NOTICE OF SPECIAL CITY COUNCIL MEETING
CITY OF TOMBALL, TEXAS

MONDAY, DECEMBER 5, 2016

5:00 P.M.

Notice is hereby given of a meeting of the Tomball City Council, to be held on Monday, December 5, 2016 at 5:00 P.M., City Hall, 401 Market Street, Tomball, Texas 77375, for the purpose of considering the following agenda items. All agenda items are subject to action. The reserves the right to meet in a closed session for consultation with attorney on any agenda item should the need arise and if applicable pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

1.0 Call to Order

2.0 Public Comments and Receipt of Petitions *[At this time, anyone will be allowed to speak on any matter other than personnel matters or matters under litigation, for length of time not to exceed three minutes. No Council/Board discussion or action may take place on a matter until such matter has been placed on an agenda and posted in accordance with law.]*

3.0 New Business:

 3.1 The Tomball City Council will enter into a Workshop Session to Discuss In-City Municipal Utility Districts (MUDs)

4.0 Adjournment

<u>C E R T I F I C A T I O N</u>

I hereby certify that the above notice of meeting was posted on the bulletin board of City Hall, City of Tomball, Texas, a place readily accessible to the general public at all times, on the 1st day of December 2016 by 5:00 p.m., and remained posted for at least 72 continuous hours preceding the scheduled time of said meeting.

<u>Doris Speer</u>

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Doris Speer
City Secretary, TRMC

This facility is wheelchair accessible and accessible parking spaces are available Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please feel free to contact the City Secretary's office at (281) 290-1002 or FAX (281) 351-6256 for further information.

AGENDAS MAY ALSO BE VIEWED ONLINE AT www.ci.tomball.tx.us.

Special City Council
Agenda Item
Data Sheet

Meeting Date: December 5, 2016

Topic:
The Tomball City Council will enter into a Workshop Session to Discuss In-City Municipal Utility Districts (MUDs)

Background:

Origination:

Recommendation:

Party(ies) responsible for placing this item on agenda:

ACTION TAKEN

Approval	**Readings Passed**	**Other**
☐ **Yes** ☐ **No**	☐ **1st** ☐ **2nd**	

ATTACHMENTS:

Ashton Woods Memorandum regarding In-City MUDs
Article - Houston Chronicle - October 9, 2016
Article - Houston Chronicle - October 12, 2016
PID vs MUD vs TIRS Comparison - Friendswood
2014 Comparative Analysis - Creation and Authority
In-City MUDs Presentation - Allen Boone Humphries Robinson

Allen Boone Humphries Robinson LLP

MEMORANDUM

TO: Brian Williams
FROM: Angela Lutz
DATE: August 5, 2016
RE: PID vs. MUDs in the City of Tomball

Ashton Woods is interested in purchasing property inside the city limits of the City of Tomball, and is interested in creating an in-city municipal utility district ("MUD") over the property upon purchase. The City stated that it has successfully used Public Improvement Districts ("PID") in the past and recommended a PID for reimbursement to the developer.

First, the PIDs used by Tomball (that I can find) have been over small parcels of property. In March 2015, the City created PID No. 5 over 10.94 acres at the Yaupon Trails subdivision. PID No. 2 was approved in 2007 and a service and assessment plan was not approved until August 2013. Construction started on that subdivision in June 2014. It was reported that PID No. 2 will total 340 homes.

A PID is governed under Chapter 372 of the Local Government Code. The city council approves the creation of the PID and the city governs the PID. The city council can appoint an advisory board, but is not required to. A PID is not a separate political subdivision of the State of Texas, as MUDs are. A PID assessment is second in priority to taxes and is only senior to purchase money mortgage liens if the assessment lien is perfected before the mortgage lien.

Moreover, the city must issue the PID bonds. While the city does not pledge its full faith and credit to the bonds, the bonds are city debt and can affect the city's own credit rating. The PID bonds have historically been issued at a much higher interest rate due to the lack of regulatory review and volatility.

Contrasting, a MUD is a political subdivision heavily regulated by the TCEQ. A developer cannot get reimbursed for infrastructure without review by the TCEQ, which requires the developer to increase the ad valorem value before bonds are issued. The MUD bonds are not issued by the city or are obligations of the city and the MUD tax rate decreases over time. MUD taxes are deductible by the homeowners, while PID special assessment payments are not. Additionally, a MUD could provide services and consultants that would assist the City, for example maintenance of detention ponds.

AL

Potential Developer Risks in a Super PID

1. Risk of Super PID Board of Directors not reimbursing the Developer
   a. Scenario: Developer pays for infrastructure, Super PID has funds available to reimburse, but Board of Directors of the Super PID chooses not to reimburse the developer
   b. Mitigation strategy: a strong Development Financing Agreement between the Developer and the Board of Directors of the Super PID
      i. Provides a contractual obligation to reimburse the Developer
      ii. Contract is enforceable by lawsuit
   c. Track record: a long history of developers in Texas collecting from and enforcing development financing agreements
   d. Risk in a Super PID as compared to risk in a MUD: same as MUD

2. Risk of not having "control" of the Board of Directors of the Super PID
   a. Scenario: Board of Directors of the Super PID is appointed by Bexar County
   b. Mitigation strategy: work with the County (and the majority landowner in the PID) to have a representative of the Joint Venture appointed to the Board of Directors
      i. (similar to a MUD, this representative wouldn't be a family member, owner, employee, or contractor of the Joint Venture or its partners, but a friend with no direct business relationship)
      ii. After 1,000 residents live in the Super PID, the Board of Directors will convert to residents
   c. Track record: my understanding is that Bexar County has a good track record of appointing developer representatives in other Super PIDs
   d. Risk in a Super PID as compared to risk in a MUD: more risk in a Super PID; in a MUD, the developer typically chooses the initial board and can maintain "control" for a period of years until residents become elected

3. Risk of being in a Super PID with other developers
   a. Scenario: governance and finances of the Super PID favors other developers
   b. Mitigation strategy: ensure that the Development Financing Agreement dedicates the value created by the Joint Venture Developer solely to its reimbursement; so that value cannot be siphoned off by other developers
   c. Track record: it is not uncommon to have multiple developers within a district; there is a long track record of Development Financing Agreements protecting developers in multi-developer districts
   d. Risk in Super PID as compared to risk in a MUD: same as any district with multiple developers

4. Risk of future tax rate increases or decreases
    a. Scenario: Super PID and Bexar County increases the ad valorem tax rate in the future, negatively impacting marketability of the project
    b. Scenario: Super PID and Bexar County decreases the ad valorem tax rate in the future, negatively impacting the ability of the Super PID to reimburse developers
    c. Mitigation strategy:
        i. the City of San Antonio and Bexar County have strong public policy interests in the tax rates of the Super PIDs and the City of San Antonio being the same
        ii. tax rates are approved by both the Board of Directors of the Super PID and Bexar County
    d. Track record: the Cibolo Canyons Special Improvement District (the only other Super PID that has levied a property tax to date) has maintained its initial tax rate
    e. Risk in Super PID as compared to risk in a MUD: basically the same

Information about Texas PIDs and MUDs

Trophy Club PID

- Sold $27.5 million in raw land bonds on December 13, 2007.
- Interest rate 7.75%, BBI was 4.46% (sold at BBI + 3.29).
- Banc of America bought the Trophy Club bonds.
- Trophy Club bonds are not yet in default, nor is there evidence that assessments have not been paid.

2008 PID Bond Sales

- There were three PID bond sales in Texas in 2008, none in the 4th quarter.

- February 15, 2008: $20,000,000 in bonds sold by Lewisville Castle Hills Public Improvement District No. 4 Project.
- Interest rate 6.75%, BBI was 4.33 (sold at BBI + 2.42).

- April 24, 2008: $3,472,000 in bonds sold by Vintage Township Public Improvement District Project (Lubbock).
- Interest rate 7.375%, BBI was 4.62% (sold at BBI + 2.755).

- September 16, 2008: $5,475,000 in bonds sold by Escondido Public Improvement District (called the Marble Falls or Horseshoe Bay project).
- Interest rate 7.25%, BBI was 4.54% (sold at BBI + 2.71).

- Banc of America bought the Lubbock and Marble Falls bonds.

- Banc of America is not presently buying PID bonds.

2008 MUD Bond Sales (Includes LIDs, WCIDs, FWSDs, Special Utility Districts, and Public Utility Districts)

- 4th Quarter 2008: More than $168,000,000 in bonds sold.
- On average, these bonds sold at BBI + 1.02.
- All of 2008: More than $775,000,000 in bonds sold.
- There was not a slow down in the 4th Quarter, but it is expected that sales will slow down considerably in mid 2009.

ALLEN BOONE HUMPHRIES ROBINSON LLP

MEMORANDUM

TO: Joe B. Allen

FROM: Alia Vinson

DATE: March 5, 2008

RE: Overview of Public Improvement Districts and Municipal Utility Districts

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The purpose of this memorandum is to provide accurate information about Public Improvement Districts ("PIDs") and Municipal Utility Districts ("MUDs") and to provide a brief discussion of the benefits and limitations of each type of district. Much has been written about the use of PIDs and MUDs and sadly much of what has been written is strongly biased propaganda for the use of one district or the other. Neither form deserves the demonization it receives from certain quarters. Public Improvement Districts ("PIDs") and Municipal Utility Districts ("MUDs") have different bundles of risk and reward, but each may be useful in certain circumstances. In general, it is recommended that PIDs are more appropriate for in-city areas that have already been developed. A number of consultants are heavily marketing PIDs to developers by emphasizing the fact that PID bonds can be issued before any expenditures are made by the developer. While it is true that developers may face fewer upfront costs by using a PID, those savings come with a price, namely lack of control in the actions and governance of the PID. By using a MUD, developers will pay upfront costs, but they will generally be reimbursed at the time of the bond issuance. Moreover, the developer will retain more control over the Board of Directors and the MUD will not be subject to oversight by the City. [1]

Investor confidence in MUD bonds is likely to be higher than investor confidence in PID bonds because (1) greater regulatory requirements are imposed on MUD bond issues; (2) a MUD may impose an unlimited ad valorem tax rate to support its bonds; (3) there is a long debt service payment history for Texas MUDs that is unavailable for PIDs; and (4) investor experience with MUD bonds has accumulated for more than thirty years whereas the use of PID bonds is a fairly new investment option. The Texas Commission on Environmental Quality ("TCEQ") requires all MUDs to satisfy strict engineering and financial feasibility rules designed to protect the consumer against excessive tax rates and to

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[1] City means any incorporated city, town, or village of the State of Texas.

ensure the integrity of MUD bonds. Consequently, MUD bonds are likely to be more marketable than PID bonds, a factor that increases the appeal of MUDs.

