

By: Lindsay

S.B. No. 1726

A BILL TO BE ENTITLED

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AN ACT

relating to the creation of the Cy-Fair Community Improvement District; providing authority to impose a tax and issue bonds.

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

SECTION 1. CREATION OF DISTRICT. (a) A special district to be known as the "Cy-Fair Community Improvement District" is a governmental agency and a political subdivision of the state.

(b) The name of the district may be changed by resolution of the board.

(c) The creation of the district is essential to accomplish the purposes of Section 52, Article III; Section 59, Article XVI; and Section 52-a, Article III, Texas Constitution, and other public purposes stated in this Act.

SECTION 2. DECLARATION OF INTENT. (a) The creation of the district is necessary to promote, develop, encourage, and maintain employment, commerce, transportation, housing, tourism, recreation, arts, entertainment, economic development, safety, and the public welfare in the Cy-Fair community of Harris County.

(b) The creation of the district and this legislation are not to be interpreted to relieve the county from providing the level of services, as of the effective date of this Act, to the area in the district or to release the county from the obligations the county has to provide services to that area. The district is created to supplement and not supplant the county services provided in the

1 area in the district.

2 (c) By creating the district and in authorizing the
3 municipality, county, and other political subdivisions to contract
4 with the district, the legislature has established a program to
5 accomplish the public purposes set out in Section 52-a, Article
6 III, Texas Constitution.

7 SECTION 3. DEFINITIONS. In this Act:

8 (1) "Board" means the board of directors of the
9 district.

10 (2) "County" means Harris County, Texas.

11 (3) "District" means the Cy-Fair Community
12 Improvement District.

13 (4) "Municipality" means the City of Houston, Texas,
14 or the City of Jersey Village, Texas.

15 SECTION 4. BOUNDARIES. The district includes all the
16 territory contained in the following described area:

17 All land included within the boundaries of Cypress Fairbanks
18 Independent School District; SAVE AND EXCEPT any land within the
19 boundaries of either of the municipalities as of the effective date
20 of this Act; and further SAVE AND EXCEPT any land currently within a
21 municipality and all tracts or parcels of land, rights-of-way,
22 facilities, and improvements owned by a public utility as defined
23 by Section 11.004, Utilities Code.

24 SECTION 5. FINDINGS RELATING TO BOUNDARIES. The boundaries
25 and field notes of the district form a closure. If a mistake is made
26 in the field notes or in copying the field notes in the legislative
27 process, the mistake does not in any way affect the:

1 (1) organization, existence, and validity of the
2 district;

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

6 (3) right of the district to impose and collect
7 assessments or taxes; or

8 (4) legality or operation of the district or its
9 governing body.

10 SECTION 6. FINDINGS OF BENEFIT AND PUBLIC PURPOSE.

11 (a) All the land and other property included in the district will
12 be benefited by the improvements and services to be provided by the
13 district under powers conferred by Section 52, Article III; Section
14 59, Article XVI; and Section 52-a, Article III, Texas Constitution,
15 and other powers granted under this Act, and the district is created
16 to serve a public use and benefit.

17 (b) The creation of the district is in the public interest
18 and is essential to:

19 (1) further the public purposes of the development and
20 diversification of the economy of the state; and

21 (2) eliminate unemployment and underemployment and
22 develop or expand transportation and commerce.

23 (c) The district will:

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

27 (2) provide needed money for the Cy-Fair community to

1 preserve, maintain, and enhance the economic health and vitality of
2 the district as a community and business center; and

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

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

13 (e) The district will not act as the agent or
14 instrumentality of any private interest even though many private
15 interests will be benefited by the district, as will the general
16 public.

17 SECTION 7. APPLICATION OF OTHER LAW. (a) Except as
18 otherwise provided by this Act, Chapter 375, Local Government Code,
19 applies to the district and its governing body and employees.

20 (b) Chapter 311, Government Code, applies to this Act.

21 SECTION 8. CONSTRUCTION OF ACT. This Act shall be liberally
22 construed in conformity with the findings and purposes stated in
23 this Act.

24 SECTION 9. BOARD OF DIRECTORS. (a) The district is
25 governed by a board of 11 directors who serve staggered terms of
26 four years, with six members' terms expiring May 1 of an
27 odd-numbered year and five members' terms expiring May 1 of the

1 following odd-numbered year. The board may increase or decrease
2 the number of directors on the board by resolution, provided that it
3 is in the best interest of the district to do so and that the board
4 consists of not fewer than nine and not more than 30 directors. A
5 decrease in the number of directors of the board does not affect the
6 term of a member on the board serving at the time of the decrease.

