86R107 GRM-D

By:  Thompson of Brazoria H.B. No. 4424

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the Clear Creek Watershed Regional Flood Control District; granting a limited power of eminent domain; providing authority to issue bonds; providing authority to impose assessments, fees, and taxes; providing a civil penalty.

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

SECTION 1.  Subtitle E, Title 6, Special District Local Laws Code, is amended by adding Chapter 7813 to read as follows:

CHAPTER 7813. CLEAR CREEK WATERSHED REGIONAL FLOOD CONTROL DISTRICT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 7813.0101.  DEFINITIONS. In this chapter:

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

(2)  "Director" means a member of the board.

(3)  "District" means the Clear Creek Watershed Regional Flood Control District.

Sec. 7813.0102.  NATURE OF DISTRICT. (a) The district is a conservation and reclamation district and flood control district as provided by this chapter.

(b)  The creation of the district is essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

Sec. 7813.0103.  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.

Sec. 7813.0104.  CONFLICTS OF LAW. This chapter prevails over any provision of general law, including a provision of Chapter 56 or 57, Water Code, that is in conflict or is inconsistent with this chapter.

SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 7813.0121.  TEMPORARY DIRECTORS. As soon as practicable after the effective date of the Act enacting this chapter, the temporary directors of the district shall be appointed as follows:

(1)  the commissioners courts of Brazoria and Harris Counties shall each appoint one director to serve a term that expires September 30, 2021; and

(2)  the commissioners courts of Fort Bend, Galveston, and Harris Counties shall each appoint one director to serve a term that expires September 30, 2023.

Sec. 7813.0122.  CONFIRMATION ELECTION REQUIRED. The temporary directors shall hold an election to confirm the creation of the district as provided by Section 49.102, Water Code.

Sec. 7813.0123.  EXPIRATION. This subchapter expires December 31, 2024.

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 7813.0201.  GOVERNING BODY; TERMS. (a) The district is governed by a board of five appointed directors.

(b)  Except as provided by Section 7813.0121, directors serve staggered four-year terms.

Sec. 7813.0202.  APPOINTMENT OF DIRECTORS; VACANCY. (a) The directors are appointed as follows:

(1)  one director appointed by the commissioners court of Brazoria County;

(2)  one director appointed by the commissioners court of Fort Bend County;

(3)  one director appointed by the commissioners court of Galveston County; and

(4)  two directors appointed by the commissioners court of Harris County.

(b)  On the expiration of a director's term, the commissioners court that appointed the director shall appoint a successor.

(c)  If a vacancy occurs during a director's term, the commissioners court that appointed the director shall appoint a person to serve as director for the remainder of the term.

Sec. 7813.0203.  COMPENSATION OF DIRECTORS. (a) Notwithstanding Section 49.060, Water Code, a director is not entitled to receive compensation for service on the board.

(b)  A director may be reimbursed for actual district travel expenses.

Sec. 7813.0204.  GENERAL MANAGER BOND. (a) The general manager of the district shall execute a bond that is:

(1)  in an amount set by the board;

(2)  payable to the district; and

(3)  conditioned on the general manager's faithful performance of the general manager's duties.

(b)  The district shall pay for the bond described by Subsection (a).

Sec. 7813.0205.  DISTRICT ENGINEER. (a) The board shall appoint a professional civil engineer as the district engineer.

(b)  The district engineer shall execute a bond that is:

(1)  in an amount set by the board;

(2)  payable to the district; and

(3)  conditioned on the faithful performance of the district engineer's duties.

(c)  The district shall pay for the bond described by Subsection (b).

(d)  The board shall determine the compensation and terms of employment for the district engineer.

Sec. 7813.0206.  BOND FOR EMPLOYEE RESPONSIBLE FOR MONEY. (a) The board shall require an employee who collects, pays, or handles district money to provide a good and sufficient bond that is:

(1)  in an amount sufficient to safeguard the district;

(2)  payable to the district; and

(3)  conditioned on:

(A)  the faithful performance of the employee's duties; and

(B)  accounting for all district money and property under the employee's control.

(b)  The district shall pay for the bond described by Subsection (a).

