

By: Eissler

H.B. No. 3562

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the creation of the Southwest Montgomery County  
3 Improvement District; providing authority to impose taxes and issue  
4 bonds.

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

6 SECTION 1. CREATION OF DISTRICT. (a) The Southwest  
7 Montgomery County Improvement District is created as a special  
8 district in Montgomery County under Section 59, Article XVI, Texas  
9 Constitution.

10 (b) The board by resolution may change the name of the  
11 district.

12 SECTION 2. DEFINITIONS. In this Act:

13 (1) "Board" means the board of directors of the  
14 district.

15 (2) "Commission" means the Texas Commission on  
16 Environmental Quality.

17 (3) "District" means the Southwest Montgomery County  
18 Improvement District.

19 SECTION 3. DECLARATION OF INTENT. (a) The creation of the  
20 district is essential to accomplish the purposes of Section 52,  
21 Article III, and Section 59, Article XVI, Texas Constitution, and  
22 other public purposes stated in this Act.

23 (b) The creation of the district is necessary to promote,  
24 develop, encourage, and maintain employment, commerce, economic

1 development, and the public welfare in the southwest portion of  
2 Montgomery County.

3 (c) The creation of the district and this legislation may  
4 not be interpreted to relieve Montgomery County or any other  
5 political subdivision from providing the level of services  
6 provided, as of the effective date of this Act, to the area in the  
7 district. The district is created to supplement and not to supplant  
8 services provided in the area in the district.

9 SECTION 4. BOUNDARIES. The district includes all of the  
10 territory contained in Montgomery County Election Precincts Number  
11 13, 18, 28, 29, 30, 34, 65, 66, 69, 71, 74, 75, 76, and 81, as those  
12 precincts existed on January 1, 2003, except for:

13 (1) territory within the corporate limits of the  
14 following municipalities as of January 1, 2003: Conroe, Houston,  
15 Magnolia, Stagecoach, and Shenandoah; and

16 (2) territory that is a part of the Town Center  
17 Improvement District as of January 1, 2003.

18 SECTION 5. FINDINGS RELATING TO BOUNDARIES. The boundaries  
19 and field notes of the district form a closure. A mistake in the  
20 field notes or in copying the field notes in the legislative process  
21 does not in any way affect the district's:

22 (1) organization, existence, or validity;

23 (2) right to enter any type of contract for a purpose  
24 for which the district is created;

25 (3) right to impose or collect an assessment or tax; or

26 (4) legality or operation.

27 SECTION 6. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a) The

1 district is created to serve a public use and benefit.

2 (b) All land and other property in the district will benefit  
3 from the improvements and services to be provided by the district  
4 under powers conferred by Section 52, Article III, and Section 59,  
5 Article XVI, Texas Constitution, and other powers granted under  
6 this Act.

7 (c) The creation of the district is in the public interest  
8 and is essential to:

9 (1) further the public purposes of development and  
10 diversification of the economy of the state;

11 (2) eliminate unemployment and underemployment; and

12 (3) develop or expand transportation and commerce.

13 (d) The present and prospective traffic congestion in the  
14 district and the safety of pedestrians and the limited availability  
15 of funds require the promotion and development of public  
16 transportation and pedestrian facilities and systems, and the  
17 district will serve the public purpose of securing expanded and  
18 improved transportation and pedestrian facilities and systems.

19 (e) The district will:

20 (1) promote the health, safety, and general welfare of  
21 residents and employers in the district;

22 (2) secure expanded and improved transportation and  
23 pedestrian facilities and systems;

24 (3) provide needed funding to preserve, maintain, and  
25 enhance the economic health and vitality of the district as a  
26 community and commerce center; and

27 (4) promote the health, safety, welfare, education,

1 convenience, and enjoyment of the public by improving, landscaping,  
2 and developing certain areas and by providing public services and  
3 facilities in and adjacent to the district, which are necessary for  
4 the restoration, preservation, enjoyment, and enhancement of  
5 scenic beauty.

