Officer  
Directors and Assistant Directors

# Municipal Management Districts

## Economic Development and Housing Committee

**April 15, 2019**

**Courtney Pogue, Director  
Office of Economic Development  
City of Dallas**



# Purpose of Briefing

- In 2018, the Texas House Committee on Special Purpose Districts issued an Interim Report proposing “template language” for future MMD bills.
- The template is missing many of the City approval rights and protections contained in the legislation that created our existing MMDs.
- Three MMD bills have been filed this legislative session utilizing the template form, and more are expected in the future.
- This briefing is intended to review the template, propose Dallas-specific amendments to the template, and establish a staff directive regarding pending and future MMD creation bills.

# Overview

- Municipal Management Districts (MMDs) are special districts formed by state legislation. Each MMD covers a defined geographic area, and may be used to finance improvements and pay for services within that area.
- The scope of each MMD is limited by its creating legislation. MMDs may impose ad valorem taxes, impact fees, special assessments, bonds, or other fees in accordance with the legislation creating the district.
- MMDs are governed by a board of directors. Board eligibility, election procedures, and other management information is dependent upon the creation legislation's language.

# Overview

- In general, MMDs generate revenue by issuing bonds for public improvements. MMD bond debt is not City debt, and does not impact City bonding capacity.
- Bond debt may be supported by ad valorem taxes, property assessments, impact fees, or other revenue methods permitted in the MMD's creation legislation.
- Bond debt may also be supported by City incentives such as Tax Increment Financing (TIF), as permitted by the MMD's creation legislation.

# Creation

- Municipal Management Districts (MMDs) can be created in two ways:
  - By the Texas Commission on Environmental Quality (TCEQ) pursuant to Texas Local Government Code Chapter 375, which requires a resolution of the municipality in support of the creation, or
  - Special legislation codified into the Texas Special Districts Local Laws Code
- All existing Dallas MMDs have been formed under one-off legislation under the Special Districts Local Laws Code.
- Three bills are pending this legislative session to create additional MMDs pursuant to special legislation under the Special Districts Local Laws Code, and others are anticipated to be filed.

# Existing Dallas MMDs

Four MMDs currently existing in the City of Dallas:

1. **Trinity River West MMD** – Chapter 3871, Texas Special District Local Laws Code. Formed in 2009.
2. **Cypress Waters MMD** - Chapter 3874, Texas Special District Local Laws Code. Formed in 2009.
3. **North Oak Cliff MMD** - Chapter 3884, Texas Special District Local Laws Code. Formed in 2009.
4. **University Hills MMD** - Chapter 3947, Texas Special District Local Laws Code. Formed in 2017.



# MMD Template Language

In October of 2017, House Speaker Joe Strauss issued four interim charges to the House Committee on Special Purpose Districts. The fourth charge was to identify best practices in the creation of MMDs, and to study and make recommendations for standard language for the creation of MMDs through special law.

In December 2018, the Committee issued an Interim Report (attached as **Addendum A**) which set out “template language” for future MMD bills. The template is intended to establish common language to allow for simplified review of MMD bills.

The guidance in the Interim Report makes clear that MMD bills are not required to conform to the template, and recognizes that districts are unique and must satisfy local citizens.

# Pending and Potential MMD Bills

- **SoGood Cedars MMD** (SB 2446 – West)
  - Map of proposed MMD area in *Addendum 3*. All properties in the proposed boundary are owned by Cedar East Phase I, LLC, an entity affiliated with Hoque Global. The site is in an Opportunity Zone.
- **New Park MMD** (SB 2445 – West)
  - Map of proposed MMD area in *Addendum 4*. All of the parcels are owned by entities affiliated with Hoque Global. The site is in an Opportunity Zone.
- **Oak Farms MMD** (HB 4733 - Gonzalez)
  - This bill was filed on April 11, 2019. We do not yet have a map of the proposed MMD boundaries.
- **Walden Pond MMD** (no bill filed)
  - On January 22, 2019 the City Secretary's Office received legal notice of intent to form the Walden Pond MMD, but no bill has been filed to date. We do not yet have a map of the proposed MMD boundaries, but the location is in Kaufman County.

# Local Oversight

- In the past, cities have maintained oversight of MMDs in several ways, such as:
  - Appointing board members
  - Municipal consent required for MMD bond issuances
  - Approval of construction within municipal right of way
  - Municipal consent required for MMD boundary changes
  - Ability to dissolve the MMD
- Local control has been removed from the template language.

# Dallas Amendments

In keeping with the Interim Report's guidance that bills are not required to conform to the template, and that districts must serve local citizens, staff recommends several "Dallas-specific" amendments to the template language.

A redlined document is attached as **Appendix B** showing the Interim Report's template language as modified by the Dallas-specific amendments.

# Dallas Amendments

Proposed amendments include:

1. No MMD shall take any action other than holding a formation meeting with its initial board members until:
  - a. Passage of a resolution by the City Council approving a development agreement between the City, the MMD, and other parties deemed necessary by the City such as the master developer; and
  - b. Execution of such development agreement.
2. If no development agreement is signed within 48 months of the effective date of the MMD legislation, the MMD will automatically terminate. The effective date must be within the same calendar year as the date of the legislative vote.

# Dallas Amendments

3. The following types of properties will not be subject to any assessment, tax, fee, or other revenue source charged by the MMD:
  - i. Property owned by a governmental entity;
  - ii. Any property with one of the following property tax exemptions:
    - a) Residence Homestead Exemption
    - b) Age 65 or Older Homestead Exemption
    - c) Surviving Spouse of Person Who Received the 65 or Older Exemption
    - d) Disabled Person Homestead Exemption
    - e) Surviving Spouse of a Person who Received the Disability Exemption
    - f) Residence Homestead Exemption for Disabled Veteran with 100% Disability
    - g) Donated Residence Homestead of Partially Disabled Veteran or Surviving Spouse of Disabled Veteran who qualified for Donated Residence Homestead
    - h) Surviving Spouse of Member of Armed Forces Killed in Action
    - i) Disabled Veteran or Survivors of a Disabled Veteran
    - j) Tax Deferral for 65 or Older or Disabled Homeowner
    - k) Charitable Exemption
    - l) Religious Exemption

# Dallas Amendments

4. The MMD may not carry out law enforcement services without the consent of the City.
5. The MMD may not amend its boundaries without the consent of the City.
6. The MMD may not subdivide into more than one MMD.
7. The MMD creation legislation may not be amended without the consent of the City.
8. The MMD may not assess a sales and use tax, and may not utilize navigation district powers.
9. Assessment liens shall not be superior to any City lien.

# Dallas Amendments

10. Board meetings must be held at locations accessible to the general public, and notice of each board meeting must be filed with the City Secretary's Office at least 72 hours prior to the meeting time.
11. The city manager, city auditor, and city attorney (or a designee of each) shall serve as an ex-officio board member.
12. The MMD is subject to the City charter and City land use regulations. All improvement projects must comply with any applicable codes and ordinances of the City.
13. The MMD may not provide, conduct, or authorize an improvement project on the city streets, highways, rights-of-way, or easements without the consent of the City.



# Next Steps

1. With the committee's approval, staff will attempt to have the three pending bills modified to include the Dallas-specific template modifications.
2. Staff will attempt to have all future bills include the Dallas-specific template modifications.

# Addendum A – 2018 Interim Report

See attachment

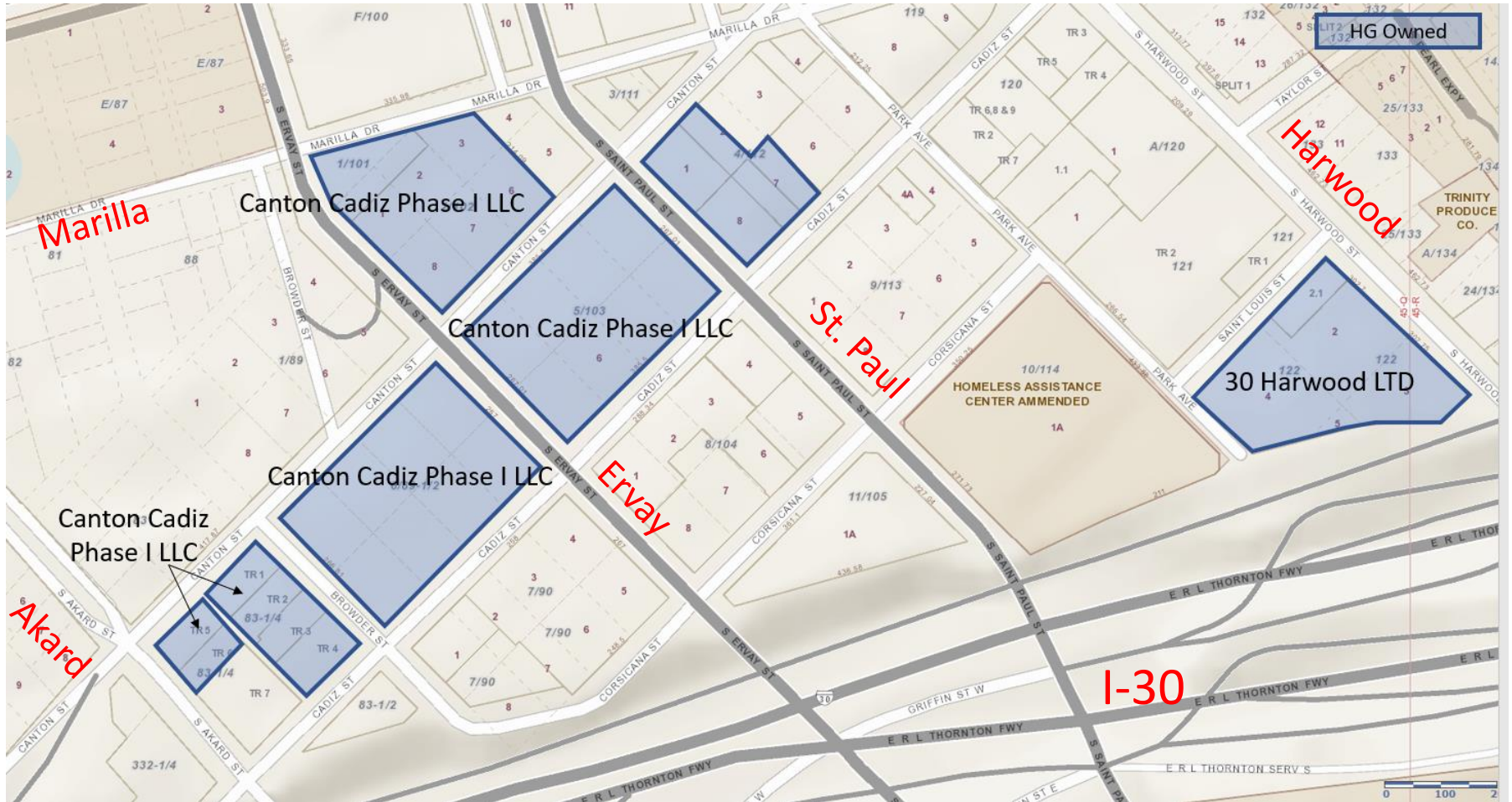
# Addendum B – Dallas Template

See attachment

# Addendum C – SoGood Cedars MMD Map



# Addendum D – New Park MMD Map



# Municipal Management Districts

## Economic Development and Housing Committee

**April 15, 2019**

**Courtney Pogue, Director  
Office of Economic Development  
City of Dallas**





# INTERIM REPORT

*to the 86<sup>th</sup> Texas Legislature*



## HOUSE COMMITTEE ON SPECIAL PURPOSE DISTRICTS

*December 2018*

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**HOUSE COMMITTEE ON SPECIAL PURPOSE DISTRICTS  
TEXAS HOUSE OF REPRESENTATIVES  
INTERIM REPORT 2018**

**A REPORT TO THE  
HOUSE OF REPRESENTATIVES  
86TH TEXAS LEGISLATURE**

**JIM MURPHY  
CHAIRMAN**

**COMMITTEE CLERK  
LAURIE MCANALLY**

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Committee On  
Special Purpose Districts

December 11, 2018

Jim Murphy  
Chairman

P.O. Box 2910  
Austin, Texas 78768-2910

The Honorable Joe Straus  
Speaker, Texas House of Representatives  
Members of the Texas House of Representatives  
Texas State Capitol, Rm. 2W.13  
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Special Purpose Districts of the Eighty-fifth Legislature hereby submits its interim report including recommendations for consideration by the Eighty-sixth Legislature.

Respectfully submitted,

  
Jim Murphy

  
Mary Ann Perez

  
Philip Cortez

  
Mike Lang

  
Cecil Bell, Jr.

  
Scott Cosper

  
Ben Leman

Mary Ann Perez  
Vice-Chairman

Members: Cecil Bell, Jr., Philip Cortez, Scott Cosper, Mike Lang, Ben Leman

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## INTRODUCTION

At the beginning of the 85th Legislature, the Honorable Joe Straus, Speaker of the Texas House of Representatives, appointed seven members to the House Committee on Special Purpose Districts. The committee membership included the following: Jim Murphy, Chairman; Mary Ann Perez, Vice Chair; Cecil Bell, Jr., Philip Cortez, Scott Cosper, Mike Lang, and Leighton Schubert. Schubert resigned his seat in January, 2018, and the remainder of his term was filled by special election by Ben Leman. Leman was subsequently appointed to this committee by Speaker Straus.

The committee was given jurisdiction over all matters pertaining to:

- The creation of any special purpose district not otherwise assigned by these rules to other standing committees, including a crime control and prevention district, library district, public improvement district, municipal management district, municipal development district, irrigation district, water improvement district, water control and improvement district, river authority, or navigation district; and
- Any other local government special purpose district authorized or created under law that as the result of its creation may levy or impose a tax, assessment, or fee for a special purpose.

