By:  Metcalf (Senate Sponsor - Creighton) H.B. No. 5316

(In the Senate - Received from the House May 10, 2023; May 10, 2023, read first time and referred to Committee on Local Government; May 17, 2023, reported favorably by the following vote: Yeas 9, Nays 0; May 17, 2023, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Bettencourt       X

Springer          X

Eckhardt          X

Gutierrez         X

Hall              X

Nichols           X

Parker            X

Paxton            X

West              X

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the Montgomery County Municipal Utility District No. 235; 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 8016 to read as follows:

CHAPTER 8016. MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 235

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8016.0101.  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. 235.

Sec. 8016.0102.  NATURE OF DISTRICT. The district is a municipal utility district created under Section 59, Article XVI, Texas Constitution.

Sec. 8016.0103.  CONFIRMATION AND DIRECTORS' 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. 8016.0104.  CONSENT OF MUNICIPALITY REQUIRED. The temporary directors may not hold an election under Section 8016.0103 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. 8016.0105.  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. 8016.0106.  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. 8016.0201.  GOVERNING BODY; TERMS. (a) The district is governed by a board of five elected directors.

(b)  Except as provided by Section 8016.0202, directors serve staggered four-year terms.

Sec. 8016.0202.  TEMPORARY DIRECTORS. (a) The temporary board consists of:

(1)  Natalie Simmons;

(2)  Page Barnes;

(3)  Sally Miller;

(4)  Kenneth Sessum Sr.; and

(5)  David Thomas.

(b)  Temporary directors serve until the earlier of:

(1)  the date permanent directors are elected under Section 8016.0103; 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 8016.0103 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 8016.0103; 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. 8016.0301.  GENERAL POWERS AND DUTIES. The district has the powers and duties necessary to accomplish the purposes for which the district is created.

Sec. 8016.0302.  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. 8016.0303.  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. 8016.0304.  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. 8016.0305.  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. 8016.0401.  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 8016.0403.

(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. 8016.0402.  OPERATION AND MAINTENANCE TAX. (a) If authorized at an election held under Section 8016.0401, 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. 8016.0403.  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. 8016.0501.  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. 8016.0502.  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. 8016.0503.  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. 235 initially includes all the territory contained in the following area:

Being a 149.1 acre tract of land located in the B.F. Winters Survey, Abstract No. 621 and the Matthew Morris Survey, Abstract No. 338 in Montgomery County, Texas; said 149.1 acre tract being a portion of a called 160.99 acre tract recorded in the name of Conroe 1484, LLC under Clerk's File (C.F.) No. 2022150104 of the Official Public Records of Montgomery County (O.P.R.M.C.); said 149.1 acre tract being more particularly described by metes and bounds as follows (all bearings are referenced to the Texas Coordinate System, North American Datum of 1983 (NAD83), Central Zone):

BEGINNING at a 5/8-inch iron rod with cap stamped "COSTELLO INC" found at the north corner of said 160.99 acre tract, the east corner of a called 5.47 acre tract recorded in the name of Asim and Faisal Shahzad under C.F. No. 2012082132 of the O.P.R.M.C., being on the southerly right-of-way (R.O.W.) line of F.M. 1484 (80-feet wide per Volume (Vol.) 344, Page 152 of the Montgomery County Deed Records (M.C.D.R.);

Thence, with the southerly R.O.W. line of said FM 1484 the following five (5) courses:

1.  866.55 feet along the arc of a curve to the right, said curve having a central angle of 54 degrees 15 minutes 26 seconds, a radius of 915.08 feet and a chord that bears South 74 degrees 20 minutes 01 seconds East, a distance of 834.54 feet to a 5/8-inch iron rod with cap stamped "COSTELLO INC" found;

2.  South 47 degrees 12 minutes 18 seconds East, a distance of 236.50 feet to a 5/8-inch iron rod with cap stamped "COSTELLO INC" found;

3.  354.05 feet along the arc of a curve to the right, said curve having a central angle of 22 degrees 10 minutes 00 seconds, a radius of 915.13 feet and a chord that bears South 36 degrees 07 minutes 18 seconds East, a distance of 351.84 feet to a 5/8-inch iron rod with cap stamped "COSTELLO INC" found;

4.  South 25 degrees 02 minutes 18 seconds East, a distance of 236.30 feet to a 5/8-inch iron rod with cap stamped "COSTELLO INC" found;

5.  329.69 feet along the arc of a curve to the left, said curve having a central angle of 18 degrees 59 minutes 07 seconds, a radius of 994.97 feet and a chord that bears South 34 degrees 31 minutes 52 seconds East, a distance of 328.19 feet to a 5/8-inch iron rod with cap stamped "COSTELLO INC" found for the northeast corner of said 160.99 acre tract and the north corner of Valley Oaks, Section One, a subdivision recorded in Cabinet Q, Sheet 109 of the Montgomery County Plat Records;

6.  Thence, with the common line of said 160.99 acre tract and said Valley Oaks, Section One, South 41 degrees 29 minutes 36 seconds West, a distance of 639.24 feet to a 5/8-inch iron rod with cap stamped "COSTELLO INC" found;