7 (b) The imposition of a tax, assessment, or impact fee
8 requires a vote of a majority of the directors serving.

9 SECTION 10. APPOINTMENT OF DIRECTORS; VACANCY. The county
10 judge and members of the governing body of the county shall appoint
11 directors from persons recommended by the board who meet the
12 qualifications of Subchapter D, Chapter 375, Local Government Code.
13 A vacancy in the office of director because of the death,
14 resignation, or removal of a director shall be filled by the
15 remaining members of the board by appointing a qualified person for
16 the unexpired term.

17 SECTION 11. POWERS OF DISTRICT. The district has:

18 (1) all powers necessary or required to accomplish the
19 purposes for which the district was created;

20 (2) the rights, powers, privileges, authority, and
21 functions of a district created under Chapter 375, Local Government
22 Code;

23 (3) the powers given to a corporation under Section
24 4B, Development Corporation Act of 1979 (Article 5190.6, Vernon's
25 Texas Civil Statutes), including the power to own, operate,
26 acquire, construct, lease, improve, and maintain projects as
27 provided by that Act;

1 (4) the power to impose ad valorem taxes, assessments,
2 or impact fees in accordance with Chapter 375, Local Government
3 Code, to provide improvements and services for a project or
4 activity the district is authorized to acquire, construct, improve,
5 or provide under this Act;

6 (5) the power to correct, add to, or delete
7 assessments from its assessment rolls; provided, however, that any
8 additional or increased assessment may occur only following notice
9 and hearing as required in Subchapter F, Chapter 375, Local
10 Government Code; and

11 (6) the power to impose a limited sales and use tax and
12 apply the proceeds from the tax to provide improvements and
13 services for a project or activity the district may acquire,
14 construct, improve, or provide under this Act.

15 SECTION 12. EMINENT DOMAIN. The district may not exercise
16 the power of eminent domain.

17 SECTION 13. RELATION TO OTHER LAW. If any provision of
18 general law, including a law referenced in this Act, is in conflict
19 with or is inconsistent with this Act, this Act prevails. Any law
20 referenced in this Act that is not in conflict or inconsistent with
21 this Act is adopted and incorporated by reference.

22 SECTION 14. REQUIREMENTS FOR FINANCING SERVICES AND
23 IMPROVEMENTS. The district may not finance services and
24 improvement projects using special assessments unless a written
25 petition requesting those improvements or services has been filed
26 with the board. The petition must be signed by:

27 (1) the owners of a majority of the assessed value of

1 real property subject to the assessment in the district as
2 determined by the most recent certified county tax appraisal roll;
3 or

4 (2) at least 50 persons who own real property that is
5 subject to the assessment in the district, if there are more than 50
6 persons who own real property subject to the assessment in the
7 district as determined by the most recent certified county tax
8 appraisal roll.

9 SECTION 15. NONPROFIT CORPORATION. (a) The board by
10 resolution may authorize the creation of a nonprofit corporation to
11 assist and act on behalf of the district in implementing a project
12 or providing a service authorized by this Act.

13 (b) The board shall appoint the board of directors of a
14 nonprofit corporation created under this section. The board of
15 directors of the nonprofit corporation shall serve in the same
16 manner as, for the same term as, and on the same conditions as the
17 board of directors of a local government corporation created under
18 Chapter 431, Transportation Code.

19 (c) A nonprofit corporation created under this section has
20 the powers of and is considered for purposes of this Act to be a
21 local government corporation created under Chapter 431,
22 Transportation Code.

23 (d) A nonprofit corporation created under this section may
24 implement any project and provide any services authorized by this
25 Act.

26 SECTION 16. DISBURSEMENTS OR TRANSFERS OF MONEY. The board
27 by resolution shall establish the number of directors' signatures

1 and the procedure required for a disbursement or transfer of the
2 district's money.

3 SECTION 17. SALES AND USE TAX; EXCISE TAX. (a) For
4 purposes of this section:

5 (1) "Taxable items" includes all items subject to any
6 sales and use tax that could be imposed by the county if the county
7 has imposed a sales and use tax.

8 (2) "Use" with respect to a taxable service, means the
9 derivation in the district of a direct or indirect benefit from the
10 service.

11 (b) The district may impose a sales and use tax for the
12 benefit of the district if authorized by a majority of the qualified
13 voters of the district voting at an election called for that
14 purpose.

15 (c) If the district adopts a sales and use tax:

16 (1) a tax is imposed on the receipts from the sale at
17 retail of taxable items in the district; and

18 (2) an excise tax is imposed on the use, storage, or
19 other consumption in the district of taxable items purchased or
20 rented from a retailer during the period that the tax is effective
21 in the district.

