86R10326 AAF-F

By:  Bell of Montgomery H.B. No. 3047

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the Montgomery County Municipal Utility District No. 167; granting a limited power of eminent domain; providing authority to issue bonds; providing authority to impose assessments, fees, and taxes.

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

SECTION 1.  Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8065 to read as follows:

CHAPTER 8065. MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 167

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8065.0101.  DEFINITIONS. In this chapter:

(1)  "Board" means the district's board of directors.

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

(3)  "Director" means a board member.

(4)  "District" means the Montgomery County Municipal Utility District No. 167.

Sec. 8065.0102.  NATURE OF DISTRICT. The district is a municipal utility district created under Section 59, Article XVI, Texas Constitution.

Sec. 8065.0103.  CONFIRMATION AND DIRECTOR ELECTION REQUIRED. The temporary directors shall hold an election to confirm the creation of the district and to elect five permanent directors as provided by Section 49.102, Water Code.

Sec. 8065.0104.  CONSENT OF MUNICIPALITY REQUIRED. The temporary directors may not hold an election under Section 8065.0103 until each municipality in whose corporate limits or extraterritorial jurisdiction the district is located has consented by ordinance or resolution to the creation of the district and to the inclusion of land in the district.

Sec. 8065.0105.  FINDINGS OF PUBLIC PURPOSE AND BENEFIT. (a) The district is created to serve a public purpose and benefit.

(b)  The district is created to accomplish the purposes of:

(1)  a municipal utility district as provided by general law and Section 59, Article XVI, Texas Constitution; and

(2)  Section 52, Article III, Texas Constitution, that relate to the construction, acquisition, improvement, operation, or maintenance of macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads.

Sec. 8065.0106.  INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section 2 of the Act enacting this chapter.

(b)  The boundaries and field notes contained in Section 2 of the Act enacting this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect the district's:

(1)  organization, existence, or validity;

(2)  right to issue any type of bond for the purposes for which the district is created or to pay the principal of and interest on a bond;

(3)  right to impose a tax; or

(4)  legality or operation.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8065.0201.  GOVERNING BODY; TERMS. (a) The district is governed by a board of five elected directors.

(b)  Except as provided by Section 8065.0202, directors serve staggered four-year terms.

Sec. 8065.0202.  TEMPORARY DIRECTORS. (a) The temporary board consists of:

(1)  Jesus Espinoza;

(2)  Norman E. Gutierrez;

(3)  John D. Eckstrum;

(4)  Tommy Nichol; and

(5)  Blake Cogdell.

(b)  Temporary directors serve until the earlier of:

(1)  the date permanent directors are elected under Section 8065.0103; or

(2)  the fourth anniversary of the effective date of the Act enacting this chapter.

(c)  If permanent directors have not been elected under Section 8065.0103 and the terms of the temporary directors have expired, successor temporary directors shall be appointed or reappointed as provided by Subsection (d) to serve terms that expire on the earlier of:

(1)  the date permanent directors are elected under Section 8065.0103; or

(2)  the fourth anniversary of the date of the appointment or reappointment.

(d)  If Subsection (c) applies, the owner or owners of a majority of the assessed value of the real property in the district may submit a petition to the commission requesting that the commission appoint as successor temporary directors the five persons named in the petition. The commission shall appoint as successor temporary directors the five persons named in the petition.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8065.0301.  GENERAL POWERS AND DUTIES. The district has the powers and duties necessary to accomplish the purposes for which the district is created.

Sec. 8065.0302.  MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES. The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8065.0303.  AUTHORITY FOR ROAD PROJECTS. Under Section 52, Article III, Texas Constitution, the district may design, acquire, construct, finance, issue bonds for, improve, operate, maintain, and convey to this state, a county, or a municipality for operation and maintenance macadamized, graveled, or paved roads, or improvements, including storm drainage, in aid of those roads.

Sec. 8065.0304.  ROAD STANDARDS AND REQUIREMENTS. (a) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the road project is located.

(b)  If a road project is not located in the corporate limits or extraterritorial jurisdiction of a municipality, the road project must meet all applicable construction standards, subdivision requirements, and regulations of each county in which the road project is located.