I. Brief Summary of Benefits and Limitations of PIDs and MUDs

A. Benefits and Limitations to the Developers

At first glance, a PID appears to greatly benefit developers because bonds can be issued on behalf of the PID before building commences. PID bond proceeds can be used to pay for permissible improvements directly, eliminating the need for the developer to front the costs and wait for reimbursement from the bond proceeds. With respect to financial outlays, PIDs can have a leg up on MUDs. However, from a developer's perspective, MUDs are usually better than PIDs because they allow the developer to retain control. The City is integrally involved in any PID. The City approves the creation of the PID, hires a consultant to create the PID's assessment plan, and may appoint an advisory board. Moreover, the City issues the bonds on behalf of the PID. With any PID, the City retains extremely strong control, which may not be to the developer's benefit. In contrast, a MUD outside of city limits is not subject to the control of the City whatsoever (except that the City must consent to the creation of a MUD in its extraterritorial jurisdiction).

B. Benefits and Limitations to the City

A City may benefit from the use of PIDs if it wants to exercise more control over the entity in question. However, PID bonds will appear as City debt even though the City is not securing the bonds. Consequently, PIDs may negatively affect a City's credit rating and, in turn, the City's ability to issue bonds. In contrast, the City exercises very little control over MUDs. However, any MUD in the City's extraterritorial jurisdiction must receive the City's consent in order to be created. The City bears no risk for the development of the MUD, but may ensure quality infrastructure by placing conditions on its consent. A key component to the analysis of whether to opt for a PID or a MUD is the City's receptiveness to each district type. It is our understanding that the City of Houston is not supportive of PIDs and has not been willing to create PIDs within its corporate limits or extraterritorial jurisdiction.

C. Benefits and Limitations to the Homeowners

On balance, the use of PIDs is far riskier for homeowners than MUDs. First, PID special assessments are levied in addition to ad valorem taxes. Homeowners can end up paying ad valorem taxes plus unlimited special assessments, resulting in an onerous burden. Second, PID special assessments are not taxes and thus may not be deducted by homeowners. Third, no feasibility report is required before PID bonds are issued and special assessments are levied. It is entirely possible that the projects for which bond proceeds are raised may not be completed or may prove to be unfeasible. In spite of this, homeowners are obligated to continue paying the special assessments. In contrast, homeowners living in MUDs should be able to deduct all ad valorem taxes paid.

Homeowners are further protected because MUDs are held to a higher standard of accountability as a result of feasibility report requirements, audit requirements and TCEQ oversight. The TCEQ rules are designed to protect the property owners from excessive tax rates.

D. Benefits and Limitations to the Bondholders

PID bonds are not rated, but entice bondholders by offering higher interest rates. MUD bonds are sometimes not rated, but generally are. They tend to offer slightly lower interest rates. Interest on both PID and MUD bonds should be exempt from federal income taxation. A risk to PID bondholders is that it can be more difficult to collect delinquent special assessments than it is to collect delinquent ad valorem taxes. In Texas, it is unconstitutional to foreclose on a homestead for special assessment delinquency (see III.H. below). MUD bonds are secured by a MUDs ability to levy an unlimited ad valorem tax on its property owners. MUD bondholders are further protected by the financial feasibility rules imposed on MUDs by the TCEQ. Before a MUD can issue bonds, the TCEQ rules require: (1) the completion of all water, sewer and drainage facilities to be financed with the proposed bond issue; (2) the completion of all streets and roads that provide access to the areas served by the utility improvements; (3) the completion of at least 25% of the projected value of houses, buildings, and/or improvements; and (4) a showing that the land values, existing improvements, and projected improvements will be sufficient to support a reasonable tax rate for debt serve payments for existing and proposed bond indebtedness while maintaining competitive utility rates.

II. Table Comparing PIDs and MUDs

	Public Improvement Districts	Municipal Utility Districts
A. Statutory Authority	PIDs are governed by § 372 of the Local Government Code.	MUDs are governed by §§ 49 and 54 of the Texas Water Code and the Texas Commission on Environmental Quality ("TCEQ") rules (§ 293, 30 Texas Administrative Code).
B. Means of Creation	PIDs are created through a petition of a majority of the owners of the property of the proposed PID to the City Commission. The City approves the creation of the PID.	MUDs are created by the TCEQ (by a petition from the owners of a majority in value of the area to be included in the MUD) or through special legislation passed by the Texas legislature. No City approval is required unless the MUD is to be located within the City's corporate limits or extraterritorial jurisdiction ("ETJ"), in which case the City must consent to its creation.
C. Political Subdivision	A PID is not a separate political subdivision, it is merely a geographic zone within (and sometimes without) a City's limits.	A MUD is a separate political subdivision of the State.

D. Revenue Collection	A PID collects revenue by levying a special assessment to finance improvements within the zone.	A MUD collects revenue by levying an ad valorem tax to finance improvements and by charging fees for water and sewer use.
E. City Oversight	(1) The City may designate a PID Advisory Board. (2) The City hires a consultant to develop a PID assessment plan identifying the infrastructure to be constructed and the amount of the assessment on the property within the PID. (3) If bonds are issued, the City must issue them.	None.
F. Permissible Improvements	Permissible improvements are extremely broad (see Local Government Code § 372.003(b)) and can include almost anything that "promotes the interests of the municipality or county".	Permissible improvements are less broadly drawn, but include water, sewer, drainage (including detention ponds), the development of parks and recreational facilities, garbage services, fire protection services, and public safety patrols. Water Code § 54.012 and 54.201.
G. Governance	PIDs are governed by a seven member board of directors (appointed by the county IF the county elects to delegate authority); directors must reside in the district (only if the district has a population of more than 1000) and be a resident or own property in the district. Local Government Code § 372.106 and 107.	MUDs are governed by a five member board of directors; directors must own property in the MUD or be a qualified voter in the MUD. Water Code § 54.101 and 102. Directors are initially appointed by the TCEQ but are subsequently elected at elections held within the MUD.
H. Priority of Revenue Stream	Special assessments do not have the same priority as property taxes. The special assessments are second in priority to taxes, but are ahead of private mortgage liens.	The ad valorem taxes are equal in priority to all other taxes.
I. Who Issues Bonds?	Because the PID is not a separate political subdivision, it cannot issue bonds. The City (or a local government corporation acting on behalf of the City) must issue the bonds. While the City does not secure the bonds, the debt will show up on its books and can affect the City's own credit rating.	The MUD issues the bonds. The City is not involved and bears no risk whatsoever.
J. Security for the Bonds	PID bonds are secured only by special assessments and not from general obligation taxes. The governing body may also pledge all or part of the income from improvements financed by the	MUD bonds are secured by the ad valorem taxes and revenues to result from the ownership or operation of the district's works, improvements, facilities, plants, equipment, and appliances. Water

	bond proceeds. Local Government Code § 372.026(a). The bonds may also be secured by mortgages or deeds of trust on any real property related to the facilities that are owned or are to be acquired by the municipality or county and by chattel mortgages, liens, or security interests on any personal property appurtenant to that real property. Local Government Code § 372.026(c). The governing body may also pledge all or part of a grant, donation, revenue, or income received or to be received by any public or private source. Local Government Code § 372.026(d).	Code § 54.503. Bonds may additionally be secured by a deed of trust or mortgage lien on part or all of the physical properties of the district. Water Code § 54.504.
K. Approval for Bonds	The TCEQ does not approve bond issuances, but the City (because it is the issuing party) and the Attorney General must approve any bond issuance.	The TCEQ and the Attorney General must approve any bond issuance.
L. Permissible Uses for Bond Proceeds	Bonds proceeds may be used to pay for a broad array of permissible improvements. See III.F. for specifics.	Bond proceeds may be used to fund water, sewer and drainage projects. However, bond proceeds from bonds supported by ad valorem taxes may not be used to pay for the development and maintenance of recreational facilities (including parks and landscaping). See Water Code § 54.774(a).
M. Feasibility Requirement	No feasibility requirement exists.	The MUD must submit a feasibility report to the TCEQ for its approval before the TCEQ will approve the bond issuance.
N. Reserve Fund	No reserve fund is required.	No reserve fund is required.
O. Fiscal Responsibility: Audit Requirement	No audit requirement.	The Board is required to have the district's fiscal accounts and records audited on an annual basis. See Water Code § 49.191.

III. Explanation of Table

A. Statutory Authority. Both PIDs and MUDs were created under Section 52, Article III and Section 59, Article XVI of the Texas Constitution. PIDs are governed by Local Government Code § 372. Additional rules apply to PIDs in home-rule municipalities. Local Government Code § 372.041. MUDs are governed by Water Code §§ 49 and 54.

B. Means of Creation. A PID must be created by petitioning the city. The petition must be signed by owners of taxable real property representing more than 50% of the appraised value of taxable real property liable for assessment and record owners of real property liable for assessment who (1) constitute more than 50% of all record owners of property that is liable for assessment; or (2) own taxable real property that constitutes more than 50% of the area of all taxable real property that is liable for assessment. Local Government Code § 372.05(b).

MUDs may be created legislatively by an act of the Texas Legislature or administratively by the TCEQ. In order for the TCEQ to create a MUD, a petition requesting its creation must be filed with the Commission. The petition must be signed by a majority in value of the holders of title of the land within the proposed district, as indicated by the tax rolls of the central appraisal district. Water Code § 54.014. A City must consent to the creation of a MUD within its extraterritorial jurisdiction or corporate limits. Water Code § 54.016. If the MUD is outside of a City's extraterritorial jurisdiction, the county may consent. Water Code § 54.0161.

