



Travis County Commissioners Court Agenda Request

Meeting Date: December 1, 2015

Prepared By/Phone Number: Diana A. Ramirez, 854-9694; Leah Henderson, 854-4741

Elected/Appointed Official/Dept. Head: Jessica Rio, County Executive, Planning and Budget

Commissioners Court Sponsor: Commissioner Margaret Gómez, Pct. 4,

AGENDA LANGUAGE: Consider and take appropriate action on Public Improvement District (PID) Policy.

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS: Local Government Code Chapter 372 allows counties to create Public Improvement Districts (PIDs) to help spur economic development by providing a means to improve infrastructure and promote economic growth. Moreover, PIDs provide for the financing of the costs of public improvements or services that benefit a definable part of the County with the costs borne by those landowners within the PID boundaries who receive special benefits from the public improvements or services.

Across the state, primarily cities have created PIDs; Hays County is the only county to date to create a PID.

Travis County received its first petition for the creation of a PID in early October 2015. The County may elect to follow the statute without creating a policy or go through the process of creating a PID policy that complies with the statute but also brings to bear the Commissioners Court's specific economic development and other policy goals.

STAFF RECOMMENDATIONS: At this time, PBO requests Commissioners Court direction on several key decision points in the policy (as outlined in the attachment). Once Commissioners Court input is incorporated into the draft policy, and final comments by several other county and external advisors are received and considered, PBO will prepare a final draft for action by Commissioners Court.

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to the County Judge's office, agenda@traviscountytx.gov by **Tuesdays at 12 noon**. for the next week's meeting.

ISSUES AND OPPORTUNITIES: PBO has been working with Transportation and Natural Resources (TNR) and the County Attorney's Office on drafting the PID policy. In addition, PBO is working with the Tax Assessor Collector's Office, the County Treasurer's Office, the County Auditor's Office, and the County's financial advisor, PFM, to ensure that the policy is fully vetted from both a financial and audit perspective. The County Attorney's Office has also provided a copy to Bond Counsel for review and comment. In addition to the policy, PBO will prepare operating procedures in the coming months to ensure that all statutory requirements are met and appropriate standards are set.

Please note that the draft PID policy includes placeholders for several issue areas that directly impact other County offices. Those sections will be written after discussions with staff of those offices.

FISCAL IMPACT AND SOURCE OF FUNDING: The PID statute allows for payment of expenses incurred in the establishment, administration, and operation of the district. While the County's direct costs of this work will be reimbursed, the overall management of the PID program adds new workload to PBO and other county offices, although the level of new workload will depend on the number of PID petitions received and created.

The complexity of this new area of work will be evaluated as the first PID petition evolves. PBO will outline a strategy to meet any new PID related work requirements and identify resource gaps as needed.

REQUIRED AUTHORIZATIONS:

Jessica Rio, Planning and Budget Office, (512) 854-9106

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PLANNING AND BUDGET OFFICE

TRAVIS COUNTY, TEXAS

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MEMORANDUM

TO: Commissioners Court

FROM: Diana A. Ramirez, Assistant Budget Director
Leah Henderson, Planning and Budget Analyst

DATE: November 20, 2015

RE: Overview of Draft Public Improvement District (PID) Policy and Commissioners Court Decision Points

The draft PID policy, attached, outlines the policies and general procedures the Commissioners Court will use to consider whether approval of a PID petition or issuance of PID bonds is in the best interest of the County. It conforms to the authorizing statute, Local Government Code Chapter 372, Improvement Districts in Municipalities and Counties.

The PID policy is comprised of the following sections. PBO has identified several decision points for Commissioners Court consideration. Most of the decision points include a staff recommendation.

84.001 – General Provisions

Describes the nature of a PID, identifies the county officer with whom a PID petition is filed, and describes how Commissioners Court may deviate from the policy.

84.002 – Definitions

Defines key terms used throughout the policy.

84.003 – Community Benefits

Establishes a priority for PIDs in the unincorporated areas of the county that provide public benefits superior to the benefits typically generated by real estate development projects not involving PID financing. The list of priority projects and improvements includes projects that will, among other things, increase affordable housing options, increase or enhance multimodal transportation options, improve public educational programs and/or facilities, provide exceptional benefits to improve the public roadway network in the County, and advance approved master plans.