SUBCHAPTER C. POWERS AND DUTIES

Sec. 7813.0301.  FLOOD CONTROL DISTRICT POWERS AND DUTIES. The district may exercise the rights, powers, privileges, and functions provided by Section 59, Article XVI, Texas Constitution, Chapters 49, 56, and 57, Water Code, and this chapter.

Sec. 7813.0302.  LOCAL COOPERATION. The district shall cooperate with other political subdivisions in order to provide uniform flood prevention programs and planning.

Sec. 7813.0303.  FLOOD CONTROL AND DRAINAGE PLAN. (a) The district shall develop a flood control and drainage plan for all land in the district, including the main channel and all tributaries of Clear Creek.

(b)  The board shall direct the district engineer to prepare a flood control and drainage plan that provides for:

(1)  control and abatement of flood water and other excess water; and

(2)  reclamation and drainage of land in the district.

(c)  The district engineer shall file the completed plan with the board and the commissioners court of each county that appoints a director.

(d)  In preparing the plan, the district engineer may:

(1)  exercise the powers and shall exercise the duties provided by Sections 56.022 and 56.023, Water Code; and

(2)  consider and use all or part of any previously prepared flood control and drainage plan that covers any area in the district.

Sec. 7813.0304.  FLOOD CONTROL AND DRAINAGE PLAN; NOTICE AND HEARING. (a) On receipt of the completed flood control and drainage plan, the board shall schedule a public hearing to consider adoption of the plan. The board must publish notice of the hearing at least once in a newspaper with general circulation in the district not later than the 30th day before the date of the hearing.

(b)  At the hearing, any person who resides or owns property in the district or a political subdivision located wholly or partly in the district may appear before the board and comment for or against all or part of the plan.

Sec. 7813.0305.  FLOOD CONTROL AND DRAINAGE PLAN; ADOPTION. (a) After holding the public hearing required by Section 7813.0304, the board shall issue its findings and decision.

(b)  If the board finds that the flood control and drainage plan requires changes before it can be adopted, the board shall direct the district engineer to make the necessary changes. The district engineer shall make the changes and resubmit the plan to the board.

(c)  Without further public hearing, the board may continue to direct the district engineer to make changes to the plan until the board finds the plan acceptable for adoption.

(d)  If the board finds the plan acceptable for adoption, the board shall submit the plan to the commissioners court of each county that appoints a director. The commissioners courts may consider the plan and recommend changes to the plan.

(e)  If the board and commissioners courts cannot agree on changes to the plan, the board shall submit the provisions in the plan that are in dispute to the district engineer for resolution of the dispute.

(f)  Not earlier than the 30th day after the date the plan is submitted to the commissioners courts, the board shall adopt the plan as revised to reflect all necessary changes.

Sec. 7813.0306.  FLOOD CONTROL AND DRAINAGE PLAN; AMENDMENTS. After adopting the flood control and drainage plan, the board may amend the flood control and drainage plan as necessary to accomplish the purpose stated in Section 7813.0303.

Sec. 7813.0307.  FLOOD CONTROL AND DRAINAGE PLAN; IMPLEMENTATION. (a) In accordance with the flood control and drainage plan, the district shall:

(1)  construct improvements on the main channel of Clear Creek that will lessen and control flooding;

(2)  prevent or remove deposits of silt and remove natural or artificial obstructions from the main channel of Clear Creek;

(3)  conduct flood-control-related maintenance on the main channel of Clear Creek; and

(4)  approve and coordinate all flood control improvements and maintenance located in the district.

(b)  Under a written agreement with a political subdivision that is subject to the flood control and drainage plan, the district may construct improvements on any watercourse or land in the district to:

(1)  lessen and control flooding;

(2)  prevent or remove deposits of silt and remove natural or artificial obstructions from any watercourse; or

(3)  conduct flood-control-related maintenance on any watercourse.

Sec. 7813.0308.  CONSTRUCTION OF IMPROVEMENTS. (a) The district may only construct improvements compatible with the flood control and drainage plan.