6 (f) The district will not act as the agent or  
7 instrumentality of any private interest even though the district  
8 will benefit many private interests as well as the public.

9 SECTION 7. APPLICATION OF OTHER LAW. (a) Except as  
10 otherwise provided by this Act, Chapter 375, Local Government Code,  
11 applies to the district.

12 (b) Chapter 311, Government Code (Code Construction Act),  
13 applies to this Act.

14 SECTION 8. CONSTRUCTION OF ACT. This Act shall be liberally  
15 construed in conformity with the findings and purposes stated in  
16 this Act.

17 SECTION 9. BOARD OF DIRECTORS. (a) Except as provided by  
18 Section 14 of this Act, the district is governed by a board of 11  
19 directors who serve staggered terms of four years.

20 (b) Except as provided by Section 14 of this Act, six  
21 directors are elected by the voters of the district at large. Five  
22 directors are appointed as follows:

23 (1) one director appointed by the governing body of  
24 the City of Magnolia;

25 (2) one director appointed by the governing body of  
26 the City of Stagecoach;

27 (3) one director appointed by the governing body of

1 the City of Conroe;

2 (4) one director appointed by the governing body of  
3 the Magnolia Independent School District; and

4 (5) one director appointed by the Montgomery County  
5 Commissioners Court.

6 (c) To be eligible to serve as a director, a person must be  
7 at least 18 years old, a resident of the district, and:

8 (1) an owner of real property in the district;

9 (2) an owner, whether beneficial or otherwise, of at  
10 least 10 percent of the outstanding stock of a corporate owner of  
11 real property in the district or of a corporate lessee of real  
12 property in the district with a lease term of five years or more  
13 measured from the date of appointment or election, excluding  
14 options;

15 (3) an owner of at least 10 percent of the beneficial  
16 interest in a trust that:

17 (A) owns real property in the district; or

18 (B) leases real property in the district under an  
19 original lease term of five years or more measured from the date of  
20 appointment or election, excluding options;

21 (4) a lessee of real property in the district under an  
22 original lease term of five years or more, excluding options;

23 (5) an owner of at least 10 percent of the outstanding  
24 interest in a general or limited partnership that:

25 (A) owns real property in the district; or

26 (B) leases real property in the district under  
27 an original lease term of five years or more measured from the date

1 of appointment or election, excluding options; or

2 (6) an agent, employee, officer, or director of any  
3 individual, corporation, trust, or partnership that owns or leases  
4 real property described by Subdivision (1), (2), (3), (4), or (5) of  
5 this subsection who is designated by the owner or lessee to serve as  
6 a director.

7 (d) A person may not be appointed as a director under  
8 Subsection (b) of this section if the appointment would cause more  
9 than three members of the board to be an agent, employee, officer,  
10 or director of the same individual, corporation, trust, or  
11 partnership that owns or leases property in the district.

12 SECTION 10. VACANCY. (a) A vacancy in an appointed  
13 position is filled for the remainder of the unexpired term by the  
14 entity that made the original appointment. A vacancy in an elected  
15 position is filled by the remaining members of the board for the  
16 unexpired term.

17 (b) If six or more vacancies occur at the same time, on  
18 petition of a property owner of the district, the Montgomery County  
19 Commissioners Court shall make appointments to fill the vacancies.

20 (c) Section 375.066, Local Government Code, does not apply  
21 to the district.

22 SECTION 11. ELECTION DATE FOR DIRECTORS. The election of a  
23 director is held on the uniform election date in September of the  
24 year in which an elected director's term expires.

25 SECTION 12. BOND NOT REQUIRED. A director is not required  
26 to execute a bond as required by Section 375.067, Local Government  
27 Code.

1           SECTION 13. REMOVAL OF DIRECTOR. The board may remove a  
2 director for misconduct or failure to carry out the director's  
3 duties by vote of not less than 75 percent of the remaining  
4 directors.

