By:  Metcalf (Senate Sponsor - Kolkhorst) H.B. No. 5318

(In the Senate - Received from the House May 3, 2023; May 4, 2023, read first time and referred to Committee on Local Government; May 15, 2023, reported favorably by the following vote: Yeas 7, Nays 0; May 15, 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 Water Control and Improvement District No. 6; 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 I, Title 6, Special District Local Laws Code, is amended by adding Chapter 9058 to read as follows:

CHAPTER 9058. MONTGOMERY COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 6

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9058.0101.  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 Water Control and Improvement District No. 6.

Sec. 9058.0102.  NATURE OF DISTRICT. The district is a water control and improvement district created under Section 59, Article XVI, Texas Constitution.

Sec. 9058.0103.  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. 9058.0104.  CONSENT OF MUNICIPALITY REQUIRED. The temporary directors may not hold an election under Section 9058.0103 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. 9058.0105.  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 water control and improvement district as provided by general law and Section 59, Article XVI, Texas Constitution, including the collection, transportation, processing, disposal, and control of domestic, industrial, or communal waste and the gathering, conducting, diverting, and control of local stormwater or other harmful excesses of water; 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. 9058.0106.  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. 9058.0201.  GOVERNING BODY; TERMS. (a) The district is governed by a board of five elected directors.

(b)  Except as provided by Section 9058.0202, directors serve staggered four-year terms.

Sec. 9058.0202.  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 9058.0103; 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 9058.0103 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 9058.0103; 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. 9058.0301.  GENERAL POWERS AND DUTIES. The district has the powers and duties necessary to accomplish the purposes for which the district is created.

Sec. 9058.0302.  WATER CONTROL AND IMPROVEMENT DISTRICT POWERS AND DUTIES. The district has the powers and duties provided by the general law of this state, including Chapters 49 and 51, Water Code, applicable to water control and improvement districts created under Section 59, Article XVI, Texas Constitution, and specifically including the powers and duties authorized under Subchapter H, Chapter 51, Water Code.

Sec. 9058.0303.  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. 9058.0304.  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. 9058.0305.  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 42.042 or 42.0425, Local Government Code, and consents to the creation of the district or to the inclusion of land in the district.

Sec. 9058.0306.  LIMITATION ON USE OF EMINENT DOMAIN. The district may not exercise the power of eminent domain outside the district boundaries to acquire a site or easement for:

(1)  a recreational facility, as defined by Section 49.462, Water Code; or

(2)  a road project authorized by Section 9058.0303.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 9058.0401.  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 9058.0403.

(b)  The district must hold an election in the manner provided by Chapters 49 and 51, 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. 9058.0402.  OPERATION AND MAINTENANCE TAX. (a) If authorized at an election held under Section 9058.0401, 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. 9058.0403.  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. 9058.0501.  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. 9058.0502.  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 Chapter 51, Water Code.

Sec. 9058.0503.  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.

Sec. 9058.0504.  BONDS FOR RECREATIONAL FACILITIES. (a) The district may develop recreational facilities and issue bonds for recreational facilities as provided by Chapter 49, Water Code, regardless of whether the district's territory overlaps with the territory of a political subdivision that is authorized to develop recreational facilities and issue bonds for recreational facilities under Chapter 49, Water Code.

(b)  The authority of the district to develop recreational facilities and issue bonds for recreational facilities under this section does not limit the authority of another political subdivision whose territory the territory of the district may overlap, wholly or partly, to develop recreational facilities and issue bonds for recreational facilities under Chapter 49, Water Code.

SECTION 2.  The Montgomery County Water Control and Improvement District No. 6 initially includes all the territory contained in the following area:

Being 299 acres of land, more or less, located in the Raleigh Rogers Survey, Abstract 33, Montgomery County, Texas, out of land conveyed to Homeplace Lands, LLC, as recorded under Clerk's File No. 2012125424 of the Official Public Records of Real Property, Montgomery County, Texas, (O.P.R.M.C.), being comprised of two (2) tracts as described below; said 299 acres, more or less, being more particularly described as follows, with all bearings referenced to the Texas Coordinate System, Central Zone, NAD83 (NA2011) Epoch 2010.00:

TRACT 1: 105 Acres

BEGINNING at the northeast corner of the herein described tract, lying in a southwesterly line of the BN & SF Railroad right-of-way, from which the northwest corner of a 216.521 acre tract, as defined under Clerk's File No. 2012125424 of the O.P.R.M.C., also being the southwest corner of land conveyed to Douglas B. & Carolyn Lee as recorded under Clerk's File No. 2014125321 of the O.P.R.M.C., bears NORTH 86 degrees 42 minutes 33 seconds EAST, 2,038.61 feet;