## INTERIM STUDY CHARGES

In October of 2017, House Speaker Joe Straus issued the following interim charges to the House Committee on Special Purpose Districts:

1. Evaluate the impact of Hurricane Harvey on residential communities within special purpose districts and districts' capacity to respond. Review the role and adequacy of the districts in emergency preparedness and response. Make recommendations for strengthening districts' emergency operations.
2. Review the statutes and procedures related to state approval and oversight of water district bonds that finance utility, infrastructure, and other projects. Identify opportunities for improving the state's oversight of bond issuance and make recommendations for statutory changes.
3. Investigate the feasibility of dissolving special purpose districts and determine if there are criteria that would make dissolution acceptable. Make recommendations for codifying the dissolution requirements and procedures.
4. Identify best practices in the creation of municipal management districts. Study the feasibility of and make recommendations for creating standard language for the creation of municipal management districts through special law.
5. Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 85th Legislature.

All charges were studied by the committee as a whole.

Charges 1 and 2 were authored by Laurie McAnally.

Charges 3 and 4 were authored by Jason Briggs.

**Charge 1**  
**Disaster Preparedness**

## Charge 1: Disaster Preparedness

### A State of Disaster

*"I am only nervous because...Katrina...started kind of similarly. It wasn't on anybody's radar to be anything too crazy, and then all of a sudden it unfolded to be worse and worse."*<sup>1</sup>

*The colors the National Weather Service uses to show rainfall on its weather map couldn't represent the deluge in southeastern Texas, so the NWS added two more purple shades to its map. The old scale topped out at more than 15 inches; the new limit tops 30 inches.*<sup>2</sup>

2016 was an unusual year for weather disasters. Right, **2016**.

There were 15 weather and climate events with losses exceeding \$1 billion across the United States. The eight severe storms, four inland floods, a tropical cyclone, drought, and wildfire led to 138 fatalities and caused \$46 billion in direct costs.<sup>3</sup>

The sea level continues to rise. Population (and wealth) continues to cluster on the coasts. And Texas has a lot of coast.

We don't have blizzards. Wildfires touch us occasionally. We have suffered through numerous droughts and heat waves. But flooding and severe storms are our bugbear. Our monster under the bed.

Between 1980 to 2016, the U.S. South/Central and Southeast regions experienced a higher frequency of billion-dollar disaster events than any other region. And at the dead center of this region sits Texas; an apocalyptic target. On the map of the United States disaster incidents at [climate.gov](http://climate.gov), Texas is depicted as the reddest of the red, the state most likely to suffer a disastrous weather event. If the giant meteor strikes, it will probably be here.

And we achieved this fabulous designation in 2016. Before Harvey.

So it's not a question of whether or not this will happen again. The question is how we will be prepared to face it when it does.

### What's Your Plan?

*"You can't prevent every horrible scenario for every individual within an area."*<sup>4</sup>

We should all have a plan for what to do when all hell breaks loose. Most of us don't. Or our plans are vague: "I'll put everyone in the car and drive away." "I'll head up to the attic with bottled water and a chainsaw." "I'll hit the supermarket and arm wrestle someone for the last can of Spam."

It's time like these that we appreciate governmental entities that employ experts to help steer all of us through disaster. It's tax money well spent. Thankfully, special purpose districts are also

required to prepare more thoroughly for unthinkable situations, especially in the Houston area. Thanks to Hurricane Ike.

## **Ike**

On September 13, 2008, Hurricane Ike made landfall over the east end of Galveston Island, and then headed into Houston. The major wind event decimated electric utilities, leaving many without power for weeks. The lack of power created a major health hazard by affecting waste and sewer services, creating backups in the system and overflow into homes, businesses, and water supplies.<sup>5</sup> Many communities were forced to issue boil water advisories for public drinking water systems.

Life is miserable in Texas without power and air conditioning. It's impossible without water.

According to the report from the House Select Committee on Hurricane Ike Devastation to the Texas Gulf Coast, although public utilities are required to have generators in the event of an emergency, only 85 percent of affected retail public utilities were in compliance with current state rules when Ike struck. Of those who were in compliance, 25 percent of those generators failed to function or ran out of fuel. One week after Ike, 250,000 residents remained without water. Another 625,000 residents' status could not be determined due to poor communications between the TCEQ and public utility providers.

## **Senate Bill 361**

SB 361, passed in 2009, requires utilities in Harris County and adjacent counties with a population greater than 400,000 (Fort Bend and Montgomery Counties) to ensure the emergency operation of its water system during an extended power outage as soon as safe and practicable following the occurrence of a natural disaster.<sup>6</sup> These utilities must submit their emergency plan to the TCEQ for approval.

The rule allows a financial waiver for systems that can demonstrate implementation of an emergency plan would result in a financial burden to their customers. The affordability standards, developed by the Environmental Protection Agency, allow for a waiver if such services are considered "unaffordable." The waiver application adds the annual cost of purchasing and maintaining equipment to meet the requirements of the rule to the average annual water cost per connection. If the total of these two factors is equal to or greater than 2% of the area median household income, implementing the rule is considered a financial burden for the affected utilities' customers, and the affected utility will be eligible for a waiver.

Fifty-four utilities in the Houston-Fort Bend area were allowed to opt out after meeting affordability criteria for public water systems. Of those fifty-four, twelve could be classified as a special purpose district.

The Texas Commission on Environmental Quality developed a template to assist affected utilities in the development of their emergency plan. And although utilities outside the Houston-Fort Bend area are not required to develop such a plan, many of them have requested the TCEQ's template for their own use.<sup>7</sup>



## The Test

*"I'm a 5th generation Houstonian. I've been here, my family's been here a long time. Obviously, we've never seen water like this."*<sup>8</sup>

*"No one knows how well you've structured a system until it's stressed."*<sup>9</sup>

How well would SB 361's provisions work? Everyone was about to find out.

Harvey started as a typical weak August tropical storm that affected the Lesser Antilles and dissipated over the central Caribbean Sea. However, after re-forming over the Bay of Campeche, Harvey rapidly intensified into a category 4 hurricane before making landfall along the middle Texas coast. The storm then stalled, with its center over or near the Texas coast for four days, and became the most significant tropical cyclone rainfall event in United States history, both in scope and peak rainfall amounts, since reliable rainfall records began around the 1880's.<sup>10</sup>

The Texas Commission on Environmental Quality began calling groundwater and surface water systems along the south coastal regions to ensure that they were preparing themselves and to offer the agency's assistance.<sup>11</sup> Because many drinking water chemicals are manufactured in the Houston area, the TCEQ began contacting other chemical drinking water companies around the United States to ensure enough supplies were on hand to send to Texas. In addition, the agency touched base with manufacturers of hand-held water testing equipment and water testing labs to make sure they could handle the extra demand.

After landfall, water and wastewater facilities were contacted for an update of their operational status, focusing on public water systems that were having operational issues and were damaged. The TCEQ tracked 2200 drinking water systems serving about 11 million people in the 58 counties of the disaster declared area. Of those, about 738 were public water systems owned by districts. Of those 738, eight systems reported inoperable conditions at the peak of the disaster due to equipment failures caused by wind damage and storm surge. The majority of those systems were back up within a week. None of the twelve special utility districts that received a financial waiver for emergency preparedness reported outages.

As a comparison, nine days after Ike, nearly 250,000 people living in Harris County still lacked running water.

Hurricane Harvey was a different kind of storm than Ike. Ike was a windstorm, Harvey was inundation. But utilities are already considering changes to adapt to future events. For already constructed facilities, utilities are discussing moving or elevating control panels and generators. For facilities that are still in design, many utilities are carefully considering whether design changes should be made to elevate facilities higher than previously contemplated.<sup>12</sup>

## **The Statistics**

*"Almost all of the Houston area experienced a 1,000-year storm with some areas receiving rain equivalent to a 40,000-year event. GPS calculations showed that the weight of the water covering the Houston area was sufficient to cause the very land beneath the city to subside by a quarter inch."*<sup>13</sup>

According to a study of the impact of Hurricane Harvey produced by the Texas Association of Water Board Directors, 190,000 homes, or 9 percent of the Houston MSA's housing stock, experienced flooding. Less than 20 percent of those flooded units were located within the utility districts that provide water, wastewater and storm water services.

- 65% of flooded homes located within MUDs are located in districts platted before 1981--the first year FEMA made flood plain maps available for Harris County.
- of the 1,096 wastewater treatment plants in the Houston MSA tracked by the TCEQ, only three were destroyed by the storm, and none of those three were operated by MUDs.
- the 63 MUDs which experienced flooding of 200 or more houses have \$195 million collectively in cash reserves; meaning that these MUDs could pay three years of debt service collectively without collecting a single dollar of tax revenue.<sup>14</sup>

The data shows that districts are taking potential flooding events into account when considering development and emergency response plans and are working to ensure that reserves are adequate to continue payment on obligations in case of an emergency. Future planning by districts must continue to be adaptable and responsive to different types of severe weather events to ensure that, no matter the type of storm, the needs of taxpayers within the district can be met quickly and sufficiently.

## **Flood Pools**

There is considerable debate as to the exact definition of the term "flood pool." It is not recognized by most dictionaries. When a query is made to dictionary.com, the server offers up the word "clodpoll." The U.S. Department of the Interior defines it as "reservoir volume above active conservation capacity and joint use capacity that is reserved for flood runoff and then evacuated as soon as possible to keep that volume in readiness for the next flood."<sup>15</sup> The Brazos River Authority defines it as "a specified area within a flood control lake and the surrounding land that may only be inundated during periods of flooding."

Those who use the term with respect to Harvey use it to describe the area flooded by the U.S. Army Corps of Engineers to prevent the reservoirs from overflowing and easing downstream flooding. And the term can vary by the rate of rainfall, prior conditions, and development over time.

Prior to a historical amount of rain falling on the Houston area, no one outside of the Corps of Engineers could have imagined that this term existed. No one could have imagined a scenario where a neighborhood would be purposely flooded. Not the districts, nor the builders. However, the pools definitely exist, and will reoccur.

The Corps of Engineers purposely purchased land around the reservoir considered to be in the 100 year "flood pool" area. Unfortunately, it wasn't nearly enough. Maps need to be updated to take Harvey into consideration, and that information needs to be shared more readily with local officials and property owners.

And as a side note, if there is a choice, neighborhoods should never be deliberately flooded in the middle of the night. That's just basic common courtesy.

### **A Note About Sprawl**

*"The city (is not) the paved-over disaster so often evoked in the media. Houston has more acres of parkland and greenspace than any other large city in America, and it ranks third behind San Diego and Dallas in park acreage per capita. The city has substantially fewer impervious surfaces covered by buildings, roads, and parking lots (39.2 percent) and substantially more absorbent surfaces with trees, grasses, and soils (60.6 percent) than similarly populated American cities."*<sup>16</sup>

*"If Harvey happened in 1850 instead of today...the results would be nearly identical in terms of land flooded...No zoning law or ban on parking lot construction would ever have 'fixed' anything about that."*<sup>17</sup>

Sprawl is an ugly word. There are those who believe that the answer to saving the world is to pack the middle and lower classes into dense living spaces. In Texas, the land has always been plentiful, and families are able to own a little piece of it, in the form of a house with a backyard.

In a series of articles, the New York Times suggested that the flooding in Houston was partly Houston's fault, because of the "sprawl." The Houston Chronicle, owned by interests in San Francisco, has apparently made it its mission to create stories about the immorality of municipal utility districts; districts that create affordable housing for Houstonians. Affordable housing with space to breathe.

If only, opines the New York Times, Houston hadn't lost so much wetlands to development, the flooding might not have been so disastrous. And it's true, development does tend to cover green space. According to research done by Texas A&M, nearly 25,000 acres of wetlands were lost to development around Houston. That lost acreage would have stored nearly 4 billion gallons of stormwater. However, Harvey dropped an estimated 19 **trillion** gallons of rain on Texas. That lost stormwater storage amounts to 0.2 percent of the water that fell during the storm.<sup>18</sup> Impervious cover, while necessary to drainage, would not have changed the outcome during Harvey.

In fact, New York City, in the middle of an area that relies on dense housing, and lots of green space in the form of Central Park, suffered \$19 billion in damage from Superstorm Sandy, which dropped less than an inch of rain on the city.

It's not the sprawl, y'all.

## Recommendations

*"Three 500-year floods in three years means either we're free and clear for the next 1,500 years, or something has seriously changed." <sup>19</sup>*

Something has seriously changed. Whether or not you believe in global warming, it's hard to ignore that disaster-type weather is happening more often. And there are no indications that the trend is anywhere near abating.

The provisions of SB 361 should be implemented statewide. At the very least, the SB 361 should be extended to include all Texas coastal counties, not just Fort Bend, Harris and Montgomery. Flooding was severe in other counties, such as Galveston, Jefferson, Orange, Hardin, Tyler, Brazoria, Wharton, Chambers, Liberty, San Jacinto, Jasper, Newton and Fayette. Wind damage was extreme in Aransas, Nueces, Refugio and San Patricio counties. Shouldn't those counties have their best chance to ensure reliable water service during an emergency, too?

Obviously, the Houston area needs its long-delayed third reservoir. Reservoirs, unfortunately, are difficult to come by. And if approved, planning and construction can take decades. An interim solution would be to appropriate funds to increase the capacity of the two existing reservoirs and other waterways by dredging silt and debris that have built up over the decades.

When airports are planned, homeowners are bought out. And when airports are expanded, homeowners in the path of the new runways are also bought out. If the federal government is aware of land designated as "flood pools," then that area should be considered an expansion of the existing reservoir's footprint. Landowners should be given updated disclosure information that their property lies in a flood pool and presented with the choice of purchasing flood insurance or having their property purchased.

Harris County Judge Ed Emmett, who is also the county's Director of Emergency Management, has put forth suggestions to help prevent a catastrophic flooding event in the future. Two of them deal with special districts and are worth a mention here:

- The roles and responsibilities of municipal utility districts and other special districts should be clarified to include flood control and storm water management, in cooperation with the Harris County Flood Control District. Existing districts should be studied for untapped capacity, and new districts developed with flood control in mind. Until a true 100-year flood level is defined, the 500-year level should be used for detention purposes.
- The State of Texas should consider authorizing clear rules for approval of development plats in unincorporated areas, specifically those areas in the extraterritorial jurisdiction of a city. Additionally, there should be clear requirements for disclosure of flood risk to homebuyers and renters.

