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FILE NO: 86061.04

April 5, 2003

Via E-Mail

The Honorable Jodie Laubenberg
The Honorable Ken Paxton
Texas House of Representatives
Texas State Capital
Austin, Texas 78711

Re: House Bills 2564 and 2565

Dear Representatives Laubenberg and Paxton:

The County Commissioners Court of Collin and Rockwall Counties respectfully request your consideration of the proposed modifications to House Bills 2564 and 2565 as set forth below.

Texas law has recognized the need for developing and expanding cities to have some control of the creation of new and independent local governments within their boundaries, and within their extra-territorial jurisdiction. Local Government Code Chapter 42, specifically at 42.041, sets for a process for the approval, or deemed approval, of a new municipality within the ETJ of an existing municipality. All the reasons that made that law appropriate apply, perhaps even more importantly, with the creation of a new municipal utility district, or other special district, within a county. To often these districts have provided power to assist developers in their financing of their development project, but fail in the long term approach to county planning, or municipal services not ordinarily provided by special districts. For example, while some districts have authority for a fire department, none of the districts have an adequate provision for a full range of city services. While some of the districts, in their many different forms, may provide water, sewer, roads and drainage, they fall short in areas of emergency medical services, police, solid waste removal, compliance with the county thoroughfare plan leading to the development, assistance with local school districts, and other essential city functions.

Two of the districts proposed for Collin County are approximately 800 acres each. The one near Lake Lavon was proposed at approximately 800 acres, and 3,500 housing units. There is one county road leading to the area. The 2A school system adjacent to the development would

be completely unable to receive the proposed number of school children from 3,500 homes. To be candid, far to often it appears that developers are creating special districts in order to facilitate developments that no town, or city, could in good conscience approve within their city limits. While cities, towns, and villages have had the ability to negotiate through development in accordance with the cities comprehensive plan, the county has no such power. The county is limited primarily to plat approval, including drainage requirements and roads. The County lacks zoning authority, and is therefore expressly prohibited in regulating the use of the property, the number of residential units to be built on the property, the size of lots, and a host of other variables which are crucial to city governance, yet lacking for county governance.

The situation was probably acceptable when counties had no need to regulate whether or not the farms in the county had one barn, or five. Now that Collin County is essentially a city with developing suburbs, it needs the same powers as are available even to a General Law City of 500 people. Surely a rapidly developing county of over five hundred and forty one thousand (2001 July, estimate) deserves the same protections as a Type B General Law Town. The U.S. census date for Collin County shows a population estimate for the County as follows:

July 1, 2001	541,403
April 1, 2000	491,675
Increase in 15 months	49,782

The increase alone of 49,782 is a population greater than the county population of over 200 Texas counties in 2000. (http://castor.tsl.state.tx.us)

Collin and Rockwall Counties are not opposed to development. They seek input as to where the development will be, and some assurances that it will be development that the county is proud of.

This legislation does not request county wide zoning, of all property not within municipal limits, or ETJ's. It seeks only to provide the county with some appropriate approval of special utility districts. As I am sure you know, the State has authorized county zoning in a number specific situations, such as around rapidly developing lakes (Tawakoni, Cedar Creek, etc.)

The revisions we have made to the legislation are as follows:

1. The brackets include the most quickly developing county, Collin, and its neighbor, Rockwall. Both counties are contiguous to Dallas County, both have rapid development plans, and both are in need of some control of unregulated development.

2. Rather than an absolute veto power, or zoning authority, the bills now provide for approval or disapproval of the creation of a MUD or SUD by the county, combined with an appeal process. The appeal is to TCEQ. In the event the County recommends creation of the district, TCEQ simply proceeds with their normal evaluation. In the event the County recommends against the creation of the district, or recommends the creation of the district with certain limitations, then TCEQ's review of the matter from the bracketed counties would require a finding by TCEQ that the decision of the Commissioners Court would be overturned only in the event TCEQ found that the Commissioners Court decision was arbitrary and capricious. Both the county, and the developer, have the right to appeal to the State District Court for review of the decision both by the Commissioners Court, and by TCEQ.