7.  Thence, with the northwest lines of said Valley Oaks, Section One and Valley Oaks, Section Two, an unrecorded subdivision, and the southeast line of said 160.99 acre tract, South 41 degrees 48 minutes 36 seconds West, a distance of 1,727.21 feet to a 5/8-inch capped iron rod stamped "COSTELLO INC" found for the south corner of said 160.99 acre tract;

8.  Thence, with a southwest line of said 160.99 acre tract, North 47 degrees 56 minutes 11 seconds West, a distance of 339.76 feet to a 3/4-inch iron rod found at an interior corner of said 160.99 acre tract;

9.  Thence, with an interior line of said 160.99 acre tract, South 44 degrees 15 minutes 23 seconds West, at a distance of 382.76 feet pass a 3/4-inch iron rod found for reference, continue in all a distance of 470.14 feet to the southeast corner of said 160.99 acre tract, same being on the centerline of Caney Creek;

Thence, with the meanders of the centerline of Caney Creek the following twenty-one (22) courses:

10.  North 59 degrees 33 minutes 18 seconds West, a distance of 174.86 feet;

11.  South 80 degrees 55 minutes 47 seconds West, a distance of 200.00 feet;

12.  South 47 degrees 51 minutes 27 seconds West, a distance of 227.00 feet;

13.  North 52 degrees 25 minutes 33 seconds West, a distance of 100.00 feet;

14.  North 03 degrees 50 minutes 27 seconds East, a distance of 185.00 feet;

15.  North 43 degrees 01 minutes 33 seconds West, a distance of 120.00 feet;

16.  North 65 degrees 42 minutes 33 seconds West, a distance of 185.00 feet;

17.  South 82 degrees 21 minutes 27 seconds West, a distance of 100.00 feet;

18.  South 23 degrees 41 minutes 27 seconds West, a distance of 232.00 feet;

19.  South 57 degrees 01 minutes 27 seconds West, a distance of 112.00 feet;

20.  North 71 degrees 50 minutes 33 seconds West, a distance of 123.00 feet;

21.  North 27 degrees 55 minutes 33 seconds West, a distance of 138.00 feet;

22.  North 03 degrees 57 minutes 27 seconds East, a distance of 175.00 feet;

23.  North 43 degrees 04 minutes 33 seconds West, a distance of 238.00 feet;

24.  North 77 degrees 35 minutes 33 seconds West, a distance of 200.00 feet;

25.  North 21 degrees 40 minutes 33 seconds West, a distance of 80.00 feet;

26.  North 49 degrees 35 minutes 27 seconds East, a distance of 160.00 feet;

27.  North 31 degrees 31 minutes 33 seconds West, a distance of 134.00 feet;

28.  South 83 degrees 26 minutes 27 seconds West, a distance of 232.00 feet;

29.  South 51 degrees 32 minutes 27 seconds West, a distance of 174.30 feet;

30.  North 25 degrees 41 minutes 33 seconds West, a distance of 290.50 feet;

31.  North 07 degrees 58 minutes 15 seconds West, a distance of 97.30 feet to the southeast R.O.W. line of said FM 1484 (width varies per Vol. 344, Pg. 144 and Vol. 344, Pg. 147 of the M.C.D.R., and C.F. No. 9325884 and 9325885 of the O.P.R.M.C.);

Thence, with the southeast R.O.W. line of said FM 1484 the following two (2) courses:

32.  North 64 degrees 28 minutes 00 seconds East, a distance of 450.50 feet to a 5/8-inch iron rod with cap stamped "COSTELLO INC" found;

33.  232.59 feet along the arc of a curve to the left, said curve having a central angle of 12 degrees 45 minutes 13 seconds, a radius of 1,044.93 feet and a chord that bears North 55 degrees 28 minutes 49 seconds East, a distance of 232.11 feet;

34.  Thence, through said 160.99 acre tract, South 49 degrees 35 minutes 33 seconds East, a distance of 575.87 feet;

35.  Thence, continuing through said 160.99 acre tract, North 41 degrees 55 minutes 01 seconds East, at a distance of 801.87 feet pass the south corner of a called 5.255 acre tract recorded in the name of Michael Chardwick Et Ux. under C.F. No. 81-03320 of the O.P.R.M.C., at a distance of 1,095.65 feet pass the south corner of a called 3.5567 acre tract recorded in the name of David Hernandez under C.F. No. 2002102847 of the O.P.R.M.C, at a distance of 1,295.06 feet pass a 1/2-inch iron rod found at the south corner of a called 4.35 acre tract recorded in the name of Andrew S. Gordon and Jessica Faye Taylor under C.F. No. 2020045361 of the O.P.R.M.C., at a distance of 1,751.38 feet pass a 3/4-inch iron rod found at the south corner of aforesaid 5.47 acre tract, continue in all a distance of 2,664.84 feet to the Point of Beginning and containing 149.1 acres of land.

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 8016, Special District Local Laws Code, as added by Section 1 of this Act, is amended by adding Section 8016.0306 to read as follows:

Sec. 8016.0306.  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 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, 2023.

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