(c)  If the state will maintain and operate the road, the Texas Transportation Commission must approve the plans and specifications of the road project.

Sec. 8065.0305.  COMPLIANCE WITH MUNICIPAL CONSENT ORDINANCE OR RESOLUTION. The district shall comply with all applicable requirements of any ordinance or resolution that is adopted under Section 54.016 or 54.0165, Water Code, and that consents to the creation of the district or to the inclusion of land in the district.

Sec. 8065.0306.  DIVISION OF DISTRICT. (a) The district may be divided into two or more new districts only if the district:

(1)  has no outstanding bonded debt; and

(2)  is not imposing ad valorem taxes.

(b)  This chapter applies to any new district created by the division of the district, and a new district has all the powers and duties of the district.

(c)  Any new district created by the division of the district may not, at the time the new district is created, contain any land outside the area described by Section 2 of the Act enacting this chapter.

(d)  The board, on its own motion or on receipt of a petition signed by the owner or owners of a majority of the assessed value of the real property in the district, may adopt an order dividing the district.

(e)  The board may adopt an order dividing the district before or after the date the board holds an election under Section 8065.0103 to confirm the creation of the district.

(f)  An order dividing the district shall:

(1)  name each new district;

(2)  include the metes and bounds description of the territory of each new district;

(3)  appoint temporary directors for each new district; and

(4)  provide for the division of assets and liabilities between or among the new districts.

(g)  On or before the 30th day after the date of adoption of an order dividing the district, the district shall file the order with the commission and record the order in the real property records of each county in which the district is located.

(h)  Any new district created by the division of the district shall hold a confirmation and directors' election as required by Section 8065.0103.

(i)  If the creation of the new district is confirmed, the new district shall provide the election date and results to the commission.

(j)  Any new district created by the division of the district must hold an election as required by this chapter to obtain voter approval before the district may impose a maintenance tax or issue bonds payable wholly or partly from ad valorem taxes.

(k)  If the voters of a new district do not confirm the creation of the new district, the assets, obligations, territory, and governance of the new district revert to that of the original district.

Sec. 8065.0307.  LIMITATION ON USE OF EMINENT DOMAIN. The district may not exercise the power of eminent domain outside the district to acquire a site or easement for:

(1)  a road project authorized by Section 8065.0303; or

(2)  a recreational facility as defined by Section 49.462, Water Code.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8065.0401.  ELECTIONS REGARDING TAXES OR BONDS. (a) The district may issue, without an election, bonds and other obligations secured by:

(1)  revenue other than ad valorem taxes; or

(2)  contract payments described by Section 8065.0403.

(b)  The district must hold an election in the manner provided by Chapters 49 and 54, Water Code, to obtain voter approval before the district may impose an ad valorem tax or issue bonds payable from ad valorem taxes.

(c)  The district may not issue bonds payable from ad valorem taxes to finance a road project unless the issuance is approved by a vote of a two-thirds majority of the district voters voting at an election held for that purpose.

Sec. 8065.0402.  OPERATION AND MAINTENANCE TAX. (a) If authorized at an election held under Section 8065.0401, the district may impose an operation and maintenance tax on taxable property in the district in accordance with Section 49.107, Water Code.

(b)  The board shall determine the tax rate. The rate may not exceed the rate approved at the election.

Sec. 8065.0403.  CONTRACT TAXES. (a) In accordance with Section 49.108, Water Code, the district may impose a tax other than an operation and maintenance tax and use the revenue derived from the tax to make payments under a contract after the provisions of the contract have been approved by a majority of the district voters voting at an election held for that purpose.

(b)  A contract approved by the district voters may contain a provision stating that the contract may be modified or amended by the board without further voter approval.

SUBCHAPTER E. BONDS AND OTHER OBLIGATIONS

Sec. 8065.0501.  AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. The district may issue bonds or other obligations payable wholly or partly from ad valorem taxes, impact fees, revenue, contract payments, grants, or other district money, or any combination of those sources, to pay for any authorized district purpose.