We believe that this provides for fairness to all parties, and introduces the critical component of county planning into the approval, or disapproval, of a special utility district. It also provides for an appeal process, in the event the district is not approved by the County.

We hope this will assist you in gaining support for the Bills. Please feel free to contact me if there are any questions or consideration.

We have attached a letter from Attorney General John Cornyn to Jane Nelson dated August 13, 2001. This letter is an excellent analysis of both the issues, and difficulties, of the current law with respect to county's growth and development. We note with agreement that the Attorney General concluded that the requirements for approval of water district bonds or other obligations would require the applicant to submit information "substantiating the ability of the Districts to pay the bonds at a reasonable tax rate, even assuming no growth of assessed value in a district over the life of the bonds." The Attorney General then noted, and we believe correctly, that such a step is not a substitute for legislative action. It is our hope that you will find the proposed bills the appropriate legislative action.

Sincerely,

James E. Shepherd

jd
cc: City of Parker
Collin County Commissioners Court
Rockwall County Commissioners Court

OFFICE OF THE ATTORNEY GENERAL - STATE OF TEXAS
JOHN CORNYN

August 13, 2001

VIA FACSIMILE & U.S. MAIL

The Honorable Jane Nelson
Texas Senate
P. O. Box 12068
Texas State Capitol
Austin, Texas 78711

Re: Denton County Utility & Development Districts

Dear Senator Nelson:

Thank you for your letter of June 11, 2001, regarding your concerns about utility districts and development districts in Denton County. I have requested members of my staff to carefully examine all the materials you sent to us and to consider the laws that may be applicable to the situation. While it is my intent to address in this letter the concerns you have raised, you did not indicate that your June 11 letter was a request for a formal Opinion. Therefore, this letter does not constitute a formal Opinion from the Office of the Attorney General (OAG) under Section 402.042 of the Texas Government Code. I should also make clear that I have not made any effort to determine whether any of the activities reported in the newspaper accounts might constitute crimes. That determination comes within the province of the Courts and the various District Attorneys in your area.

I would like to provide you with some general information on districts, both in your area of the State and in the Harris County area, where most utility districts are located. I will then address your questions about investigation of the activities reported in the newspaper articles you sent to me and make some recommendations. All of the statutory citations in this letter are to the Texas Water Code.

Generally

Utility districts are governmental bodies created as a means of providing water and sewer utilities to undeveloped areas to make them ready for development. Generally, these districts can issue tax-exempt bonds to raise money for utility construction at a lower cost than a private party can raise such funds. If a district were not created, the developer could not use tax-exempt financing and would have to recover the cost of the utilities in the sales price of the homes or other facilities constructed in the district. While there is potential for abuse if there is not sufficient oversight, utility districts have played an important role in providing utilities for the development of residential and commercial areas, particularly in the areas surrounding the City of Houston. The districts in those areas are primarily municipal utility districts (MUDs), and most are

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eventually annexed by the City of Houston. Like those in Denton County, they frequently have a small number of residents who vote to authorize the initial bonds and taxes for the district. Unlike the districts created in Denton County, MUDs require approval by the Texas Natural Resource Conservation Commission (TNRCC) for their creation. With appropriate oversight by the TNRCC, the Houston area districts do not appear to have caused significant concerns.

In Denton County, the types of districts created in recent years have been fresh water supply districts, water control and improvement districts (WC&IDs) and county development districts, none of which require TNRCC approval for creation. All of these districts, like MUDs, must have any bonds they issue approved by the Attorney General. The Attorney General approval process is limited to a review of the district's compliance with statutes applicable to the issuance of the bonds and the creation of the district. These districts must also have their bonds approved by the TNRCC, except that county development district bonds are subject to TNRCC approval only if the proceeds of the bonds are to be used to provide water, sewage, or drainage facilities. The bond approval process generally occurs quite some time after the districts have been created and have begun levying taxes, and none of the Denton County districts have as yet submitted bonds for approval. Given the complexity of this area of the law, I believe it would be helpful to briefly set out how these districts are structured and have been used historically.