5           SECTION 14. INITIAL DIRECTORS. (a) Not later than the 30th  
6 day after the effective date of this Act, the entities described in  
7 Section 9(b) of this Act shall make the initial appointments to the  
8 positions described in that section. The Montgomery County  
9 Commissioners Court shall make the initial appointment of the six  
10 elected directors and designate whether the director serves for a  
11 term expiring October 1, 2005, or October 1, 2007.

12           (b) The initial directors serve terms as follows:

13                   (1) the director appointed under Section 9(b)(5) of  
14 this Act and three of the elected directors appointed by the  
15 Montgomery County Commissioners Court under Subsection (a) serve  
16 for terms expiring on October 1, 2007;

17                   (2) the directors appointed under Sections 9(b)(1),  
18 (2), and (4) of this Act serve for terms expiring on October 1,  
19 2006; and

20                   (3) the director appointed under Section 9(b)(3) of  
21 this Act and three of the elected directors appointed by the  
22 commissioners court under Subsection (a) of this section serve for  
23 terms expiring on October 1, 2005.

24           (c) This section expires January 1, 2008.

25           SECTION 15. CONFIRMATION ELECTION. (a) After holding any  
26 hearings on whether to exclude territory from the district, the  
27 board shall order an election on the confirmation of the district.

1 The election shall be held on the first uniform election date that  
2 occurs 45 or more days after the date the election is ordered.

3 (b) The election shall be called and held in the same manner  
4 as provided by general law for a municipal utility district.

5 (c) If less than a majority of the votes cast at the  
6 election favor confirmation of the district, another confirmation  
7 election may not be held sooner than 180 days after the date of a  
8 previous confirmation election.

9 (d) Until confirmed at an election, the district may not  
10 impose taxes, fees, or assessments, but may carry out other  
11 district business as determined by the board.

12 SECTION 16. BORROWING MONEY BEFORE CONFIRMATION ELECTION.

13 (a) Before the election confirming the district and the election  
14 imposing a limited sales and use tax, the board may borrow money to  
15 hire employees, obtain office space, pay fees and costs of holding  
16 elections, and pay other costs and expenses reasonably necessary to  
17 prepare for commencement of operation.

18 (b) Funds borrowed for a purpose described by Subsection (a)  
19 of this section are repayable by the district only if the elections  
20 result in the confirmation of the district and imposition of a  
21 limited sales and use tax. The district shall repay those funds not  
22 later than the fifth anniversary of the date the funds were  
23 borrowed.

24 (c) The maximum amount the district may borrow under this  
25 section is \$75,000.

26 SECTION 17. IMPACT AREAS. (a) In this section, "impact  
27 area" means an area defined by board resolution that is in the



1 district or within two miles of the district and located in  
2 Montgomery County.

3 (b) The board may, after allowing for the general and  
4 administrative costs of operating the district, apply proceeds from  
5 the limited sales and use tax to mitigate the net negative effects  
6 of development in the district on an impact area, including effects  
7 on public utilities and services, public transportation and traffic  
8 movement, and scenic beauty.

9 (c) The district may allocate direct expenditures for the  
10 district or the impact area to each area for which the expenditure  
11 was made. The district may allocate expenditures for the general  
12 welfare, promotion, or benefit of the district and impact area  
13 between the district and the impact area in the amount, as  
14 determined by the board, that is proportionate to the benefit  
15 conferred on each area.

16 SECTION 18. IMPROVEMENT PROJECTS. (a) The board may  
17 authorize any program or project necessary for the accomplishment  
18 of the public purposes of the district, whether located or  
19 conducted inside or outside of the district or provided by or on  
20 behalf of the district, for the:

21 (1) planning, design, construction, acquisition,  
22 lease, rental, installment purchase, improvement, provision of  
23 furnishings or other equipment, rehabilitation, repair,  
24 reconstruction, relocation, use, management, operation, or  
25 maintenance of any works, improvements, or facilities; or

26 (2) provision, support, enhancement, improvement,  
27 extension, or expansion of services.