(b)  Only the district may construct improvements or perform maintenance on the main channel of Clear Creek. The district may contract for the construction and maintenance of improvements to the main channel of Clear Creek. The district is responsible for assuring that all construction and maintenance is done in conformance with the flood control and drainage plan.

(c)  Other political subdivisions than the district may construct improvements and perform maintenance on lands draining into Clear Creek or its tributaries, including detention structures, and channels other than the main channel of Clear Creek. The district may construct improvements and perform maintenance under this subsection under an agreement with the applicable political subdivision.

Sec. 7813.0309.  PERMIT REQUIRED FOR ACTIVITY AFFECTING FLOOD CONTROL OR DRAINAGE. (a) Except as provided by Subsection (b), a person may not engage in an activity that will affect flood control or drainage in the district without obtaining a permit from the board.

(b)  After notice and hearing, the board may adopt a rule or issue an order that exempts a specified activity from obtaining a permit under this section. The board may exempt an activity only if the board, after consultation with the district engineer, finds that the activity will have at most a minimal effect on flood control and drainage.

Sec. 7813.0310.  NOTICE OF ACTIVITIES AFFECTING FLOOD CONTROL OR DRAINAGE. (a) A person that plans to engage in an activity that will affect flood control or drainage in the district shall submit written notice to the board of the intent to engage in the activity, accompanied by plans, specifications, and other information relating to the activity.

(b)  A person shall submit the notice and other information required by Subsection (a) in the form and time period provided by board rules.

Sec. 7813.0311.  CONSIDERATION OF ACTIVITY BY DISTRICT ENGINEER. (a) On receiving notice of a proposed activity under Section 7813.0310, the board shall submit the notice and other information to the district engineer for consideration.

(b)  The district engineer shall examine the notice and other information to determine:

(1)  the effect of the proposed activity on flood control and drainage in the district; and

(2)  whether the proposed activity is compatible with the flood control and drainage plan.

(c)  The district engineer shall consult with the person submitting the notice and information and suggest changes in the proposed plans and specifications for the activity necessary to make the activity compatible with the flood control and drainage plan.

(d)  If the district engineer and the person proposing an activity agree to plans and specifications for the activity that are compatible with the flood control and drainage plan as determined by the district engineer, the district engineer shall recommend that the board issue a permit authorizing the activity. If the district engineer and the person proposing an activity cannot agree, the district engineer shall recommend that the board decline to issue a permit authorizing the activity. The district engineer's recommendation shall be included in a brief written report to the board stating the district engineer's reasons for the recommendation.

Sec. 7813.0312.  BOARD CONSIDERATION AND ACTION. (a) On receiving the district engineer's report under Section 7813.0311(d), the board may issue a permit without giving notice or holding a public hearing to consider the issuance.

(b)  After consideration of the district engineer's report, the board may deny issuance of a permit only if the board gives notice and holds a public hearing in accordance with the district's rules to consider the issuance of the permit. After conducting the hearing, the board shall issue a written decision granting or denying the permit or granting the permit subject to specific requirements. The decision must state the findings of the board in making the decision.

Sec. 7813.0313.  OBSTRUCTIONS AND STRUCTURES. (a) A person may not place an obstruction or construct or alter a structure that affects flood control or drainage on land in the district if the obstruction or structure is not compatible with the flood control and drainage plan and the district has not issued a permit for the activity.

(b)  After notice and hearing, the board may issue an order directing a person to remove or make changes to an obstruction or structure constructed after adoption of the flood control and drainage plan as necessary to comply with the plan.

Sec. 7813.0314.  INJUNCTIVE RELIEF. If a person engages in an activity that will affect flood control or drainage in the district without a permit or places an obstruction or constructs or alters a structure in violation of an order issued by the board under Section 7813.0313, the board may sue in a district court in any county in which the activity is occurring or an obstruction is built for injunctive relief to restrain the person from continuing the violation or to require the person to remove an obstruction or structure.

Sec. 7813.0315.  CIVIL PENALTY. (a) A person who violates Section 7813.0309 or 7813.0313 or any order issued by the board under Section 7813.0309 or 7813.0313 is subject to a civil penalty of not less than $100 or more than $1,000 for each violation or each day of a continuing violation.