While many people have different ideas about the role special purpose districts in general (and municipal utility districts in particular) should play in flood control, it is important to remember

that more government does not necessarily mean better results. Flood control districts, river authorities, cities, and counties are a few of the governments which already govern and often share responsibilities for flood planning and mitigation. While utility districts can certainly play a part, careful consideration should be given so that duplication of government is limited. Current systems should be evaluated for potential efficiency improvements before any expansion of government is mandated.

Houston is the fourth largest city in the United States. It isn't going anywhere. There is no "safe" place to build a community. California faces wildfires, the northeast has its blizzards, and the midwest its tornadoes. Telling people they "shouldn't build there" is disingenuous. We all have to live somewhere. And Houston made it work. Within days, the city was operational, unlike New Orleans, which took months to reach a fraction of normality. Stay in Houston, a great place to live and work. But buy the flood insurance.

# **Charge 2**

## **Bonding**

## Charge 2 : Bonding

### Boom

*"There was never any question of budget. The only limit was my imagination."*<sup>20</sup>

*"Laborers forced out of work in the Rust Belt heard tales about walking up to oil rigs...and going to work for \$12 an hour. By the thousands, they headed west and learned the stories were true."*<sup>21</sup>

*"Whoa, we're half way there... livin' on a prayer."*<sup>22</sup>

The 1980's. Big, brash, and in your face. Neon colors, parachute pants, MTV, bands featuring singers with big hair, baby on board signs. And best of all for Texas, a booming oil economy, exemplified by J.R. Ewing.

A decade earlier, OPEC oil embargoes had everyone scrambling. Americans lined up at gas tanks on their appointed day to fill up their tanks before the supply ran out. To encourage production, President Carter deregulated the price of crude. Drilling increased, especially in Texas, and the price jumped from \$16 to \$40 per barrel in one year. Everyone wanted to be a part of it, and everyone wanted to move to Texas.<sup>23</sup>

All of these people were going to need a place to live. And municipal utility districts stepped in where cities wouldn't, or couldn't. MUDs could sell bonds and construct facilities to serve homes and development that developers promised to build. Those bonds relied on future tax value projections. And it worked great. The price of oil went up, up, up. So did the economy. And the people kept on coming and buying houses, so there was always new development to count on.

Oil and Texas. They mix well. Until they don't.

### Ka-Boom

*"1986 began with OPEC in disarray and the plunge of West Texas intermediate crude oil from \$25 a barrel to \$9 a barrel in the course of a few short months."*<sup>24</sup>

*"There was general consensus with regard to districts and the real estate business that if you build it, they will come. And they were coming. They were coming by the hundreds of thousands. It was just great. And it worked, until it didn't."*<sup>25</sup>

Unfortunately, we weren't the only ones drilling. Other countries joined in the fun, and prices began to tumble, taking the Texas economy with it. Other factors, such as trade imbalances, the decline of agriculture, and the Challenger explosion, rocked the state even more; financially and emotionally. King Ranch was struggling. Banks were failing. Savings and Loans disappeared. Business failures in Texas jumped 56.4 percent in 1986, compared with a nationwide increase of

6.9 percent.<sup>26</sup> Lawmakers grappled with financial problems during two special sessions. The only industry to show growth was the pawnshop.

Once the jobs started disappearing, the mortgage failures began.

At the time, MUDs issued bonds based on future development, which works great if you are issuing municipal bonds or even hospital bonds. There's a bigger entity to pick up the pieces when things fall apart. But in the case of the MUDs, the only entity to pick up those pieces were existing homeowners. And they weren't enough.

Some MUDs muddled through the bust, restructuring debt service. Some MUD tax rates shot up to pay the debt service. Some MUDs filed for reorganization and didn't pay their bonds. It's important to note that the MUDs themselves, for the most part, didn't fail because of bad developers. They were a casualty of the economy. In an era when companies such as Texaco, RCA, E.F. Hutton and TWA ceased to exist, it's not surprising that a few MUDs found themselves in trouble.

The difference was that these weren't companies, they were homes. And everyone; developers, bond holders and regulators, agreed to take steps to ensure that this never happened again. Especially during bad economic times.

### **The Fix**

*"A crisis will prove whether a system works. It worked in 2008, and it's worked in Harvey. It didn't work in the late eighties, and we fixed it."*<sup>27</sup>

*"Getting a bond issue past the water commission is something like getting a very thorough physical exam."*<sup>28</sup>

There is always risk in life. The challenge is how much risk you are willing to bear. Do you buy the renters' insurance? Do you give personal information to "IRS agents" over the phone? Do you drive over the speed limit? Or do you slow down when children are in the backseat? We make these kinds of decisions constantly.

Years before the "too much government" era began, those involved in MUDs decided they wanted more government regulation to lessen the risk. They wanted more eyes on the finances. They wanted more protection for the taxpayers, homeowners, and bond holders.

Working with the Texas Commission on Environmental Quality, rules were developed to keep the risk of a successful development on the developer and not to transfer that risk from the developer either to the taxpayer or the bondholders.<sup>29</sup>

The rules force developers to complete construction of planned infrastructure and to assume the market risk of the bonds of a MUD by requiring that minimum levels of development be achieved before MUD bonds could be issued. The result is that developers must "advance" the



costs of MUD engineering and construction projects at the outset, but may be "reimbursed" all or substantially all of these advanced costs, plus a limited amount of interest carry on advanced funds, if development goals are achieved in a timely manner. There must be a reasonable amount of taxable value already generated on the ground to meet the tax rate feasibility rules before the bonds could be sold and the developers could be reimbursed.

The TCEQ's bond review program provides for the review of bonds issued by districts that are intended for financing water, wastewater, and drainage infrastructure. The reviews provide assurance that the bonds are economically feasible, and that the districts are not being laden with debt they cannot afford.<sup>30</sup> Among other things, the MUD must demonstrate adequate cash flow to meet debt service and operations and maintenance requirements with adequate reserves. All water, wastewater and drainage facilities, along with related lift stations, pumping facilities and all developer financed street and road improvements to serve the proposed development must be at least 95% complete. Unquestionably, this process is working. Not one MUD has gone into default since the TCEQ rules were adopted.

### **Advantages of the MUD Model**

*"Houston, which is soon to be the third largest city, could not have become what it is if the system had not been fixed and we weren't allowed to use special districts in our region." <sup>31</sup>*

One of the advantages of the model is that it allows a water district to sell tax exempt bonds to finance public infrastructure.

MUDs are the only bond issuer in the state that is required to obtain state agency approval, making it a highly regulated process.

These rules have produced investment grade debt. A rating directly relates to lower borrowing costs. Those lower costs relate to lower interest rates, which results in lower tax rates, which results in fewer costs passed on to the homeowner.<sup>32</sup> On average, new homes in MUDs sell for \$150,000 less than non-MUD homes. Fifty five percent of the MUDs in Houston's ETJ have a lower tax rate than Houston.<sup>33</sup>

Among the nation's very largest urban areas, Houston has had the lowest cost of new housing. For example, even in smaller urban areas in many parts of the country today, new home prices for comparable housing run close to or over \$200 per square foot in contrast to Houston suburban prices of around \$125 per square foot. According to research from the Association of Water Board Directors, the use of MUDs is the most significant reason why this has been the case.<sup>34</sup>

In addition, MUDs have begun building up significant fund balances for operating and debt service. Because of these fund balances, MUDs in the Houston area were all able to make their debt service payments on September 1, days after Harvey hit. And remember the housing downturn of 2008? There were zero MUD bankruptcies during that time.

## Assessments

The problems in the 1980's were caused because there were no rules preventing MUDs from solely relying on future tax value projections to support the bonds that they were issuing. MUDs could sell bonds and construct facilities to serve homes and developments that developers promised to build. This is the problem with certain assessment-backed bonds.

MUDs must have a certain amount of infrastructure on the ground before bonds can be sold, requiring developers to have "skin in the game." With assessments, bonds are secured by a special assessment lien on property within the district. The amount of each assessment lien is based on mathematical formulas that consider how much each property will benefit from the infrastructure improvement derived from the bond-funded project. The assessment lien is usually a fixed amount.<sup>35</sup> To remove the burden from the developer as soon as possible, this model requires quick build-out. Assessments are consistent, don't change like property tax rates, and can be prepaid by the owner.

Unlike MUD bonds, assessment backed bonds can be used to **fund** development, rather than **reimburse** a developer, removing the "skin in the game" concept. And since these bonds may not be as highly rated as tax-backed bonds, residents can end up paying far more for facilities.

Typically, assessment revenue bonds are issued within cities, with extensive development agreements. These agreements are stringent, at least meeting and often times exceeding the requirements imposed by TCEQ. This makes sense when the long-term plan is for the city to eventually own the facility. The city has their own inspectors on site during construction, and all construction is to happen to the city's codes and ordinances.<sup>36</sup> If something fiscally bad happens, the city has other revenues to depend on to pay the bills.

But what if it doesn't happen that way?

## PIDs and Assessments

A PID, or a Public Improvement District, is a defined geographical area established to provide specific types of improvements or maintenance which are financed by assessments against the property owners within the area.<sup>37</sup> A PID can provide a means to fund supplemental services and improvements to meet community needs which could not otherwise be constructed or provided. PIDs can include both residential and commercial property.

In the past, these areas were generally within city limits, with city resources available if the assessments aren't adequate. The City of Dallas, for example, typically does not allow the creation of PIDs in undeveloped subdivisions.<sup>38</sup>

But increasingly, the PID is within the city's extraterritorial jurisdiction, with annexation of the area the goal if the development is successful. However, there is nothing in statute that compels the city to assist. That would (hopefully) be part of the development agreement. And development agreements typically aren't subject to state scrutiny.

Stay with me.

Suppose a residential development is going up, PID-style, in a city's ETJ. There will be 100 houses, and each will pay an assessment of \$2000. Bonds are sold with the understanding that they will be paid back with the future assessments. Currently, the developer pays the assessments. As each house is built, the homeowner takes \$2000 of that total off of the developer's hands.

But there's a downturn in the economy. Ten houses are built, no more. The developer won't (or can't) continue paying his share of the assessments on the houseless lots. Without that income, the bonds fail. What happens to the bondholders? What happens to the homeowners in the ten existing houses? And the city has no desire to annex a failed development.

Additionally, that type of financing, typically associated with PIDs, is beginning to ooze over into MUDs and management districts.

MUDs in the 1980's. Assessments today. It's the same thing. And what do they say about people who can't learn from history?

### **Other States**

Typically, fast-growing states rely on special districts to create development. States such as California, Colorado and Florida, have also learned the hard way about what are colloquially called "dirt bonds." In this case, "dirt" doesn't mean junky or bad, it means undeveloped land.

Just like Texas, Colorado experienced problems in the late 1980's after the collapse of the oil industry. In 1991, investors were burned by buying Colorado dirt bonds after Colorado real estate collapsed. The real estate collapsed in turn caused the bonds to collapse--31 bond issues failed, representing \$427 million.<sup>39</sup>

California experienced defaults in the early 1990's with cutbacks in the defense industry. And they are still experiencing problems today, especially in Riverside County, where 21 of its 345 "community facilities districts" report less than required monetary reserves, 12 of those reporting had none of their required reserve on hand.<sup>40</sup> Indicative of Riverside County's problems is a master-planned community in Cathedral City that faltered in 2005 after building only 200 of 1,362 planned single family homes. Taken over by another developer in 2014, the project has stumbled again, resulting in reserve draws to make bond payments on \$11 million in outstanding community facility district special tax bonds.

The Florida Community Development District Report provides a "watch list" of districts currently in trouble:

*"There are 600 Community Development Districts in Florida, 438 of which were begun in 2003 through 2008. They have issued \$6.5 billion in municipal bonds to finance their infrastructure.*

*Since the collapse of the housing market, over 168 of these districts are in default on \$5.1 billion of bonds and, in many cases, the project developer is in financial distress as well. Since some 204 of these projects were launched in 2006 through 2008, all have not yet completed their infrastructure build out, so they have not yet defaulted."*<sup>41</sup>

### **Playing in the Dirt**

*"Everywhere you turn, you see Americans sacrifice their long-term interests for a short-term reward."*<sup>42</sup>

Nonrated bonds are issued by many entities, and are sold without being reviewed by a standard credit rating agency. Many of these bonds are below investment grade; others come from creditworthy borrowers who don't want to face the time and expense of being reviewed by a rating agency.

Some do quite well, backed by developers who know what they are doing and understand the risk. There are some investors who are hesitant to take on the risk, worrying that the housing market won't hold up. But is the risk fully understood by those who buy the homes? And if the bonds are sold by a developer who needs quick cash and is soon to depart the premises, higher rates are not a factor in their decision-making process. However, those rates are surely a consideration for the future residents who had no say in the issuance of the debt.

Meanwhile, assessment financing is on the rise in Texas: While only about \$500 million have been issued since the structure was authorized by Texas lawmakers in the 1980's, \$311 million of that was between a two-year period; 2014-2016.<sup>43</sup>

And in 2017, over \$200 million in assessment bonds were issued in the state.

Assessment bonds, like all other special district bonds, have to go through the Attorney General's office to be inspected before sale. They do not, however, have to go through the Texas Commission on Environmental Quality. The difference is that the Attorney General's office checks for legality only. The TCEQ checks to see if the bonds are actually sustainable, if there are reserves to make payments when needed, and ensures that the infrastructure financed is up to the job.

The Attorney General can tell you that it's legal to put a bean up your nose. The TCEQ will tell you that sure, it's legal, but probably not a good idea.

### **The MUD Conspiracy Theory**

It's not your imagination. There are a lot of MUDs in Houston, more so than any other area. The number of district applications filed has increased over the past five years. This is a direct reflection of the current economy, an increase in funding and lending opportunities, and an increase in construction of housing and business development throughout Texas. That's a good thing.

