

By: Eissler (Senate Sponsor - Staples) H.B. No. 3514  
(In the Senate - Received from the House May 11, 2005;  
May 16, 2005, read first time and referred to Committee on  
Intergovernmental Relations; May 20, 2005, reported favorably by  
the following vote: Yeas 4, Nays 0; May 20, 2005, sent to  
printer.)

A BILL TO BE ENTITLED  
AN ACT

relating to the powers and duties of the Southwest Montgomery  
County Improvement District.

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

SECTION 1. Section 1(a), Chapter 323, Acts of the 78th  
Legislature, Regular Session, 2003, is amended to read as follows:

(a) The Southwest Montgomery County Improvement District is  
~~[created as]~~ a special district in Montgomery County created under  
Sections 52 and 52-a, Article III, and Section 59, Article XVI,  
Texas Constitution.

SECTION 2. Section 6(b), Chapter 323, Acts of the 78th  
Legislature, Regular Session, 2003, is amended to read as follows:

(b) All land and other property in the district will benefit  
from the improvements and services to be provided by the district  
under powers conferred by Sections ~~[Section]~~ 52 and 52-a, Article  
III, and Section 59, Article XVI, Texas Constitution, and other  
powers granted under this Act.

SECTION 3. Section 9, Chapter 323, Acts of the 78th  
Legislature, Regular Session, 2003, is amended to read as follows:

Sec. 9. BOARD OF DIRECTORS. (a) The ~~[Except as provided by  
Section 14 of this Act, the]~~ district is governed by a board of 11  
directors who serve staggered terms of four years, with five or six  
directors' terms expiring June 1 of each odd-numbered year.

(b) The board by resolution may increase or decrease the  
number of directors on the board, but only if a majority of the  
board votes to do so. The board may not:

(1) increase the number of directors to more than 30;  
or

(2) decrease the number of directors to fewer than  
seven ~~[Except as provided by Section 14 of this Act, six directors  
are elected by the voters of the district at large. Five directors  
are appointed as follows:~~

~~[(1) one director appointed by the governing body of  
the City of Magnolia;~~

~~[(2) one director appointed by the governing body of  
the City of Stagecoach;~~

~~[(3) one director appointed by the governing body of  
the City of Conroe;~~

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

~~[(5) one director appointed by the Montgomery County  
Commissioners Court].~~

(c) The Montgomery County Commissioners Court shall appoint  
the directors.

(d) Section 375.061, Local Government Code, does not apply  
to the district.

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

(1) a resident of Montgomery County Commissioners  
Court Precinct 2;

(2) an owner of real property in the district;

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

(4) ~~[(3)]~~ an owner of at least 10 percent of the beneficial interest in a trust that:

(A) owns real property in the district; or

(B) leases real property in the district with a remaining ~~[under an original]~~ lease term of five years or more measured from the date of appointment ~~[or election]~~, excluding options;

(5) ~~[(4)]~~ a lessee of real property in the district with a remaining ~~[under an original]~~ lease term of five years or more measured from the date of appointment, excluding options;

(6) ~~[(5)]~~ an owner of at least 10 percent of the outstanding interest in a general or limited partnership that:

(A) owns real property in the district; or

(B) leases real property in the district with a remaining ~~[under an original]~~ lease term of five years or more measured from the date of appointment ~~[or election]~~, excluding options; or

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

(f) ~~[(d)]~~ A person may not serve ~~[be appointed]~~ as a director ~~[under Subsection (b) of this section]~~ if the person's appointment would cause more than 20 percent ~~[three members]~~ of the board to be an agent, employee, officer, or director of the same individual, corporation, trust, or partnership that owns or leases property in the district.

(g) A director may not serve more than three consecutive terms.

SECTION 4. Section 10(b), Chapter 323, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

(b) If a majority of the board positions are vacant ~~[six or more vacancies occur at the same time]~~, on petition of a property owner of the district, the Montgomery County Commissioners Court shall make appointments to fill the vacancies.

SECTION 5. Section 11, Chapter 323, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

Sec. 11. RECOMMENDATIONS FOR SUCCEEDING BOARD ~~[ELECTION DATE FOR DIRECTORS]~~. (a) The board shall recommend to the Montgomery County Commissioners Court persons to serve on a succeeding board.

(b) After reviewing the recommendations, the Montgomery County Commissioners Court shall approve or disapprove the directors recommended by the board.

(c) If the Montgomery County Commissioners Court is not satisfied with the recommendations submitted by the board, the board, on the request of the commissioners court, shall submit to the commissioners court additional recommendations.

(d) If any provision of Subsections (a) through (c) is found to be invalid, the commission shall appoint the board from recommendations submitted by the preceding board. ~~[The election of a director is held on the uniform election date in September of the year in which an elected director's term expires.]~~

SECTION 6. The heading to Section 16, Chapter 323, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

Sec. 16. BORROWING MONEY FOR INITIAL DISTRICT OPERATIONS ~~[BEFORE CONFIRMATION ELECTION]~~.

SECTION 7. Section 16, Chapter 323, Acts of the 78th Legislature, Regular Session, 2003, is amended by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) Before levying an assessment ~~[the election confirming the district and the election imposing a limited sales and use tax]~~, the board may borrow money to hire employees, obtain office space, ~~[pay fees and costs of holding elections]~~ and pay other costs and expenses reasonably necessary to prepare for commencement of operation.