C. Political Subdivision. A PID is not a political subdivision; a MUD is.

D. Revenue Collection. PIDs collect revenue by levying a special assessment. The method of apportioning assessments leaves a lot of room for discretion. The governing body apportions the assessment on the basis of special benefits accruing to the property because of the improvement. The cost of an improvement may be assessed: (1) equally per front foot or square foot; (2) according to the value of the property; or (3) *in any other manner* that results in imposing equal shares of the cost on property similarly benefited. Local Government Code § 372.015. MUDs collect revenue by levying ad valorem taxes and charging user fees for water and sewer. Ad valorem taxes are assessed in accordance with the Texas Property Tax Code.

E. City Oversight. The City must approve the PID for it to be created. In addition, the City may appoint an advisory board with the responsibility of developing and recommending an improvement plan. Local Government Code § 372.008. The City treasury creates a separate public improvement district fund. Proceeds from the sale of bonds, temporary notes, and time warrants are credited to the fund to be administrated by the City. Local Government Code § 372.022. Only MUDs within the City's extraterritorial jurisdiction or corporate limits must obtain the City's approval to be created. It is possible for a City to place certain conditions on its consent. The City may require the MUD to submit all its infrastructure plans to the city for approval and may place limitations on the length of maturity and interest rates of the MUD bonds. The City has the legal option to annex the MUD, acquire all the assets and assume the debt, subject to certain procedural steps.

F. Permissible Improvements. For PIDs, the scope of permissible improvements is extremely broad. Local Government Code § 372.003 states that a public improvement project may include the following: (1) landscaping; (2) erection of fountains, distinctive lighting, and signs; (3) acquiring, constructing, improving, widening, narrowing, closing, or rerouting of sidewalks or of streets, any other roadways, or their rights-of-way; (4) construction or improvements of pedestrian malls; (5) acquisition and installation of pieces of art; (6) acquisition, construction, or improvement of libraries; (7) acquisition, construction, or improvement of off-street parking facilities; (8) acquisition, construction, improvement, or rerouting of mass transportation facilities; (9) acquisition, construction, or improvement of water, wastewater, or drainage facilities or improvements; (10) the establishment or improvement of parks; (11) projects similar to those listed in subdivisions (1) through (10); (12) acquisition, by purchase or otherwise, of real property in connection with an authorized improvement; (13) special supplemental services for improvement and promotion of the district, including services relating to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and cultural enhancement; and (14) payment of expenses incurred in the establishment, administration and operation of the district.

MUDs are created for the following purposes: (1) the control, storage, preservation and distribution of its storm water and floodwater, the water of its rivers and streams for irrigation, power, and all other useful purposes; (2) the reclamation and irrigation of its arid, semiarid, and other land needing irrigation; (3) the reclamation and drainage of its overflowed land and other land needing drainage; (4) the conservation and development of its forests, water, and hydroelectric power; (5) the navigation of its inland and coastal water; (6) the control, abatement, and change of any shortage or harmful excess of water; (7) the protection, preservation, and restoration of the purity and sanitary condition of water within the state; and (8) the preservation of all natural resources of the state. Water Code § 54.012. A MUD shall have the functions, powers, authority, rights, and duties which will permit accomplishment of the purposes for which it was created. Water Code § 54.201.

G. Governance. PIDs are governed by a board of seven directors appointed by the county. Local Government Code § 372.106. A MUD is governed by a board of five directors. Water Code § 54.101.

H. Priority of Revenue Stream. PID special assessments are a first and prior lien against the property assessed, superior to all other liens and claims *except* liens or claims for state, county, school district, or municipality ad valorem taxes, and is a personal liability of and charge against the owners of the property regardless of whether the owners are named. The lien is effective from the date of the ordinance or order levying the assessment until the assessment is paid and may be enforced by the governing body in the same manner that an ad valorem tax lien against real property may be enforced by the governing body. See Local Government Code § 372.018. In case of delinquency, special assessments cannot be collected by foreclosure of a homestead without violating the Texas Constitution. Attorney General Opinion No. JC0386 (2001). However, the determination as to whether the property is a homestead is made at the time the special assessment was levied. Attorney General Opinion No. 0237 (2004). An issue that arises with PIDs is the fact that a property owner may default on his or her ad valorem taxes which could result in that property's foreclosure.

If that occurs, the PIDs right to any remaining due but unpaid special assessments may be extinguished.

MUD ad valorem taxes are equal in priority to all other taxes, making them first in priority.

I. **Who Issues Bonds?** PID bonds are general obligation bonds. See Local Government Code § 372.023(d). As such, these general obligation bonds are treated as debt of the issuing city even if that City is not securing the bonds. MUD bonds are issued by the MUD itself.

J. **Security for the Bonds.** The order authorizing the issuance of the PID bonds may specify that the proceeds from the sale of the bonds: (1) be used to pay interest on the bonds during and after the period of acquisition or construction of an improvement financed through the sale of the bonds; (2) be used for creating a reserve fund for payment of the principal of and interest on the bonds and for creating other funds; and (3) may be placed in time deposit or invested, until needed. Local Government Code § 372.025(c). PIDs may pledge all or part of the income from improvements financed, including income received in installment payments. Local Government Code § 372.026(a). Bonds may also be secured by mortgages or deeds of trust. Local Government Code § 372.026(c). The issuer may also pledge all or part of a grant, donation, revenue, or income received or to be received from the government of the US or any other public or private source. Local Government Code § 372.026(d). The Local Government Code does not require a reserve fund.

A MUD may secure its bonds on the collection of ad valorem taxes on all taxable property within the district and/or by pledging all or any part of the designated revenues to result from the ownership or operation of the district's works, improvements, facilities, plants, equipment, and appliances. Water Code § 54.503. A MUD may additionally secure its bonds with a deed of trust or mortgage lien on part or all of the physical properties of the district, and franchises, easements, water rights, and appropriation permits, leases, and contracts and all rights appurtenant to such properties. Water Code § 54.504.

K. **Government Approval for Bonds.** MUD bonds must be approved by the TCEQ, but PID bonds do not require TCEQ approval. Water Code § 49.181. PID and MUD bonds must be approved by the attorney general.

L. **Permissible Uses for Bond Proceeds.** PID and MUD bond proceeds may be used to pay for the permissible improvements described in III.F. above. The Local Government Code states that PID bond proceeds may: (1) be used to pay interest on the bonds during and after the period of acquisition or construction of an improvement financed through the sale of the bonds; (2) be used for creating a reserve fund for payment of the principal of and interest on the bonds and for creating other funds; and (3) be placed in time deposit or invested, until needed. Local Government Code § 372.025(c).

A MUD may issue bonds for the purpose of purchasing, constructing, acquiring, owning, operating, repairing, improving, or extending any district works, improvements, facilities, plants, equipment, and appliances needed to accomplish the purposes for which a district may be created. Water Code § 54.501. A MUD may pay out of bond proceeds all expenses of the district reasonable and necessary to effect the issuance, sale, and delivery of bonds. Water Code § 49.155.

M. Feasibility Requirement. PID improvements do not require a feasibility report. However, the governing body may request a feasibility report before establishing the PID or before entering into any contract. Local Government Code § 372.007. MUDs must submit a feasibility report to the TCEQ before it can receive approval to issue bonds.

N. Reserve Fund. Neither PID nor MUD bonds are required to have a reserve fund. As a marketing matter, however, a reserve fund is likely to be used.

O. Fiscal Responsibility: Audit Requirement. Water Code § 49.191 requires MUDs to have their fiscal accounts and records audited annually at the expense of the district. The audit must be performed by a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy. The audit must be completed within 120 days after the close of the district's fiscal year.

AV

HOUSTON ★ CHRONICLE

Sunday, October 9, 2016 | HoustonChronicle.com and Chron.com | Vol. 115, No. 362 | $4.00 ★★

Chance of storms: High 90, Low 75

Districts exercise sweeping powers

Backed by key GOP lawmakers, unchecked MUDs have $60B in debt

By James Drew and John D. Harden

In Houston's conservative suburbs, where local governments are loath to raise taxes, the thankless task of hiking revenues has fallen to hundreds of so-called municipal utility districts created for developers to finance water and sewage systems, roads and other amenities.

These MUDs, as they're called, have virtually unlimited power in bright red, anti-tax Texas to sell bonds and levy property taxes.

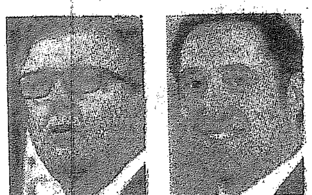
MUD MONEY

Second in a series

The state's leading tea party conservatives, Comptroller Glenn Hegar and Lt. Gov. Dan Patrick, have championed their creation in what ethics reformers say is a clear example of special interest influence in Austin.

All told, lawmakers who carry bills creating MUDs and other water districts have collected $3.5 million in campaign contributions since 2001 from law firms that specialize in creating those districts on behalf of developers or do bond work on their multimillion-dollar deals, a Houston Chronicle investigation has found. The Chronicle used a state database to pinpoint which law firms work for water districts. The data doesn't

MUDs continues on A21



Dan Patrick and Glenn Hegar champion MUDs.

MUDs' powers unconstrained by state law

MUDs from page A1

include developers, who also contribute large sums to legislators.

Both Hegar and Patrick say MUDs and other water districts have played a critical role in developing infrastructure and creating jobs. They deny campaign contributions have anything to do with the bills they've carried. But both also say they are concerned about surging property tax burdens levied by school districts, towns, cities, counties — and MUDs, their less accountable, largely anonymous first cousins.

MUDs and other water districts have to date issued more than $60 billion in outstanding debt and face almost no government oversight of their spending. While most voters know the names of their mayors and city council members, many have no idea who runs their local MUD — or even what a MUD is.