84.004 – PIDs within Municipal Limits or ETJs

Requires additional coordination with a municipality and establishes additional criteria for Commissioners Court consideration of such PID petitions.

84.005 – Minimum Requirements for a PID

Establishes the minimum requirements for Commissioners Court to consider in the creation of a PID. The requirements stipulate that a proposed PID must achieve at least one of the priority Community Benefits listed in §84.003, the County will not incur non-reimbursable costs for the establishment, administration and operation of a PID, a third party selected by the County will perform the administration and management of a PID, and various other administrative and business process requirements recommended by staff.

84.006 – Preferential Requirements

Establishes the preference for PIDs that are financed without County financial participation, with two exceptions, and PID petitions signed by 100% of the owners in the PID boundaries.

The PID statute requires that more than 50% of the owners in the PID boundaries sign the petition. That requirement forms the base requirement with 100% of the owners' signatures being the County's preferred level of commitment. This leaves the Commissioners Court with the flexibility to accept a petition with a signature level anywhere along this range.

PBO is working with the Tax Assessor Collector's Office to determine the capacity for that office to collect PID assessments, rather than have another party collect the assessments. If possible, the preference is to have the Tax Office collect the PID assessments.

84.007 – Contents and Filing of Petition

Requires significant information from the petitioner(s) including statutorily required documents and statements as well as a market feasibility study, petitioner's qualifications, preliminary plans for any phasing of the development, a preliminary Service and Assessment Plan, etc.

Decision Point 1

One of the statutorily required statements that must be made in the petition is that a PID advisory body may be appointed by the Commissioners Court, and whether the petitioners propose one. Staff does not anticipate recommending the appointment of a separate PID advisory body for any PID. A PID advisory body must include owners of property in the PID. Staff recommends that the development and recommendation of an improvement plan remain the responsibility of the County.

Decision Point 2

This section requires the submission of certification that none of the property in the PID is a homestead. This serves as a policy limit for county PIDs to undeveloped land. Several cities allow or prioritize PID creation within established neighborhoods to allow those owners to

essentially pay for infrastructure replacement or improvement and maintenance. However, staff recommends limiting PIDs to undeveloped land to avoid dealing with secondary liens.

Decision Point 3

This section establishes a filing fee that is intended to defray the approximate costs of internal staffing and overhead. Because the County does not have actual experience in processing a PID petition yet, rough estimates based on approximately 120-150 hours of staff time (salaries and benefits) plus an overhead cost of 6.5% (the amount the County includes in its interlocal agreements with the City of Austin) totals \$9,200-\$11,600. A review of other PID policies shows filing fees as high as \$15,000. PBO recommends a \$10,000 filing fee.

In addition, all direct costs of advertisement, mailing of notices, and contract work will be invoiced to the petitioner for reimbursement.

84.008 – Notice, Public Hearing, and Approval of Petition

Establishes the procedures for Commissioners Court approval of a PID petition.

Of special note in this section is that the statute allows for the initial public hearing on a PID petition to be continued “from time to time,” meaning that the public hearing is called to order and continued for a period of time until staff have collected all the information required to prepare a report of findings to present to Commissioners Court. It is anticipated that such hearings will be continued for weeks or months, depending on the complexity of the PID agreement being prepared.

84.009 – Financial Limitations and Performance Standards

Establishes the requirements that must be met before PID bonds may be issued and sets limitations on the PID bonds.

Decision Point 4

Several city policies reviewed by staff had a cap on the annual PID assessment. This cap is an attempt to keep the combined burden of overlapping ad valorem taxes plus the PID assessment comparable to the overlapping ad valorem tax burden on owners in nearby developments. As part of §84.007, the policy requires the proposed method of assessment submitted with the petition to include such a comparison. This section would set a cap on the assessment, if Commissioners Court so chooses.

The caps in the city policies reviewed by staff range up to \$0.60 per \$100 of assessed value. This amount appears very high, given that the County’s tax rate for FY 2016 is \$0.4169 per \$100 of taxable value. The burden on an owner in a PID would be even greater once other ad valorem taxes from community college districts, school districts, and cities (if the PID is located within a city’s corporate limits) are layered on top of the County’s tax rate.

