By:  Leman (Senate Sponsor - Kolkhorst) H.B. No. 4623

(In the Senate - Received from the House May 17, 2021; May 17, 2021, read first time and referred to Committee on Local Government; May 22, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 7, Nays 0; May 22, 2021, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Bettencourt       X

Menéndez          X

Eckhardt                   X

Gutierrez                  X

Hall              X

Nichols           X

Paxton            X

Springer          X

Zaffirini         X

COMMITTEE SUBSTITUTE FOR H.B. No. 4623 By:  Eckhardt

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the Austin County Municipal Utility District No. 1; 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 7913A to read as follows:

CHAPTER 7913A. AUSTIN COUNTY MUNICIPAL UTILITY DISTRICT NO. 1

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 7913A.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 Austin County Municipal Utility District No. 1.

Sec. 7913A.0102.  NATURE OF DISTRICT. The district is a municipal utility district created under Section 59, Article XVI, Texas Constitution.

Sec. 7913A.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. 7913A.0104.  CONSENT OF MUNICIPALITY REQUIRED. The temporary directors may not hold an election under Section 7913A.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. 7913A.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. 7913A.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. 7913A.0201.  GOVERNING BODY; TERMS. (a) The district is governed by a board of five elected directors.

(b)  Except as provided by Section 7913A.0202, directors serve staggered four-year terms.

Sec. 7913A.0202.  TEMPORARY DIRECTORS. (a) On or after the effective date of the Act enacting this chapter, 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 temporary directors the five persons named in the petition. The commission shall appoint as temporary directors the five persons named in the petition.

(b)  Temporary directors serve until the earlier of:

(1)  the date permanent directors are elected under Section 7913A.0103; or

(2)  January 1, 2026.

(c)  If permanent directors have not been elected under Section 7913A.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 7913A.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. 7913A.0301.  GENERAL POWERS AND DUTIES. The district has the powers and duties necessary to accomplish the purposes for which the district is created.

Sec. 7913A.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. 7913A.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. 7913A.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. 7913A.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.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 7913A.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 7913A.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. 7913A.0402.  OPERATION AND MAINTENANCE TAX. (a) If authorized at an election held under Section 7913A.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. 7913A.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. 7913A.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. 7913A.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. 7913A.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 Austin County Municipal Utility District No. 1 initially includes all the territory contained in the following area:

A 38.118 acre, or 1,660,419 square feet more or less, tract of land, being a portion of that residue of called 38.143 acre tract of land conveyed to David Cryan as described in a deed recorded in Clerk's File No. 153921 of the Official Records of Austin County, Texas, situated in the San Felipe de Austin Survey, Abstract 5, in the City of Sealy, Austin County, Texas. Said 38.118 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System of 1983, South Central Zone from the North American Datum of 1983 (NA2011) epoch 2010.00:

BEGINNING:  At an iron rod with aluminum cap found in the centerline of Harrison Road (30 feet wide) as recorded under Volume Y, Page 318 of the Deed Records of Austin County, Texas and the northeast corner of said 38.143 acre tract and for the northeast corner of the herein described tract and being on the west right-of-way line of Schmidt Road (60 feet wide) a called 3.946 acres of land as conveyed to the City of Sealy as recorded under Clerk's File No. 025841 of the official Records of Austin County, Texas;

THENCE:  S 42°42'31" W, along and with the said west right-of-way line, a distance of 2,864.13 feet to a point to a 1/2 inch iron pipe with cap stamped "Brown & Gay" found for the southeast corner of the herein described tract and being on the northeast line of a called 237.88 acre tract as described in a deed to Wal-Mart Stores East, LP recorded under Clerk's File No. 031749 of the Official Records of Austin County, Texas;

THENCE:  N 47°18'41" W, along and with said northeast line, a distance of 578.43 feet to an iron rod with a yellow cap stamped "Pate-Dawson" to be set for the southwest corner of the herein described tract and the southeast corner of a called 70.00 acres of land conveyed to David Cryan as recorded in Clerk's File No. 126232 of the Official Records of Austin County, Texas;

THENCE:  N 42°39'39" E, along with said north line, a distance of a distance of 2,865.17 feet to a 1/2 inch iron rod found in the said centerline of Harrison Road and for the northwest corner of the herein described tract and the northeast corner of said 70.00 acres;

THENCE:  S 47°12'30" E, along said centerline of Harrison Road, a distance of 580.82 feet to the POINT OF BEGINNING, and containing 38.118 acres in the City of Houston, Harris County, Texas.