THENCE SOUTHEASTERLY with and adjoining said southwesterly line of said BN & SF Railroad right-of-way line approximately 2,789 feet, more or less, to the southeast corner of the hereon described tract, lying in a northerly line of land as described in a warranty deed to Earle T. McCants and Edward W. McCants as recorded under Clerk's File No. 99002183 of the Official Public Records of Real Property Montgomery County, Texas (O.P.R.R.P.M.C.);

THENCE WESTERLY approximately 3,351 feet, more or less, with and adjoining a northerly line of said Earle T. McCants and Edward W. McCants tract to the southwest corner of the herein described tract, also being a northerly interior corner of said McCants tract;

THENCE NORTHERLY at approximately 918.7 feet, passing a northerly corner of said Earle T. McCants and Edward W. McCants tract, and continuing a total distance of 1,989 feet, more or less, to the northwest corner of the herein described tract;

THENCE EASTERLY approximately 1,425 feet, more or less, to the POINT OF BEGINNING, and containing approximately 105 acres of land. This document was prepared under 22 Texas Administrative Code §138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

TRACT 2:194 Acres

BEGINNING at a southeast corner of a tract, conveyed to David L. and Cathy L. Messecar, as recorded under Clerk's File No. 9626214 of the Official Public Records of Real Property Montgomery County, Texas (O.P.R.R.P.M.C.), also being the southwest corner of an 18.984 acre tract as described under Clerk's File No. 2012125424 of the Official Public Records Montgomery County, Texas (O.P.R.M.C.), lying in the westerly right-of-way line of F.M. 2854;

THENCE SOUTH 52 degrees 53 minutes 12 seconds EAST, approximately 353 feet, more or less, to an easterly corner of the herein described tract, lying in a northwesterly line of a 2.9785 acre tract as defined under Clerk's File No. 2018005218 of the O.P.R.M.C.;

THENCE SOUTHWESTERLY approximately 699 feet, more or less, with and adjoining said northwesterly line of the 2.9785 acre tract, to a point of curvature and easterly corner of the herein described tract;

THENCE SOUTHERLY approximately 448 feet, more or less, along a curve to the left, with and adjoining said northwesterly line of the 2.9785 acre tract;

THENCE SOUTHEASTERLY approximately 154 feet, more or less, with and adjoining said northwesterly line of the 2.9785 acre tract, and a northerly line of a 123.962 acre tract as recorded under Clerk's File No. 2009-017518 of the O.P.R.M.C., to the centerline meanders of a tributary ditch of MOUND CREEK, also being a northerly corner of said 123.962 acre tract and an easterly corner of the herein described tract;

THENCE SOUTHWESTERLY approximately 2,392 feet, more or less, with and adjoining the northerly line of said 123.962 acre tract and the centerline meanders of a tributary ditch of MOUND CREEK, to a southerly corner of the herein described tract;

THENCE SOUTHERLY approximately 571 feet, more or less, with and adjoining a westerly line of said 123.962 acre tract, to a southerly corner of the herein described tract, also being the northeast corner of a 3.50 acre tract as defined under Clerk's File No. 214046987 of the O.P.R.M.C.;

THENCE WESTERLY approximately 342 feet, more or less, with and adjoining the north line of said 3.50 acre tract, to a southerly corner of the herein defined tract;

THENCE SOUTHWESTERLY approximately 247 feet, more or less, with and adjoining a westerly line of said 3.50 acre tract, to a southerly of the herein defined tract, lying in a northeasterly line of the BN & SF Railroad right-of-way;

THENCE NORTHWESTERLY approximately 4,144 feet, more or less, with and adjoining said northeasterly line of the BN & SF Railroad right-of-way, to the northwest corner of the herein described tract;

THENCE NORTH 86 degrees 42 minutes 33 seconds EAST, approximately 1,908 feet, more or less, to the northwest corner of a 216.521 acre tract, as defined under Clerk's File No. 2012125424 of the O.P.R.M.C., also being the southwest corner of land conveyed to Douglas B. & Carolyn Lee as recorded under Clerk's File No. 2014125321 of the O.P.R.M.C., and being a northerly corner of the herein described tract;

THENCE EASTERLY approximately 3,227 feet, more or less, with and adjoining the southerly line of said Douglas B. & Carolyn Lee tact and a southerly line of said David L. and Cathy L. Messecar tract, to the POINT OF BEGINNING, and containing approximately 194 acres. This document was prepared under 22 Texas Administrative Code §138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

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 9058.0306, 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 9058, Special District Local Laws Code, as added by Section 1 of this Act, is amended by adding Section 9058.0306 to read as follows:

Sec. 9058.0306.  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, 2023.

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