Commissioners Court could use a lower cap in the policy, around \$0.30 per \$100 of assessed value or instead, choose to make the assessment level part of the negotiation process and use that to leverage a greater level of public benefit. Staff recommends not setting an assessment cap in the policy and allowing staff to negotiate with the petitioners based on the facts of each petition.

Decision Point 5

The PID statute allows bond maturities to be as long as 40 years. Commissioners Court has historically issued general obligation bonds and certificates of obligation with 20 year maturities. Staff recommends that Commissioners Court cap PID bond maturities at 30 years with individual issuances dependent on the life of the asset. This recommendation is made after discussions with the County's financial advisor.

84.010 – PID Administration and Management

Identifies a third party firm as the administrator of the PID, that the selection of a firm will follow the County Purchasing Act, and that PBO will manage the contract.

84.011 – Audit Requirements

Sets the right of the County to audit the records of the third party firm and petitioners.

84.012 – Boundary Modifications, Supplemental Assessments, Renewal, or Dissolution

Establishes that changes to a PID may only be approved following the same process as creating a PID.

NEXT STEPS:

The PID policy needs further work and refinement. This briefing is expedited in consideration of an active petition received by the County. However, PBO requests that the Commissioners Court allow staff sufficient time to review all comments received from all impacted County offices, our financial and legal advisors, as well as any comments that may be received by the petitioners, other interested parties, and the general public and formulate any further revisions to a complete policy. PBO will take your input today and provide a second draft of this policy for consideration no later than January 12, 2016.

CHAPTER 84. TRAVIS COUNTY PUBLIC IMPROVEMENT DISTRICT POLICY AND PROCEDURES

84.001. General Provisions

- (a) A public improvement district (PID) is a tool that provides for the financing of the costs of public improvements or services that benefit a definable part of Travis County (the County). It allows the costs of PID improvements or services to be borne by those who receive special benefits from the improvements or services because they own property in that definable area. At the same time, residents of the county who live outside the definable area also receive some benefit from those improvements or services.
- (b) The purpose of this chapter is to outline the policies and procedures the Travis County Commissioners Court (the Commissioners Court) will use to consider whether approval of a PID petition or issuance of PID bonds is in the best interest of the County.
- (c) For purposes of the several filing requirements of Chapter 372, Local Government Code (Ch. 372), the person performing the functions of a municipal secretary for the County is the assistant Travis County Clerk responsible for maintaining the minutes and other records of the Commissioners Court.
- (d) The Commissioners Court may, on a case-by-case basis, waive a requirement of this chapter if it does not conflict with state law. Any requirements waived shall be noted in the resolution approving the PID petition or other relevant document and must include a finding that the waiver is in the best interest of the County.

84.002. Definitions

- (a) "Approved Master Plans" means master and regional plans approved by the Commissioners Court, such as the Land Water and Transportation Plan, the Colorado River Corridor Plan, and the Eastern Creeks Greenbelts Plan.
- (b) "ETJ" means the extraterritorial jurisdiction of a municipality.
- (c) "Market Feasibility Study" means a study that examines the likelihood that a proposed real estate development project supported by a PID will be financially successful based on historical and projected real estate demand and supply trends.
- (d) "Owners" means owners of real property in the PID.
- (e) "Petitioners" means the owners signing the PID petition.
- (f) "PID bonds" means revenue bonds issued by the County under Ch. 372 backed by assessments on property in the PID.

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- (g) "PID improvements" means landscaping, lighting, signs, sidewalks, roads, streets, pedestrian malls, libraries, off-street parking, public transit, water, wastewater, stormwater management, parks, development and improvement of affordable housing, and improvements providing similar benefits.
- (h) "PID petition" means a petition for creation, modification, dissolution, or renewal of a PID.
- (i) "Service and Assessment Plan" means a plan approved by the Commissioners Court that covers an ongoing period of five years that defines the annual indebtedness and the projected cost for PID improvements, and that is updated annually by the Commissioners Court to establish the annual assessments and budget for the PID.
- (j) "Services" means services for improvement, promotion, and maintenance of a PID.