(b)  If a suit is filed under this section to recover a civil penalty, the court may include in any final judgment in favor of the district an award to cover court costs and reasonable attorney's fees.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 7813.0401.  ELECTIONS REGARDING TAXES OR BONDS. (a) The district may issue, without an election, bonds and other obligations secured by revenue other than ad valorem taxes.

(b)  The district must hold an election in the manner provided by Chapters 49 and 57, Water Code, to obtain voter approval before the district may impose an ad valorem tax or issue bonds payable from ad valorem taxes.

Sec. 7813.0402.  OPERATION AND MAINTENANCE TAX. (a) If authorized at an election held under Section 7813.0401, 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. 7813.0403.  BUDGET. (a) The board shall adopt an annual budget containing a complete financial statement of the district.

(b)  The board shall conduct a public hearing on the proposed budget on a date set by the board after August 15 and before the imposition of district taxes. The board shall give public notice of the hearing by publication in a newspaper of general circulation in the district at least 15 days before the date of the hearing.

SUBCHAPTER E. BONDS AND OTHER OBLIGATIONS

Sec. 7813.0501.  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. 7813.0502.  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 57.251 and 57.259, Water Code.

Sec. 7813.0503.  AD VALOREM BONDS FOR IMPROVEMENTS. The district may issue bonds under this chapter supported by ad valorem taxes on property in the district to finance up to one-half of the cost of construction under Section 7813.0307 if the district finds that the project will not be constructed without the use of the ad valorem taxes.

Sec. 7813.0504.  JOINT PROJECTS BONDS. (a) The district may issue bonds secured by revenues arising from a contract with a political subdivision located wholly or partly in the district for the construction of an improvement identified in the flood control and drainage plan. The district shall provide the proceeds from the bonds to the local political subdivision for the construction of the improvement, or, if the contract with the political subdivision requires the district to construct the improvements, the district shall use the proceeds for the required construction. Bonds issued under this section are subject to Subchapter F, Chapter 49, Water Code, except that any provision associated with the imposition of an ad valorem tax does not apply.

(b)  A political subdivision located wholly or partly in the district may enter into any contract with the district. The political subdivision may pledge to the payment of the contract any source of revenue available to the political subdivision, including the imposition of ad valorem taxes, if the political subdivision has the authority to impose those taxes. To the extent a political subdivision pledges money to be derived from any of its own systems, the payments constitute an operating expense of that system.

(c)  The district may issue bonds supported by revenues under this section to finance all or part of the cost of construction of improvements under the flood control and drainage plan implemented under Subchapter C.

SECTION 2.  The Clear Creek Watershed Regional Flood Control District initially includes all the territory contained in the following area:

