By:  Metcalf (Senate Sponsor - Kolkhorst) H.B. No. 5339

(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 Municipal Utility District No. 223; 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 7955A to read as follows:

CHAPTER 7955A. MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 223

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 7955A.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. 223.

Sec. 7955A.0102.  NATURE OF DISTRICT. The district is a municipal utility district created under Section 59, Article XVI, Texas Constitution.

Sec. 7955A.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. 7955A.0104.  CONSENT OF MUNICIPALITY REQUIRED. The temporary directors may not hold an election under Section 7955A.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 as required by applicable law.

Sec. 7955A.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. 7955A.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. 7955A.0201.  GOVERNING BODY; TERMS. (a) The district is governed by a board of five elected directors.

(b)  Except as provided by Section 7955A.0202, directors serve staggered four-year terms.

Sec. 7955A.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 7955A.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 7955A.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 7955A.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. 7955A.0301.  GENERAL POWERS AND DUTIES. The district has the powers and duties necessary to accomplish the purposes for which the district is created.

Sec. 7955A.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. 7955A.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. 7955A.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. 7955A.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. 7955A.0306.  DIVISION OF DISTRICT. (a) 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.

(b)  An order dividing a district may create one or more new districts and may provide for the continuation of the district.

(c)  An order dividing the district must:

(1)  name any new district;

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

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

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

(d)  The board may adopt an order dividing the district before or after the date the board holds an election to confirm the district's creation.

(e)  The district may be divided only if the district:

(1)  has never issued any bonds; and

(2)  is not imposing ad valorem taxes.

(f)   A 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.

(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)  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.

(i)  A new district created by the division of the district shall hold a confirmation and directors' election.

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

(k)  A 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.

(l)  The district may continue to rely on confirmation, directors', bond, or tax elections held prior to the division of the district.

(m)  Municipal consent to the creation of the district and to the inclusion of land in the district acts as municipal consent to the creation of any new district created by the division of the district and to the inclusion of land in the new district.

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 7955A.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 7955A.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. 7955A.0402.  OPERATION AND MAINTENANCE TAX. (a) If authorized at an election held under Section 7955A.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. 7955A.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. 7955A.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. 7955A.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. 7955A.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.  Montgomery County Municipal Utility District No. 223 initially includes all the territory contained in the following area:

An 819.0 acre tract of land situated in the W.M. Rankin Survey, Abstract No. 30, and the N. Griffin Survey, Abstract No. 16, Montgomery County, Texas; said 819.0 acre tract of land being out of and a part of a called 537.81 acre tract of land and a called 680.88 acre tract of land as conveyed to Thomas McGrady and recorded under Volume 695, Page 156 of the Deed Records of Montgomery County, Texas (M.C.D.R.); said 819.0 acre tract of land being more particularly described by metes and bounds as follows:

NOTE: The basis of bearings is referenced to the Texas State Plane Coordinate System of 1983, South Central Zone (#4204), as defined by article 21.071 of the Natural Resources Code of the State of Texas, 1983 Datum (2001 adjustment). All distances are actual distances.

BEGINNING at a the Easternmost corner of said McGrady tract of land, the Northeast corner of a called 40.26 acre tract of land as conveyed to Sarah Martin and recorded under County Clerk's File Number (M.C.C.F. No.) 8736234 of the Official Public Records of Real Property (O.P.R.O.R.P.) and being in the Western right-of-way line of Spring Branch Road (60' right-of-way & 60' prescriptive right-of-way) as recorded under Volume 372, Page 276 of the M.C.D.R.

THENCE S 86°42'47" W, with an interior line of said McGrady tract of land and the North line of said 41 acre tract of land, at a distance of 1,231.86 feet passing the Northwest corner of said 41 acre tract of land and the Northeast corner of a called 12.36 acre tract of land as conveyed to Richard Hill and recorded under Volume 153, Page 465 of the M.C.D.R., and continuing for a total distance of 1,505.85 feet, to a 1/2" iron pipe found for the Northwest corner of said 12.36 acre tract of land and an interior corner of said McGrady tract of land.

THENCE S 02°56'09" E, with an interior line of said McGrady tract of land and the West line of said 12.36 acre tract of land, a distance of 481.80 feet, to an interior point for said McGrady tract of land and an interior point of said 12.36 acre tract of land.

THENCE S 87°11'51" W, with an interior line of said McGrady tract of land and the said 12.36 acre tract of land, a distance of 446.00 feet, to a 1/2" iron pipe found for an interior corner of said McGrady tract of land and the Northwest corner of said 12.36 acre tract of land.