Fresh Water Supply District. A fresh water supply district is created by an election called after a petition has been received by the county commissioners court from landowners within the district. TNRCC approval of creation is not required. These districts usually have only water supply powers, though they can adopt sewer powers, and do not have the power to construct or provide flood control/drainage systems (*see* sections 53.101 and 53.121). However, since 1987 they have been authorized by statute to assume the powers of road districts, potentially giving them the power to provide roads in the district (section 53.029(c)). A fresh water supply district may divide into two districts if it has not previously issued bonds and may annex contiguous or noncontiguous territory under certain circumstances (sections 53.029(b), 49.301, and 49.302, respectively). Historically, these districts were not used for the purpose of development of areas near population centers, but rather were more commonly used in rural areas and only for the supply of water.

Water Control and Improvement District. A WC&ID does not require TNRCC approval for its creation unless its powers are to include the power to provide waste water (sewer) services and storm water control/drainage facilities. A WC&ID created without TNRCC approval and without sewer and drainage powers may later, with the approval of TNRCC, add those powers. WC&IDs without sewer powers have a history similar to

that of fresh water supply districts in that they were not commonly used to provide utilities for development near major population centers. A fresh water supply district can be converted into a WC&ID without TNRCC approval.

Using the statutes relating to these two types of districts, developers have brought about the creation of fresh water supply districts with county commissioner approval but not TNRCC approval. These districts, usually through an election involving very few voters, sometimes then acquired sewer or road district powers without either county commissioners court or TNRCC involvement. Some of them annexed noncontiguous territory and later divided into two districts, with one district consisting of the part previously annexed. Some of these districts converted to WC&IDs, apparently believing that they thereby obtained all the sewer and storm water control/drainage powers of those districts. Our examination of these actions by such districts has resulted in the following conclusions.

First, section 51.040 allows a fresh water supply district to convert into a WC&ID, and section 51.043 provides that the converted district has "all the powers, authorities, functions and privileges" provided for a district that had been created originally as a WC&ID. However, section 51.332(a) provides that a WC&ID does not have waste disposal and storm water control powers unless it obtains TNRCC approval to adopt such powers. Nor, pursuant to section 51.044, may a fresh water supply district reserve or keep powers it had before conversion, such as waste disposal/sewer powers, if those powers are provided for in chapter 51 in relation to WC&IDs. Our analysis of these provisions has led us to conclude that a fresh water supply district that has converted into a WC&ID does not have sewer and drainage powers unless it obtains the approval of TNRCC.

Second, section 49.301 provides that the board of a fresh water supply district may approve a petition to annex territory, whether contiguous or not, if the addition of the land is "feasible, practicable, and to the advantage of the district and if the district's system and other improvements of the district are sufficient or will be sufficient to supply the added land without injuring land already in the district." Some have expressed concerns that the annexation of a noncontiguous tract of land located a substantial distance from the district could not meet these conditions. Additionally, the subsequent division of the district into two districts whereby the previously annexed land becomes a new district would be considered by some as further evidence that the conditions had not been met. However, any conclusions regarding such annexations are heavily dependent on the facts of each particular district and each annexation and division.

County Development Districts. You also inquired about county development districts. It appears that the validation acts I mention below may also affect the creation and past

actions of these districts. However, the validation acts do not confer additional powers on these districts prospectively. Those districts still do not have ad valorem taxing powers and are limited in purpose, as described in my Opinion, JC-291, of last year.

Investigation

The enforcement and investigative authority that the OAG has over the activities of water districts and development districts is based principally on referrals from other State agencies and officials that have primary jurisdiction over certain activities by law. For example, the TNRCC has oversight authority over districts under Section 12.081 of the Texas Water Code. Section 12.081 gives the TNRCC the right of continuing supervision over districts and empowers the TNRCC to hold hearings and subpoena witnesses in order to inquire into the activities of districts. Local District Attorneys in the State can in certain circumstances request prosecutorial assistance from the OAG. These agencies and officials ordinarily refer to us or request OAG assistance on specific cases. The Secretary of State has certain jurisdiction over election-related issues in the State. Media articles have emphasized the small number of voters who have authorized districts to issue bonds. Existing election law, however does not require that more than one vote be cast in such an election.