A 118.535 acre, or 5,163,385 square feet more or less, tract of land, being a portion of that residue of called 140.000 acre tract of land conveyed to Ranch County of Texas, Inc. as described in a deed recorded in Clerk's File No. 081189 of the Official Records of Austin County, Texas, and a portion of Tract 1, a residue of a called 55.3 acres of land conveyed to David Cryan as described in a deed recorded in Clerk's File No. 164420 of the Official Records of Austin County, Texas, and all of Tract 2, a called 28.172 acres of land conveyed to David Cryan as described in a deed recorded in Clerk's File No. 153921 of the Official Records of Austin County, Texas, and all of Tract 5, a called 6.1259 acres of land conveyed to David Cryan as described in a deed recorded in Clerk's File No. 164420 of the Official Records of Austin County, Texas, and all of Tract 4, a called 6.1259 acres of land conveyed to David Cryan as described in a deed recorded in Clerk's File No. 164420 of the Official Records of Austin County, Texas, and all of Tract 3, a called 6.1259 acres of land conveyed to David Cryan as described in a deed recorded in Clerk's File No. 164420 of the Official Records of Austin County, Texas, and all of Tract 2, a called 6.1259 acres of land conveyed to David Cryan as described in a deed recorded in Clerk's File No. 164420 of the Official Records of Austin County, Texas, and all of Parcel 1, a called 5.452 acres of land conveyed to David Cryan as described in a deed recorded in Clerk's File No. 191010 of the Official Records of Austin County, Texas, and all of Parcel 2, a called 5.350 acres of land conveyed to David Cryan as described in a deed recorded in Clerk's File No. 191010 of the Official Records of Austin County, Texas, situated in the San Felipe de Austin Survey, Abstract 5, in the City of Sealy, Austin County, Texas. Said 118.535 acre tract being more fully described as follows, with bearings based on the Texas Coordinate System of 1983, South Central Zone from the North American Datum of 1983 (NA2011) epoch 2010.00:

BEGINNING:  At an iron rod with aluminum cap found on the west right-of-way line of F.M. Highway No. 3013 (width varies) and the northeast corner of a called 38.69 acre tract of land conveyed to Jinsung T.E.C. Texas, L.L.C. Texas, L.L.C. as described in a deed recorded in Clerk's File No. 126413 of the Official Records of Austin County, Texas, and for the most northerly southeast corner of the herein described tract;

THENCE:  N 47°17'47" W, a distance of 950.10 feet to a 5/8 inch iron rod found for an interior corner of the herein described tract and being the northwest corner of said 38.69 acres and on the east line of said Tract 1, a residue of a called 55.3 acres;

THENCE:  S 42°39'37" W, along the common line of said Tract 1, a residue of a called 55.3 acres and said 38.69 acres, a distance of 1,774.20 feet to an iron rod with aluminum cap found for the southeast corner of said Tract 1, a residue of a called 55.3 acres and the southwest corner of said 38.69 acres and for the most southerly southeast corner of the herein described tract and on the northerly line of a called 6.362 acres of land conveyed to the City of Sealy, Texas as recorded in Clerk's File No. 031750 of the Official Records of Austin County, Texas;

THENCE:  N 47°18'41" W, along with said north line, a distance of 1,607.38 feet to an iron rod with aluminum cap found on the east right-of-way line to Schmidt Road (60 feet wide) a called 3.946 acres of land as conveyed to the City of Sealy as recorded under Clerk's File No. 025841 of the official Records of Austin County, Texas, and the southwest corner said Tract 2 of called 28.172 acres and the southwest corner of the herein described tract;

THENCE:  N 42°42'31" E, along the said east right-of-way line and along said Tract 2 of called 28.172 acres, a distance of 2,864.02 feet to an iron rod with aluminum cap found in the centerline of Harrison Road (30 feet wide) as recorded under Volume Y, Page 318 of Deed Records of Austin County, Texas and the northwest corner of said Tract 2 of called 28.172 acres and the northwest corner of the herein described tract;

THENCE:  S 47°12'30" E, along and with said centerline of Harrison Road, a distance of 1,921.18 feet to a Mag Nail found for the most northerly northeast corner of the herein described tract and for the northeast corner of said Parcel 2 and the northwest corner of said Residue of called 140.000 acres;

THENCE:  S 42°38'14" W, along and with the east line of said Parcel 2, a distance of 736.53 feet to an iron rod with aluminum cap found for an interior corner of the herein described tract and for the southeast corner of said Parcel 2;

THENCE:  S 47°18'33" E, departing said east line and along and with the north line of said Parcel 1, a distance of 633.63 feet to an iron rod with aluminum cap found on the west right-of-way line of said F.M. No. 3013 and the most southerly northeast corner of the herein described tract;

THENCE:  S 42°39'57" W, a distance of 350.05 feet to the POINT OF BEGINNING, and containing 118.535 acres in the City of Houston, Harris County, Texas.

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 7913A, Special District Local Laws Code, as added by Section 1 of this Act, is amended by adding Section 7913A.0306 to read as follows:

Sec. 7913A.0306.  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 January 1, 2022.

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