Houston is about to become the third largest city in the nation. Everyone wanted to come here in the 1980's to make their fortune. And the city is still a major draw for many reasons. Jobs, weather (okay, it gets hot here in the summer, but we've got air conditioning and try shoveling snow for a winter and see how you like it), cheaper housing, room to grow. And if you're in a MUD just outside the city, you can probably count on good schools and nice parks. If you want art and culture, world class museums are just a short drive away.

Even hurricanes don't lessen Houston's allure. Right around the time Harvey hit, more than 1.4 million people had moved into counties in Harvey's path since Ike in 2008. Six hundred thousand of those people moved to Harris County.<sup>44</sup> Interestingly, heat is the only weather-related phenomenon that has killed more Americans than flooding. And the Texas heat isn't stopping the southern migration, either.

So you have all these people continuing to move here, and they need a place to live. Housing and infrastructure is cheaper outside the city limits. Cities don't particularly like to annex housing subdivisions; there's no profit in it, like there would be in a manufacturing plant or a stadium. And counties were constitutionally created in a weak fashion, lacking the legal authority and resources to serve new residential development.<sup>45</sup>

But Houston is blessed with groundwater. And unlike Dallas and San Antonio, Houston has an abundant supply of it. With that supply of groundwater, you don't need a water supply connected to the city, so development occurs easily. MUDs provide municipal quality infrastructure to places the city doesn't want to go. After all, why would the cities ask their existing taxpayers to foot the bill for infrastructure for others? People like to pay their own way. And they like other people to pay their own way, too.

And is there money in being the developer in a MUD? Yes. When you buy a house, someone is making money. When you buy a newspaper, or watch the local evening news, someone is making money. When you buy snow cone at a corner stand, money is changing hands. For the most part, people produce goods and services to make money. It's called the economy.

And do those living in MUDs outside the city limits pay city taxes? They do not. There is no aging infrastructure for them to support, no pension plans. Since the 1990's, tax rates in MUDs have been declining.

The real conspiracy is the media's compulsion to paint all MUDs as "bad" when an occasional bad development fails. Most developers helped write the rules that put more stringent requirements in place. They like the regulation. They dislike being painted as part of the problem when they were a large part of the solution in the 1980's.

The real conspiracy is the media's attempt to sensationalize non-stories to encourage citizen outrage. Angry people don't think. They don't reason. They just accept whatever the media hands out as fact. And that's a problem that is much larger than the misunderstanding of the MUDs.

## **Recommendations**

Legislation was introduced, amended, and eventually stripped of its most important provisions, during the 2011 session to regulate the PID model much in the same way that MUDs are regulated. The senate version allowed for a three-tiered system, giving larger cities more financial leeway than the smaller cities. That legislation, CSHB 1400, needs to be resurrected, and re-examined. (Appendix)

The TCEQ model of oversight for bonds backed by assessments should be considered when those bonds will be used to finance construction of sewer, water, and drainage facilities. This would require reimbursed funds and inspected facilities. It will be a challenge, but will keep rates low, secure the market and maintain affordable housing. This is not a small recommendation. The folks in the water districts division are hardworking, overwhelmed, and (some say) underpaid. None of them have ever complained, not during testimony, nor during one-on-one conversations. But it is the nature of state agencies, along with the demands of the "government is too big" crowd that have made it that way. Those involved in the development of MUDs pay to have their permits examined by the water districts division, yet the monies do not go solely to that division. That needs to change. Those who pay to have their permits examined deserve the full staffing and attention of that division.

# **Charge 3 Dissolution**

### **Charge 3: Dissolution**

Interim Charge #3: Investigate the feasibility of dissolving special purpose districts and determine if there are criteria that would make dissolution acceptable. Make recommendations for codifying the dissolution requirements and procedures.

#### **Background**

During the 85th Session, the Office of the Governor issued a letter proposing changes to general and special laws related to special purpose districts. A number of these proposals- written notice to landowners subject to creation or annexation of a special purpose district and increasing the threshold for petition to create or annex a special district- were passed and became law (Senate Bill 1987).

One suggestion raised by the Governor's office which was not resolved was lowering the threshold for district dissolution to a simple majority of property owners.

Dissolving a district is appropriate when that district is inactive for an extended period of time or has completed all obligations for which it was created. There are currently two methods for dissolution: administrative dissolution through the TCEQ and legislative dissolution of a district.

#### **Administrative Dissolution**

TCEQ rules for dissolution are found in the Texas Administrative Code, Title 30, Part 1, Chapter 293, Subchapter L. These rules are granted by statutory authority in the Water Code, Chapter 49, Subchapter K. The threshold for TCEQ dissolution authority is two parts: a district must be inactive for a period of five consecutive years and must not have any outstanding bonded indebtedness. Dissolution proceedings may be initiated by the executive director of TCEQ or upon receipt of an application filed by owners of land or interests in land within the district sought to be dissolved, a member or members of the board of directors of the district, or any other party who can demonstrate an interest in having the district dissolved. TAC 293.131(1). If the dissolution proceedings are initiated by any party other than the executive director, the application for dissolution must include certain items pursuant to TAC 293.131(2) Dissolution proceedings initiated by the executive director of TCEQ must satisfy requirements of TAC 293.131(3). After the appropriate dissolution proposal, TCEQ must publish notice and hold a hearing, prepare a written report, and file a dissolution order. Any outstanding assets of the district escheat to the State of Texas and are disposed of according to the Texas Property Code, Ch. 74.

#### **Statutory Dissolution**

In addition to existing TCEQ rules for dissolution, the legislature has the ability to dissolve districts. Last session, the legislature passed two bills (SB 976, SB 248) dissolving districts and another (HB 1709) outlining procedures to dissolve an existing levee improvement district. Dissolution procedures for general law districts created under the Water Code are found in their corresponding chapters of the Water Code but are always contingent on the district either not issuing bonds or not proceeding under the purposes for which the district was created. For districts created under the Local Government Code, dissolution by petition is permitted on filing



of a written petition with the TCEQ by property owners who own either 75% or more of the assessed value in the district or 75% or more of the surface area of the district.

SB 1987, also passed during the 85th legislature, changed the threshold for landowners to petition for annexation from 50 property owners to a majority, in value, of property owners. Changing the dissolution threshold to a simple majority would create uniformity in statute for special district creation, annexation, and dissolution.

### **Evaluation of Dissolution**

Dissolution is not an impossible task for property owners who feel that a district has served its purpose. According to the TCEQ Water District Database a total of 1454 districts have been dissolved. The questions, then, is whether the threshold for dissolution by petition of districts should be lowered and, if so, to what level? Additionally, what will be the consequences of lowering the dissolution threshold?

Any special purpose district propose for dissolution should first be required to propose a plan addressing:

- the outstanding assets and liabilities of a district
- administration of property, assets, and debts belonging to the district
- continuation of ongoing services

Districts without dissolution plans may find themselves facing higher fees and penalties added into contracts with utility companies, waste disposal services, and other service providers who are seeking to protect themselves from unexpected losses in the wake of a district dissolution. These increased costs are sure to be passed through by the district to the taxpayer. Written dissolution provisions addressing disposition of liabilities, including ongoing contracts, should help to alleviate market concerns and ensure the lowest cost possible.

Even if a majority of owners prefer dissolution, continuation of essential services such as fire, safety, and water must continue to be provided for. Failure to address ongoing needs and outstanding legal obligations after dissolution is likely to result in dire consequences for residents who are now subject to interrupted or discontinued services and may possibly result in litigation that delays the dissolution of a district. If, for instance, district dissolution results in discontinuation of water and wastewater services, every property within the district will be affected. The difference in dissolution of a district providing non-essential services like public improvements and graffiti abatement is vastly different than a district providing water and wastewater services and any consideration of dissolution must take into account the health and safety of residents who rely on district services. Upon certification of a dissolution petition, district board of directors should develop a dissolution turnover plan outlining how outstanding liabilities will be resolved, the continuation of services as applicable, and identify the assets that will escheat to the state. Development of a plan should occur in a reasonable amount of time as to allow for posting of notice, either online or through a newspaper of general circulation in the district, as to give taxpayers sufficient information before an election.

### **Petition Process**

Some recent dissolution efforts in Texas have been impeded through court challenges due to

questions surrounding the validity of signatures. Specific questions were raised when a national business signed onto the petition for dissolution because the individual signing the petition was not the person identified in the county tax records. Consideration should be given to allowing an officer or other authorized signatory permitted to file with the Secretary of State to sign a petition for services in lieu of an owner of property. This signature, accompanied by a corporate certificate of authority or other equivalent document, would permit businesses who may not be headquartered in Texas to more easily participate in the petition process and will serve to prevent confusion and dissention seen in other district dissolutions.

### **Specific Assets**

Under both the Water Code and Local Government Code, assets of dissolved districts escheat to the State and are administered and disposed of pursuant to Chapter 74 of the Property Code. During dissolution proceedings in 2018 for a municipal management district in Houston, bridge lights over Highway 59 were turned off as a result of a temporary restraining order meant to prevent the district from expending additional funds. Districts and other local governments may find value in identifying specific items that will escheat directly to local governments instead of the State in the event of a district dissolution.

### **Recommendations**

- The petition threshold for dissolution of districts should be reduced to a percentage of landowners by value somewhere below the current 75% level. Possible new thresholds could be a simple majority, a two-thirds majority, or somewhere in between.
- The petition process related to dissolution (as well as creation and annexation) should be changed to allow for a landowner's authorized signatory to sign a petition in place of a landowner. The petition should be accompanied by a certificate of corporate authority or other duly recognized document as verification that the landowner consents to the considerations of the petition.
- Require a board of directors, upon commencement of dissolution proceedings, to develop a dissolution plan that ensures a continuation of essential services to taxpayers within the district if the services are provided by the district. These services include but are not limited to sewer, water, drainage, fire, police, and medical. Dissolution plans should also consider the transfer of specific assets to other units of local government if the transferee unit of government agrees to the acquisition.

**Charge 4**  
**MMD Template Language**

## **Charge 4: MMD Template Language**

Interim Charge #4: Identify best practices in the creation of municipal management districts. Study the feasibility of and make recommendations for creating standard language for the creation of municipal management districts through special law.

### **Background**

Creation of special purpose districts through the legislature takes two forms. Districts can be created through administrative grant at the TCEQ or through the legislature as a special law. Special law districts often request certain powers that are outside the authority of administrative creation and beyond the powers granted through general law in the Water Code and Local Government Code. These powers provide districts the ability to perform special functions unique to the communities they are designed to serve.

### **Template Language**

Pursuant to 80th Session Interim Charges, the legislature heard testimony that standardized language for municipal utility districts would allow members to more effectively evaluate the creation of these districts. As a result, "template" language was developed which outlined basic powers granted to districts being created through the legislative process. This template language for municipal utility districts has proven to be greatly successful as "template MUDs" are a known and familiar commodity to members who understand that the district is not asking for any unfamiliar taxing or assessment powers. Non-template districts are subject to greater scrutiny and further questioning by members to ensure that taxpayers are not subject to onerous or burdensome taxes and regulations which will be layered on top of the already existing fees and rules imposed by local and state government.

As municipal management districts become a more popular and common form of local government across the state, calls for "template MMDs" have increased. Over a number of sessions, management districts being created through the legislature have simply used past districts as a baseline for creation and, as a result, districts have increased on scope and power without significant justification for the expansion of authority.

Creation of a management district template is meant to serve the same purposes as the MUD template: common and familiar language to Texas Legislative Council drafters, members of the legislature, and taxpayers. This template language will allow for observers to more easily identify when a district is asking for exceptional powers and provide for an easier apples-to-apples comparison of districts as they come before the legislature.

While a template is useful for evaluating requested powers it does not mean that every district must conform to the template. While a common baseline is appropriate, each district is unique and meant to serve the needs and desires of the local citizens. Districts will still have the ability to request powers not granted through the template and template language is not meant to preclude districts from having powers necessary to accomplish their goals. Instead, template language is meant to reduce carte blanche grants of authority and provide a clean and efficient

form for districts as they first come before the legislature.

### **Development Process**

Work on template language began in the Spring of 2018. Committee staff created a proposed template document based on municipal management district bills presented to the Committee during the 85th legislature, aggregating a number of provisions into a primary template baseline document. Staff then solicited and received input from stakeholders in the development community, the legislature, and executive agencies in the creation of the MMD template. After multiple rounds of consideration, staff submitted the template to Texas Legislative Council for drafting and performed a final round of edits and revisions. The template was presented to the Committee in the Fall of 2018 and recommended for use during the 86th legislature. Template language is included in the appendix.

"Standard language" for non-template powers were also developed. This language is for powers the committee often sees requested which do not fit in the base template, but are requested often enough that uniform language should be developed. This standard language will provide for easier review of proposed management districts, and increase transparency by ensuring that the requested powers have been vetted.

### **Recommendations**

- MMD template language should be used as a baseline for districts created by the legislature.
- Composition of an MMD board, whether elected or appointed, does not change the substantive powers of a district and ensures appropriate representation for a district. For purposes of consideration by the legislature, changing the board makeup between elected and appointed should not have any bearing on whether a district is "template."
- MMD template language should be updated in conjunction with any general law changed made by the legislature.

PROPOSED MMD TEMPLATE LANGUAGE

By: \_\_\_\_\_

\_\_\_\_.B. No. \_\_\_\_\_

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the \_\_\_\_\_ *[[[name of district]]]*; providing authority to issue bonds; providing authority to impose assessments, fees, and taxes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 4, Special District Local Laws Code, is amended by adding Chapter \_\_\_\_\_ to read as follows:

CHAPTER \_\_\_\_\_.

SUBCHAPTER A. GENERAL PROVISIONS

Sec. \_\_\_\_\_.0001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "City" means the *[[[name of municipality]]]*.

(3) "County" means *[[[name of county]]]*. *[[[A*

*definition of the county in which the district is located is unnecessary if the bill does not include language about the county]]]*

(\_) "Director" means a board member.