The OAG does not possess authority to make a judicial determination on a set of facts as a court would do, nor does the OAG possess authority to hold hearings and inquire into facts for the purpose of formulating policy as the Texas Legislature would do. It is therefore not possible for me to conduct the type of comprehensive investigation of the situations reported in the newspaper accounts you provided me that I believe would be of the most benefit to you. I have been advised that for a number of years prior to 1995, the OAG did conduct interviews of voters in districts when fewer than ten people voted in a bond election, but discontinued the practice as not being of substantial benefit. The lack of any special legal requirements for qualifying for a district election, along with the modest residency requirements for voters in general, have led me to conclude that reinstating an interview procedure would be of very little benefit.

In trying to ascertain the legal status of the district creations and district actions referred to in your June 11 letter, it is also necessary to consider recent legislative enactments. Section 42 of Senate Bill 1444, passed in the last Legislative Session, may have a significant effect on the legal status of the activities reported in the news media. Section 42 of Senate Bill 1444 validates district creations and acts taken by districts within the two years preceding the effective date of the bill. There are specific exceptions. One applies when the actions taken were the subject of pending litigation on the effective date of Senate Bill 1444. Some districts, such as Denton County Freshwater Supply District No. 4, appear to be covered by that exception as they are already the subject of litigation. However, it appears that most of the districts in the

area are not the subject of prior litigation. Another exception applies when the governmental actions taken were a misdemeanor or felony at the time they were taken. Senate Bill 1444 is not precise regarding what evidence is required to prove that the governmental actions taken were crimes (whether, for example, proof of an actual criminal conviction is necessary). We are not aware of anyone being charged with or prosecuted for a crime in connection with the activities reported in the newspaper articles you provided.

In addition, House Bill 742 validates the acts or proceedings of districts after the third anniversary of the act or proceeding. Neither Senate Bill 1444 nor House Bill 742 would appear to apply prospectively to affect any future district creations or future district actions.

Conclusion

Assuming the accuracy of all facts reported in the news articles you provided, it appears that the concerns you have expressed regarding the activities of certain districts in North Texas arise primarily from the way that the current law is structured and from the newly enacted validation acts described above.

As you know, Denton County Judge Scott Armey wrote to me on June 13, 2001, and expressed concerns similar to your own. Judge Armey indicated that he will ask for the appointment of an interim legislative task force to examine the current law and make recommendations for its revision. Given the Texas Legislature's authority to investigate issues of public policy and to revise the laws of this State as it deems appropriate, it is my belief that the Legislature can most effectively address the concerns that you and Judge Armey have expressed.

Since the Legislature cannot pass laws addressing these issues immediately, I have, as an interim measure, directed my Public Finance Division to put into place an additional requirement for the approval of water district bonds or other obligations that have not been approved by the TNRCC. For such bonds submitted after today this office will require the submission of information substantiating the ability of the district to pay the bonds at a reasonable tax rate, even assuming no growth of assessed value in the district over the life of the bonds. This is a limited step, but I believe it will help protect future residents of the district while being within the authority of the Attorney General to refuse to approve bonds for which the issuer has not demonstrated a reasonable ability to repay. It is not, however, a substitute for legislative action.

As always, I will be happy to offer the services of my staff to assist the Legislature should it choose to address these issues. Please contact Ms. Nancy Fuller at (512) 936-2925 to coordinate this assistance. I look forward to working with you in the future.