THENCE S 02°56'09" E, with an interior line of said McGrady tract of land and the West line of said 12.36 acre tract of land, a distance of 569.70 feet, to a 1/2" iron pipe found for an interior corner of said McGrady tract of land, the Southwest corner of said 12.36 acre tract of land and being in the North line of a called 50 acre tract of land as conveyed to KRP Properties 1, LLC and recorded under M.C.C.F. No.  2018042281 of the O.P.R.O.R.P.

THENCE S 86°34'00" W, with the interior line of said McGrady tract of land and the North line of said 50 acre tract of land, a distance of 1,216.16 feet, to a point for corner.

THENCE N 88°54'56" W, with the interior line of said McGrady tract of land and the North line of said 50 acre tract of land, a distance of 154.61 feet, to an interior point of said McGrady tract of land, and the Northwest corner of said 50 acre tract of land.

THENCE S 16°01'18" E, with the interior line of said McGrady tract of land and the Southwest line of said 50 acre tract of land, a distance of 56.45 feet, to a point for corner.

THENCE S 57°34'14" E, with the interior line of said McGrady tract of land and the Southwest line of said 50 acre tract of land, a distance of 1,472.12 feet, to an interior point for this tract of land, being in the Southwest line of said 50 acre tract of land, and the Northwest corner of a called 100.00 acre tract of land as conveyed to Firdaus P. Jhabvala and Josefina Ososrio Avalos and recorded under M.C.C.F. No. 2014020922 of the O.P.R.O.R.P.

THENCE with the East line of said McGrady tract of land and the West line of said 100.00 acre tract of land, the following courses and distances:

1.  S 00°19'11" E, a distance of 1,049.86 feet, to a point for corner.

2.  S 11°21'37" W, a distance of 991.73 feet, to a point for corner.

3.  S 56°16'33" W, a distance of 15.04 feet, to a point for corner.

4.  S 09°01'56" W, a distance of 512.88 feet, to a point for the Southeast corner of said McGrady tract of land and the Southwest corner of said 100.00 acre tract of land.

THENCE with the West line of said McGrady tract of land the following courses and distances:

