By:  Kitzman (Senate Sponsor - Kolkhorst) H.B. No. 5349

(In the Senate - Received from the House May 10, 2023; May 10, 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 Austin County Municipal Utility District No. 4; 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 7991A to read as follows:

CHAPTER 7991A. AUSTIN COUNTY MUNICIPAL UTILITY DISTRICT NO. 4

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 7991A.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. 4.

Sec. 7991A.0102.  NATURE OF DISTRICT. The district is a municipal utility district created under Section 59, Article XVI, Texas Constitution.

Sec. 7991A.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. 7991A.0104.  CONSENT OF MUNICIPALITY REQUIRED. The temporary directors may not hold an election under Section 7991A.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. 7991A.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. 7991A.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. 7991A.0201.  GOVERNING BODY; TERMS. (a) The district is governed by a board of five elected directors.

(b)  Except as provided by Section 7991A.0202, directors serve staggered four-year terms.

Sec. 7991A.0202.  TEMPORARY DIRECTORS. (a) The temporary board consists of:

(1)  Micah Burson;

(2)  Cullen Weishuhn;

(3)  Nick Tirey;

(4)  Chris Beckendorff; and

(5)  Mills Duncan.

(b)  Temporary directors serve until the earlier of:

(1)  the date permanent directors are elected under Section 7991A.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 7991A.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 7991A.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. 7991A.0301.  GENERAL POWERS AND DUTIES. The district has the powers and duties necessary to accomplish the purposes for which the district is created.

Sec. 7991A.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. 7991A.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. 7991A.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. 7991A.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. 7991A.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 7991A.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. 7991A.0402.  OPERATION AND MAINTENANCE TAX. (a) If authorized at an election held under Section 7991A.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. 7991A.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. 7991A.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. 7991A.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. 7991A.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. 4 initially includes all the territory contained in the following area:

BEING all that certain tract or parcel of land containing 113.676 acres of land, more or less, in the J. K. Lee Survey, Abstract 353, Austin County, Texas, same being out of the residue of that certain Tract 1 called 160 acre parcel East Quarter of School Section 144, Patent No. 474, Volume 12 as described by instrument recorded in Volume 288, Page 575 of the Deed Records of Austin County, Texas, said 113.676 acre tract being more particularly described by metes and bounds, as follows, to wit:

Commencing for reference at a 1/2 inch iron rod found for corner, same being the most easterly corner of the residue of that certain called 6.162 acre parcel as described by instrument recorded in Clerk's File No. 981607 of the Official Records of Austin County, Texas, same being the most northerly corner of that certain called 5.000 acre parcel as described by instrument recorded in Clerk's File No. 191600 of the Official Records of Austin County, Texas, same being in the southwesterly occupied right-of-way line of Sens Road (right-of-way varies), same being a northeasterly exterior corner of that certain Parcel "B" called 100.000 acre parcel this day herein described, from which a 1/2 inch iron rod found for corner bears South 45 degrees 00 minutes 00 seconds East, a distance of 2,154.29 feet (called South 45 degrees 00 minutes 00 seconds East, 2,154.31 feet) (Basis of Bearings), same being a northwesterly interior corner of that certain called 12.631 acre parcel as described by instrument recorded in Clerk's File No. 007898 of the Official Records of Austin County, Texas, same being the most easterly corner of that certain Parcel "A" called 113.676 acre parcel this day herein described, and same being the most easterly corner of the residue of that certain Tract 1 called 160 acre parcel as described by instrument recorded in Volume 288, Page 577 of the Deed Records of Austin County, Texas;

THENCE, departing said occupied southwesterly right-of-way line of Sens Road and with said common line, South 31 degrees 02 minutes 31 seconds West (called South 31 degrees 02 minutes 31 seconds West) pass at a distance of 235.66 feet (called 235.61 feet) a 1/2 inch iron rod found for corner, same being the most southerly corner of the residue of said called 6.162 acre parcel, same being an easterly exterior corner of the residue of said Tract 1, in all a distance of 418.23 feet (called 418.23 feet) to a 1/2 inch iron rod found for corner, same being the most westerly corner of said called 5.000 acre parcel, same being an easterly interior corner of that certain Parcel "B" this day herein described, same being an easterly interior corner of the residue of said Tract 1, and same being an easterly interior corner of the tract herein described;

THENCE, continuing with said common line, South 45 degrees 09 minutes 08 seconds East, a distance of 126.36 feet (called South 45 degrees 09 minutes 08 seconds East) to POINT OF BEGINNING and a northerly exterior corner of the tract herein described, same being the most easterly southeast exterior corner of said Parcel "B" this day herein described, same being in the southwesterly line of said called 5.000 acre parcel;

THENCE, continuing with said common line, South 45 degrees 09 minutes 08 seconds East, a distance of 408.08 feet (called South 45 degrees 09 minutes 08 seconds East) to a 1/2 inch iron rod found for corner, same being the most southerly corner of said called 5.000 acre parcel, same being a northerly interior corner of the residue of said Tract 1, and same being a northerly interior corner of the tract herein described;