Sec. 8065.0502.  TAXES FOR BONDS. At the time the district issues bonds payable wholly or partly from ad valorem taxes, the board shall provide for the annual imposition of a continuing direct ad valorem tax, without limit as to rate or amount, while all or part of the bonds are outstanding as required and in the manner provided by Sections 54.601 and 54.602, Water Code.

Sec. 8065.0503.  BONDS FOR ROAD PROJECTS. At the time of issuance, the total principal amount of bonds or other obligations issued or incurred to finance road projects and payable from ad valorem taxes may not exceed one-fourth of the assessed value of the real property in the district.

SECTION 2.  The Montgomery County Municipal Utility District No. 167 initially includes all the territory contained in the following area:

BEING 242.128 ACRES OF LAND, MORE OR LESS, WITH 74.18 ACRES SITUATED IN THE THOMAS DOUGLAS SURVEY, ABSTRACT NUMBER 187 AND 167.88 ACRES SITUATED IN THE MATTHEW CARTWRIGHT SURVEY, ABSTRACT NUMBER 126, ALL IN MONTGOMERY COUNTY, TEXAS AND BEING OUT OF THAT CERTAIN CALLED 249.943 ACRE TRACT CONVEYED IN SPECIAL WARRANTY DEED TO AVANTI 2854, LLC, RECORDED UNDER CLERK'S FILE NUMBER 2017006860 OFFICIAL PUBLIC RECORDS OF MONTGOMERY COUNTY, TEXAS, TOGETHER WITH THAT CERTAIN CALLED 0.4658 ACRE TRACT CONVEYED TO AVANTI 2854, LLC, RECORDED UNDER CLERK'S FILE NUMBER 2018092894 OFFICIAL PUBLIC RECORDS OF MONTGOMERY COUNTY, TEXAS, SAVE AND EXCEPT THAT CERTAIN CALLED 8.341 ACRE TRACT AS CONVEYED BY AVANTI 2854, LLC TO MONTGOMERY COUNTY, TEXAS, A POLITICAL SUBDIVISION OF THE STATE OF TEXAS, RECORDED IN EXCHANGE DEED UNDER CLERK'S FILE NUMBER 2018092878 OFFICIAL PUBLIC RECORDS OF MONTGOMERY COUNTY, TEXAS; SAID 242.128 ACRES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH ALL BEARINGS AND COORDINATES REFERENCED TO THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE 4203 NAD-83, ALL COORDINATES SHOWN ARE GRID AND MAY BE CONVERTED TO SURFACE BY MULTIPLYING BY THE COMBINED ADJUSTMENT FACTOR OF 1.00061987:

BEGINNING at the lower Northwest corner of the called 249.943 acre tract located at the intersection of the South right-of-way of Katie Road, a variable width right-of-way designated as a "County Road" (no deed found), with the East right-of-way of F. M. Highway 2854, a variable width right-of-way as referenced in Deed from J. H. Talley to the County of Montgomery, State of Texas and recorded in Volume 716, Page 132 Montgomery County Deed Records; said point having a coordinate value of North 10,114,844.41 and East 3,774,584.72;

THENCE North 87° 21' 23" East for a distance of 1209.36 feet along the lower North line of the called 249.943 acre tract and South line of Katie Road to an interior Northwest corner of the herein described tract and further located at the East line of the Thomas Douglas Survey and the West line of the Matthew Cartwright Survey;

THENCE North 03° 25' 54" West along the upper West line of the called 249.943 acre tract, continuing along the East line of the Thomas Douglas Survey and the West line of the Matthew Cartwright Survey passing the North line of Katie Road and the Southeast corner of that certain called 13.38 acre tract conveyed to Ronald G. McCracken and spouse, Laura J. McCracken recorded under Clerk's File Number 2006-077430 Montgomery County Real Property Records, continuing a deed call distance of 1334.52 feet to the 13.38 acre tract Northeast corner and being an angle point of the herein described tract at an upper Southeast corner of that certain called 16.027 acre tract conveyed to Ronald G. McCracken, et ux, recorded under Clerk's File Number 2007-0573 Montgomery County Real Property Records;