1. N 55°08'39" W, a distance of 257.97 feet, to a point for corner.

2. N 74°32'21" W, a distance of 252.82 feet, to a point for corner.

3. S 79°05'19" W, a distance of 106.56 feet, to a point for corner.

4. S 31°16'38" W, a distance of 194.00 feet, to a point for corner.

5. S 56°18'43" W, a distance of 159.56 feet, to a point for corner.

6. N 72°01'22" W, a distance of 354.34 feet, to a point for corner.

7. N 44°48'11" W, a distance of 313.53 feet, to a point for corner.

8. N 61°48'15" W, a distance of 154.90 feet, to a point for corner.

9. N 70°51'53" W, a distance of 87.12 feet, to a point for corner.

10. N 88°06'33" W, a distance of 408.00 feet, to a point for corner.

11. N 20°17'36" W, a distance of 153.35 feet, to a point for corner.

12. N 24°19'33" W, a distance of 168.70 feet, to a point for corner.

13. S 65°40'27" W, a distance of 262.10 feet, to a point for corner.

14. N 58°30'33" W, a distance of 225.90 feet, to a point for corner.

15. N 08°42'33" W, a distance of 85.10 feet, to a point for corner.

16. N 36°31'27" E, a distance of 151.60 feet, to a point for corner.

17. N 28°00'33" W, a distance of 98.60 feet, to a point for corner.

18. N 77°23'33" W, a distance of 141.60 feet, to a point for corner.

19. S 83°22'27" W, a distance of 363.00 feet, to a point for corner.

20. N 60°51'33" W, a distance of 151.30 feet, to a point for corner.

21. N 60°04'33" W, a distance of 145.90 feet, to a point for corner.

22. N 15°41'27" E, a distance of 371.00 feet, to a point for corner.

23. N 26°34'27" E, a distance of 175.90 feet, to a point for corner.

24. S 55°49'27" W, a distance of 138.00 feet, to a point for corner.

25. N 48°43'33" W, a distance of 157.00 feet, to a point for corner.

26. N 26°31'33" W, a distance of 205.70 feet, to a point for corner.

27. N 00°47'33" W, a distance of 146.00 feet, to a point for corner.

28. N 16°58'27" E, a distance of 301.40 feet, to a point for corner.

29. N 74°45'27" E, a distance of 154.60 feet, to a point for corner.

30. S 46°34'33" E, a distance of 316.90 feet, to a point for corner.

31. N 42°59'27" E, a distance of 70.70 feet, to a point for corner.

32. N 18°37'33" W, a distance of 597.20 feet, to a point for corner.

33. N 67°58'33" W, a distance of 229.90 feet, to a point for corner.

34. N 53°33'33" W, a distance of 55.60 feet, to a point for corner.

35. N 88°31'33" W, a distance of 211.70 feet, to a point for corner.

36. N 25°10'33" W, a distance of 62.70 feet, to a point for corner.

37. N 16°52'27" E, a distance of 122.60 feet, to a point for corner.

38. N 43°14'27" E, a distance of 204.40 feet, to a point for corner.

39. N 25°19'33" W, a distance of 132.70 feet, to a point for corner.

40. S 74°24'27" W, a distance of 330.40 feet, to a point for corner.

41. N 34°20'33" W, a distance of 339.70 feet, to a point for corner.

42. N 08°45'33" W, a distance of 343.50 feet, to a point for corner.

43. N 33°07'27" E, a distance of 274.30 feet, to a point for corner.

44. N 19°28'33" W, a distance of 232.30 feet, to a point for corner.

45. N 87°38'20" E, a distance of 1,203.17 feet, to a point for corner.

46. N 28°58'47" E, a distance of 115.50 feet, to a point for corner.

47. N 00°44'47" E, a distance of 300.00 feet, to a point for corner.

48. N 10°23'13" W, a distance of 247.00 feet, to a point for corner.

49. N 14°00'47" E, a distance of 160.00 feet, to a point for corner.

50. N 15°57'47" E, a distance of 127.00 feet, to a point for corner.

51. N 34°16'47" E, a distance of 185.40 feet, to a point for corner.

52. N 15°14'47" E, a distance of 178.00 feet, to a point for corner.

53. N 33°37'47" E, a distance of 214.00 feet, to a point for corner.

54. N 55°22'47" E, a distance of 213.70 feet, to a point for corner.

55. N 26°31'47" E, a distance of 152.00 feet, to a point for corner.

56. N 07°12'13" W, a distance of 85.00 feet, to a point for corner.

57. N 17°22'47" E, a distance of 285.40 feet, to a point for corner.

58. N 31°32'47" E, a distance of 145.00 feet, to a point for corner.

59. N 00°01'47" E, a distance of 452.80 feet, to a point for corner.

60. N 41°38'13" W, a distance of 335.40 feet, to a point for corner.

61. N 23°34'47" E, a distance of 240.20 feet, to a point for corner.

62. S 86°57'13" E, a distance of 293.00 feet, to a point for corner.

63. N 14°02'47" E, a distance of 60.80 feet, to a point for corner.

64. N 04°16'13" W, a distance of 141.60 feet, to a point for corner.

65. N 42°16'13" W, a distance of 276.90 feet, to a point for corner.

66. N 53°00'13" W, a distance of 360.70 feet, to a point for corner.

67. N 09°21'13" W, a distance of 151.20 feet, to a point for corner.

68. S 62°05'13" E, a distance of 125.00 feet, to a point for corner.

69. N 43°23'47" E, a distance of 420.00 feet, to a point for corner.

70. N 18°02'13" W, a distance of 301.90 feet, to a point for corner.

71. N 49°00'47" E, a distance of 501.30 feet, to a point for corner.

72. N 29°48'47" E, a distance of 341.90 feet, to a point for corner.

73. N 36°51'47" E, a distance of 106.72 feet, to a point for the Northwest corner of said McGrady tract of land and the Southwest corner of a called 50.000 acre tract of land as conveyed to Earnest Paul Stroade and wife Katie Jo Stroade and Paula Sue Stroade and recorded under M.C.C.F. No. 2013078842 of the O.P.R.O.R.P.

THENCE N 88°33'15" E, with the North line of said McGrady tract of land and the South line of said 50.000 acre tract of land, a distance of 3,380.63 feet, to a point for the Northeast corner of said McGrady tract of land, the Southeast corner of said 50.000 acre tract of land and being in the Western right-of-way line of said Spring Branch Road.

THENCE S 03°39'13" E, with the East line of said McGrady tract of land and the Western right-of-way line of said Spring Branch Road, a distance of 4,892.19 feet, to the PLACE OF BEGINNING; containing within said boundaries a calculated area of 819.0 of an acre 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 7955A, Special District Local Laws Code, as added by Section 1 of this Act, is amended by adding Section 7955A.0307 to read as follows:

Sec. 7955A.0307.  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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