Sincerely,

John Cornyn
Attorney General of Texas

JC:nf

county table

Time Series of Texas Population Estimates by County: April 1, 2000 to July 1, 2001				
County	State	July 1, 2001 Estimate	July 1, 2000 Estimate	April 1, 2000 Population Estimates Base
	Texas	21,325,018	20,946,503	20,851,820
Anderson	Texas	55,329	55,119	55,109
Andrews	Texas	12,795	12,944	13,004
Angelina	Texas	80,513	80,270	80,130
Aransas	Texas	22,695	22,548	22,497
Archer	Texas	8,926	8,982	8,854
Armstrong	Texas	2,129	2,160	2,148
Atascosa	Texas	40,264	38,939	38,628
Austin	Texas	24,454	23,791	23,590
Bailey	Texas	6,571	6,604	6,594
Bandera	Texas	18,553	17,854	17,645
Bastrop	Texas	62,059	58,356	57,733
Baylor	Texas	3,986	4,076	4,093
Bee	Texas	32,314	32,294	32,359
Bell	Texas	239,571	239,021	237,974
Bexar	Texas	1,417,501	1,397,933	1,392,931
Blanco	Texas	8,767	8,491	8,418
Borden	Texas	677	714	729
Bosque	Texas	17,624	17,256	17,204
Bowie	Texas	89,961	89,302	89,306
Brazoria	Texas	249,832	243,271	241,767
Brazos	Texas	151,660	152,657	152,415
Brewster	Texas	8,859	8,869	8,866
Briscoe	Texas	1,710	1,781	1,790
Brooks	Texas	7,683	7,943	7,976
Brown	Texas	37,774	37,703	37,674
Burleson	Texas	16,628	16,543	16,470
Burnet	Texas	36,151	34,551	34,147
Caldwell	Texas	34,193	32,503	32,194
Calhoun	Texas	20,600	20,634	20,647
Callahan	Texas	12,863	12,932	12,905
Cameron	Texas	344,782	336,991	335,227
Camp	Texas	11,507	11,594	11,549
Carson	Texas	6,474	6,505	6,516

Cass	Texas	30,471	30,447	30,438
Castro	Texas	8,129	8,234	8,285
Chambers	Texas	26,859	26,165	26,031
Cherokee	Texas	47,231	46,683	46,659
Childress	Texas	7,651	7,683	7,688
Clay	Texas	11,179	11,098	11,006
Cochran	Texas	3,689	3,722	3,730
Coke	Texas	3,873	3,851	3,864
Coleman	Texas	9,033	9,187	9,235
Collin	Texas	541,403	499,733	491,675
Collingsworth	Texas	3,135	3,198	3,206
Colorado	Texas	20,230	20,359	20,390
Comal	Texas	82,563	78,802	78,021
Comanche	Texas	13,751	14,000	14,026
Concho	Texas	3,917	3,957	3,966
Cooke	Texas	37,193	36,457	36,363
Coryell	Texas	74,426	75,231	74,978
Cottle	Texas	1,805	1,883	1,904
Crane	Texas	3,919	3,961	3,996
Crockett	Texas	3,919	4,044	4,099
Crosby	Texas	6,899	7,048	7,072
Culberson	Texas	2,774	2,938	2,975
Dallam	Texas	6,157	6,228	6,222
Dallas	Texas	2,245,398	2,223,671	2,218,899
Dawson	Texas	14,838	14,953	14,985
Deaf Smith	Texas	18,235	18,517	18,561
Delta	Texas	5,379	5,346	5,327
Denton	Texas	466,240	438,591	432,976
De Witt	Texas	20,114	19,995	20,013
Dickens	Texas	2,705	2,730	2,762
Dimmit	Texas	10,170	10,224	10,248
Donley	Texas	3,836	3,826	3,828
Duval	Texas	12,996	13,069	13,120
Eastland	Texas	18,158	18,326	18,297
Ector	Texas	121,298	120,791	121,123
Edwards	Texas	2,044	2,148	2,162
Ellis	Texas	116,555	112,500	111,360
El Paso	Texas	688,039	682,111	679,622
Erath	Texas	32,989	33,058	33,001
Falls	Texas	18,352	18,534	18,576
Fannin	Texas	31,556	31,391	31,242
Fayette	Texas	22,150	21,822	21,804
Fisher	Texas	4,278	4,337	4,344
Floyd	Texas	7,563	7,738	7,771
Foard	Texas	1,621	1,610	1,622

About Texas
Texas State Library and Archives Commission

Texas County Population Estimates, 2001 Arranged in Descending Order

Related Links
Texas Cities | Texas Counties | Texas and U.S. Population | State Data Center
U.S. Bureau of the Census

Data extracted by Texas State Library and Archives Commission, Reference/Documents staff from
http://eire.census.gov/popest/data/counties/tables/CO-EST2001-07/CO-EST2001-07-48.php