James Quintero, director of the Center for Local Governance for the Texas Public Policy Foundation, a conservative think tank based in Austin, wants the legislature to protect taxpayers by preventing local officeholders from "off-loading" the delivery of public services to MUDs and other "special purpose districts" that contribute to the property tax burden and often lack transparency.

Texas officials don't even know how many special purpose districts there are in the state. The U.S. Census Bureau in 2012 put the number at about 2,600. It defines the districts as independent governments that "exist as separate entities with substantial administrative and fiscal independence from general purpose local governments" — everything from agricultural development districts to toll way authorities.

By far the most important class, at least when it comes to facilitating growth and development, consists of 949 MUDs that have sweeping powers unconstrained by state law or the state constitution to issue tax-exempt bonds and raise taxes to cover developers' infrastructure costs.

Developers and their lawyers hold enormous sway over how MUDs are created, assembling their boards and organizing the "electors" who must vote to ratify their existence and authorize maximum bond sales. Quite often, just a handful of these electors are responsible for authorizing hundreds of millions of dollars in tax-exempt debt.

A trade group for MUDs — the Association of Water Board Directors-Texas — said by enabling developers to recover their infrastructure costs through bond sales, home prices are lower because those costs are not passed on to buyers. But homeowners pay the cost of those bonds, plus interest, over 25 years in the form of higher taxes.

The explosive growth of MUDs — there are 620 in Harris, Fort Bend and Montgomery Counties — and surging property values have contributed to significant growth in local property tax bills, said former Comptroller Susan Combs, a Republican.

Combs doesn't consider herself a foe of MUDs. "But you have got to tell people what you are doing and how you are spending money, and you owe it to them to be transparent," she said.

■■■

Straddling Waller and Fort Bend Counties on 555 acres of former prairie land, the Willow Creek Farms Municipal Utility District provides an illustrative case study in how powerful lawmakers — in this case then-Sen. Glenn Hegar — receive sizeable campaign contributions to carry legislation creating MUDs for developers, even though the process is typically uncontested and receives scant attention in Austin.

Hegar, a Fort Bend Republican, filed the legislation two months into the 2007 legislative session. His bill had three hearings by legislative committees. Only one person testified - attorney Joe B. Allen, who was in favor.

Four years earlier, Allen had left the Vinson & Elkins law firm and started his own firm: Allen Boone Humphries Robinson. Based in Houston, the firm specializes in helping developers create MUDs and represents the most water districts in Texas at 350, according to state data.

Once the districts are approved by the legislature or the Texas Commission on Environmental Quality, developers usually recruit a few people to move on to the vacant land so they can ratify their creation and authorize the sale of

ABHR ranks first in campaign contributions among law firms that do water district work, contributing $1.4 million since 2001 to legislators who have carried water district bills or served on committees that were in charge of approving them.

James Boone, ABHR's managing partner, declined an interview request from the Chronicle. In a written statement, the firm said it is a civic duty to participate in the electoral process: "ABHR makes contributions to the political campaigns of candidates with a vision of the continued growth and development of Texas and the Texas economy."

Hegar, elected comptroller in 2014, ranks second in the amount of campaign contributions, $110,394, from ABHR and other firms that specialize in MUDs and other water districts, and public finance. He ranked first among lawmakers in the number of water district bills that have become law.

Hegar said there was no connection between the 79 water district bills he filed that became law and campaign contributions from law firms representing developers and water districts.

As a candidate who said he favored eliminating property taxes when he ran for Comptroller in 2014, Hegar acknowledges that local government debt must be taken seriously. But he said special purpose districts have played an essential role in Texas' population growth and development in recent years, particularly in Greater Houston.

In 2007, at its first board meeting, the Willow Creek Farms MUD chose ABHR as its general counsel and bond counsel.

Three years later, when Willow Creek Farms MUD sold its first bonds, the official statement provided to investors said the "district's voters" had authorized the sale of up to $92 million of bonds to build water and sewage projects, parks, and roads.

Nowhere in the 113-page report — the public sector version of a bond prospectus — did it note that only two people voted in the election. The "yes" votes — Marc Heidemann and Mary H. Atkinson — could not be reached for comment. The practice, in which developers recruit people to move onto vacant land in mobile homes so they can vote in favor of MUD bonds, is referred to as "rent-a-voter."

Over the past six years, the district has sold $28.7 million in bonds.

That has helped six companies, including Pulte Homes, develop nearly 1,000 single-family lots, with about 800 homes completed.

Four times, the MUD's board has raised the portion of the property tax rate that's used to repay bonds. Homeowners in Willow Creek Farms started out in 2007 paying $1,250 in taxes annually on every $100,000 in assessed home value. While that overall rate has declined to $1,095 per $100,000, taxes have gone up with the value of homes to the point that the MUD's overall tax revenues have jumped from $404,000 in 2011 to $1.8 million last year.

Harris County Improvement District 18 — best described as a super-MUD that includes the new Exxon Mobil campus — has benefited even more from a huge spike in property values in northern Harris County. It, too, was created by a powerful lawmaker, then-Sen. Dan Patrick, with little scrutiny and no opposition.

The bill that Patrick filed in 2009 to create the improvement district says its purpose would be 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."

In addition to granting the district authority to sell bonds and levy taxes to support all those endeavors, the bill sent a message to Harris County, barring it from cutting public services within the district's boundaries.

As was the case with Hegar's bill to create the Willow Creek Farms MUD, the only person to testify about Patrick's legislation was Allen, who urged approval and is listed in legislative records as representing Springwoods Realty Co., which was the original developer.

After unanimous votes in the Senate and House, Patrick's bill was signed into law by Gov. Rick Perry in June 2009.

ABHR became the district's general counsel and also its bond counsel.

As was the case with Hegar, Patrick was a major recipient of contributions from ABHR and other law firms representing water districts or doing bond work on their deals — he ranked first, receiving $144,691, including $66,441 from ABHR.

Unlike Hegar's Willow Creek Farms MUD, Patrick's Improvement District 18 levies multiple taxes, including a 1 percent sales tax and a 7 percent hotel-motel tax, and receives additional tax contributions from Harris County.

Keith Elkins, a Patrick spokesman, said the lieutenant governor has "made it clear that lowering property taxes is his number one priority" in the upcoming legislative session and "any suggestion to the contrary is simply absurd." Patrick carried legislation creating 15 special purpose districts, including Improvement District 18. Elkins said Exxon Mobil and Southwestern Energy have brought thousands of jobs, which he said "would not exist if District 18 had not been created."

The district can sell up to sell $2.3 billion in bonds for road construction, water, sewer and drainage systems; parks and recreational facilities, fire fighting facilities, public parking, economic development projects, and transit. That vast bonding authority was authorized in two separate votes by four people.

From the start, the board set the tax rate for operating expenses at the $1,500 maximum per $100,000 assessed valuation that those four voters approved in a ballot issue. For property owners within the improvement district boundaries, that rate is the highest among local governments that tax there - edging out Spring ISD, 3.5 times higher than Harris County, and 14 times higher than the Lone Star College District.

While the overall property tax rate has remained steady during the district's lifetime, the district's board twice has increased a portion of the tax that goes to pay debt service on its bonds - from zero to $350 per $100,000 assessed valuation for 2013 and then to $770 for 2014.

A big chunk of the tax dollars have been used to pay principal and interest on bonds sold to reimburse developers for Exxon Mobil infrastructure and the first sections of Springwoods Village, which features homes close to an "urban center" with plans for shops, restaurants, offices and apartments.

Over the years, Allen Boone Humphries Robinson's donations have shown how MUDs have become a source of campaign money for lawmakers, particularly when they become committee chairmen responsible for moving MUD bills.

Democratic state Sen. Royce West of Dallas received $15,990 from ABHR as chairman of the Intergovernmental Relations Committee — but only $3,000 since he left the committee.

His successor, state Sen. Juan Hinojosa, a Democrat from McAllen, fits the same pattern: Of the $25,532 that ABHR has donated to Hinojosa's campaigns, $17,532 came during the only two legislation sessions he chaired the committee.

Ditto state Rep. Dennis Bonnen, an Angleton Republican, who received $7,654 from ABHR when he was chairman of the House Special Purpose Districts Committee, far more than he has received after leaving the committee in 2015.

The $3.5 million total contributed by law firms representing MUDs and other water districts pales in comparison to special interest money spent by other industries. But ethics experts said the $3.5 million is significant because bills creating the districts rarely face opposition or scrutiny.