1 (b) A project authorized under this section may include:

2 (1) landscaping, lighting, banners, signs, streets or  
3 sidewalks, hike and bike paths and trails, pedestrian walkways,  
4 skywalks, crosswalks or tunnels, and highway right-of-way or  
5 transit corridor beautification and improvements;

6 (2) drainage or storm water detention improvements and  
7 solid waste, water, sewer, telecommunications infrastructure, or  
8 power facilities and services, including electrical, gas, steam,  
9 and chilled water facilities;

10 (3) parks, lakes, gardens, recreational facilities,  
11 open space, scenic areas, and related exhibits and preserves,  
12 fountains, plazas, and pedestrian malls, public art and sculpture  
13 and related exhibits and facilities, and educational and cultural  
14 exhibits and facilities;

15 (4) conferences, conventions, or exhibitions,  
16 manufacturer, consumer, or trade shows, civic, community, or  
17 institutional events, exhibits, displays, attractions and  
18 facilities for special events, holidays, and seasonal or cultural  
19 celebrations;

20 (5) off-street parking facilities, bus terminals,  
21 heliports, mass-transit, and roadway-borne or water-borne  
22 transportation and people-mover systems; and

23 (6) any other public improvements, facilities, or  
24 services similar to the projects described in this subsection.

25 (c) In connection with any improvement project the board  
26 may:

27 (1) remove, raze, demolish, or clear land or

1 improvements;

2 (2) acquire any interest in real or personal property  
3 except that the district may not acquire the property through  
4 eminent domain; and

5 (3) provide any special or supplemental services for  
6 the improvement and promotion of the district or adjacent areas or  
7 for the protection of public health and safety in or adjacent to the  
8 district, including advertising, promotion, tourism, health and  
9 sanitation, public safety, security, fire protection and emergency  
10 medical services, business recruitment, development, elimination  
11 of traffic congestion, and recreational, educational, and cultural  
12 improvements, enhancements, and services.

13 (d) The board may undertake separately or jointly with other  
14 persons and pay all or part of the cost of improvement projects,  
15 including projects:

16 (1) for improving, enhancing, and supporting public  
17 safety and security, fire protection and emergency medical  
18 services, and law enforcement within and adjacent to the district;  
19 and

20 (2) that confer a general benefit on the entire  
21 district and adjacent areas or a special benefit on a definable part  
22 of the district.

23 SECTION 19. PAYMENT OF EXPENSES. The board may provide or  
24 secure the payment or repayment of the costs and expenses of the  
25 establishment, administration, and operation of the district,  
26 including the costs of an improvement project or a contractual  
27 obligation or indebtedness, through:

1           (1) a lease, installment purchase contract, or other  
2 agreement with any person; or

3           (2) the imposition of taxes, user fees, concessions,  
4 rentals, or other revenues or resources of the district.

5           SECTION 20. USE OF OPEN SPACES. (a) The board by rule may  
6 regulate the private use of public roadways, open spaces, parks,  
7 sidewalks, and similar public areas. The rules may provide for the  
8 safe and orderly use of public roadways, open spaces, parks,  
9 sidewalks, and similar public areas or facilities.

10          (b) To the extent a rule adopted under Subsection (a) of  
11 this section conflicts with a rule, order, ordinance, or  
12 regulation of a county or municipality with jurisdiction in the  
13 district's territory, the rule, order, ordinance, or regulation of  
14 the county or municipality controls.

15          SECTION 21. PERMIT FOR PUBLIC GATHERINGS; FEE. (a) The  
16 board may require a permit for a parade, demonstration,  
17 celebration, entertainment event, or similar nongovernmental  
18 activity in or on the public roadways, open spaces, parks,  
19 sidewalks, and similar public areas or facilities in the district.

20          (b) The board may charge a fee for the permit application  
21 and for public safety or security services in an amount the board  
22 considers necessary.

23          SECTION 22. PUBLIC SECURITY. The district may not employ  
24 peace officers, but may contract for off-duty peace officers to  
25 provide public safety and security services in connection with  
26 security needs in commercial office, retail, or industrial areas  
27 and in connection with a special event, holiday, or other period

1 with high traffic congestion, or similar circumstance.