84.003. Community Benefits.

Subject to the requirements of this chapter, the Commissioners Court will prioritize approval of PID petitions for land in the unincorporated area of the county that provide for the following public benefits to a degree that is superior to the benefits typically generated by real estate development projects not involving PID financing.

- (1) Projects that will generate primary employment or other long-term economic development benefits to the County, above and beyond the economic development benefits generated by hiring short-term workers to construct the project supported by the PID.
- (2) Projects that increase affordable housing options.
- (3) Improvements or services that advance Approved Master Plans.
- (4) Projects that create or enhance parks, hike and bike trails, recreational facilities, open space benefits, etc. that exceed what is required by applicable development regulations.
- (5) Projects that improve environmental protection, stormwater quality, and flood control benefits in ways that exceed what is required by applicable development regulations.
- (6) Projects that increase or enhance multimodal transportation options.
- (7) Projects that improve public educational programs and/or facilities.
- (8) Projects that provide exceptional benefits to improve the public roadway network in the County.

84.004. PIDs Within Municipal Limits or ETJs

- (a) For proposed PIDs in an ETJ or municipal limits, the petitioners shall be responsible for coordination with and between the County and the municipality at the earliest possible date to assess municipal annexation plans, the maximum PID assessment rate relative to

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municipal taxation, relative responsibilities for acceptance and maintenance of PID improvements to be financed by the PID, and related matters.

- (b) Generally, the Commissioners Court will consider PID petitions for property in municipal limits only if:
 - (1) the project will enhance or assist in completing a County project;
 - (2) the PID includes property within an unincorporated area and municipal limits or within multiple municipal limits.
- (c) For PIDs in either municipal limits or an ETJ, the petitioners must provide the County with acceptable evidence that the municipality will not object to creation of the PID by the Commissioners Court.

Comment [TN1]: It may be preferable not to require affirmative action by a city.

84.005. Minimum Requirements for a PID

To be considered by the Commissioners Court, the real estate development project supported by the PID must meet the following minimum requirements.

- (1) The PID must be designed to achieve at least one of the priorities listed in Sec. 84.003.
- (2) Filing and review of the PID petition may not impose one-time, unreimbursed administrative or operational costs on the County, such as costs of:
 - (A) reviewing the PID petition;
 - (B) publishing related notices;
 - (C) reviewing the appraisal, the initial Service and Assessment Plan, and the Market Feasibility Study, including the cost of services provided by County consultants, bond counsel, and financial advisors;
 - (D) bond issuance;
 - (E) review and approval of plans for and inspection of construction of PID improvements;
 - (F) procurement of contracts for PID administration and operation, collection of assessments, foreclosures, etc.
- (3) The County's ongoing administrative and operational costs related to an approved PID, such as collection of PID assessments, review and approval of Service and Assessment Plan updates, and other costs shall be reimbursed from PID assessments. The County's costs will be determined on an annual basis.

- (4) Administration and management of ongoing PID responsibilities, such as preparation and updating of the Service and Assessment Plan, issuance of notices for annual Commissioners Court action on the Service and Assessment Plan, operation and maintenance of PID improvements, and other related matters shall be paid by PID assessments and performed by a third party firm under contract with the County.
- (5) The County will use PID bond proceeds only to reimburse the costs of completed PID improvements that have been designed and constructed to the applicable standards of, and accepted for maintenance or otherwise approved by, the government entity responsible for them.
- (6) In the event of default under the terms of the PID petition or the PID agreement, the County shall, after providing notice and an opportunity to cure, have the right to recapture reimbursements.
- (7) Before a PID petition may be approved, the PID petitioners and the County must enter into a PID Agreement that establishes:
 - (A) the basic terms and conditions for creation of the PID, including the provision of community benefits;
 - (B) payment or reimbursement to the County of both the County's one-time and ongoing administrative and operational costs;
 - (C) the financing of the PID improvements;
 - (D) the planning, development, construction, management, and maintenance of the PID improvements, including review and approval by the government entities ultimately responsible for the PID improvements;
 - (E) terms and conditions for ongoing PID administration, operation, and management, including collection of PID assessments;
 - (F) any services to be funded by the PID will provide; and
 - (G) other related matters.
- (8) With regard to use of historically underutilized businesses, payment of prevailing wages, provision of performance and payment bonds and workers compensation insurance, and other requirements, contracts for design and construction of the PID improvements shall substantially conform to the requirements the County applies to design and construction contracts for roads built pursuant to public/private participation agreements.
- (9) The PID agreement and/or other documentation acceptable to the County must be recorded in the County Clerk's Official Public Records to notify any prospective owner of the existence of PID assessments on the property. All closing statements and sales contracts for property in the PID must disclose responsibility for payment of PID assessments and the