(\_) "District" means the *[[[name of district]]]*.

Sec. \_\_\_\_\_.0002. NATURE OF DISTRICT. The *[[[name of*

district]]] is a special district created under Section 59, Article XVI, Texas Constitution.

Sec. \_\_\_\_\_.0003. PURPOSE; DECLARATION OF INTENT. (a) The creation of the district is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, and other public purposes stated in this chapter.

(b) By creating the district and in authorizing [[[select as appropriate]]] the county, the city, 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.

(c) The creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the district.

(d) This chapter and the creation of the district may not be interpreted to relieve [[[select as appropriate]]] the county or the city from providing the level of services provided as of the effective date of the Act enacting this chapter to the area in the district. The district is created to supplement and not to supplant [[[select as appropriate]]] county or city services provided in the district.

Sec. \_\_\_\_ .0004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a)

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.

(b) The district is created to serve a public use and benefit.

(c) The creation of the district is in the public interest and is essential to further the public purposes of:

(1) developing and diversifying the economy of the state;

(2) eliminating unemployment and underemployment; and

(3) developing or expanding transportation and commerce.

(d) The district will:

(1) promote the health, safety, and general welfare of residents, employers, potential employees, employees, visitors, and consumers in the district, and of the public;

(2) provide needed funding for the district to preserve, maintain, and enhance the economic health and vitality of the district territory as a community and business center;

(3) promote the health, safety, welfare, and enjoyment of the public by providing pedestrian ways and by landscaping and



developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of scenic beauty; and

(4) provide for water, wastewater, drainage, road, and recreational facilities for the district.

(e) Pedestrian ways along or across a street, whether at grade or above or below the surface, and street lighting, street landscaping, parking, and street art objects are parts of and necessary components of a street and are considered to be a street or road improvement.

(f) 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. \_\_\_\_ .0005. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section 2 of the Act enacting this chapter.

(b) The boundaries and field notes contained in Section 2 of the Act enacting this chapter form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not affect the district's:

(1) organization, existence, or validity;

(2) right to issue any type of bonds for the purposes for which the district is created or to pay the principal of and interest on the bonds;

(3) right to impose or collect an assessment or tax; or

(4) legality or operation.

Sec. \_\_\_\_\_.0006. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES.

All or any part of the area of the district is eligible to be included in:

(1) a tax increment reinvestment zone created under Chapter 311, Tax Code; or

(2) a tax abatement reinvestment zone created under Chapter 312, Tax Code.

Sec. \_\_\_\_\_.0007. APPLICABILITY OF MUNICIPAL MANAGEMENT DISTRICTS LAW. Except as otherwise provided by this chapter, Chapter 375, Local Government Code, applies to the district.

Sec. \_\_\_\_\_.0008. CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed in conformity with the findings and purposes stated in this chapter.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. \_\_\_\_\_.0051. GOVERNING BODY; TERMS.

Sec. \_\_\_\_\_.0052. INITIAL DIRECTORS.

SUBCHAPTER C. POWERS AND DUTIES

Sec. \_\_\_\_\_.0101. GENERAL POWERS AND DUTIES. The district has the powers and duties necessary to accomplish the purposes for which the district is created.

Sec. \_\_\_\_\_.0102. IMPROVEMENT PROJECTS AND SERVICES. (a) The district, using any money available to the district for the

purpose, may provide, design, construct, acquire, improve, relocate, operate, maintain, or finance an improvement project or service authorized under this chapter or Chapter 375, Local Government Code.

(b) The district may contract with a governmental or private entity to carry out an action under Subsection (a).

(c) The implementation of a district project or service is a governmental function or service for the purposes of Chapter 791, Government Code.

Sec. \_\_\_\_\_.0103. NONPROFIT CORPORATION. (a) The board by resolution may authorize the creation of a nonprofit corporation to assist and act for the district in implementing a project or providing a service authorized by this chapter.

(b) The nonprofit corporation:

(1) has each power of and is considered to be a local government corporation created under Subchapter D, Chapter 431, Transportation Code; and

(2) may implement any project and provide any service authorized by this chapter.

(c) The board shall appoint the board of directors of the nonprofit corporation. The board of directors of the nonprofit corporation shall serve in the same manner as the board of directors of a local government corporation created under Subchapter D, Chapter 431, Transportation Code, except that a board

member is not required to reside in the district.

Sec. \_\_\_\_\_.0104. LAW ENFORCEMENT SERVICES. To protect the public interest, the district may contract with a qualified party, including *[[[select as appropriate]]]* the county or the city, to provide law enforcement services in the district for a fee.

Sec. \_\_\_\_\_.0105. MEMBERSHIP IN CHARITABLE ORGANIZATIONS. The district may join and pay dues to a charitable or nonprofit organization that performs a service or provides an activity consistent with the furtherance of a district purpose.

Sec. \_\_\_\_\_.0106. ECONOMIC DEVELOPMENT PROGRAMS. (a) The district may engage in activities that accomplish the economic development purposes of the district.

(b) The district may establish and provide for the administration of one or more programs to promote state or local economic development and to stimulate business and commercial activity in the district, including programs to:

- (1) make loans and grants of public money; and
- (2) provide district personnel and services.

(c) The district may create economic development programs and exercise the economic development powers provided to municipalities by:

- (1) Chapter 380, Local Government Code; and
- (2) Subchapter A, Chapter 1509, Government Code.

Sec. \_\_\_\_\_.0107. PARKING FACILITIES. (a) The district may

acquire, lease as lessor or lessee, construct, develop, own, operate, and maintain parking facilities or a system of parking facilities, including lots, garages, parking terminals, or other structures or accommodations for parking motor vehicles off the streets and related appurtenances.

(b) The district's parking facilities serve the public purposes of the district and are owned, used, and held for a public purpose even if leased or operated by a private entity for a term of years.

(c) The district's parking facilities are parts of and necessary components of a street and are considered to be a street or road improvement.

(d) The development and operation of the district's parking facilities may be considered an economic development program.

Sec. \_\_\_\_\_.0108. ADDING OR EXCLUDING LAND. The district may add or exclude land in the manner provided by Subchapter J, Chapter 49, Water Code, or by Subchapter H, Chapter 54, Water Code.

Sec. \_\_\_\_\_.0109. DISBURSEMENTS AND TRANSFERS OF MONEY. The board by resolution shall establish the number of directors' signatures and the procedure required for a disbursement or transfer of district money.

Sec. \_\_\_\_\_.0110. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

#### SUBCHAPTER D. ASSESSMENTS

Sec. \_\_\_\_ .0151. PETITION REQUIRED FOR FINANCING SERVICES AND IMPROVEMENTS WITH ASSESSMENTS. (a) The board may not finance a service or improvement project with assessments under this chapter unless a written petition requesting that service or improvement has been filed with the board.

(b) A petition filed under Subsection (a) must be signed by the owners of a majority of the assessed value of real property in the district subject to assessment according to the most recent certified tax appraisal roll for the county.

Sec. \_\_\_\_ .0152. ASSESSMENTS; LIENS FOR ASSESSMENTS. (a) The board by resolution may impose and collect an assessment for any purpose authorized by this chapter in all or any part of the district.

(b) An assessment, a reassessment, or an assessment resulting from an addition to or correction of the assessment roll by the district, penalties and interest on an assessment or reassessment, an expense of collection, and reasonable attorney's fees incurred by the district:

(1) are a first and prior lien against the property assessed;

(2) are superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes; and

(3) are the personal liability of and a charge against

the owners of the property even if the owners are not named in the assessment proceedings.

(c) The lien is effective from the date of the board's resolution imposing the assessment until the date the assessment is paid. The board may enforce the lien in the same manner that the board may enforce an ad valorem tax lien against real property.

(d) The board may make a correction to or deletion from the assessment roll that does not increase the amount of assessment of any parcel of land without providing notice and holding a hearing in the manner required for additional assessments.

#### SUBCHAPTER E. TAXES AND BONDS

Sec. \_\_\_\_.0201. TAX ELECTION REQUIRED. The district must hold an election in the manner provided by Chapter 49, Water Code, or, if applicable, Chapter 375, Local Government Code, to obtain voter approval before the district may impose an ad valorem tax.

Sec. \_\_\_\_.0202. OPERATION AND MAINTENANCE TAX. (a) If authorized by a majority of the district voters voting at an election under Section \_\_\_\_.0201, the district may impose an operation and maintenance tax on taxable property in the district in the manner provided by Section 49.107, Water Code, for any district purpose, including to:

- (1) maintain and operate the district;
- (2) construct or acquire improvements; or
- (3) provide a service.

(b) The board shall determine the operation and maintenance tax rate. The rate may not exceed the rate approved at the election.

Sec. \_\_\_\_ .0203. AUTHORITY TO BORROW MONEY AND TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may borrow money on terms determined by the board.

(b) The district may issue bonds, notes, or other obligations payable wholly or partly from ad valorem taxes, assessments, impact fees, revenue, contract payments, grants, or other district money, or any combination of those sources of money, to pay for any authorized district purpose.

(c) The limitation on the outstanding principal amount of bonds, notes, or other obligations provided by Section 49.4645, Water Code, does not apply to the district.

Sec. \_\_\_\_ .0204. BONDS SECURED BY REVENUE OR CONTRACT PAYMENTS. The district may issue, without an election, bonds secured by:

(1) revenue other than ad valorem taxes, including contract revenues; or

(2) contract payments, provided that the requirements of Section 49.108, Water Code, have been met.

Sec. \_\_\_\_ .0205. BONDS SECURED BY AD VALOREM TAXES; ELECTIONS. (a) If authorized at an election under Section \_\_\_\_ .0201, the district may issue bonds payable from ad valorem taxes.



(b) Section 375.243, Local Government Code, does not apply to the district.

(c) At the time the district issues bonds payable wholly or partly from ad valorem taxes, the board shall provide for the annual imposition of a continuing direct annual ad valorem tax, without limit as to rate or amount, for each year that all or part of the bonds are outstanding as required and in the manner provided by Sections 54.601 and 54.602, Water Code.

(d) All or any part of any facilities or improvements that may be acquired by a district by the issuance of its bonds may be submitted as a single proposition or as several propositions to be voted on at the election.

Sec. \_\_\_\_ .0206. CONSENT OF MUNICIPALITY REQUIRED. (a) The board may not issue bonds until each municipality in whose corporate limits or extraterritorial jurisdiction the district is located has consented by ordinance or resolution to the creation of the district and to the inclusion of land in the district.

(b) This section applies only to the district's first issuance of bonds payable from ad valorem taxes.

SUBCHAPTER Z. DISSOLUTION

Sec. \_\_\_\_ .0901. DISSOLUTION. (a) The board shall dissolve the district on written petition filed with the board by the owners of:

(1) 66 percent or more of the assessed value of the

property subject to assessment by the district based on the most recent certified county property tax rolls; or

(2) 66 percent or more of the surface area of the district, excluding roads, streets, highways, utility rights-of-way, other public areas, and other property exempt from assessment by the district according to the most recent certified county property tax rolls.

(b) The board by majority vote may dissolve the district at any time.

(c) The district may not be dissolved by its board under Subsection (a) or (b) if the district:

(1) has any outstanding bonded indebtedness until that bonded indebtedness has been repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds;

(2) has a contractual obligation to pay money until that obligation has been fully paid in accordance with the contract; or

(3) owns, operates, or maintains public works, facilities, or improvements unless the district contracts with another person for the ownership, operation, or maintenance of the public works, facilities, or improvements.

(d) Sections 375.261, 375.262, and 375.264, Local Government Code, do not apply to the district.

SECTION 2. The *[[name of district]]* initially includes all

territory contained in the following area:

[[[*description of district territory*]]]

SECTION 3. (a) 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) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality 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) 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. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this

Act takes effect [[*effective date*]].

## OPTIONAL ADDITIONAL POWERS

Sec. \_\_\_\_ .0111. NAVIGATION DISTRICT POWERS. (a) The district has the powers provided by the general law of this state applicable to navigation districts created under Section 59, Article XVI, Texas Constitution, including Chapters 60 and 62, Water Code.

(b) The district may purchase, construct, acquire, own, operate, maintain, improve, or extend, inside and outside the district, a canal, waterway, bulkhead, dock, or other improvement or facility necessary or convenient to accomplish the navigation purposes of the district.

### SUBCHAPTER F. SALES AND USE TAX

Sec. \_\_\_\_ .0251. APPLICABILITY OF CERTAIN TAX CODE PROVISIONS. (a) Chapter 321, Tax Code, governs the imposition, computation, administration, enforcement, and collection of the sales and use tax authorized by this subchapter except to the extent Chapter 321, Tax Code, is inconsistent with this chapter.

(b) For the purposes of this subchapter, a reference in Chapter 321, Tax Code, to a municipality or the governing body of a municipality is a reference to the district or the board, respectively.

Sec. \_\_\_\_ .0252. ELECTION; ADOPTION OF TAX. (a) The district may adopt a sales and use tax if authorized by a majority

of the voters of the district voting at an election held for that purpose.

(b) The board by order may call an election to authorize the adoption of the sales and use tax. The election may be held on any uniform election date and in conjunction with any other district election.

(c) The district shall provide notice of the election and shall hold the election in the manner prescribed by Section \_\_\_\_\_.0201.

(d) The ballot shall be printed to provide for voting for or against the proposition: "Authorization of a sales and use tax in the [[[name of district]]] at a rate not to exceed \_\_\_\_ percent" (insert rate of one or more increments of one-eighth of one percent).

Sec. \_\_\_\_\_.0253. SALES AND USE TAX RATE. (a) After the date the results are declared of an election held under Section \_\_\_\_\_.0252 at which the voters authorized imposition of a tax, the board shall provide by resolution or order the initial rate of the tax, which must be in one or more increments of one-eighth of one percent.

(b) After the authorization of a tax under Section \_\_\_\_\_.0252, the board may increase or decrease the rate of the tax by one or more increments of one-eighth of one percent.