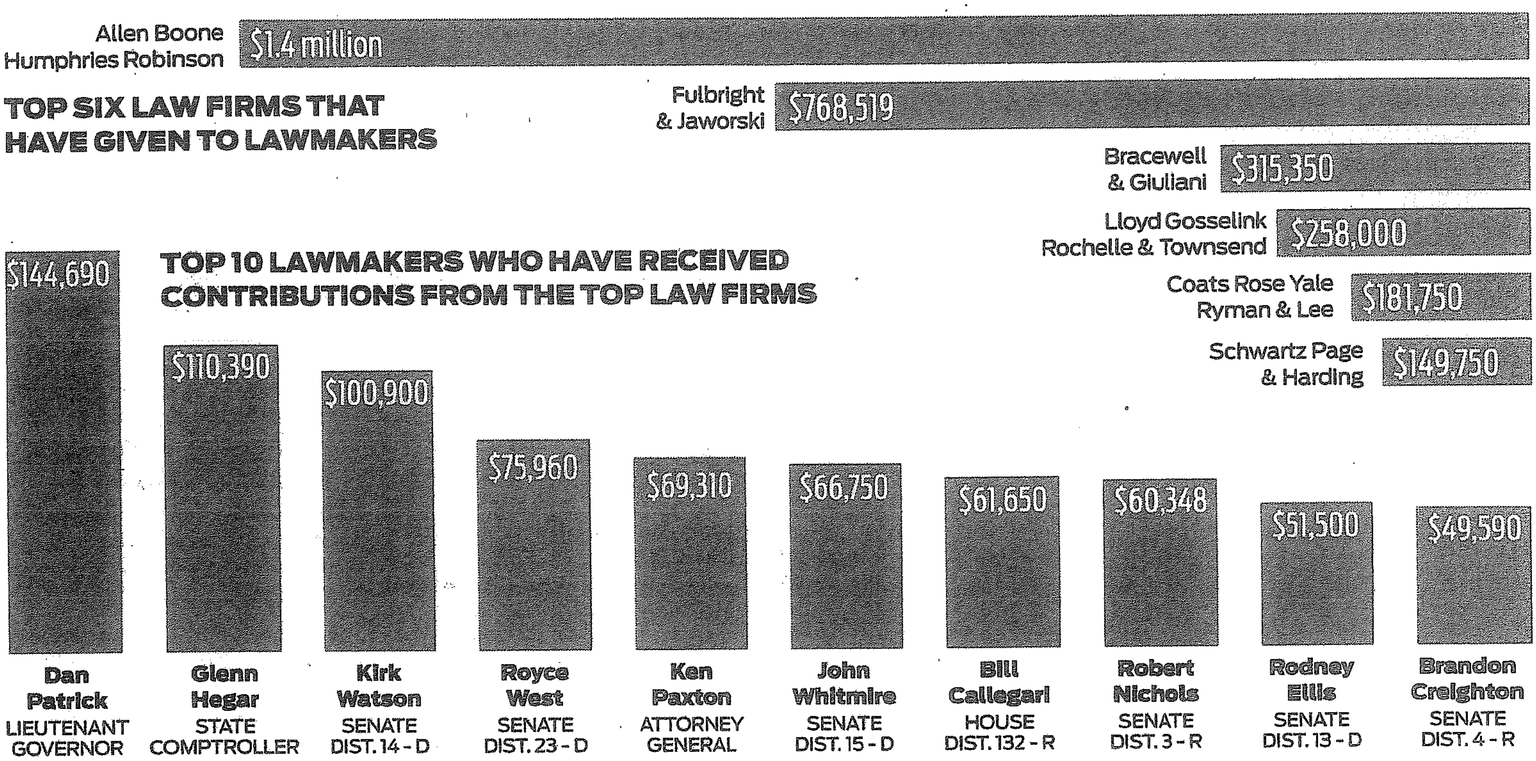
"As a result of big contributions, lawyers and lobbyists will get good access to be able to ensure that their bills pass, thus ensuring that their clients' interests are represented," said Tom "Smitty" Smith, director of the Texas office of Public Citizen, a nonprofit consumer and environmental group.

One reform proposal that has been put forth by conservative groups would form a state board — similar to the Sunset Advisory Commission — that would examine the original goals of special purpose districts and decide if they should be dissolved or if other local governments could provide those services at a lower cost.

Another option would be to enable residents to vote, for instance, 10 years after a special purpose district is created whether it should continue or be disbanded.

Law firms give, and lawmakers receive

State data shows how law firms specializing in creating municipal utility districts have made $3.5 million in contributions since 2001 to lawmakers who carry bills creating MUDs and other special purpose districts.



Source: Texas Ethics Commission

Houston Chronicle

At the minimum, said Quintero, director of the Center for Local Governance for the Texas Public Policy Foundation, MUDs and other special purpose districts should be required to maintain websites so that citizens can have access to financial data.

"Where there is a lack of transparency, there often times is a lack of accountability and good governance," he said.

Combs, the former comptroller whose campaigns received $44,000 in contributions from Allen Boone Humphries Robinson, said she found herself tangling with a determined foe when she tried to get a bill passed in 2013 requiring MUDs and other water districts to post budget and long-term debt data on the web: Allen Boone Humphries Robinson.

Combs recalled how Jody Richardson, an ABHR attorney who also is a lobbyist, "hated the bill, said it was just unreasonably difficult" — and seems to have succeeded in helping kill it. Reached for comment, Richardson said her role was "extremely limited" and ABHR had no role in the bill's demise.

But Combs, referring to ABHR, the state's leading water district firm, said "they didn't think anybody needed it. Well, we had testimony that some MUDs had not operated well."

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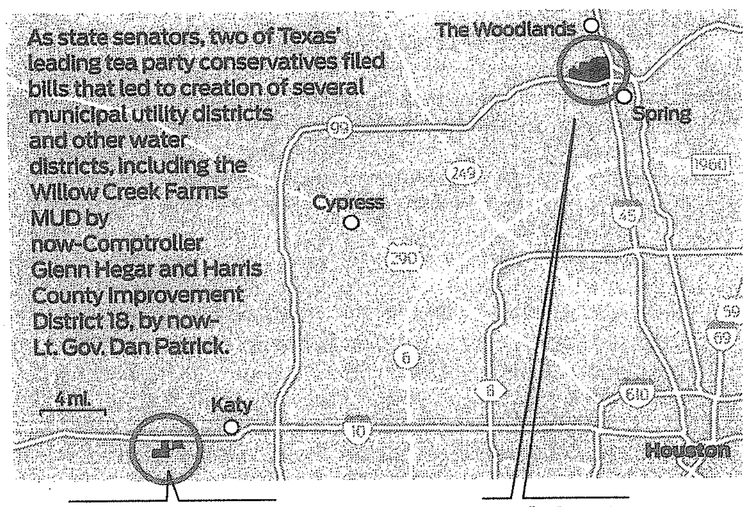
» *If you've had trouble communicating with your municipal utility district, tell your story by submitting a form at **HoustonChronicle.com/MUDStories***

A tale of two districts



Willow Creek Farms Municipal Utility District		Harris County Improvement District 18
2007	YEAR CREATED	2009
555 acres	SIZE	1,887 acres
In a 2007 election, the sale of up to $92.1 million	BONDS AUTHORIZED	In 2009 and 2011 elections, the sale of up to $2.3 billion
Two	NUMBER OF VOTERS	Two in 2009 and two in 2011
$28.7 million	AMOUNT OF BONDS SOLD	**$115 million**

Sources: Texas Commission on Environmental Quality and bond official statements from the Harris County Improvement District 18 and Willow Creek Farms Municipal Utility District.

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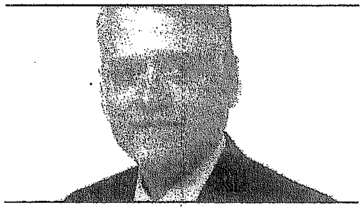
BUSINESS

True conservatives wouldn't create huge debts, would they?

CHRIS TOMLINSON
Commentary



Texas conservatives make a big deal about the state's growing indebtedness, along with rising property taxes and their negative effect on the state's business climate.

If a Texas school board wants to improve the future workforce by raising taxes to boost programs, or, God forbid, pay teachers a competitive wage, you can count on every Republican lawmaker within 30 miles to condemn the proposal. If a city wants to raise taxes to replace leaky water pipes or improve roads, conservatives will line up at the next council meeting to call everyone involved a tax-and-spend liberal.

Yet these same lawmakers have quietly granted private real estate developers legal authority to borrow more than $60 billion over the last 15 years and then impose new property taxes to pay off those bonds over generations. The kicker is that these so-called conservatives campaign on reducing or eliminating property taxes.

The Republican governors and the Republican majority in the Legislature do this by allowing developers to create Municipal Utility Districts and Public Utility Districts, which the developers control with little or no government oversight. The MUDs and PUDs then issue bonds to raise cash to build roads and water and sewage systems, basically all of the infrastructure that is required for modern living.

Dan Patrick, left, and Glenn Hegar are the Legislature's PUD and MUD studs.

If you haven't read my colleague James Drew's Sunday investigation into Houston-area Republicans Lt. Gov. Dan Patrick and state Comptroller Glenn Hegar, the Legislature's PUD and MUD studs, take the time for an

Tomlinson continues on B9

INSIDE

Drive-through convenience store chain Farm Stores is coming to Houston.

Page B6

AT A GLANCE

- **DOW** 18,128.66, down 200.38 (-1.1%)
- **S&P 500** 2,136.73, down 26.93 (-1.2%)
- **CRUDE OIL** $50.79, down 56¢ (-1.1%)
- **NATURAL GAS** $3.237, down 3.8¢ (-1.2%)

Tomlinson: Taxpayers wind up with debt

Tomlinson from page B1

important civics lesson on who really is driving up your property taxes. Also learn why even conservative groups like the Texas Public Policy Foundation are a little queasy about what has been going on in Austin and why they want it changed.

The problem is not necessarily the development or debt, mind you; it's the underhanded and deceitful way the money is raised and the debt is transferred to unwitting taxpayers.

No developer wants to incur the costs of a water treatment plant or hundreds of miles of pipes or new roads at the beginning of a development. If developers couldn't issue municipal bonds, new homes would cost more than most people could afford.

The problem is that politicians don't want to raise taxes and won't have an honest conversation about the true cost of the very development they love to brag about. If a developer wants to build a community on vacant land, county commissioners and city council members don't want to ask their voters to approve a bond package that would raise property taxes.

So developers go to state lawmakers and ask them to introduce legislation that creates a "special purpose district" that has borrowing and taxing powers for the vacant lot they want to build on.

The developers then pay two or three people to live on the land, usually in trailers, until they establish legal residency and can vote on a bond package. The MUD or PUD schedules an election, and the rent-a-voters approve tens of millions of dollars in debt that will be paid back over 25 years from property taxes.

After the vote, the so-called residents move away, the developer collects the cash and the politicians can claim they didn't raise taxes. The developers and their attorneys then contribute to the politicians' campaign funds, and leave future residents and businesses to pay off the bonds.

Since Texas businesses pay 63 percent of the taxes in this state, they end up paying the most. Businesses also don't get homestead or senior citizen exemptions that limit how much their property taxes go up every year.

Why pick on Hegar, who was Katy's state senator before he became state comptroller in 2014? Because he led the Legislature in getting 79 water districts created, and he came in second for political contributions from law firms that specialize in creating special-purpose districts. While running to become the state's chief financial officer, despite having no accounting experience, he campaigned on eliminating property taxes, even though he passed legislation that ultimately created new ones.

Patrick warrants attention for creating 15 new taxing authorities and a special purpose district for the Exxon Mobil campus in northern Harris County, which can take on $2.3 billion in debt. He ranks first in campaign cash from the same law firms, even while telling voters he wants to lower or eliminate property taxes.