Comment [TN2]: PID applicants prefer to be able to draw down PID bond proceeds to pay for construction as it occurs, rather than being reimbursed a lump sum after construction is complete.

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amount of the PID assessments. The petitioners must erect signage disclosing the existence of the PID in a form acceptable to the County along the main entries and exits at the boundaries of the PID that is clearly visible to all motorists entering and exiting the PID.

- (10) Property in the PID owned by Travis County shall not be subject to PID assessments. Property in the PID owned by another governmental entity may be assessed only pursuant to an interlocal agreement between the entity and the County.
- (11) The PID may not finance improvements or services within a gated community or a development that in which PID improvements would not be accessible to the general public.
- (12) A PID may not overlap the boundaries of another PID.
- (13) Development of property within the PID may not require significant or unmitigated variances from applicable development regulations.

84.006. Preferential Requirements.

- (a) PIDs in which the cost of public improvements are financed without County financial participation are preferred. Except for public improvements specifically approved in a County bond proposition, the County will not expend or pledge a tax increment, general fund revenue, general obligation or certificate of obligation bond proceeds, etc. to support the costs of PID improvements unless is explicitly approved by Commissioners Court as advancing a County purpose.
- (b) PID petitions signed by 100% of the owners in the PID boundaries are preferred. At a minimum, a PID petition must be signed by owners representing at least 50% of the value of the property, the number of record owners, or the total of the land area, within the PID. A PID petition will be viewed more favorably when it is signed by a higher percentage of the owners.
- (c) Collection of PID assessments by the County Tax Assessor Collector is preferred.

Comment [TN3]: Pending discussion with Tax Office.

84.007. Contents and Filing of Petition

- (a) The petitioners shall notify in writing the County Judge, the Commissioner of any precinct in which a proposed PID is located, and the County Executive of Planning and Budget at least 90 days in advance of their intent to file a PID petition. The petitioners must attend one or more pre-filing meetings scheduled by the County.
- (b) The petition must include the following:
 - (1) A legal description of the boundaries of the PID and a black and white map of the PID boundaries suitable for publication.
 - (2) The general nature of the proposed improvements.

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- (3) The estimated cost of the improvements.
 - (4) The petitioner's qualifications and previous experience with real estate development, financing of that development, prior PIDS, etc.
 - (5) A fair market value appraisal of property in the PID by an appraiser acceptable to the County.
 - (6) A Market Feasibility Study.
 - (7) The proposed method of assessment, including a preliminary Service and Assessment Plan, including a comparison of the combined PID assessment and *ad valorem* tax burden on owners in the PID with comparable combined burdens on owners in nearby developments.
 - (8) A plan for administering and managing PID responsibilities, such as collection of assessments, preparation and updating of the Service and Assessment Plan and assessment roll, and other related matters.
 - (9) Any plan for phasing of both the real estate development supported by the PID and construction of public improvements in the development.
 - (10) The proposed apportionment of costs between the PID and governmental entities.
 - (11) A statement that the petitioners request or concur with the establishment of the PID.
 - (12) A statement that a PID advisory body may be appointed, and whether the petitioners propose one.
 - (13) A certification that none of the property in the PID is a homestead.
 - (14) A current tax roll of the owners in the PID.
 - (15) A plan for ensuring dissolution of the PID will not impose unintended costs on the County or other governmental entities, and that addresses the maintenance or disposition of PID improvements if a PID is dissolved.
- (c) The petitioners must include with the PID petition a certified check for a filing fee of \$____, which will be used to defer the County's approximate internal staffing and overhead costs of processing and reviewing the PID petition. In addition, petitioners must pay all direct costs of processing the PID petition, such as newspaper advertisements, postage, and contractors.