(c) The board may not decrease the rate of the tax if the

decrease would impair the repayment of any outstanding debt or obligation payable from the tax.

(d) The initial rate of the tax or any rate resulting from subsequent increases or decreases may not exceed the lesser of:

(1) the maximum rate authorized at the election held under Section \_\_\_\_\_.0252; or

(2) a rate that, when added to the rates of all sales and use taxes imposed by other political subdivisions with territory in the district, would result in the maximum combined rate prescribed by Section 321.101(f), Tax Code, at any location in the district.

(e) In determining whether the combined sales and use tax rate under Subsection (d)(2) would exceed the maximum combined rate prescribed by Section 321.101(f), Tax Code, at any location in the district, the board shall include:

(1) any sales and use tax imposed by a political subdivision whose territory overlaps all or part of the district;

(2) any sales and use tax to be imposed by the city or the county as a result of an election held on the same date as the election held under Section \_\_\_\_\_.0252; and

(3) any increase to an existing sales and use tax imposed by the city or the county as a result of an election held on the same date as the election held under Section \_\_\_\_\_.0252.

(f) If the district adopts a sales and use tax authorized at

an election under Section .0252 and subsequently includes new territory in the district, the district:

(1) is not required to hold another election to approve the imposition of the sales and use tax in the included territory; and

(2) shall impose the sales and use tax in the included territory as provided by Chapter 321, Tax Code.

(g) If the district adopts a sales and use tax authorized at an election held under Section .0252 and subsequently excludes territory in the district under this section, the sales and use tax is inapplicable to the excluded territory as provided by Chapter 321, Tax Code, but is applicable to the territory remaining in the district.

Sec. \_\_\_\_ .0254. NOTIFICATION OF RATE CHANGE. The board shall notify the comptroller of any changes made to the tax rate under this subchapter in the same manner the municipal secretary provides notice to the comptroller under Section 321.405(b), Tax Code.

Sec. \_\_\_\_ .0255. USE OF REVENUE. Revenue from the sales and use tax imposed under this subchapter is for the use and benefit of the district and may be used for any district purpose. The district may pledge all or part of the revenue to the payment of bonds, notes, or other obligations, and that pledge of revenue may be in combination with other revenue, including tax revenue,



available to the district.

Sec. \_\_\_\_\_.0256. ABOLITION OF TAX. (a) Except as provided by Subsection (b), the board may abolish the tax imposed under this subchapter without an election.

(b) The board may not abolish the tax imposed under this subchapter if the district has any outstanding debt or obligation secured by the tax, and repayment of the debt or obligation would be impaired by the abolition of the tax.

(c) If the board abolishes the tax, the board shall notify the comptroller of that action in the same manner the municipal secretary provides notice to the comptroller under Section 321.405(b), Tax Code.

(d) If the board abolishes the tax or decreases the tax rate to zero, a new election to authorize a sales and use tax must be held under Section \_\_\_\_\_.0252 before the district may subsequently impose the tax.

SUBCHAPTER H. DIVISION OF DISTRICT INTO MULTIPLE DISTRICTS

Sec. \_\_\_\_\_.0351. DIVISION OF DISTRICT; PREREQUISITES. (a) The district may be divided into two or more new districts only if the district:

- (1) has never issued any bonds; and
- (2) is not imposing ad valorem taxes.

(b) the board may adopt an order dividing the district before or after the date the board holds an election under Subchapter B

to confirm the creation of the district.

Sec. \_\_\_\_\_.0352. LAW APPLICABLE TO NEW DISTRICT. This chapter applies to any new district created by division of the district, and a new district has all the powers and duties of the district.

Sec. \_\_\_\_\_.0353. LIMITATION ON AREA OF NEW DISTRICT. A new district created by the division of the district may not, at the time the new district is created, contain any land outside the area described by Section 2 of the Act enacting this chapter.

Sec. \_\_\_\_\_.0354. DIVISION PROCEDURES. (a) The board, on its own motion or on receipt of a petition signed by the owner or owners of a majority of the assessed value of the real property in the district, may adopt an order dividing the district.

(b) An order dividing the district must:

(1) name each new district;

(2) include the metes and bounds description of the territory of each new district;

(3) appoint temporary directors for each new district;

and

(4) provide for the division of assets and liabilities between the new districts.

(c) On or before the 30th day after the date of adoption of an order dividing the district, the district shall file the order with the commission and record the order in the real property

records of each county in which the district is located.

(d) Municipal consent to the creation of the district and to the inclusion of land in the district acts as municipal consent to the creation of any new district created by division of the district and to the inclusion of land in the new district.

Sec. \_\_\_\_\_.0355. CONFIRMATION ELECTION FOR NEW DISTRICT. (a) A new district created by the division of the district shall hold a confirmation and directors' election as required by Subchapter B.

(b) If the creation of the new district is confirmed, the new district shall provide the election date and results to the Texas Commission on Environmental Quality.

Sec. \_\_\_\_\_.0356. TAX OR BOND ELECTION. Before a new district created by the division of the district may impose a tax for which an election is required under this chapter for the original district or issue bonds payable wholly or partly from ad valorem taxes, the new district must hold an election as required by this chapter to obtain voter approval.

#### SUBCHAPTER I. DEFINED AREAS

Sec. \_\_\_\_\_.0401. AUTHORITY TO ESTABLISH DEFINED AREAS OR DESIGNATED PROPERTY. The district may define areas or designate certain property of the district to pay for improvements, facilities, or services that primarily benefit that area or property and do not generally and directly benefit the district as

a whole.

Sec. \_\_\_\_\_.0402. PROCEDURE FOR ELECTION. (a) Before the district may impose an ad valorem tax applicable only to the defined area or designated property or issue bonds payable from ad valorem taxes of the defined area or designated property, the board shall hold an election in the defined area or designated property only.

(b) The board may submit the proposition to the voters on the same ballot to be used in another election.

Sec. \_\_\_\_\_.0403. DECLARING RESULT AND ISSUING ORDER. (a) If a majority of the voters voting at an election held under Section \_\_\_\_\_.0402 approve the proposition or propositions, the board shall declare the results and, by order, shall establish the defined area or designated property and describe it by metes and bounds or designate the specific area or property.

(b) A court may not review the board's order except on the ground of fraud, palpable error, or arbitrary and confiscatory abuse of discretion.

Sec. \_\_\_\_\_.0404. TAXES FOR SERVICES, IMPROVEMENTS, AND FACILITIES IN DEFINED AREAS OR DESIGNATED PROPERTY. On voter approval and adoption of an order described by Section \_\_\_\_\_.0403, the district may apply separately, differently, equitably, and specifically its taxing power and lien authority to the defined area or designated property to provide money to construct,

administer, maintain, and operate services, improvements, and facilities that primarily benefit the defined area or designated property.

Sec. \_\_\_\_\_.0405. ISSUANCE OF BONDS FOR DEFINED AREA OR DESIGNATED PROPERTY. After an order under Section \_\_\_\_\_.0403 is adopted, the district may issue bonds to provide for any land, improvements, facilities, plants, equipment, and appliances for the defined area or designated property.

## APPENDIX

COMMITTEE SUBSTITUTE FOR H.B. No. 1400

By: West

A BILL TO BE ENTITLED

AN ACT

relating to the boundaries and financing of public improvement districts designated by a municipality or county.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 372.003, Local Government Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) Payment of expenses under Subsection (b)(14) may also include expenses related to the operation and maintenance of mass transportation facilities.

SECTION 2. Subchapter A, Chapter 372, Local Government Code, is amended by adding Section 372.0035 to read as follows:

Sec. 372.0035. COMMON CHARACTERISTIC OR USE FOR PROJECTS IN CERTAIN MUNICIPALITIES. (a) This section applies only to:

(1) a municipality that has a population of more than one million and a council-manager form of government and that is located wholly or partly in a county with a population of more than two million; and

(2) a public improvement district established under this subchapter and solely composed of territory in which the only

businesses are hotels with 100 or more rooms ordinarily used for sleeping.

(b) A municipality may undertake a project that confers a special benefit on areas that share a common characteristic or use. The areas may be noncontiguous.

(c) This section does not prohibit a municipality from or limit a municipality to establishing a district that includes a noncontiguous area authorized by this subchapter.

SECTION 3. Subchapter A, Chapter 372, Local Government Code, is amended by adding Section 372.0055 to read as follows:

Sec. 372.0055. DEFERRED ASSESSMENT; ESTIMATE. If a proposed improvement under Section 372.005 includes a deferred assessment, before holding the hearing required by Section 372.009, the governing body of the municipality or county must estimate:

(1) the appraised value of taxable real property liable for assessment in the district; and

(2) the cost of the improvement.

SECTION 4. Section 372.017(b), Local Government Code, is amended to read as follows:

(b) After all objections have been heard and the governing body has passed on the objections, the governing body by ordinance or order shall levy the assessment as a special assessment on the property. The governing body by ordinance or order shall specify the method of payment of the assessment. The governing body may

defer an assessment until a date the governing body specifies in the ordinance or order. The governing body may provide that assessments be paid in periodic installments, at an interest rate and for a period approved by the governing body. The provision that assessments be paid in periodic installments may, but is not required to, result in level annual installment payments. The installments must be in amounts necessary to meet annual costs for improvements and must continue for:

(1) the period necessary to retire the indebtedness on the improvements; or

(2) the period approved by the governing body for the payment of the installments.

SECTION 5. Subchapter A, Chapter 372, Local Government Code, is amended by adding Section 372.031 to read as follows:

Sec. 372.031. FINDINGS PRIOR TO ISSUANCE OF CERTAIN BONDS OR OBLIGATIONS. (a) Prior to the issuance under this chapter of bonds or obligations wholly or partly payable from or secured by assessments, the governing body of a municipality with a population of 250,000 or less or the governing body of a county with a population of 1 million or less issuing the bonds or obligations must find and determine the following:

(1) construction of all underground water, wastewater, and drainage facilities and roadways to serve the real property liable for assessments necessary to support the payment of the



bonds or obligations is at least 95 percent complete; and

(2) construction of at least 25 percent of the houses or other buildings on the real property liable for assessments and necessary to support the bonds or obligations has been completed.

(b) Prior to the issuance under this chapter of bonds or obligations wholly or partly payable from or secured by assessments, a municipality with a population of more than 250,000 or a county with a population of more than 1 million issuing the bonds or obligations must obtain an independent market study from a firm recognized in the area of real estate market analysis supporting the development projects for the real property liable for assessments and necessary to support the payment of the bonds or obligations.

(c) Subsections (a) and (b) do not apply to general obligation bonds or certificates of obligations.

(d) The Attorney General shall adopt rules to enforce this section and to ensure the integrity and economic feasibility of bonds or obligations issued under this chapter.

SECTION 6. Section 372.041(a), Local Government Code, is amended to read as follows:

(a) A home-rule municipality may create improvement districts for the purposes of:

(1) levying, straightening, widening, enclosing, or otherwise improving a river, creek, bayou, stream, other body of

water, street, or alley;

(2) draining, grading, filling, and otherwise protecting and improving the territory within the municipality's limits; ~~and~~

(3) issuing bonds to finance improvements listed in this subsection; and

(4) financing an improvement described in Subchapter A.

SECTION 7. This Act takes effect September 1, 2011.

## ENDNOTES

- <sup>1</sup> Jill Archibald, quoted in "As Hurricane Harvey Approaches, Officials Hope New, Longtime Residents Heed Warnings," Rebeca Elliot, Houston Chronicle, August 26, 2017.
- <sup>2</sup> Npr.org., August 28, 2017.
- <sup>3</sup> Adam B. Smith, "2016: A Historic Year for Billion-Dollar Weather and Climate Disasters in U.S.," The National Oceanic and Atmospheric Administration, Climate.gov., January 9, 2017.
- <sup>4</sup> Payshunz Nagashima, quoted by the Houston Chronicle, "Evacuation in Face of Harvey not a Simple Call, Leaders Say," August 29, 2017.
- <sup>5</sup> Jesse Sifuentez, House Select Committee on Hurricane Ike Devastation to the Texas Gulf Coast, Interim Report 2008, January 12, 2009.
- <sup>6</sup> SB 361 Bill Analysis, Enrolled, Senate Research Center, June 29, 2009.
- <sup>7</sup> E-mail conversation with Isaac Jackson, Legislative Liaison, Texas Commission on Environmental Quality, January 19, 2018.
- <sup>8</sup> Todd Burrer, Severn Trent Resources, during testimony before the committee, November 30, 2017.
- <sup>9</sup> Chairman Jim Murphy, during testimony before the committee, November 30, 2017.
- <sup>10</sup> Eric S. Blake and David A. Zelinsky, "National Hurricane Center Tropical Cyclone Report, Hurricane Harvey (AL092017) 17 August - 1 September 2017," January 23, 2018.
- <sup>11</sup> Cari-Michel La Caille, Director, Water Supply Division, Texas Commission on Environmental Quality, during testimony before the committee, November 30, 2017.
- <sup>12</sup> Alia Vinson, Confluence Magazine, Texas Water Conservation Association, November 2017.
- <sup>13</sup> Scott Davis, "Hurricane Harvey: Impact of Harvey on Houston MUDs," Texas Association of Water Board Directors, April 2018.
- <sup>14</sup> Scott Davis, "Hurricane Harvey: Impact of Harvey on Houston MUDs," Texas Association of Water Board Directors, April 2018.
- <sup>15</sup> Definedterm.com
- <sup>16</sup> Joel Kotkin and Tory Gattis, "Doing Houston Wrong" City Journal, Manhattan Institute, December 13, 2017.
- <sup>17</sup> Historian Phil Magness quoted by Seth Beyer, "Did Houston Flood Because of a Lack of Zoning?" Forbes, August 30, 2017.
- <sup>18</sup> Joel Kotkin and Tory Gattis, "Doing Houston Wrong" City Journal, Manhattan Institute, December 13, 2017.
- <sup>19</sup> Harris County Judge Ed Emmet, quoted in "Lessons from Hurricane Harvey: Houston's Struggle is America's Tale," Michael Kimmelman, New York Times November 11, 2017.
- <sup>20</sup> Robin Stanier, corporate entertainer, quoted by Steve Frazier, "City Under Stress: Oil Recession Plunges Houston into a State of Mental Depression," March 26, 1986.
- <sup>21</sup> Mary Jo Nelson, "The 1980s, 10 Turbulent Years," The Oklahoman, December 31, 1989.
- <sup>22</sup> Bon Jovi, "Livin' on a Prayer," 1986.
- <sup>23</sup> Loren Steffy, "This Time It'll be Different," Texas Monthly, February 2015.
- <sup>24</sup> Bernard L. Weinstein and Harold T. Gross, "Texas to Sort Out Structural Changes in '87," special to the Dallas News, January 2, 1987.
- <sup>25</sup> Julie Peak, Financial Analyst, First Southwest, during testimony before the committee, November 30, 2017.
- <sup>26</sup> Jack Z. Smith, "Failure Rate of State Firms Soars 56.4%," Fort Worth Star-Telegram, February 28, 1987.
- <sup>27</sup> Jan Bartholomew, RW Baird, during testimony before the committee, November 30, 2017.
- <sup>28</sup> John Racine, "Regulation, and Plenty of it, Called Secret of Municipal Utility Districts' Success," The Bond Buyer, May 6, 1991.
- <sup>29</sup> Howard Cohen, Schwartz, Page & Harding, L.L.P., during testimony before the committee, November 30, 2017.
- <sup>30</sup> Chris Ullman, P.E., Manager, Districts Section, Water Supply Division, Texas Commission on Environmental Quality, during testimony before the committee, November 30, 2017.
- <sup>31</sup> Julie Peak, Financial Analyst, First Southwest, during testimony before the committee, November 30, 2017.
- <sup>32</sup> Julie Peak, Financial Analyst, First Southwest, during testimony before the committee, November 30, 2017.
- <sup>33</sup> Handout produced by Schwartz, Page & Harding, L.L.P., provided to Senate Intergovernmental Relations Committee hearing, March 27, 2018.
- <sup>34</sup> Dr. Barton A. Smith, Professor Emeritus, Department of Economics, University of Houston, "The Argument in Favor of MUDs as Currently Constituted in Texas," awbd-tx.org.
- <sup>35</sup> "Understanding Land-Secured Municipal Bonds," Nuveen Asset Management, May 2017.
- <sup>36</sup> Ross Martin, Winstead PC, during testimony before the committee, November 30, 2017.
- <sup>37</sup> www.fortwortexas.gov/pid.