(b) Funds borrowed for a purpose described by Subsection (a) of this section are repayable by the district only if an assessment is levied as required by Chapter 375, Local Government Code ~~[the elections result in the confirmation of the district and imposition of a limited sales and use tax]~~. The district shall repay those funds not later than the fifth anniversary of the date the funds were borrowed.

(d) This section does not impair or invalidate any action taken by the board to borrow money that occurred before September 1, 2005.

SECTION 8. Section 28, Chapter 323, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

Sec. 28. BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations payable wholly or partly from taxes, assessments, impact fees, revenue, grants, or other money of the district, or any combination of those sources of money, to pay for any authorized purpose of the district.

(b) The district may issue a bond or other obligation in the form of a bond, note, certificate of participation or other instrument evidencing a proportionate interest in payments to be made by the district, or other type of obligation.

(c) The board may issue bonds of the district in the manner provided by Subchapter J, Chapter 375, Local Government Code, except that Sections 375.207 and 375.208, Local Government Code, do not apply.

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

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

SECTION 9. Section 30, Chapter 323, Acts of the 78th Legislature, Regular Session, 2003, is amended to read as follows:

Sec. 30. DISSOLUTION. (a) Except as provided by Section 375.264, Local Government Code, the Montgomery County Commissioners Court may dissolve the district by unanimously voting to adopt an ordinance dissolving the district ~~[Subchapter M, Chapter 375, Local Government Code, governs the dissolution of the district, except that Section 375.263 of that subchapter does not apply to the district]~~.

(b) On dissolution of the district, Montgomery County assumes all bonds, debts, obligations, and liabilities of the district, and the board shall transfer ownership of all property and assets of the district to ~~+~~

~~[(1)]~~ Montgomery County ~~+, or~~  
~~[(2)] if on the date of dissolution of the district more than 50 percent of the territory in the district is located in the corporate limits of a municipality, that municipality]~~.

(c) Section 375.263, Local Government Code, does not apply to the district.

SECTION 10. Chapter 323, Acts of the 78th Legislature, Regular Session, 2003, is amended by adding Sections 33, 34, 35, and 36 to read as follows:

Sec. 33. PETITION REQUIRED FOR FINANCING SERVICES AND IMPROVEMENTS. (a) The board may not finance a service or improvement project under this Act unless a written petition requesting that service or improvement has been filed with the board.

(b) A petition filed under Subsection (a) of this section must be signed by:

(1) the owners of a majority of the assessed value of real property in the district subject to assessment according to the most recent certified tax appraisal roll for Montgomery County;  
or

(2) at least 50 persons who own real property in the district, if more than 50 persons own real property in the district

as determined by the most recent certified tax appraisal roll for Montgomery County.

Sec. 34. NONPROFIT CORPORATION. (a) The board by resolution may authorize the creation of a nonprofit corporation to assist and act for the district in implementing a project, providing residential housing, or providing a service authorized by this Act.

(b) The nonprofit corporation:

(1) has each power of and is considered for purposes of this chapter to be a local government corporation created under Chapter 431, Transportation Code; and

(2) may implement any project and provide any service authorized by this Act.

(c) The board shall appoint the board of directors of the nonprofit corporation. The board of directors of the nonprofit corporation shall serve in the same manner as the board of directors of a local government corporation created under Chapter 431, Transportation Code, except that a board member is not required to reside in the district.

Sec. 35. ASSESSMENTS; LIENS FOR ASSESSMENTS. (a) The board by resolution may impose an assessment.

(b) An assessment, a reassessment, or an assessment resulting from an addition to or correction of the assessment roll by the district, penalties and interest on an assessment or reassessment, an expense of collection, and reasonable attorney's fees incurred by the district:

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

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

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

(c) The lien is effective from the date of the board's resolution imposing the assessment until the date the assessment is paid. The board may enforce the lien in the same manner that the board may enforce an ad valorem tax lien against real property.

Sec. 36. REMOVAL OF DIRECTOR FOR CAUSE. (a) On petition by a majority of directors, the board, after notice and hearing, may remove a director for misconduct or failure to carry out the director's duties.

(b) Section 375.065, Local Government Code, does not apply to the district.

SECTION 11. Sections 10(a) and (c), 15, 25(b), (c), and (d), and 26, Chapter 323, Acts of the 78th Legislature, Regular Session, 2003, are repealed.

SECTION 12. (a) The changes in law made by this Act do not affect the entitlement of a director serving on the board of the Southwest Montgomery County Improvement District immediately before the effective date of this Act to continue to carry out the board's functions for the remainder of the director's term.

(b) A person serving as a member of the board of the Southwest Montgomery County Improvement District on the effective date of this Act shall continue to serve until the appointment of a new director for that position.

(c) Not later than June 1, 2006, the Montgomery County Commissioners Court shall appoint directors to the board of the Southwest Montgomery County Improvement District to replace a director appointed or elected before the effective date of this Act. The commissioners court shall appoint five members with terms expiring June 1, 2007, and six members with terms expiring June 1, 2009.

SECTION 13. This Act takes effect September 1, 2005.

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