The district is composed of Brazoria County tracts 0601.10, 0601.20, 0602.12, 0602.22, and 0602.32; and that part of Brazoria County tract 0602.11 included in block group 1 and blocks 201A, 201B, 202A, 202B, 202C, 206B, 301A, and 301B; and that part of Brazoria County tract 0602.21 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109A, 109B, 110, 111, 112A, 112B, 113A, 113B, 114, 115, 116, 117, 118, 119, 120, 301A, 301B, 302B, 303B, 304, 305A, 305B, 306A, 306B, 307A, 307B, 308, 309, 310A, 310B, and 311; and that part of Brazoria County tract 0603.10 included in blocks 101A, 101B, 102, 103, 104, 105, 106, 107, 108, 109, 308A, 308C, 312, 317, 318A, 318B, 319, 320, 321, 322, and 326A; and that part of Fort Bend County tract 0701.15 included in blocks 607A, 607B, 614, 615, 616A, and 616B; and that part of Fort Bend County tract 0701.25 included in blocks 101, 102, 103A, 103C, 105, 122, 123, 201, 202, 203, 204, and 205; Galveston County tracts 1201.01, 1201.02, 1205, 1206.10, and 1206.20; and that part of Galveston County tract 1202 included in block groups 1, 2, 5, and blocks 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312A, 312B, 313, 314, 315, 316A, 316B, 316C, 319, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, and 415; and that part of Galveston County tract 1203 included in block groups 1, 2, 3, 5, and blocks 401, 402, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 601, and 602; and that part of Galveston County tract 1204 included in block groups 1 and 2 and blocks 304, and 307; and that part of Galveston County tract 1207 included in block groups 1, 3, 4, 5, and blocks 201A, 201B, 201E, 202, 203, 204A, and 204B; and that part of Galveston County tract 1208 included in block 407A; and that part of Galveston County tract 1209 included in blocks 101, 102, 103, 104, 105, 106, 107, 112, 113, 114, 115, 116, 117, 118, 123, 124, 125, 126, 130, and 131; Harris County tracts 0337, 0341, 0345.02, 0366.41, 0371.02, 0371.11, 0371.21, 0372, 0373.04, 0374, and 0375; and that part of Harris County tract 0336 included in blocks 403B, 408, 409, 410, 411, and 412; and that part of Harris County tract 0338 included in blocks 401 and 413; and that part of Harris County tract 0340 included in blocks 604, 605, 606, 607, 608, and 609; and that part of Harris County tract 0342 included in blocks 113, 126, 128, 129, 130, 131, 132, and 133; and that part of Harris County tract 0344 included in block 426; and that part of Harris County tract 0345.01 included in block groups 4, 5, 6, and blocks 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, and 320; and that part of Harris County tract 0346 included in blocks 204, 209, 210, 212, and 304; and that part of Harris County tract 0347.03 included in block 202; and that part of Harris County tract 0363 included in blocks 119, 120, 121, 301, and 331; and that part of Harris County tract 0366.02 included in blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120A, 120B, 120C, 123, 124, 125, 126, 199A, 201, 202, 203, 204, 210, 212, 213, 214, 215, 216, 217A, 217B, 301, 302, 303, 304, 305, and 307; and that part of Harris County tract 0366.21 included in blocks 302A, 302B, and 303; and that part of Harris County tract 0366.31 included in blocks 901, 902, 903, 904A, 904B, 904C, 904D, 904E, 905A, 905B, 905C, 905D, 905E, 905F, 909, 910, 911A, 911B, 911C, 912A, 912B, 912C, 912D, 913A, 913B, 914, 915, 916, 917, 999A, and 999B; and that part of Harris County tract 0367 included in blocks 103A, 103B, 103C, 103D, 129A, 129C, 130A, 130C, 131A, 131B, 131C, 132, 133, 199A, 199C, and 199D; and that part of Harris County tract 0368.01 included in block groups 5, 6, 7, 8, and blocks 402A, 402B, 402C, 402D, 402E, 403, 404, 499A, 499B, 499C, 499D, and 499E; and that part of Harris County tract 0368.02 included in blocks 109, 113, 115, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 305, 308, 309, 312, 315, 316, 319, 320, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 358, 359, 364, 365, and 399; and that part of Harris County tract 0369 included in block group 1 and blocks 201, 202, 203, 204, 205, 206, 207A, 207C, 209, 212, 299, 301A, 301B, 301C, 301D, 304A, 306, 309, 310, 399A, and 399B; and that part of Harris County tract 0370.10 included in block groups 1 and 2 and blocks 301A, 301B, and 303; and that part of Harris County tract 0370.20 included in blocks 901A and 903; and that part of Harris County tract 0373.02 included in block group 6 and blocks 305, 308, 309, 702, 703, 704, and 705; and that part of Harris County tract 0373.03 included in block groups 1, 2, 3, and blocks 401A, 401B, 403, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 505, 506, 507, 508, 509, 510, 511, and 512; and that part of Harris County tract 0373.11 included in blocks 101A, 101B, 102, 103, 104, 301A, 301B, 303A, and 303B; and that part of Harris County tract 0373.21 included in block group 3 and blocks 111, 201, 202, 203, 206, 207, 209, 210, 211, 212, 213, 214, 215, 216, 217B, 218, 219, and 220.

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) If this Act does not receive a two-thirds vote of all the members elected to each house, Subchapter C, Chapter 7813, Special District Local Laws Code, as added by Section 1 of this Act, is amended by adding Section 7813.0316 to read as follows:

Sec. 7813.0316.  NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

(b)  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.