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<sup>38</sup> Public Improvement Districts, City of Dallas, Office of Economic Development, [www.dallasecodev.org](http://www.dallasecodev.org).

<sup>39</sup> Leslie Wayne, "Wall Street: The Fuss Over Nonrated Bonds," *The New York Times* archives, January 24, 1993.

<sup>40</sup> Keeley Webster, "Behind a Struggling California Dirt-Bond Deal," *The Bond Buyer*, March 30, 2017.

<sup>41</sup> [www.floridacddreport.com](http://www.floridacddreport.com).

<sup>42</sup> Michael Lewis, "Boomerang: Travels in the New Third World," 2011.

<sup>43</sup> Darrell Preston, "Texas Dirt Bonds Make A Comeback, Fewer Protections," *The Daily Herald*, February 15, 2016.

<sup>44</sup> Philip Bump, "Since the Last Deadly Texas Hurricane, 1.4 Million People have Moved into Harvey's Impact Area," *The Washington Post*, August 25, 2017.

<sup>45</sup> Dr. Barton A. Smith, Professor Emeritus, Department of Economics, University of Houston. "The Argument in Favor of MUDs as Currently Constituted in Texas," [awbd-tx.org](http://awbd-tx.org).

PROPOSED MMD TEMPLATE LANGUAGE

By: \_\_\_\_\_

\_\_B. No. \_\_\_\_\_

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the \_\_\_\_\_ *[[[name of district]]]*; providing authority to issue bonds; providing authority to impose assessments, fees, and taxes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 4, Special District Local Laws Code, is amended by adding Chapter \_\_\_\_\_ to read as follows:

CHAPTER \_\_\_\_\_ .

SUBCHAPTER A. GENERAL PROVISIONS

Sec. .0001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "City" means the [[name of municipality]].

(3) "County" means [[name of county]]. [[A definition of the county in which the district is located is unnecessary if the bill does not include language about the county]]

( ) "Director" means a board member.

( ) "District" means the [[name of district]].

( ) "Exempt Properties" means:

- i. Any property owned by a governmental entity;
- ii. Any property with one of the following property tax exemptions:
  - a) Residence Homestead Exemption
  - b) Age 65 or Older Homestead Exemption
  - c) Surviving Spouse of Person Who Received the 65 or Older Exemption
  - d) Disabled Person Homestead Exemption
  - e) Surviving Spouse of a Person who Received the Disability Exemption
  - f) Residence Homestead Exemption for Disabled Veteran with 100% Disability
  - g) Donated Residence Homestead of Partially Disabled Veteran or Surviving Spouse of Disabled Veteran who qualified for Donated Residence Homestead
  - h) Surviving Spouse of Member of Armed Forces Killed in Action
  - i) Disabled Veteran or Survivors of a Disabled Veteran
  - j) Tax Deferral for 65 or Older or Disabled Homeowner
  - k) Charitable Exemption
  - l) Religious Exemption

Sec. .0002. NATURE OF DISTRICT. The [[name of district]] is a special district created under Section 59, Article XVI, Texas Constitution.

Sec. .0003. PURPOSE; DECLARATION OF INTENT. (a) The creation of the district is essential to accomplish the purposes of Sections 52 and 52-a, Article III, and Section 59, Article XVI,

Texas Constitution, and other public purposes stated in this chapter.

(b) By creating the district and in authorizing [[[select as appropriate]]] the county, the city, 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.

(c) The creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, the arts, entertainment, economic development, safety, and the public welfare in the district.

(d) This chapter and the creation of the district may not be interpreted to relieve [[[select as appropriate]]] the county or the city from providing the level of services provided as of the effective date of the Act enacting this chapter to the area in the district. The district is created to supplement and not to supplant [[[select as appropriate]]] county or city services provided in the district.

Sec. .0004. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) 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.

(b) The district is created to serve a public use and benefit.

(c) The creation of the district is in the public interest and is essential to further the public purposes of:

(1) developing and diversifying the economy of the state;

(2) eliminating unemployment and underemployment; and

(3) developing or expanding transportation and commerce.

(d) The district will:

(1) promote the health, safety, and general welfare of residents, employers, potential employees, employees, visitors, and consumers in the district, and of the public;

(2) provide needed funding for the district to preserve, maintain, and enhance the economic health and vitality of the district territory as a community and business center;

(3) promote the health, safety, welfare, and enjoyment of the public by providing pedestrian ways and by landscaping and developing certain areas in the district, which are necessary for the restoration, preservation, and enhancement of scenic beauty;  
and

(4) provide for water, wastewater, drainage, road, and recreational facilities for the district.

(e) Pedestrian ways along or across a street, whether at



grade or above or below the surface, and street lighting, street landscaping, parking, and street art objects are parts of and necessary components of a street and are considered to be a street or road improvement.

(f) 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. .0005. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section 2 of the Act enacting this chapter.

(b) The boundaries and field notes contained in Section 2 of the Act enacting this chapter form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not affect the district's:

- (1) organization, existence, or validity;
- (2) right to issue any type of bonds for the purposes for which the district is created or to pay the principal of and interest on the bonds;

(3) right to impose or collect an assessment or tax; or

(4) legality or operation.

Sec .0006. ELIGIBILITY FOR INCLUSION IN SPECIAL ZONES.

All or any part of the area of the district is eligible to be included in:

(1) a tax increment reinvestment zone created under Chapter 311, Tax Code; or

(2) a tax abatement reinvestment zone created under Chapter 312, Tax Code.

Sec. .0007. APPLICABILITY OF MUNICIPAL MANAGEMENT DISTRICTS LAW. Except as otherwise provided by this chapter, Chapter 375, Local Government Code, applies to the district.

Sec. .0008. CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed in conformity with the findings and purposes stated in this chapter.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. .0051. GOVERNING BODY; TERMS.

(a) Notice of each board meeting shall be posted with the city secretary of City at least 72 hours prior to the meeting time. Board meetings shall be held in a location that is accessible to the general public.

(b) In addition to the board members [elected/appointed] as described herein, the city manager, city auditor, and

city attorney of City, or the designee of each, shall serve as ex-officio board members.

Sec. .0052. INITIAL DIRECTORS.

SUBCHAPTER C. POWERS AND DUTIES

Sec. .0101. GENERAL POWERS AND DUTIES.

(a) The district has the powers and duties necessary to accomplish the purpose for which the district is created.

(b) Notwithstanding Sec. 0101(a), the district shall take no action other than holding an initial formation meeting with the board members named in the Act creating this chapter unless and until (i) the governing body of City approves by resolution a development agreement between the City, the district, and any other entities deemed necessary by the City, and (ii) the parties execute the development agreement.

(c) If a development agreement is not approved by City and executed by all parties within 48 months of the effective date of the Act creating this chapter, the district shall automatically terminate, and this chapter shall be of no further effect.

Sec. .0102. IMPROVEMENT PROJECTS AND SERVICES. (a) The district, using any money available to the district for the purpose, may provide, design, construct, acquire, improve,

relocate, operate, maintain, or finance an improvement project or service authorized under this chapter or Chapter 375, Local Government Code.

(b) The district may contract with a governmental or private entity to carry out an action under Subsection (a).

(c) The implementation of a district project or service is a governmental function or service for the purposes of Chapter 791, Government Code.

(d) The district is subject to the City charter and City land use laws, and all district projects or services must comply with City codes and ordinances.

(e) The district may not provide, conduct, or authorize an improvement project on any streets, highways, rights-of-way, or easements owned or controlled by City without the consent of the governing body of City.

Sec. .0103. NONPROFIT CORPORATION. (a) The board, with consent of the governing body of City by ~~resolution~~ may authorize the creation of a nonprofit corporation to assist and act for the district in implementing a project or providing a service authorized by this chapter.

(b) The nonprofit corporation:

(1) has each power of and is considered to be a local government corporation created under Subchapter D, Chapter 431, Transportation Code; and

(2) may implement any project and provide any service authorized by this chapter.

(c) The board shall appoint the board of directors of the nonprofit corporation. The board of directors of the nonprofit corporation shall serve in the same manner as the board of directors of a local government corporation created under Subchapter D, Chapter 431, Transportation Code, except that a board member is not required to reside in the district.

**(f) Notice of each board meeting shall be posted with the city secretary of City at least 72 hours prior to the meeting time. Board meetings shall be held in a location that is accessible to the general public.**

Sec. .0104. LAW ENFORCEMENT SERVICES. To protect the public interest, **and solely with the consent of the governing body of City,** the district may contract with a qualified party, including *[[select as appropriate]]* the county or the city, to provide law enforcement services in the district for a fee.

Sec. .0105. MEMBERSHIP IN CHARITABLE ORGANIZATIONS. The district may join and pay dues to a charitable or nonprofit organization that performs a service or provides an activity consistent with the furtherance of a district purpose.

Sec. .0106. ECONOMIC DEVELOPMENT PROGRAMS. (a) The district may engage in activities that accomplish the economic development purposes of the district.

(b) The district may establish and provide for the administration of one or more programs to promote state or local economic development and to stimulate business and commercial activity in the district, including programs to:

- (1) make loans and grants of public money; and
- (2) provide district personnel and services.

(c) The district may create economic development programs and exercise the economic development powers provided to municipalities by:

- (1) Chapter 380, Local Government Code; and
- (2) Subchapter A, Chapter 1509, Government Code.

Sec. .0107. PARKING FACILITIES. (a) The district may acquire, lease as lessor or lessee, construct, develop, own, operate, and maintain parking facilities or a system of parking facilities, including lots, garages, parking terminals, or other structures or accommodations for parking motor vehicles off the streets and related appurtenances.

(b) The district's parking facilities serve the public purposes of the district and are owned, used, and held for a public purpose even if leased or operated by a private entity for a term of years.

(c) The district's parking facilities are parts of and necessary components of a street and are considered to be a street or road improvement.

(d) The development and operation of the district's parking

facilities may be considered an economic development program.

Sec. .0108. ADDING OR EXCLUDING LAND. The district may add or exclude land in the manner provided by Subchapter J, Chapter 49, Water Code, or by Subchapter H, Chapter 54, Water Code, **subject to the consent of the governing body of City.**

Sec. .0109. DISBURSEMENTS AND TRANSFERS OF MONEY.

The board by resolution shall establish the number of directors' signatures and the procedure required for a disbursement or transfer of district money.

Sec. .0110. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

SUBCHAPTER D. ASSESSMENTS

Sec. .0151. PETITION REQUIRED FOR FINANCING SERVICES AND IMPROVEMENTS WITH ASSESSMENTS. (a) The board may not finance a service or improvement project with assessments under this chapter unless a written petition requesting that service or improvement has been filed with the board.

(b) A petition filed under Subsection (a) must be signed by the owners of a majority of the assessed value of real property in the district subject to assessment according to the most recent certified tax appraisal roll for the county.

Sec. .0152. ASSESSMENTS; LIENS FOR ASSESSMENTS.

- (a) The board by resolution may impose and collect an assessment for any purpose authorized by this chapter in all or any part of the District, **subject to (e)**.
- (b) An assessment, a reassessment, or an assessment resulting from an addition to or correction of the assessment roll by the district, penalties and interest on an assessment or reassessment, an expense of collection, and reasonable attorney's fees incurred by the district:
- (1) are a first and prior lien against the property assessed;
  - (2) are superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes **or any other lien filed by City or securing an obligation owed to City;** and
  - (3) are the personal liability of and a charge against the owners of the property even if the owners are not named in the assessment proceedings.
- (c) The lien is effective from the date of the board's resolution imposing the assessment until the date the assessment is paid. The board may enforce the lien in the same manner that the board may enforce an ad



valorem tax lien against real property.