Suggested Original Source Citation:
Table CO-EST2001-07-48 - Time Series of Texas Population Estimates by County: April 1, 2000 to July 1, 2001
Source: Population Division, U.S. Census Bureau
Release Date: April 29, 2002

3460589	Harris
2245398	Dallas
1486392	Tarrant
1417501	Bexar
833797	Travis
688039	El Paso
590285	Hidalgo
541403	Collin
466240	Denton
381200	Fort Bend
344782	Cameron
315418	Montgomery
312470	Nueces
278067	Williamson
255865	Galveston
249832	Brazoria
249640	Jefferson
243999	Lubbock

78R7683 RCJ-F

By: Paxton H.B. No. 2564

A BILL TO BE ENTITLED

AN ACT

relating to review by a county of a petition for the creation of a municipal utility district.

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

SECTION 1. Section 65.0161, Water Code, is amended adding Subsection (d) to read as follows:

(a) If all or part of a proposed district is to be located outside the extraterritorial jurisdiction of a city, the commissioners court of the county in which the district is to be located may review the petition for creation and other evidence and information relating to the proposed district that the commissioners consider necessary. Petitioners for the creation of a district shall submit to the county commissioners court any relevant information requested by the commissioners court in the event a review is done.

(d) The following provisions apply only to a county which is contiguous to a county of two million or more, and which, on the date of the 2000 U. S. census had a population of between 489,000 and 493,000 or 42,000 and 44,000.

(1) In addition to the requirements of sub-section (a) above , the petitioners must:

(i) File the petition for creation of the district with the county clerk's office and the county judge at least 120 days in advance of any date set for hearing before the commission. The notice shall provide the maximum boundaries of the district, the proposed uses, and shall show the proposed districts ability to provide all of the services required in a service plan, as such plans are defined in Local Government Code § 43.056.

(ii) Upon receiving the notice, and all of the information required or reasonably requested by the commissioners court, the commissioners court may, within 90 days of receiving all such information, conduct the review authorized by this section. At the conclusion of the review, the commissioners court shall provide a written recommendation to the commission, either for the creation, creation with limitations, or denial of the creation of the district. In the event recommendation is for denial, then the recommendation is received by the commission as a rebuttable presumption, overturned by the commission only in the event the commission finds that the actions of the commissioners court have been arbitrary and capricious. Such findings shall not be made by the commission without adequate notice to both sides, and an opportunity for each side to be heard.

In the event either side is dissatisfied with the ruling of the commission, then either side may appeal to district court in the county where the proposed district is to be created.

78R7700 MXM-F

By: Paxton H.B. No. 2565

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain special districts by certain populous counties.

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

SECTION 1. Chapter 232, Local Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. REGULATION OF CERTAIN SPECIAL DISTRICTS

Sec. 232.151. SPECIAL DISTRICTS COVERED. (a) Except as provided by Subsection (b), this subchapter applies only to the following special districts:

(1) municipal utility districts, special utility districts, road utility districts, and any other type of utility district;

(2) fresh water supply districts;

(3) drainage districts; and

(4) road and bridge districts.

(b) This subchapter does not apply to the North Texas Municipal Water District

Sec. 232.152. COUNTIES COVERED. This subchapter applies only to a county which is contiguous to a county of two million or more, and which, on the date of the 2000 U. S. census had a population of between 489,000 and 493,000 or 42,000 and 44,000.

Sec. 232.153. INFORMATION REQUIRED.

(a) The commissioners court may require the following information in regard to the proposed special districts :

(1) the boundaries of the district;

(2) the steps, financial and otherwise, proposed by the district to reduce its impact, if any, on the school district in which the territory of the district lies;

(3) the districts compliance with the county plan for development, and any relevant plans approved by the county for thoroughfares, parks, trails, drainage, and/or flood plain.;

(4) the district's proposal for providing to the ultimate owners and occupants of land within the district of the provision of services to the residents and property owners of the proposed district, including those required of a service plan as defined in Local Government Code § 43.056;

(5) the placement of water and sewage facilities, parks, and other public requirements; and;

(6 any other relevant information regarding the district, and its impact on the county.