22 (d) The rate of the excise tax is the same as the rate of the
23 sales tax portion of the tax applied to the sales price of the
24 taxable items and is included in the sales tax.

25 SECTION 18. SALES AND USE TAX ELECTION PROCEDURES.

26 (a) The board by order may call an election to adopt, change the
27 rate of, or abolish a sales and use tax. The election may be held at

1 the same time and in conjunction with a confirmation or directors
2 election.

3 (b) The election must be held on the next uniform election
4 date that falls on or after the 45th day after the date the order
5 calling the election is adopted.

6 (c) Notice of the election shall be given and the election
7 shall be held and conducted in the manner prescribed for bond
8 elections under Subchapter D, Chapter 49, Water Code.

9 (d) In an election to adopt the tax, the ballot shall be
10 prepared to permit voting for or against the proposition: "The
11 adoption of a local sales and use tax in the Cy-Fair Community
12 Improvement District at the rate of (proposed tax rate)."

13 (e) In an election to change the rate of the tax, the ballot
14 shall be prepared to permit voting for or against the proposition:
15 "The (increase or decrease, as applicable) in the rate of the local
16 sales and use tax imposed in the Cy-Fair Community Improvement
17 District from (tax rate on election date) percent to (proposed tax
18 rate) percent."

19 (f) In an election to abolish the tax, the ballot shall be
20 prepared to permit voting for or against the proposition: "The
21 abolition of the local sales and use tax in the Cy-Fair Community
22 Improvement District."

23 SECTION 19. IMPOSITION, COMPUTATION, ADMINISTRATION, AND
24 GOVERNANCE OF SALES AND USE TAX. (a) Chapter 323, Tax Code, to the
25 extent not inconsistent with this Act, governs the imposition,
26 application, collection, and administration of a sales and use tax
27 under this Act, except that Sections 323.401-323.406 and 323.505,

1 Tax Code, do not apply. Subtitles A and B, Title 2, Tax Code, and
2 Chapter 151, Tax Code, govern the administration and enforcement of
3 the taxes under this Act.

4 (b) The provisions of Sections 323.101(d) and (e), Tax Code,
5 apply to a sales and use tax authorized by this Act.

6 (c) Chapter 323, Tax Code, does not apply to the use and
7 allocation of revenues under this Act.

8 (d) In applying Chapter 323, Tax Code, the district's name
9 shall be substituted for references in that chapter to "the county"
10 and the board is substituted for references in that chapter to
11 "commissioners court."

12 (e) The adoption of a tax rate or change in the tax rate
13 takes effect after the expiration of the first complete calendar
14 quarter occurring after the date on which the comptroller of public
15 accounts receives a notice of the results of the election.

16 (f) The district may impose the sales and use tax under this
17 Act in increments of one-eighth of one percent, with a minimum tax
18 of one-half percent and a maximum tax of one percent.

19 (g) The board by order may abolish the local sales and use
20 tax without an election.

21 SECTION 20. USE OF SALES AND USE TAX. Revenue from a sales
22 and use tax imposed under this Act may be used only for the purposes
23 for which the district was created.

24 SECTION 21. SUBMISSION OF ANNEXATION INFORMATION. Not
25 later than the 10th day after the date on which the district annexes
26 or excludes territory, the board shall send to the comptroller of
27 public accounts a certified copy of any resolution, order, or

1 ordinance relating to the annexation or exclusion.

2 SECTION 22. BONDS. (a) The district may issue bonds or
3 other obligations secured by or payable in whole or in part from ad
4 valorem taxes, assessments, impact fees, sales and use taxes,
5 revenues, grants, or other money of the district, or any
6 combination of those sources of money, to pay for any authorized
7 purpose of the district.

8 (b) In exercising the district's borrowing power, the
9 district may issue a bond or other obligation in the form of a bond,
10 note, certificate of participation, or other instrument evidencing
11 a proportionate interest in payments to be made by the district, or
12 other type of obligation.

13 (c) Except as provided by Subsection (d) of this section,
14 the district must obtain the approval of the applicable
15 municipality prior to the issuance of bonds for an improvement
16 within the applicable municipality's extraterritorial
17 jurisdiction.

18 (d) If the district obtains the applicable municipality's
19 approval of a capital improvements budget, the district may finance
20 the capital improvements and issue bonds specified in the budget
21 without further municipal approval.

22 SECTION 23. ASSESSMENTS. (a) The board may impose and
23 collect an assessment for any purpose authorized by this Act.