THENCE North 02° 04' 38" West for a distance of 260.11 feet continuing along the East line of the Thomas Douglas Survey and the West line of the Matthew Cartwright Survey, common to the upper East line of the called 16.027 acre tract, to the upper Northwest corner of the herein described tract and the upper Northwest corner of the called 249.943 acre tract, and located at the Southwest corner of that certain called 85.194 acre tract conveyed to the Estate of Carl A. Sudbury, et al to Martha D. Mayer, Trustee, recorded under Clerk's File Number 2000-003039 Montgomery County Real Property Records

THENCE North 86° 44' 51" East along the South line of the called 85.194 acre tract for a distance of 1570.87 feet to a point for angle at the called 85.194 acre tract Southeast corner and a Southwest corner of a called 207 acre tract conveyed to Jasper Duncan Cartwright and recorded in Volume 626, Page 86 Montgomery County Deed Records;

THENCE North 73° 43' 03" East along the South line of the called 207 acre tract for a distance of 673.34 feet to a point for the Northeast corner of the herein described tract located in the Westerly high-bank of Mound Creek;

THENCE with the following courses and distances along the Westerly high-bank of Mound Creek:

1)  South 34° 16' 12" East for a distance of 44.50 feet to a point for corner;

2)  South 67° 14' 09" East for a distance of 51.81 feet to a point for corner;

3)  South 54° 16' 20" East for a distance of 22.71 feet to a point for corner;

4)  South 14° 59' 12" West for a distance of 33.77 feet to a point for corner/;

5)  South 49° 10' 18" East for a distance of 21.62 feet to a point for corner;

6)  South 08° 50' 45" East for a distance of 32.07 feet to a point for corner;

7)  South 14° 29' 14" West for a distance of 59.23 feet to a point for corner;

8)  South 19° 56' 34" East for a distance of 59.05 feet to a point for corner;

9)  South 06° 16' 39" East for a distance of 90.94 feet to a point for corner;

10)  South 11° 21' 07" East for a distance of 38.72 feet to a point for corner;

11)  South 32° 51' 33" East for a distance of 103.15 feet to a point for corner;

12)  South 31° 08' 48" East for a distance of 111.54 feet to a point for corner;

13)  South 67° 19' 47" East for a distance of 37.51 feet to a point for corner;

14)  South 39° 35' 32" East for a distance of 31.28 feet to a point for corner;

15)  South 27° 22' 39" East for a distance of 173.85 feet to a point for corner;

16)  South 00° 37' 47" East for a distance of 35.63 feet to a point for corner;

17)  South 26° 43' 57" East for a distance of 34.32 feet to a point for corner;

18)  South 49° 57' 22" East for a distance of 106.17 feet to a point for corner;

19)  South 43° 57' 10" East for a distance of 174.91 feet to a point for corner;

20)  South 00° 25' 37" East for a distance of 255.88 feet to a point for corner;

21)  South 23° 28' 27" E for a distance of 14.24 feet to a point

THENCE South 86° 19' 53" West for a distance of 82.61 feet along the West line of the aforesaid called 207 acre tract to an interior corner of the herein described tract;

THENCE South 03° 16' 56" East for a distance of 1398.16 feet continuing along the West line of the called 207 acre tract to a point for the upper Southeast corner of the herein described tract and Southeast corner of the called 249.943 acre tract and being in the North line of that certain called 75 acre tract conveyed to Jasper Duncan Cartwright in Deed recorded in Volume 626, Page 509 Montgomery County Deed Records;

THENCE South 86° 41' 48" West for a distance of 1041.81 feet along the Cartwright North line to an interior corner of the herein described tract

THENCE South 12° 01' 56" East for a distance of 329.46 feet to a Southeast corner of the herein described tract at an interior corner of the called 75 acre tract;

THENCE South 87° 26' 11" West for a distance of 1692.85 feet along the Westerly North line of the called 75 acre tract to a Northwest corner of the called 75 acre tract at an interior corner of the herein described tract;

THENCE South 06° 29' 00" E for a distance of 354.36 feet along the West line of the called 75 acre tract to the Southwest corner of the called 74 acre tract and being an interior corner of the herein described tract;