The dirty little secret, though, is that property taxes are never going away because there are 2,600 such districts in Texas carrying debt relying on those taxes. Don't expect Democrats to raise a fuss, because most of these bills to create special purpose districts pass the Legislature almost unanimously.

Democrats don't want to raise taxes anymore than Republicans. They also want development in their districts and the campaign contributions that come with them.

The honest way of taking on this debt is to do away with special-purpose districts. Make city councils, county commissions or the state Legislature approve these bonds before they go for a vote by the entire community. Get rid of the back-room dealing, and make sure public bond money is spent wisely.

If we keep piling on debt at the current pace, Texas businesspeople will suffer the consequences through higher taxes or a depressed economy. More than likely, both.

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Municipal Utility District ("MUD")

vs.

Public Improvement District ("PID")

vs.

Tax Increment Reinvestment Zone ("TIRZ")

The following identifies certain pertinent matters relating to, and comparing, Municipal Utility Districts, Public Improvement Districts, and Tax Increment Reinvestment Zones.

1. <u>LEGAL AUTHORITY</u>

MUD: Texas Water Code, Chapters 49, 54.

PID: Texas Local Government Code, Chapter 372, Subchapter A.

TIRZ: Texas Tax Code, Chapter 311.

2. <u>PURPOSES FOR CREATION</u>

MUD: Establishes a mechanism to finance public infrastructure to serve properties within the district through the issuance of general obligation or revenue bonds, or a combination thereof, the payments of which are derived from ad valorem taxes against properties located within the district, and/or from revenues generated from the operation of district facilities.

PID: Establishes a mechanism to finance improvement projects, including but not limited to water, wastewater and drainage facilities, the initial payment of which may be through the issuance of general obligation or revenue bonds, or a combination thereof, or directly from a special improvement district fund established by the city with general tax revenues, the payments or repayments of which may be derived from special assessments against benefited properties.

TIRZ: Establishes a mechanism to finance public infrastructure through issuance of tax increment bonds or notes, payable from taxes generated as a result of increased values of real properties within the reinvestment zone subsequent to the creation of the zone.

3. METHOD OF CREATION

MUD: Through special act of the Legislature, or by order of the Texas Commission on Environmental Quality (TCEQ) upon petition by the owners of a majority of the value of the land in the proposed district. A MUD may not be created within the corporate limits or the extraterritorial jurisdiction of a municipality without consent of the municipality.

PID: By resolution of the city council, upon petition of the owners of taxable real property that would be subject to an assessment.

TIRZ: By ordinance of the city council, either as a result of landowner petition or on its own motion.

4. GOVERNMENT/OPERATION

MUD: Governed by a an elected board of directors. Subject to many laws applicable to municipalities, or similar, such as Open Meetings and Open Records acts, Public Funds Investment Act, annual fiscal auditing requirements, competitive bidding, etc. Elections held in compliance with Texas Election Code. Board of directors may sue and be sued, exercise the power of eminent domain, issue permits, and annex or exclude property from its boundaries.

PID: Governed by the city council, but may appoint an "advisory body" to develop and recommend the improvement plan. However, the final determination regarding advisability and nature of the improvements, the estimated costs, boundaries of the district, and the method of assessment and apportionment of costs are made by city council.

TIRZ: Governed by a board of directors of 5 to 15 members, appointed by the city council, with each taxing unit (i.e. school district, county, etc.) that approves payment of all or part of its tax increment into the tax increment fund being entitled to appoint one member.

5. DISSOLUTION

MUD: By ordinance of the city council, if approved by 2/3rd majority of the entire membership. However, such ordinance is subject to a confirmation election if a petition, requesting reconsideration of the ordinance, signed by number equal to 10% of the total votes cast in the last municipal officers election, is submitted to the council within 30 days following the effective date of the ordinance. Upon any such dissolution, the city assumes all assets and liabilities of the MUD.

PID: By resolution of the city council, upon petition as required for creation. However, if the district is dissolved, the district nonetheless remains in effect for the purpose of meeting obligations of indebtedness for improvements.

TIRZ: Upon the termination date designated in the ordinance creating the zone, an earlier date designated by ordinance of the city adopted after creation of the zone, or the date on which all project costs, tax increment bonds, and interest on the bonds have been paid in full. The tax increments pledged for debt service may be discharged and the zone terminated if the city deposits with a trustee funds in an amount that would be sufficient to retire the debt.

6. FINANCING SCHEME

MUD: Developer creates the district, and advances funds to construct water, wastewater and/or drainage facilities. Once the assessed valuation of the district reaches a feasible level, the district issues general obligation or combination tax and revenue bonds, or other authorized evidences of indebtedness, and purchases the newly constructed facilities from the developer. Some limitations do exist on reimbursement, but for the most part if the district is economically viable, the developer will recover his costs. Ad valorem taxes, or revenues from the water/sewer system, are used to pay debt service on the bonds or other evidences of indebtedness.

PID: Developer or city fronts the costs for constructing the improvements. City may issue bonds for this purpose. A special assessment is levied against properties that are benefited from the improvements, in proportion to the benefit received, and proceeds from the assessments are used to reimburse the developer or city, as applicable.

TIRZ: Developer or city fronts the costs for constructing the improvements. Taxes received as a result of the increased appraised values in the zone are diverted to a fund that is used to reimburse the entity that paid for the improvements that contributed to the increased valuation.

7. PRACTICALITIES/MECHANICS

MUD: Traditional governmental entity that exercises governmental functions only. A MUD acts very much like a general law city, but without general police power. It issues bonds to finance its improvements. It is governed by an elected board of trustees. It is generally utilized where incorporation of a municipality is not a possibility, or where development is within the boundaries or extraterritorial jurisdiction of a municipality that does not provide water or wastewater services.

PID: Law that authorizes public improvement districts resulted from economic development constitutional amendment. It establishes a method and a procedure to finance improvements generally designed to stimulate economic development, with a benefited property owner being liable for the value of the benefit resulting from the improvement. Complexity is involved in both the creation of the improvement district, and the imposition of the assessment, each of which involves fairly cumbersome procedures.

TIRZ: An outgrowth of laws that attempted to stimulate redevelopment in blighted areas, a TIRZ is generally intended to fund infrastructure associated with redevelopment, with the costs being paid from increased tax revenues that result from increased values of properties within the zone. It is used successfully in many locations, but does have semi-complicated procedural requirements. All taxing units in which the zone is to be located must be notified of all hearings, have an opportunity to comment, and are entitled to nominate one member to the zone's board of directors. However, taxing units may opt not to participate in reinvestment zones that have 10% or more of their area used for residential purposes.

8. <u>PROS</u>

MUD: Traditional scheme. Developers are familiar with the procedures, limitations, and practicalities.

<u>PID:</u> Scope of authorized improvements is vast; good procedures in place to make studied decision regarding feasibility of improvement projects. Much public participation provided for. Hearings require consideration of all aspects of project, including basis for determining how to value benefits. Theoretically, only property owners who receive the benefit are liable for costs of the district.

TIRZ: Establishes procedure where city can issue bonds for infrastructure improvements without pledging its full faith and credit for the repayment. Tax increment bonds or notes are payable solely from the tax increment fund. Procedures provide for significant public input and participation, and presentation of the plan for development with all taxing units having areas within the zone. Other taxpayers of the city not adversely impacted since payment to the tax increment fund is solely from increased taxes realized from increased values within the zone following its designation.

9. <u>CONS</u>

MUD: Creates another layer of government, with taxing authority. Duplicates services already provided by the city. Even though the district may contract with the city to take over facilities as they are constructed, and to provide district customers with potable water and wastewater treatment services, the very existence of the competing entity, and the room for disagreement and conflict, leaves the city without the absolute control over certain development and government issues. As with the city, the district probably may not contract away its legislative authority, or legislative discretion, in many areas. It is the unforeseen that is bothersome.

PID: Very cumbersome procedure to establish a PID, and to establish assessments. Citizens are never happy with an assessment, how costs are apportioned, or economic benefit determined to be received. The assessment cannot exceed the value of the assessment. Also, even though an assessment is a superior lien, a homestead cannot be foreclosed on to satisfy a assessment. Special contractual arrangements would have to be entered into with each property owner to avoid foreclosure issues. The city or developer risks the carrying costs pending satisfaction of the assessment if the property cannot be foreclosed.

TIRZ: Cumbersome procedure, with no guarantee that other taxing units would agree to be bound to a tax increment fund. Diverts tax revenues to the tax increment fund even for increased values that would have occurred regardless of the improvements. Same issues that are presented with any other economic development measure where tax benefits are accrued (i.e., unfair advantage, taxpayer subsidy, promotion of competition against existing citizen, etc.).

COMPARATIVE ANALYSES OF ECONOMIC DEVELOPMENT "DISTRICTS"

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Overview of Selected "Special District" Economic Development Tools

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	Available Revenue Sources for Economic Development			New or Existing Revenue		Timing of Revenue		Political Subdivision?
	Ad valorem Property Tax	Sales and Use Tax	Special Assessments	New Revenue	Existing Revenue	Pre Development Funding	Reimbursement Funding	
Municipal Utility Districts Art XVI, 59; WC Chp 54	√			√			√	**Yes**, subject to open meetings and open records; TCEQ bond approval.
Fresh Water Supply Districts Art XVI, 59; WC Chp 53	√			√			√	**Yes**, subject to open meetings and open records; TCEQ bond approval.
Water Control and Improvement Districts Art XVI, 59; Art III, 52; WC Chp 51	√			√			√	**Yes**, subject to open meetings and open records; TCEQ bond approval.
Municipal Management Districts Art XVI, 59; Art III, 52; LGC Chp 375	√		√	√			√	**Yes**, subject to open meetings and open records; TCEQ bond approval.
Legislative Districts	√	√	√	√		√ Bonds exempt from TCEQ review.	√	**Yes**, subject to open meetings and open records; TCEQ bond approval (generally city-controlled if MMDs, including the board, a finance plan, and bonds).
Public Improvement Districts LGC Chp 372			√	√		√	√	**No**; an area designated and controlled by the governing body of a city or county.
Economic Development Corporations (4A & 4B) LGC Chps 504, 505		√		√	√	√	√	**No**; non-profit corporations that act on behalf of and with the approval of the governing body of a city.
Tax Increment Financing TC Chp 311	√	√			√		√	**No**; a "zone" designated and controlled by the governing body of a city.
Tax Abatements TC Chp 312	√				√		√	**No**; a "zone" designated and controlled by the governing body of a city.
380/381 Economic Development Agreements Art III, 52-a; LGC Chp 380; LGC Chp 381	√ Annual Appropriation	√ Multi-Year			√		√	**No**; agreements entered into between a developer and a city or county, including performance standards and a "clawback."