(d) The board may make a correction to or deletion from the assessment roll that does not increase the amount of assessment of any parcel of land without providing notice and holding a hearing in the manner required for additional assessments.

**(e) Exempt properties shall not be assessed any tax, fee, assessment, or other charge or cost by the district.**

SUBCHAPTER E. TAXES AND BONDS

Sec .0201. TAX ELECTION REQUIRED. The district must hold an election in the manner provided by Chapter 49, Water Code, or, if applicable, Chapter 375, Local Government Code, to obtain voter approval before the district may impose an ad valorem tax.

Sec. .0202. OPERATION AND MAINTENANCE TAX. (a) If authorized by a majority of the district voters voting at an election under Section .0201, the district may impose an operation and maintenance tax on taxable property in the district in the manner provided by Section 49.107, Water Code, for any district purpose, including to:

- (1) maintain and operate the district;
- (2) construct or acquire improvements; or
- (3) provide a service.

(b) The board shall determine the operation and maintenance

tax rate. The rate may not exceed the rate approved at the election.

(c) Exempt properties shall not be considered taxable properties for purposes of Sec. 0202, and shall not be assessed any tax, fee, assessment, or other charge or cost by the district.

Sec. .0203. AUTHORITY TO BORROW MONEY AND TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may borrow money on terms determined by the board.

(b) The district may issue bonds, notes, or other obligations payable wholly or partly from ad valorem taxes, assessments, impact fees, revenue, contract payments, grants, or other district money, or any combination of those sources of money, to pay for any authorized district purpose.

(c) The limitation on the outstanding principal amount of bonds, notes, or other obligations provided by Section 49.4645, Water Code, does not apply to the district.

Sec. .0204. BONDS SECURED BY REVENUE OR CONTRACT PAYMENTS. The district may issue, without an election, bonds secured by:

(1) revenue other than ad valorem taxes, including contract revenues; or

(2) contract payments, provided that the requirements of Section 49.108, Water Code, have been met.

Sec. .0205. BONDS SECURED BY AD VALOREM TAXES; ELECTIONS.

(a) If authorized at an election under Section .0201, the district may issue bonds payable from ad valorem taxes.

(b) Section 375.243, Local Government Code, does not apply to the district.

(c) At the time the district issues bonds payable wholly or partly from ad valorem taxes, the board shall provide for the annual imposition of a continuing direct annual ad valorem tax, without limit as to rate or amount, for each year that all or part of the bonds are outstanding as required and in the manner provided by Sections 54.601 and 54.602, Water Code.

(d) All or any part of any facilities or improvements that may be acquired by a district by the issuance of its bonds may be submitted as a single proposition or as several propositions to be voted on at the election.

Sec. .0206. CONSENT OF MUNICIPALITY REQUIRED. (a) The board may not issue bonds until each municipality in whose corporate limits or extraterritorial jurisdiction the district is located has consented by ordinance or resolution to the creation of the district and to the inclusion of land in the district.

(b) This section applies only to the district's first issuance of bonds payable from ad valorem taxes.

SUBCHAPTER Z. DISSOLUTION

Sec. .0901. DISSOLUTION. (a) The board shall

dissolve the district on written petition filed with the board by the owners of:

(1) 66 percent or more of the assessed value of the property subject to assessment by the district based on the most recent certified county property tax rolls; or

(2) 66 percent or more of the surface area of the district, excluding roads, streets, highways, utility rights-of-way, other public areas, and other property exempt from assessment by the district according to the most recent certified county property tax rolls.

(b) The board by majority vote may dissolve the district at any time.

**(c) The City by resolution may dissolve the district at any time.**

(d) The district may not be dissolved by its board **or by City** under Subsection (a), (b), or (c) if the district:

(1) has outstanding bonded indebtedness until that bonded indebtedness has been repaid or defeased in accordance with the order or resolution authorizing the issuance of the bonds;

(2) has a contractual obligation to pay money until that obligation has been fully paid in accordance with the contract; or

(3) owns, operates, or maintains public works, facilities, or improvements unless the district contracts with

another person for the ownership, operation, or maintenance of the public works, facilities, or improvements.

(e) Sections 375.261, 375.262, and 375.264, Local Government Code, do not apply to the district.

SECTION 2. The *[[[name of district]]]* initially includes all territory contained in the following area:

*[[[description of district territory]]]*

SECTION 3. (a) 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) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality 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) 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. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect [[[effective date **must be within the same calendar year as the date of the legislative vote**]]].

SECTION 5. This Act may only be amended with the consent of the governing body of City.

## OPTIONAL ADDITIONAL POWERS

~~Sec. .0111. NAVIGATION DISTRICT POWERS. (a) The district has the powers provided by the general law of this state applicable to navigation districts created under Section 59, Article XVI, Texas Constitution, including Chapters 60 and 62, Water Code.~~

~~(b) The district may purchase, construct, acquire, own, operate, maintain, improve, or extend, inside and outside the district, a canal, waterway, bulkhead, dock, or other improvement or facility necessary or convenient to accomplish the navigation purposes of the district.~~

### SUBCHAPTER F. SALES AND USE TAX

~~Sec. .0251. APPLICABILITY OF CERTAIN TAX CODE PROVISIONS. (a) Chapter 321, Tax Code, governs the imposition, computation, administration, enforcement, and collection of the sales and use tax authorized by this subchapter except to the extent Chapter 321, Tax Code, is inconsistent with this chapter.~~

~~(b) For the purposes of this subchapter, a reference in Chapter 321, Tax Code, to a municipality or the governing body of a municipality is a reference to the district or the board, respectively.~~

~~Sec. .0252. ELECTION; ADOPTION OF TAX. (a) The district may adopt a sales and use tax if authorized by a majority~~

~~of the voters of the district voting at an election held for that purpose.~~

~~(b) The board by order may call an election to authorize the adoption of the sales and use tax. The election may be held on any uniform election date and in conjunction with any other district election.~~

~~(c) The district shall provide notice of the election and shall hold the election in the manner prescribed by Section .0201.~~

~~(d) The ballot shall be printed to provide for voting for or against the proposition: "Authorization of a sales and use tax in the [[[name of district]]] at a rate not to exceed \_\_\_\_\_ percent" (insert rate of one or more increments of one-eighth of one percent).~~

~~Sec. .0253. SALES AND USE TAX RATE. (a) After the date the results are declared of an election held under Section .0252 at which the voters authorized imposition of a tax, the board shall provide by resolution or order the initial rate of the tax, which must be in one or more increments of one-eighth of one percent.~~

~~(b) After the authorization of a tax under Section .0252, the board may increase or decrease the rate of the tax by one or more increments of one-eighth of one percent.~~

~~(c) The board may not decrease the rate of the tax if the~~



~~decrease would impair the repayment of any outstanding debt or obligation payable from the tax.~~

~~(d) The initial rate of the tax or any rate resulting from subsequent increases or decreases may not exceed the lesser of:~~

~~(1) the maximum rate authorized at the election held under Section \_\_\_\_\_ .0252; or~~

~~(2) a rate that, when added to the rates of all sales and use taxes imposed by other political subdivisions with territory in the district, would result in the maximum combined rate prescribed by Section 321.101(f), Tax Code, at any location in the district.~~

~~(e) In determining whether the combined sales and use tax rate under Subsection (d) (2) would exceed the maximum combined rate prescribed by Section 321.101(f), Tax Code, at any location in the district, the board shall include:~~

~~(1) any sales and use tax imposed by a political subdivision whose territory overlaps all or part of the district;~~

~~(2) any sales and use tax to be imposed by the city or the county as a result of an election held on the same date as the election held under Section \_\_\_\_\_ .0252; and~~

~~(3) any increase to an existing sales and use tax imposed by the city or the county as a result of an election held on the same date as the election held under Section \_\_\_\_\_ .0252.~~

~~(f) If the district adopts a sales and use tax authorized at~~

~~an election under Section .0252 and subsequently includes new territory in the district, the district:~~

~~(1) is not required to hold another election to approve the imposition of the sales and use tax in the included territory; and~~

~~(2) shall impose the sales and use tax in the included territory as provided by Chapter 321, Tax Code.~~

~~(g) If the district adopts a sales and use tax authorized at an election held under Section .0252 and subsequently excludes territory in the district under this section, the sales and use tax is inapplicable to the excluded territory as provided by Chapter 321, Tax Code, but is applicable to the territory remaining in the district.~~

~~Sec. .0254. NOTIFICATION OF RATE CHANGE. The board shall notify the comptroller of any changes made to the tax rate under this subchapter in the same manner the municipal secretary provides notice to the comptroller under Section 321.405(b), Tax Code.~~

~~Sec. .0255. USE OF REVENUE. Revenue from the sales and use tax imposed under this subchapter is for the use and benefit of the district and may be used for any district purpose. The district may pledge all or part of the revenue to the payment of bonds, notes, or other obligations, and that pledge of revenue may be in combination with other revenue, including tax revenue,~~

~~available to the district.~~

~~Sec. .0256. ABOLITION OF TAX. (a) Except as provided by Subsection (b), the board may abolish the tax imposed under this subchapter without an election.~~

~~(b) The board may not abolish the tax imposed under this subchapter if the district has any outstanding debt or obligation secured by the tax, and repayment of the debt or obligation would be impaired by the abolition of the tax.~~

~~(c) If the board abolishes the tax, the board shall notify the comptroller of that action in the same manner the municipal secretary provides notice to the comptroller under Section 321.405(b), Tax Code.~~

~~(d) If the board abolishes the tax or decreases the tax rate to zero, a new election to authorize a sales and use tax must be held under Section .0252 before the district may subsequently impose the tax.~~

#### ~~SUBCHAPTER H. DIVISION OF DISTRICT INTO MULTIPLE DISTRICTS~~

~~Sec. .0351. DIVISION OF DISTRICT; PREREQUISITES. (a) The district may be divided into two or more new districts only if the district:~~

- ~~(1) has never issued any bonds; and~~
- ~~(2) is not imposing ad valorem taxes.~~

~~(b) the board may adopt an order dividing the district before or after the date the board holds an election under Subchapter B~~

~~to confirm the creation of the district.~~

~~Sec. .0352. LAW APPLICABLE TO NEW DISTRICT. This chapter applies to any new district created by division of the district, and a new district has all the powers and duties of the district.~~

~~Sec. .0353. LIMITATION ON AREA OF NEW DISTRICT. A new district created by the division of the district may not, at the time the new district is created, contain any land outside the area described by Section 2 of the Act enacting this chapter.~~

~~Sec. .0354. DIVISION PROCEDURES. (a) The board, on its own motion or on receipt of a petition signed by the owner or owners of a majority of the assessed value of the real property in the district, may adopt an order dividing the district.~~

~~(b) An order dividing the district must:~~

~~(1) name each new district;~~

~~(2) include the metes and bounds description of the territory of each new district;~~

~~(3) appoint temporary directors for each new district;~~

~~and~~

~~(4) provide for the division of assets and liabilities between the new districts.~~

~~(c) On or before the 30th day after the date of adoption of an order dividing the district, the district shall file the order with the commission and record the order in the real property~~

~~records of each county in which the district is located.~~

~~(d) Municipal consent to the creation of the district and to the inclusion of land in the district acts as municipal consent to the creation of any new district created by division of the district and to the inclusion of land in the new district.~~

~~Sec. .0355. CONFIRMATION ELECTION FOR NEW DISTRICT. (a) A new district created by the division of the district shall hold a confirmation and directors' election as required by Subchapter B.~~

~~(b) If the creation of the new district is confirmed, the new district shall provide the election date and results to the Texas Commission on Environmental Quality.~~

~~Sec. .0356. TAX OR BOND ELECTION. Before a new district created by the division of the district may impose a tax for which an election is required under this chapter for the original district or issue bonds payable wholly or partly from ad valorem taxes, the new district must hold an election as required by this chapter to obtain voter approval.~~

#### SUBCHAPTER I. DEFINED AREAS

Sec. .0401. AUTHORITY TO ESTABLISH DEFINED AREAS OR DESIGNATED PROPERTY. The district may define areas or designate certain property of the district to pay for improvements, facilities, or services that primarily benefit that area or property and do not generally and directly benefit the district as

a whole.

Sec. .0402. PROCEDURE FOR ELECTION. (a) Before the district may impose an ad valorem tax applicable only to the defined area or designated property or issue bonds payable from ad valorem taxes of the defined area or designated property, the board shall hold an election in the defined area or designated property only.

(b) The board may submit the proposition to the voters on the same ballot to be used in another election.

Sec. .0403. DECLARING RESULT AND ISSUING ORDER. (a) If a majority of the voters voting at an election held under Section .0402 approve the proposition or propositions, the board shall declare the results and, by order, shall establish the defined area or designated property and describe it by metes and bounds or designate the specific area or property.

(b) A court may not review the board's order except on the ground of fraud, palpable error, or arbitrary and confiscatory abuse of discretion.

Sec. .0404. TAXES FOR SERVICES, IMPROVEMENTS, AND FACILITIES IN DEFINED AREAS OR DESIGNATED PROPERTY. On voter approval and adoption of an order described by Section .0403, the district may apply separately, differently, equitably, and specifically its taxing power and lien authority to the defined area or designated property to provide money to construct,

administer, maintain, and operate services, improvements, and facilities that primarily benefit the defined area or designated property.

Sec. .0405. ISSUANCE OF BONDS FOR DEFINED AREA OR DESIGNATED PROPERTY. After an order under Section .0403 is adopted, the district may issue bonds to provide for any land, improvements, facilities, plants, equipment, and appliances for the defined area or designated property.

**Sec. .0406. EXEMPTION FROM PAYMENT.**

**Notwithstanding anything contained in this Subsection, exempt properties shall not be assessed any tax, fee, assessment, or other charge or cost by the district.**