24 (b) Assessments, reassessments, or assessments resulting
25 from an addition to or correction of the assessment roll by the
26 district, penalties and interest on an assessment or reassessment,
27 expenses of collection, and reasonable attorney's fees incurred by

1 the district:

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

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

7 (3) are the personal liability of and charge against
8 the owners of the property even if the owners are not named in the
9 assessment proceedings.

10 (c) The lien is effective from the date of the resolution of
11 the board imposing the assessment until the date the assessment is
12 paid. The board may enforce the lien in the same manner, including
13 penalties and interest, that the board may enforce an ad valorem tax
14 lien against real property.

15 SECTION 24. PROPERTY EXEMPTED FROM TAX, FEE, OR ASSESSMENT.

16 (a) The district may not impose a tax, impact fee, or assessment on
17 a residential property, multi-unit residential property, or
18 condominium.

19 (b) The district may not impose an impact fee or assessment
20 on the property, equipment, or facilities of a public utility as
21 defined by Section 11.004, Utilities Code.

22 SECTION 25. ELECTIONS. (a) In addition to the elections
23 the district must hold under Subchapter L, Chapter 375, Local
24 Government Code, the district shall hold an election in the manner
25 provided by that subchapter to obtain voter approval before the
26 district imposes a maintenance tax or issues bonds payable from ad
27 valorem taxes or assessments.

1 (b) The board may submit multiple purposes in a single
2 proposition at an election.

3 SECTION 26. MAINTENANCE TAX. (a) If authorized at an
4 election held in accordance with Section 25 of this Act, the
5 district may impose and collect an annual ad valorem tax on taxable
6 property in the district for the maintenance and operation of the
7 district, for the construction and acquisition of improvements, or
8 for the provision of services.

9 (b) The board shall determine the tax rate.

10 SECTION 27. ANNEXATION OF CERTAIN TERRITORY BY GOVERNING
11 BODY OF MUNICIPALITY. (a) The governing body of a municipality
12 that annexes for any purpose all or part of the territory of the
13 district may adopt an ordinance excluding that territory from the
14 district.

15 (b) On adoption of an ordinance under Subsection (a) of this
16 section, the district shall continue to levy and collect taxes and
17 assessments each year on the excluded territory at the same rate or
18 amount levied on territory in the district to meet its debt service
19 obligations with respect to the excluded territory's pro rata share
20 of the indebtedness of the district at the time the territory was
21 excluded. The taxes and assessments collected under this
22 subsection shall be applied exclusively to the payment of the
23 excluded territory's pro rata share of the indebtedness; provided,
24 however, that the district's sales taxes shall no longer be levied
25 within the excluded territory if the municipality undertakes in
26 writing to remit to the district monthly the excluded territory's
27 pro rata share of the indebtedness of the district to which sales

1 taxes of the district are pledged at the time the territory was
2 excluded, so long as such payment is timely made.

3 SECTION 28. LAW ENFORCEMENT. To protect the public
4 interest, the district may contract with the municipality or the
5 county for the provision of law enforcement services in the
6 district for a fee.

7 SECTION 29. CONTRACTS. (a) The municipality, the county,
8 or another political subdivision of the state, without further
9 authorization, may contract with the district to implement a
10 project of the district or assist the district in providing the
11 services authorized under this Act. A contract under this
12 subsection may:

- 13 (1) be for a period on which the parties agree;
- 14 (2) include terms on which the parties agree;
- 15 (3) be payable from taxes or any other sources of
16 revenue that may be available for that purpose; or
- 17 (4) provide that taxes or other revenue collected at a
18 district project or from a person using or purchasing a commodity or
19 service at a district project may be paid or rebated to the district
20 under the terms of the contract.

21 (b) The district may enter into a contract, lease, or other
22 agreement with or make or accept grants and loans to or from:

- 23 (1) the United States;
- 24 (2) the state or a state agency;
- 25 (3) a county, a municipality, or another political
26 subdivision of the state;
- 27 (4) a public or private corporation, including a

1 nonprofit corporation created by the board under this Act; or

2 (5) any other person.

3 SECTION 30. GENERAL AUTHORITY. The district may perform
4 all acts necessary for the full exercise of the powers vested in the
5 district on terms and for the period the board determines
6 advisable.