(b) The commissioners court may, prior to rendering a recommendation on the creation, or the denial of the creation of a special district, to provide the same financial and

factual information to be submitted to the Texas Commission on Environmental Quality for an application to:

(1) create a special district; or

(2) sell bonds for a special district.

Sec. 232.154. REVIEW OF INFORMATION. The commissioners court of the county may determine whether the application submitted under Section 232.153 is in accordance with the county comprehensive plan and whether the application is designed to:

(1) decrease congestion on the streets and roads;

(2) secure safety from fire, panic, and other dangers;

(3) promote health and the general welfare;

(4) provide adequate light and air;

(5) prevent the overcrowding of land;

(6) avoid undue concentration of population; and

(7) facilitate the adequate provision of transportation, water, sewers, parks, and other public requirements.

Sec. 232.155. APPROVAL.

(1) The petitioners must:

(i) File the petition for creation of the district with the county clerk's office and the county judge at least 120 days in advance of any date set for hearing before the commission. The notice shall provide the maximum boundaries of the district, the proposed uses, and shall show the proposed districts ability to provide all of the services required in a service plan, as such plans are defined in Local Government Code § 43.056.

(ii) Upon receiving the notice, and all of the information required or reasonably requested by the commissioners court, the commissioners court may, within 90 days of receiving all such information, conduct the review authorized by this section. At the conclusion of the review, the commissioners court shall provide a written recommendation to the commission, either for the creation, creation with limitations, or denial of the creation of the district. In the event recommendation is for denial, then the recommendation is received by the commission as a rebuttable presumption, overturned by the commission only in the event the commission finds that the actions of the commissioners court have been arbitrary and capricious. Such findings shall not be made by the commission without adequate notice to both sides, and an opportunity for each side to be heard.

In the event either side is dissatisfied with the ruling of the commission, then either side may appeal to district court in the county where the proposed district is to be created.

SECTION 2. The heading to Chapter 232, Local Government Code, is amended to read as follows:

CHAPTER 232. COUNTY REGULATION OF SUBDIVISIONS AND PROPERTY DEVELOPMENT

SECTION 3. This Act takes effect September 1, 2003.

78R7683 RCJ-F

By: Paxton H.B. No. 2564

A BILL TO BE ENTITLED

AN ACT

relating to review by a county of a petition for the creation of a municipal utility district.

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

SECTION 1. Section 65.0161, Water Code, is amended adding Subsection (d) to read as follows:

(a) If all or part of a proposed district is to be located outside the extraterritorial jurisdiction of a city, the commissioners court of the county in which the district is to be located may review the petition for creation and other evidence and information relating to the proposed district that the commissioners consider necessary. Petitioners for the creation of a district shall submit to the county commissioners court any relevant information requested by the commissioners court in the event a review is done.

(d) The following provisions apply only to a county which is contiguous to a county of two million or more, and which, on the date of the 2000 U. S. census had a population of between 489,000 and 493,000 or 42,000 and 44,000.

(1) In addition to the requirements of sub-section (a) above , the petitioners must:

(i) File the petition for creation of the district with the county clerk's office and the county judge at least 120 days in advance of any date set for hearing before the commission. The notice shall provide the maximum boundaries of the district, the proposed uses, and shall show the proposed districts ability to provide all of the services required in a service plan, as such plans are defined in Local Government Code § 43.056.

(ii) Upon receiving the notice, and all of the information required or reasonably requested by the commissioners court, the commissioners court may, within 90 days of receiving all such information, conduct the review authorized by this section. At the conclusion of the review, the commissioners court shall provide a written recommendation to the commission, either for the creation, creation with limitations, or denial of the creation of the district. In the event recommendation is for denial, then the recommendation is received by the commission as a rebuttable presumption, overturned by the commission only in the event the commission finds that the actions of the commissioners court have been arbitrary and capricious. Such findings shall not be made by the commission without adequate notice to both sides, and an opportunity for each side to be heard.

In the event either side is dissatisfied with the ruling of the commission, then either side may appeal to district court in the county where the proposed district is to be created.