2 SECTION 23. ECONOMIC DEVELOPMENT POWERS. (a) The district  
3 has the same economic development powers that Chapter 380, Local  
4 Government Code, and Subchapter A, Chapter 1509, Government Code,  
5 provide a municipality with a population of more than 100,000.

6 (b) The district has the powers and duties of a conservation  
7 and reclamation district created under Section 59, Article XVI,  
8 Texas Constitution, under the Development Corporation Act of 1979  
9 (Article 5190.6, Vernon's Texas Civil Statutes).

10 SECTION 24. REQUIREMENTS FOR USE OF FACILITIES. The board  
11 may require a permit or franchise agreement with a vendor,  
12 concessionaire, exhibitor, or similar private or commercial entity  
13 for the limited use of the area or facilities of the district on  
14 terms the board may impose.

15 SECTION 25. CHANGE IN DISTRICT TERRITORY. (a) The board  
16 may add or exclude territory in the manner provided by Subchapter J,  
17 Chapter 49, and Section 54.016, Water Code, except that:

18 (1) a reference in those laws to a tax means an ad  
19 valorem tax only; and

20 (2) Section 42.042, Local Government Code, and Section  
21 54.016, Water Code, apply only with respect to the consent of a  
22 municipality with a population of 25,000 or less and do not apply to  
23 the annexation of land restricted primarily to commercial or  
24 business use.

25 (b) Territory of the district that is annexed by a  
26 municipality is no longer a part of the district effective on the  
27 date the municipality may impose a sales and use tax in the

1 territory.

2 (c) Not later than the 10th day after the date of the  
3 annexation or exclusion of territory by the district, the board  
4 shall send to the comptroller, by certified or registered mail,  
5 certified copies of all resolutions, orders, or ordinances  
6 pertaining to the annexation or exclusion of the territory by a  
7 district or municipality.

8 SECTION 26. LIMITED SALES AND USE TAX. (a) Words and  
9 phrases used in this section that are defined by Chapters 151 and  
10 321, Tax Code, have the meanings assigned by Chapters 151 and 321,  
11 Tax Code.

12 (b) Except as otherwise provided in this section, Subtitles  
13 A and B, Title 2, Tax Code, and Chapter 151, Tax Code, apply to the  
14 taxes and to the administration and enforcement of the taxes  
15 imposed by the district in the same manner that those laws apply to  
16 state taxes.

17 (c) The district may adopt, reduce, or repeal the limited  
18 sales and use tax authorized by this section at an election in which  
19 a majority of the voters of the district voting in the election  
20 approve the adoption or the abolition of the tax, as applicable.  
21 The board may set the tax at any rate of up to two percent in  
22 increments of one-eighth of one percent except that the tax may not  
23 be imposed at a rate that would cause the combined tax rate of all  
24 local sales and use taxes in any location in the district to exceed  
25 two percent.

26 (d) The provisions of Subchapters C, D, E, and F, Chapter  
27 323, Tax Code, relating to county sales and use taxes shall apply to

1 the application, collection, and administration of a sales and use  
2 tax imposed under this section to the extent consistent with this  
3 Act, as if references in Chapter 323, Tax Code, to a county referred  
4 to the district and references to a commissioners court referred to  
5 the board. Sections 323.401-323.404 and 323.505, Tax Code, do not  
6 apply to a tax imposed under this section.

7 (e) A tax imposed under this section or the repeal or  
8 reduction of a tax under this section takes effect on the first day  
9 of the calendar quarter occurring after the date on which the  
10 comptroller receives the copy of the resolution as required by  
11 Section 323.405(b), Tax Code.

12 (f) On adoption of the tax authorized by this section, there  
13 is imposed a tax at the rate approved on the receipts from the sale  
14 at retail of taxable items within the district, and an excise tax on  
15 the use, storage, or other consumption within the district of  
16 taxable items purchased, leased, or rented from a retailer within  
17 the district during the period that the tax is in effect. The rate  
18 of the excise tax is the same as the rate of the sales tax portion of  
19 the tax and is applied to the sales price of the taxable item. With  
20 respect to a taxable service, "use" means the derivation in the  
21 district of a direct or indirect benefit from the service.