Comment [TN4]: PID applicants prefer to be able to provide these a later stage.

84.008. Notice, Public Hearing, and Approval of Petition

- (a) County staff and consultants will assess the adequacy of the PID petition, including the Market Feasibility Study, and the PID agreement and their compliance with this chapter and Ch. 372 and

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recommend to the Commissioners Court whether to proceed with a public hearing on the PID petition.

- (b) The PID agreement must be executed on or before the date the public hearing is set.
- (c) If the Commissioners Court approves setting a public hearing on the PID petition, County staff will publish the newspaper notice and mail the notice to property owners required by Ch. 372.
- (d) The hearing may be continued from time to time. After the final adjournment of the public hearing, the Commissioners Court has six months to adopt a resolution making the findings required by Ch. 372 to approve the PID petition.
- (e) The resolution must be approved by a majority of all members of the Commissioners Court.
- (f) Creation of the PID is effective when it has been published by County staff one time on a newspaper of general circulation in the County.
- (g) During the 20-day period after PID creation takes effect, PID creation may be protested in writing by the owners of at least two thirds of property in the PID.
- (h) Construction of PID improvements may not begin until the later of the 30th day after PID creation takes effect or final resolution of any PID appeal.

84.009. Financial Limitations and Performance Standards

- (a) Before authorizing issuance of PID bonds, the Commissioners Court shall:
 - (1) determine the total cost of PID improvements;
 - (2) approve a final Service and Assessment Plan and appraisal roll;
 - (3) levy an assessment; and
 - (4) establish a separate public improvement district fund in the County treasury.
- (b) The annual PID assessment shall be no more than ____.
- (c) The following limitations and performance standards shall apply to PID bonds.
 - (1) The minimum appraised value-to-lien ratio at date of each bond issue shall be 3:1.
 - (2) The maximum maturity for each series of bonds shall be ____.
 - (3) The aggregate principal amount of bonds required to be issued shall not exceed an amount sufficient to fund:
 - (A) the actual costs of the qualified PID improvements;

Comment [TN5]: PID applicants think it is not practicable to set a "one size fits all" cap.

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(B) required reserves and capitalized interest during the period of construction and not more than 12 months after the completion of construction and in no event for a period greater than 3 years from the date of the initial delivery of the bonds; and

(C) any costs of issuance.

(e) The PID bond reserve fund shall be the lesser of the maximum annual debt service on the bonds, (ii) 10 percent of the par amount of the bonds, or 125 percent of the average annual debt service. The reserve fund will be funded from bond proceeds at the time bonds are issued.

(f) PLACE HOLDER FOR POST-ISSUANCE COMPLIANCE PENDING BOND COUNSEL DISCUSSION

84.010. PID Administration and Management

(a) The County will procure a third party firm to administer the PID under the County Purchasing Act.

(b) A third party firm shall:

- (1) perform all duties required by the PID petition or PID agreement;
- (2) submit to the County quarterly reports of all PID activities and expenditures;
- (3) submit to the County an annual independent audit of all PID expenditures;
- (4) prepare all proposed assessment rolls;
- (5) prepare proposed Service and Assessment Plan updates, which shall include a comparison of the combined PID assessment and *ad valorem* tax burden on owners in the PID with comparable combined burdens on owners in nearby developments;
- (6) hold an annual meeting in a public place open to all owners in the PID, with written notice mailed to them at least two weeks in advance, to provide an opportunity for owners to review and submit questions, comments, and input on the Commissioners Court's upcoming approval of any proposed assessment roll or Service and Assessment Plan update; and
- (7) submit all proposed assessment rolls and Service and Assessment Plan updates to the Commissioners Court for approval.

(c) The Planning and Budget Office will manage the third party firm's contract.

84.011. Audit Requirements

(a) Upon reasonable prior written notice, the County shall have the right during normal business hours to audit and inspect the records, books, and all other relevant records of the third party firm and the petitioners related to the PID.

Comment [TN6]: PID applicants feel this is overbroad.

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84.012 Boundary Modifications, Supplemental Assessments, Renewal, or Dissolution

The Commissioners Court may only renew, add territory to, supplement assessments for, or dissolve a PID in the same manner as a PID is created.

DRAFT