7 SECTION 31. INITIAL DIRECTORS. (a) The initial board
8 consists of the following persons:

	Pos. No.	Name of Director
10	1	Mike Bubela
11	2	Lynda F. Burke
12	3	Jimmy Martin
13	4	Alan Quintaro
14	5	Terry E. Payne
15	6	Rick Berry
16	7	Fred F. Caldwell
17	8	Carl Linseisen
18	9	Wayne C. Meyer
19	10	Gail Schubot
20	11	Diane K. Troyer

21 (b) Of the initial directors, the terms of directors
22 appointed for positions 1 through 5 expire on May 1, 2005, and the
23 terms of directors appointed for positions 6 through 11 expire on
24 May 1, 2007.

25 (c) This section expires May 2, 2007.

26 SECTION 32. The legislature finds that:

27 (1) proper and legal notice of the intention to

1 introduce this Act, setting forth the general substance of this
2 Act, has been published as provided by law, and the notice and a
3 copy of this Act have been furnished to all persons, agencies,
4 officials, or entities to which they are required to be furnished by
5 the constitution and laws of this state, including the governor,
6 who has submitted the notice and Act to the Texas Commission on
7 Environmental Quality;

8 (2) the Texas Commission on Environmental Quality has
9 filed its recommendations relating to this Act with the governor,
10 lieutenant governor, and speaker of the house of representatives
11 within the required time;

12 (3) the general law relating to consent by political
13 subdivisions to the creation of districts with conservation,
14 reclamation, and road powers and the inclusion of land in those
15 districts has been complied with; and

16 (4) all requirements of the constitution and laws of
17 this state and the rules and procedures of the legislature with
18 respect to the notice, introduction, and passage of this Act have
19 been fulfilled and accomplished.

20 SECTION 33. This Act takes effect immediately if it
21 receives a vote of two-thirds of all the members elected to each
22 house, as provided by Section 39, Article III, Texas Constitution.
23 If this Act does not receive the vote necessary for immediate
24 effect, this Act takes effect September 1, 2003.

COMMITTEE AMENDMENT NO. 1

Amend SB 1726 as follows:

(1) In SECTION 4 of the bill (page 2, lines 22-23) strike "by a public utility as defined by Section 11.004, Utilities Code" and substitute "by an electric utility as defined by Section 31.002, Utilities Code, a gas utility as defined by Section 101.003 or 121.001, Utilities Code, a telecommunications provider as defined by Section 51.002, Utilities Code, or a cable operator as defined by 47 U.S.C. Section 522, and its subsequent amendments".

(2) In SECTION 24 of the bill (page 12, lines 19-21) strike Subsection (b) and substitute the following:

(b) The district may not impose an impact fee on property, including equipment or facilities, of an electric utility as defined by Section 31.002, Utilities Code, a gas utility as defined by Section 101.003 or 121.001, Utilities Code, a telecommunications provider as defined by Section 51.002, Utilities Code, or a cable operator as defined by 47 U.S.C. Section 522, and its subsequent amendments.

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COMMITTEE AMENDMENT NO. 2

Amend S.B. No. 1726 as follows:

(1) On page 6, between lines 21 and 22, add a new SECTION 14 and renumber the remaining sections of the bill as appropriate:

SECTION 14. DISTRICT CONFIRMATION ELECTION. (a) As soon as practicable after all initial directors have qualified for office, the initial directors shall hold an organizational meeting and call a confirmation election to be held on the uniform election date

1 occurring in November 2003.

2 (b) The confirmation election shall be called and held in
3 the manner provided by Subchapter D, Chapter 49, Water Code. The
4 costs of holding the election shall be paid by the county but if the
5 district is confirmed, the district shall reimburse the county for
6 the costs of the election.

7 (c) The initial directors shall adopt the wording of the
8 ballot proposition which must clearly and completely explain:

9 (1) whether the district may:

10 (A) impose taxes or fees, including an
11 explanation of the nature of those taxes or fees;

12 (B) exercise the power of eminent domain;

13 (C) issue bonds; and

14 (2) the powers and duties of the district.

15 (d) Before the district is confirmed at the election, the
16 district may carry on any business as the board may determine except
17 that the district may not borrow money or impose or assess a tax or
18 an assessment.

19 (2) In SECTION 25 of the bill, on page 13, line 1, between
20 "may" and "submit" insert "not".

21 (3) In SECTION 29 of the bill, on page 15, between lines 2
22 and 3, add new Subsections (c) and (d) to read as follows:

23 (c) The district may not enter into or renew a contract with
24 a business entity in which a director of the board has a substantial
25 interest, as defined by Section 171.002, Local Government Code.

26 (d) A director commits an offense if the director
27 authorizes, or allows an employee of the district to authorize,

S.B. No. 1726

1 entering or renewing a contract in violation of Subsection (c). An
2 offense under this subsection is a Class A misdemeanor.

3 Talton