Comparative Analysis of Consents to Creation

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	Petition	Required Consents: In-City	Required Consents: ETJ	Required Consents: County (including ETJ)	Required Consents: ISD	Created By	Standard for Creation
Municipal Utility District (MUD) Art XVI, 59; WC Chp 54	Yes, TCEQ	City	City consent or deemed consent LGC 42.042 WC 54.016	WC 54.0161 30 TAC Chp 55 Rule 55.203	N/A	TCEQ	The district is feasible, practicable and necessary and will benefit the land. 54.021 After the petition is filed, the Commission shall notify the Commissioners Court which may review the petition. Petitioners shall submit to the Court any relevant information requested by the Court. If the Court votes to submit information to the Commission or make a recommendation, the Court shall submit to the Commission a written opinion stating whether the Court recommends the creation of the district and any findings, conclusions, and other information that the Court thinks would assist the Commission in making a final determination on the petition. The Commission shall consider the written opinion submitted by the Court. 54.0161
Fresh Water Supply District (FWSD) Art XVI, 59; WC Chp 53	Yes, County	City	City consent or deemed consent LGC 42.042	County	N/A	County Commissioners	The petition is sufficient, including the necessity and feasibility of the district. 53.079; 53.014
Water Control and Improvement District (WCID) Art XVI, 59; Art III, 52; WC Chp 51	Yes, County or TECQ	City	City consent or deemed consent LGC 42.042	County if water one county; N/A if TCEQ created.	N/A	County Commissioners if water only one county; TCEQ if water two or more counties; TCEQ if sewer/drainage	The petition shall be granted if (1) the district is feasible and practicable, (2) the land and residents will be benefited, (3) there is a pubic necessity or need, and (4) the creation will further the public welfare. 51.021
Municipal Management District (MMD) Art XVI, 59; Art III, 52; LGC Chp 375	Yes, TCEQ	City	City consent or deemed consent LGC 42.042	WC 54.0161 30 TAC Chp 55 Rule 55.203?	N/A	TCEQ **(according to the Senate IGR 2010 Interim Report, only one MMD has been administratively created)**	The district is feasible and necessary and would benefit the public, taking into consideration (1) the availability of comparable services from other systems (including special districts, municipalities, and regional authorities) and (2) the reasonableness of the proposed public purpose projects and services. 375.025
LEGISLATIVE DISTRICT	**N/A**	**CITY**	**CITY AND COUNTY**	**COUNTY (and CITY?)**	**ISD?**	**SPECIAL ACT OF LEGISLATURE**	**SPONSORED BY HOUSE/SENATE REPS; SUPPORT FROM THE CITY, COUNTY, AND ISD.**
Public Improvement District (PID) LGC Chp 372	Yes, City ----------- Yes, County	City ----------- Home Rule	City -------------- Home Rule	N/A ------------- County	N/A	City Council ---------------------------- Commissioners	The proposed public improvement projects are advisable. 372.006; 372.010

Comparative Analysis of District Authority

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	Water	Sewer	Drainage	Roads	Police	Fire	Recreational Facilities	Strategic Partnership Agreement	Eminent Domain
Municipal Utility District Art XVI, 59 WC Chps 49 & 54	YES 54.201	YES 54.201	YES 54.201	YES, with TCEQ approval, thoroughfares, arterials, and collectors that meet the criteria of the county in whose jurisdiction the road is located or the city in whose corporate limits or ETJ the road is located. 54.234 (amended by HB 377, 80th Legislature). YES, after 10 years (and without TCEQ approval) a district may (with voter approval) issue bonds to maintain and repair streets. 54.522	YES 49.216 JC-0530	YES, with election and TCEQ approval 49.351	YES 54.201; 49.461-466	YES LGC 43.0751 (sales tax)	YES
Fresh Water Supply District Art XVI, 59 WC Chps 49 & 53	YES 53.101	YES, with an election 53.121	NO	YES, if in or adjacent to a county with a population of at least 1.3 million (including a city of 1 million) and with an election approving road powers under TC Chp 257. 53.029	YES[4] 49.216 JC-0530	YES, with election and TCEQ approval 49.351	YES 49.461-466	YES LGC 43.0751 (sales tax)	YES
Water Control and Improvement District Art XVI, 59; Art III, 52 WC Chps 49 & 51	YES 51.121	YES TCEQ approval 51.331;51.333	YES TCEQ approval 51.331;51.333	NO	YES[4] 49.216 JC-0530 CCP Art 2.12	YES Election and TCEQ approval 49.351	YES 49.461-466	YES LGC 43.0751 (sales tax)	YES
Fresh Water Supply District converted to a **Water Control and Improvement District**	YES 51.044	YES TCEQ approval 51.331;51.333 AG Ltr 8/13/01	YES TCEQ approval 51.331;51.333 AG Ltr 8/13/01	YES, if pre-conversion FWSD had road district powers. 51.044	YES[4] 49.216 JC-0530 CCP Art 2.12	YES Election and TCEQ approval 49.351	YES 49.461-466	YES LGC 43.0751 (sales tax)	YES
Municipal Management District Art XVI, 59; Art III, 52 LGC Chp 375	YES Same as a MUD 375.091 375.112	YES Same as a MUD 375.091 375.112	YES Same as a MUD 375.091 375.112	YES Same as a MUD (375.091), plus Road district and road utility district powers [375.091(c)]; plus Road powers under Chps 365 and 441, TC [375.091(d)]	YES Same as a MUD 375.091	YES Same as a MUD 375.091	YES Same as a MUD 375.091 375.112	YES? (sales tax) Same as a MUD 375.091	NO (375.094)
Legislative District	**YES**	**YES**	**YES**	**YES**	**YES**	**YES**	**YES**	**YES**	**YES**
Public Improvement District LGC Chp 372	YES 372.003(b)	YES 372.003(b)	YES 372.003(b)	Yes, including streets, sidewalks, roadways, off-street parking, and mass trans facilities; 372.003(b)	YES Public safety 372.003(b)(13)	YES Public safety 372.003(b)(13)	YES Parks 372.003(b)(13)	NO	NO

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	Governed by:	Qualifications
MUD (WC Chp 54)	5 directors. 54.101	A director must be at least 18, a resident citizen of Texas and either own land subject to taxation in the district or be a qualified voter within the district. 54.102 The disqualification rules of 49.052 apply.
FWSD (WC Chp 53)	5 supervisors. 53.062	A supervisor must be at least 18, a resident of the state, and own taxable property in the district. 53.063(a) If any part of the district is in Denton County, the person must be a registered voter in the district. 53.063(b) The disqualification rules of 49.052 apply.
WCID (WC Chp 51)	5 directors. 51.071	A director must be at least 18, a resident of the state, and own land subject to taxation in the district. 51.072 The disqualification rules of 49.052 apply unless the principal purpose of the district is to provide water for irrigation. 51.072
MMD (LGC Chp 375)	At least 9 but not more than 30 directors. 375.061	A director must be at least 18 **and** (1) a resident of the district, (2) an owner of property in the district, (3) an owner of stock, whether beneficial or otherwise, of a corporate owner of property in the district, (4) an owner of a beneficial interest in a trust that owns property in the district, **or** (5) an agent, employee, or tenant of a person covered by (2), (3), or (4). 375.063. The disqualification rules of 49.052 apply.
Viridian MMD (Arlington – SL 3861)	5 directors. 3861.051	A director must own land in the district. 3861.053(a) The disqualification rules of 49.052 do not apply. 3861.053(b)
Cypress Waters MMD (Dallas – SL 3874)	9 directors (6 appointed by Council; one assistant city manager; the city's chief financial officer; and the city's economic director). 3874.051	To be appointed, a person must be 18 **and** (1) a resident of the district who is a registered voter of the district, (2) an owner of property in the district, (3) an owner of stock or a partnership or membership interest, whether beneficial or otherwise, of a corporate partnership, limited liability company, or other entity owner of a direct or indirect interest in property in the district, (4) an owner of a beneficial interest in a trust, or a trustee in a trust, that directly or indirectly owns property in the district, (5) an agent, employee, or tenant of a person covered by (2), (3), or (4,) **or** (6) an initial director. A person may not be appointed if fewer than three directors would be city residents. 3874.052(b); 3874.053(a) The disqualification rules of 49.052 do not apply. 3874.053(b)
Trinity River West MMD (Dallas – SL 3871))	9 directors appointed by Council, including 3 who are city employees. 3871.051	To be appointed, a person must be 18 **and** (1) a resident of the district who is a registered voter of the district or a registered voter who lives within two miles of the district, (2) an owner of property in the district, (3) an owner of stock, whether beneficial or otherwise, of a corporate owner of property in the district, (4) an owner of a beneficial interest in a trust that owns property in the district, **or** (5) an agent, employee, or tenant of a person covered by (2), (3) or (4). A person may not be appointed if fewer than four directors would be city residents. 3871.052(a); 3871.053(a) The disqualification rules of 49.052 do not apply. 3871.053(b)
North Oak Cliff MMD (Dallas – SL 3884)	9 directors (6 appointed by Council; one assistant city manager; the city's chief financial officer; and the city's economic director). 3884.051	To be appointed, a person must be 18 **and** (1) a resident of the district who is a registered voter of the district or a registered voter who lives within two miles of the district, (2) an owner of property in the district, (3) an owner of stock, whether beneficial or otherwise, of a corporate owner of property in the district, (4) an owner of a beneficial interest in a trust that owns property in the district, **or** (5) an agent, employee, or tenant of a person covered by (2), (3) or (4). A person may not be appointed if fewer than four directors would be city residents. A person may not be appointed if fewer than four directors would be city residents or if more than four directors would be seeking financial assistance from the district for capital improvements. 3884.052(b), (c); 3884.053 The disqualification rules of 49.052 do not apply. 3884.053(b)