THENCE, continuing with said common line, North 31 degrees 46 minutes 52 seconds East, a distance of 415.47 feet (called North 31 degrees 46 minutes 52 seconds East, 415.47 feet) to a 1/2 inch iron rod found for corner, same being the most easterly corner of said called 5.000 acre parcel, same being a northerly exterior corner of said Tract 1, same being in the southwesterly occupied right-of-way of Sens Road, and same being a northerly exterior corner of the tract herein described;

THENCE, with said southwesterly occupied right-of-way line of said Sens Road and said common line, South 45 degrees 00 minutes 00 seconds East (called South 45 degrees 00 minutes 00 seconds East) pass at a distance of 1,579.97 feet a 1/2 inch iron rod found for corner, same being the most northerly northwest corner of said called 12.631 acre parcel, same being the apparent intersection of the occupied southwesterly right-of-way line of Sens Road with the northeasterly extension of Sens Road, departing said southwesterly right-of-way line and said southeasterly right-of-way line of Sens Road intersection, in all a distance of 1,613.98 feet to a 1/2 inch iron rod found for corner, same being the most easterly southeast corner of the occupied residue of said Tract 1 called 160 acre parcel, same being a northwesterly interior corner of said called 12.631 acre parcel, and same being the most easterly corner of the tract herein described;

THENCE, with said occupied common line, South 45 degrees 13 minutes 38 seconds West, a distance of 1,385.44 feet (called South 45 degrees 00 minutes 00 seconds West) to a 1/2 inch iron rod found for corner, same being a southeasterly exterior corner of the residue of said Tract 1, same being a northwesterly interior corner of said called 12.631 acre parcel, and same being a southeasterly exterior corner of the tract herein described;

THENCE, continuing with said common line, South 48 degrees 25 minutes 53 seconds West, a distance of 59.19 feet (called South 45 degrees 00 minutes 00 seconds West) to a 5/8 inch iron rod set for corner at an old occupied fence intersection point, same being a northwesterly exterior corner of said called 12.631 acre parcel, same being in the southeasterly occupied line of the residue of said Tract 1, and same being a southeasterly interior corner of the tract herein described;

THENCE, continuing with said common line, South 44 degrees 40 minutes 55 seconds West, a distance of 364.58 feet (called South 45 degrees 00 minutes 00 seconds West) to a 1/2 inch iron rod found for corner at an old occupied fence intersection, same being a southeasterly exterior corner of the residue of said Tract 1, same being the most westerly corner of said called 12.631 acre parcel, and same being a northerly exterior corner of that certain Parcel 1 called 919.5371 acre parcel as described by instrument recorded in Clerk's File No. 144449 of the Official Records of Austin County, Texas, and same being a southeasterly exterior corner of the tract herein described;

THENCE, continuing with said common occupied line, South 45 degrees 26 minutes 52 seconds West, a distance of 843.83 feet (called South 45 degrees 00 minutes 00 seconds West) to a 1/2 inch iron rod found for corner at an old fence intersection, same being the most southerly corner of the residue of Tract 1, same being in a northwesterly line of said Parcel 1 called 919.5371 acre parcel, same being the most easterly corner of that certain called 943.659 acre parcel as described by instrument recorded in Clerk's File No. 973704 of the Official Records of Austin County, Texas, and same being the most southerly corner of the tract herein described;

THENCE, continuing with said occupied common line, North 44 degrees 38 minutes 14 seconds West, a distance of 412.60 feet (called North 45 degrees 00 minutes 00 seconds West) to a 5/8 inch iron rod set for corner at an old occupied fence intersection point, same being in the southwesterly line of the residue of said Tract 1, same being in the northeasterly line of said called 943.659 acre parcel, and same being in the southwesterly line of the tract herein described;

THENCE, continuing with said occupied common line, North 44 degrees 55 minutes 54 seconds West, a distance of 809.93 feet (called North 45 degrees 00 minutes 00 seconds West) to a 3/8 inch iron rod found for corner, same being in the southwesterly line of said Tract 1, same being in the northeasterly line of said called 943.659 acre parcel, and same being in the southwesterly occupied line of the tract herein described;

THENCE, continuing with said occupied common line, North 44 degrees 52 minutes 24 seconds West, a distance of 415.58 feet (called North 45 degrees 00 minutes 00 seconds West) to a 5/8 inch iron rod set for corner at an old fence intersection , same being in the southwesterly line of the residue of said Tract 1, same being in the northeasterly line of said called 943.659 acre parcel, and same being in the southwesterly line of the tract herein described;

THENCE, continuing with said occupied common line, North 44 degrees 26 minutes 41 seconds West, a distance of 282.25 feet (called North 45 degrees 00 minutes 00 seconds West) to a 5/8 inch iron rod set for corner on the old occupied line, same being in the southwesterly line of the residue of said Tract 1, same being in the northeasterly line of said called 943.659 acre parcel, same being the most southerly corner of said Parcel "B" called 100.00 acre parcel this day herein described, and same being the most westerly corner of the tract herein described;

THENCE, departing said common line, and with the southeast line of said Parcel "B" called 100.000 acre parcel this day herein described, North 45 degrees 10 minutes 34 seconds East, a distance of 2,240.13 feet to the POINT OF BEGINNING of the tract herein described and containing 113.676 acres of land, more or less.

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 7991A, Special District Local Laws Code, as added by Section 1 of this Act, is amended by adding Section 7991A.0306 to read as follows:

Sec. 7991A.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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