THENCE North 87° 41' 38" East for a distance of 144.44 feet to a lower Northeast corner of the herein described tract and being a Northwest corner of that certain called 98.2 acre tract conveyed to Patricia Joe Schuller in Deed recorded in Volume 626, Page 78 Montgomery County Deed Records;

THENCE South 03° 16' 52" East along the West line of the called 98.2 acre tract and the West line of a called 9.0054 acre tract conveyed to James Michael Brown recorded under Clerk's File Number 9703943 Montgomery County Real Property Records; in all, a distance of 1900.40 feet to the Southeast corner of the herein described tract;

THENCE South 87° 11' 56" West along the North line of that certain called 5.435 acre tract conveyed to Patricia S. Smith recorded under Clerk's File Number 9346082 Montgomery County Real Property Records, and along the North line of that certain called 1.000 acre tract conveyed to Barnie E. Edwards recorded under Clerk's File Number 8213103 Montgomery County Real Property Records for a distance of 559.03 feet to the Southwest corner of the herein described tract, located in the East line of F. M. 2854;

THENCE with the following courses and distances along the East line of F. M. 2854 and the West line of the called 249.943 acre tract as follows:

1)  North 36° 18' 16" West for a distance of 246.29 feet to a point for corner;

2)  North 28° 02' 36" West for a distance of 577.02 feet to the beginning of a non-tangential curve to the right;

3)  Along said curve turning to the right through an angle of 13° 16' 17", having a radius of 2804.83 feet, an arc length of 649.68 feet and whose long chord bears North 21° 15' 04" West for a distance of 648.23 feet to a point of intersection with a non-tangential line;

4)  North 08° 21' 11" West for a distance of 286.54 feet to a point for corner at the Southwest corner of the aforementioned called 8.341 acre tract;

THENCE with the following courses and distances along the called 8.341 acre tract:

1)  North 38° 33' 59" East for a distance of 79.38 feet to a point for corner;

2)  North 85° 41' 19" East for a distance of 431.79 feet to the beginning of a curve to the left;

3)  With said curve turning to the left through an angle of 90° 00' 00", having a radius of 201.00 feet, an arc length of 315.73 feet and whose long chord bears North 40° 41' 19" East for a distance of 284.26 feet to a point for corner;

4)  North 04° 18' 41" West for a distance of 148.00 feet to the beginning of a curve to the left;

5)  Along said curve turning to the left through an angle of 90° 00' 00", having a radius of 201.00 feet, an arc length of 315.73 feet and whose long chord bears North 49° 18' 41" West for a distance of 284.26 feet;

6)  South 85° 41' 19" West for a distance of 433.95 feet to a point for corner;

7)  North 50° 06' 44" West for a distance of 71.76 feet to a point for corner in the East line of F. M. 2854;

THENCE with the following courses and distances along the East line of F. M. 2854 and the West line of the called 249.943 acre tract as follows:

1)  North 05° 14' 58" West for a distance of 129.46 feet to a point for corner;

2)  North 07° 34' 43" West for a distance of 190.26 feet to a point for corner;

3)  North 11° 52' 28" West for a distance of 584.29 feet to the beginning of a non-tangential curve to the left;

4)  Along said curve turning to the left through 03° 40' 20", having a radius of 5809.65 feet, an arc length of 372.36 feet and whose long chord bears North 16° 15' 44" West for a distance of 372.30 feet to the Point of Beginning and containing a calculated area of 242.128 acres.

SECTION 3.  (a) The legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b)  The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c)  The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d)  All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 4.  (a) Section 8065.0307, Special District Local Laws Code, as added by Section 1 of this Act, takes effect only if this Act receives a two-thirds vote of all the members elected to each house.

(b)  If this Act does not receive a two-thirds vote of all the members elected to each house, Subchapter C, Chapter 8065, Special District Local Laws Code, as added by Section 1 of this Act, is amended by adding Section 8065.0307 to read as follows:

Sec. 8065.0307.  NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

(c)  This section is not intended to be an expression of a legislative interpretation of the requirements of Section 17(c), Article I, Texas Constitution.

SECTION 5.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.