22 (g) An election to authorize, reduce, or repeal a limited  
23 sales and use tax may be called by order of the board and must be  
24 held on the next available uniform election date that occurs 45 or  
25 more days after the date on which the order calling the election was  
26 passed. The district shall provide notice of the election and shall  
27 hold and conduct the election in the manner prescribed by Chapter

1 54, Water Code, for bond elections for municipal utility districts.  
2 The ballots shall be printed to provide for voting for or against  
3 the appropriate one of the following propositions:

4 (1) "Adoption of a \_\_\_ percent district sales and use  
5 tax within the district";

6 (2) "Reduction of the district sales and use tax  
7 within the district from \_\_\_ percent to \_\_\_ percent"; or

8 (3) "Abolition of the district sales and use tax  
9 within the district."

10 (h) The district may examine and receive information  
11 related to the imposition, assessment, and collection of sales and  
12 use taxes to the same extent as if the district were a municipality.

13 SECTION 27. BONDS. (a) The board may issue bonds of the  
14 district in the manner provided by Subchapter J, Chapter 375, Local  
15 Government Code, except that Sections 375.207 and 375.208, Local  
16 Government Code, do not apply.

17 (b) If the district issues bonds for the primary purpose of  
18 providing water, sewage, or drainage facilities, the district must  
19 obtain the commission's approval in the manner provided by Chapter  
20 49, Water Code.

21 (c) In addition to the sources of money described by  
22 Subchapter J, Chapter 375, Local Government Code, the bonds of the  
23 district may be secured and made payable, wholly or partly, by a  
24 pledge of any part of the net proceeds the district receives from a  
25 specified portion of the sales and use tax authorized by this Act.

26 SECTION 28. INTERLOCAL AGREEMENTS. (a) The district and a  
27 municipality, any part of which is located in the boundaries of the



1 district or impact area defined as provided by Section 17 of this  
2 Act, may enter into an interlocal agreement to:

- 3 (1) accomplish an improvement project; or  
4 (2) provide for a facility, service, or equipment from  
5 the district for the benefit of the municipality.

6 (b) Payment for the improvement project, facility, service,  
7 or equipment may be made or pledged by the municipality to the  
8 district out of any money the municipality collects under Chapter  
9 351, Tax Code, or out of any other available money.

10 SECTION 29. DISSOLUTION. (a) Subchapter M, Chapter 375,  
11 Local Government Code, governs the dissolution of the district,  
12 except that Section 375.263 of that subchapter does not apply to the  
13 district.

14 (b) On dissolution of the district, the board shall transfer  
15 ownership of all property and assets of the district to:

- 16 (1) Montgomery County; or  
17 (2) if on the date of dissolution of the district more  
18 than 50 percent of the territory in the district is located in the  
19 corporate limits of a municipality, that municipality.

20 SECTION 30. ADDITIONAL LEGISLATIVE FINDINGS. The  
21 legislature finds that:

- 22 (1) proper and legal notice of the intention to  
23 introduce this Act, setting forth the general substance of this  
24 Act, has been published as provided by law, and the notice and a  
25 copy of this Act have been furnished to all persons, agencies,  
26 officials, or entities to which they are required to be furnished by  
27 the constitution and laws of this state, including the governor,

1 who has submitted the notice and Act to the commission;

2 (2) the commission has filed its recommendations  
3 relating to this Act with the governor, lieutenant governor, and  
4 speaker of the house of representatives within the required time;  
5 and

6 (3) all requirements of the constitution and laws of  
7 this state and the rules and procedures of the legislature with  
8 respect to the notice, introduction, and passage of this Act have  
9 been fulfilled and accomplished.

10 SECTION 31. EFFECTIVE DATE. This Act takes effect  
11 immediately if it receives a vote of two-thirds of all the members  
12 elected to each house, as provided by Section 39, Article III, Texas  
13 Constitution. If this Act does not receive the vote necessary for  
14 immediate effect, this Act takes effect September 1, 2003.