

SUBJECT: Creation of seven municipal utility districts in Travis County

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 6 ayes — Counts, Yost, King, R. Lewis, Puente. Walker

0 nays

3 absent — Combs, Corte, Stiles

SENATE VOTE: On final passage, April 28 — 26-2 (Barrientos, Zaffirini)

WITNESSES: (*On House companion bill, HB 3190*):

For — None

Against — Michael Erdmann, City of Austin

BACKGROUND: Water districts are local political subdivisions of the state governed by boards of directors. All water districts in Texas derive their authority from the Texas Constitution, Art. 3, Sec. 52 or Art. 16, sec. 59.

Water districts are created either by special or general law. General law districts may be created by the Texas Natural Resource Conservation Commission (TNRCC), a county commissioners court, or in limited cases, a city governing board. The Legislature creates special law districts.

Municipal utility districts (MUDs) created under Texas Constitution Art. 16, sec. 59 are conservation and reclamation districts created to finance and operate water, wastewater and drainage systems within their district area. MUDs may issue revenue bonds and levy taxes with voter approval.

DIGEST: SB 1606 would create seven municipal utility districts in Travis County, all in the extraterritorial jurisdiction of Austin, and limit municipal powers to annex the districts. The districts would be known as Travis County MUDs Numbers 3-9. They would be created under the Texas Constitution, Art. 16, sec. 59. The bill describes the territory included in each of the districts.

The MUDs, governed by five-member boards, would have the general law powers of Chapters 50 and 54 of the Water Code, as well as additional powers conferred by SB 1606. The rights, powers and duties of the districts would be subject to the continuing right of supervision by TNRCC.

The bill lists the names of temporary board members for each of the five districts, who would serve until an election was held to confirm establishment of the district and elect five initial directors. Four years after the confirmation election, an election would be held for two of the board members who would hold two-year terms; the three remaining members would hold four-year terms.

A city in whose ETJ a district is located (Austin) could not pass any ordinances, resolutions or otherwise take action that would impair the powers of the district or limit its ability to finance, construct or operate its water, wastewater or drainage system.

The districts could not be annexed by Austin until 20 years after they were confirmed, or upon installation of 90 percent of the infrastructure needed to provide service to the proposed developments within the districts and to accomplish the purposes for which the districts were created.

If Austin annexation impaired a district's ability to issue bonds, the city would be required to pay cash to the landowner or developer for the actual costs and district expenses that the district had agreed in writing to pay that would otherwise have been reimbursable from bond proceeds. Austin would be required to install all necessary water, wastewater and drainage facilities to serve full buildout of development within the district.

The bill would take immediate effect if approved by two-thirds of the membership of each house.

**SUPPORTERS
SAY:**

It is not uncommon for the Legislature to create conservation and reclamation districts such as the seven MUDs this bill would create in Travis County. Austin has repeatedly refused to provide services or to authorize the creation of MUDs in the area where the seven districts would be created. The MUDs could issue bonds to finance the infrastructure

needed to provide water and wastewater services to the area. The districts would still be subject to supervision by TNRCC.

Austin has hindered development in its ETJ by questionable means. By switching the rules in the middle of projects, applying ordinances retroactively to projects already begun and passing four different ordinances affecting development in the last three years, the city has destroyed the ability of developers in the area to make any plans for the future and has cost them million of dollars.

It is important to limit Austin's annexation authority (unless the city genuinely does intend to provide services and has put most of the infrastructure in place) because the city can and has in the past used annexation to stop development. Austin is welcome to annex the districts as long as 90 percent of utility systems and other improvements are installed.

When a MUD incurs bonded indebtedness to serve 400 homes, for example, and the city annexes the area before half of those homes are built, the remaining residents of the area must pay higher costs to service the debts. Austin should not be allowed to abuse its powers of annexation for purposes that have nothing to do servicing an area and everything to do with halting development.

Creating seven separate districts rather than one giant district would allow phased development of each of the districts in an orderly fashion.

**OPPONENTS
SAY:**

The MUDs created by this bill would not be ordinary MUDs. They would be set up specifically to escape any regulation from the City of Austin. Legislative creation of these MUDs would bypass the usual process for creating such districts, which involves negotiations between the city, developer and TNRCC. Special provisions specify that cities cannot take any actions to impair the powers of these districts, and would limit Austin's ability to annex them.

If Austin did annex a district, SB 1606 would require the city to reimburse the developer for all costs that the district had agreed to pay and install any additional infrastructure needed for full buildout of the planned

development. This would be an unprecedented taxpayer guarantee of profits for the developer of that district, essentially guaranteeing full profits for land development at absolutely no risk to the developer if Austin should decide to annex.

Making it unaffordable, and therefore essentially impossible, for Austin to annex districts in the city's ETJ would condemn the city to decline, landlocked by rich and powerful sovereign developments and unable to increase its tax base, grow or plan for the future. It is shortsighted for developers to curtail the growth of a city that the residents of their development will ultimately have to depend on for certain services.

SB 1606 and the many other bills proposed this session that would curb Austin's ability to annex or would remove areas from Austin's ETJ and limit the city's ability to regulate nearby developments will in the long run negatively impact the City of Austin and everyone who lives and works there. The city is willing to negotiate with those who want to develop land in its ETJ; removing the city's powers through legislative action will just polarize the opposing parties in the argument over development to become more polarized.

NOTES:

SB 1017 by Wentworth, which would allow creation of water quality protection zones in Austin's ETJ, limit the city's ability to annex and prohibit the city from enforcing certain regulations in the zones, passed the House on second reading on May 18.

SB 1016 by Brown et al., which would allow certain water districts to serve a city, and void obligations the district had with that city that would limit the district's power, was placed on the General State Calendar for May 18.

HB 3193 by Saunders, which would create the Southwest Travis County Water District, which would be excluded from Austin's ETJ, was passed by the House on May 12 and was scheduled for public hearing in the Senate on May 18.