Comparative Analysis of Division/Addition/Exclusion Rules

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	DIVISION OF A DISTRICT	ADDITION OF LAND TO A DISTRICT	EXCLUSION OF LAND FROM A DISTRICT[7]
MUD	No statutory authority for division.	Contiguous or non-contiguous land may be added by landowner petition and board action if feasible, practicable, and to the district's advantage and if the district's improvements are/will be sufficient to serve the added land without injuring land already in the district. WC 49.301/49.302 Land that does not need or use district services may be excluded and other land included without impairment of security. WC 49.739 City consent is required to add land within the city's ETJ, subject to the procedures of LGC 42.042 and WC 54.016. Conditions to consent are limited to WC 54.016(e). LGC 42.0425; WC 54.0165	If the district has no debt payable from taxes, land can be excluded upon landowner petition or board action. WC 49.303 An exclusion may be made by the board, on its own motion, if practicable, just, or desirable. WC 49.303. Exclusions may be made on the grounds that: (1) retention would be arbitrary and unnecessary, would impair the value of the excluded property, and would constitute a confiscatory burden, (2) the extension of district services would burden the remainder of the district, or (3) the excluded property would not be bettered by the district's proposed improvements. WC 49.306 Land that does not need or use district services may be excluded and other land included without impairment of security. WC 49.739 City consent is not required.
FWSD	53.029-53.043 May divide into 2 new districts (each of which may divide) if the district (i) has no bonded debt; (ii) has levied no tax; and (iii) is in a county with a population ≥1.3m that includes a city with a population >1m (or in a county next to such a county). Division requires an election. New districts have the same powers as the original district. City consent is not required.	Contiguous or non-contiguous land may be added by landowner petition and board action if feasible, practicable, and to the district's advantage and if the district's improvements are/will be sufficient to serve the added land without injuring land already in the district. WC 49.301/49.302 City consent is required to add land within the city's ETJ, subject to the procedures of LGC 42.042. Conditions to consent are limited to WC 54.016(e). LGC 42.0425	If the district has no debt payable from taxes, land can be excluded upon landowner petition or board action. WC 49.303 An exclusion may be made by the board, on its own motion, if practicable, just, or desirable. WC 49.303. Exclusions may be made on the grounds that: (1) retention would be arbitrary and unnecessary, would impair the value of the excluded property, and would constitute a confiscatory burden, (2) the extension of district services would burden the remainder of the district, or (3) the excluded property would not be bettered by the district's proposed improvements. WC 49.306 City consent is not required.
WCID	51.748-51.753 Upon board motion or landowner petition, an "original district" may divide into 2 or more districts if the original district has no debt secured by taxes or net revenues and the new districts have at least 100 acres. City consent is not required. Division requires an election. New districts shall be governed as separate districts with full power and authority of a Chp 51 district. City consent is not required.	Contiguous or non-contiguous land may be added by landowner petition and board action if feasible, practicable, and to the district's advantage and if the district's system and other improvements are/will be sufficient to serve the added land without injuring land already in the district. A district may not increase its total land by more than 100% in any one calendar year. WC 49.301/49.302; WC 51.714 City consent is required to add land within the city's ETJ, subject to the procedures of LGC 42.042 unless (i) the land is contiguous, and (ii) within the preceding 12 months the land was not in the city's service area or corporate limits, and (iii) the district has no bonded debt; or unless the district is primarily engaged in providing irrigation services. Conditions to consent are limited to WC 54.016(e). LGC 42.0425 and WC 51.714 [**NOTE THESE PROVISIONS CONFLICT**]	If the district has no debt payable from taxes, land can be excluded upon landowner petition or by the board action. WC 49.303 An exclusion may be made by the board, on its own motion, if practicable, just, or desirable. WC 49.303. Exclusions may be made on the grounds that: (1) retention would be arbitrary and unnecessary, would impair the value of the excluded property, and would constitute a confiscatory burden, (2) the extension of district services would burden the remainder of the district, or (3) the excluded property would not be bettered by the district's proposed improvements. WC 49.306 If the district has no debt payable from taxes, land can be excluded by landowner petition and board action if district obligations will not be impaired, if the district will not incur any obligations, and the exclusion is in the best interest of the district. WC 51.756/51.757. City consent is not required.
MMD	No statutory authority for division.	Same as a MUD, subject to approval of the governing body of the municipality. 375.043 The TCEQ may issue an order changing the boundaries. 375.041	Same as a MUD if the district does not have outstanding bonds. 375.044 The TCEQ may issue an order changing the boundaries. 375.041
Legislative District	**YES, as provided by the legislation**	**YES, as provided by the legislation**	**YES, as provided by the legislation**
PID	No statutory authority for division.	No statutory authority for additions after the PID is created.	No statutory authority for exclusions after the PID is created.

End Notes

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In-City Municipal Utility Districts

Allen Boone Humphries Robinson LLP

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Options of Developing inside the City limits

- 1. The City can provide the infrastructure (water lines, sewer lines, capacity in the water and sewer plants)
- 2. The City can force the Developer to put in the infrastructure with no reimbursement mechanism
- 3. The City can consent to a reimbursement mechanism before or after the developer installs the infrastructure
  - In-City Municipal Utility District
  - Public Improvement District

Option 1—The City Installs the Infrastructure

1. City Installs the Infrastructure

- Estimated Cost?
- Upgrades to Water/Sewer Plants needed?
- Increase in City's ad valorem or Water/Sewer Rate?
- Political issues?

Option 2—The City forces the developer to install infrastructure with no reimbursement

2. Developer installs with no reimbursement

- Houses will be more expensive (developer must now recoup infrastructure and lot prices in the sale of the lot/home)
- Probably a lack of Master Planned Community or amenities
- Smaller communities
- Lack of commercial development in undeveloped lands, due to a lack of a predictable housing market/Master Planned Community

Option 3—The City allows developer reimbursement through an In-City Municipal Utility District

Municipal Utility Districts

- Governed by Texas Water Code Chapters 49 and 54 and the TCEQ
- Created by Petition of the property owners
- Separate political subdivision
- Governed by 5 member board of directors
  - Directors must own property or be a qualified voter in the MUD
- Limited City oversight
  - City can add requirements to bond sale or Development Agreement, but otherwise don't have to worry about the day-to-day and bond issuance

Municipal Utility Districts

- Permissible Improvements
  - Water, Sewer, and drainage
  - Major Roads
  - Parks and Recreational Facilities (including landscaping, sidewalks and street lighting)
  - Garbage services
  - Fire Protection Services
  - Police

Revenue from MUD

- Ad Valorem Tax
  - Assessed in accordance with the Texas Property Tax Code
  - Equal in priority to all other taxes, but MUD taxes are superior to assessments or other liens
- Water and Sewer Revenue
  - All water and sewer revenue usually is kept by the City
  - MUDs usually can add some revenue ($20/month) that is collected by the City and transferred to the MUD above the normal City water/sewer revenue

Bonds for Reimbursement

- MUD issues the bonds
  - City is not involved and has no financial risk
- Secured by District ad valorem taxes
  - A pledge of unlimited taxes is the best credit for bonds and results in the lowest interest rate
- TCEQ and AG must approve the bond issue
  - MUD must submit a feasibility report to the TCEQ before bonds are approved
- **CANNOT ISSUE RAW LAND BONDS**
  - **Developer must add value before reimbursement**
  - **A great check and balance**

Examples of In-City MUDs

Many Cities have In-City MUDs around Tomball

- Houston
- Sugar Land
- Katy
- Conroe
- Pearland
- Rosenberg
- Manvel
- League City
- Texas City

City of Pearland—Shadow Creek Ranch

- Shadow Creek Ranch was developed with the use of In-City MUDs
- The City will dissolve the MUD once all debt service is paid
- Brazoria MUD 28 had 16 separate parcels of land annexed into the District ALL WITH CITY COUNCIL APPROVAL PRIOR TO ANNEXATION
- This is an example of how one in-city MUD can help develop smaller parcels of land with quality infrastructure and low home prices inside the city limits


W. BROADWAY (FM 518)
MAGNOLIA ST.
MAGNOLIA ST.
PEARLAND PKWY.
BRAZORIA COUNTY MUNICIPAL
UTILITY DISTRICT NO. 28
S. MAIN
BAILEY RD.
N
PEARLAND PKWY.

City of Katy—The Reserve at Katy

- Fort Bend MUD 161
  - 219 acre development
  - 137 lots to date
- Developer—Toll Brothers
  - Average Home Value $450,000-$1,000,000
- Tax Rates
  - City Tax Rate =$0.547
  - MUD Tax Rate = $0.916
- 2016 Value = $83,228,346


INTERSTATE 10
FM 1463
N
FORT BEND COUNTY MUNICIPAL
UTILITY DISTRICT NO. 161
KATY RD.

Kroger Grocery Store

Single-Family Residential

Recreation Center

Single-Family Residential

Pros of In-City MUDs

- No City funds are used for administration of the MUD
- Small in-fill projects that are not large enough to meet feasibility as a stand-alone MUD or PID can join together in a Non-Contiguous Tract In-City MUD
- City usually gets all water and sewer revenue, in addition to the financing of upgrades to the City's water and sewer plants
- MUDs require vertical construction and PIDs don't

Pros of In-City MUDs

- Master Planned Communities
- Commercial/Retail follows Master Planned Development
- Job Centers move to follow Commercial/Retail and Master Planned Communities
- Lower house prices with a MUD reimbursement mechanism
- High-Quality developers purchase land to increase the City's property value
- In City MUD tax rates usually reduce very quickly and stay low until debt is paid off

Potential Tomball In-City MUD

Questions?

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