

PRELIMINARY DRAFT

TEXAS LEGISLATIVE COUNCIL
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9 CHAPTER 9053. LAZY RIVER IMPROVEMENT DISTRICT

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Revised Law

12 Sec. 9053.001. DEFINITIONS. In this chapter:

- 13 (1) "Board" means the district's board of directors.
- 14 (2) "Director" means a board member.
- 15 (3) "District" means the Lazy River Improvement

16 District. (Acts 59th Leg., R.S., Ch. 584, Sec. 1 (part); New.)

17 Source Law

18 Sec. 1. . . . [a . . . district] . . . to be
19 known as "Lazy River Improvement District,"
20 hereinafter called the "District,"

21 Revisor's Note

22 The definitions of "board" and "director" are
23 added to the revised law for drafting convenience and
24 to eliminate frequent, unnecessary repetition of the
25 substance of the definitions.

26 Revised Law

27 Sec. 9053.002. NATURE OF DISTRICT. The district is a
28 conservation and reclamation district in Montgomery County created
29 under Section 59, Article XVI, Texas Constitution. (Acts 59th
30 Leg., R.S., Ch. 584, Sec. 1 (part).)

31 Source Law

32 Sec. 1. Under and pursuant to the provisions of
33 Article 16, Section 59, of the Constitution of Texas, a
34 conservation and reclamation district is hereby
35 created and established in Montgomery County, Texas,
36 . . . which shall be a governmental agency and a body
37 politic and corporate. . . .

1 Revisor's Note

2 (1) Section 1, Chapter 584, Acts of the 59th
3 Legislature, Regular Session, 1965, provides that the
4 district is "created and established" in Montgomery
5 County, Texas. The revised law omits "established"
6 because the meaning of that word is included in the
7 meaning of "created."

8 (2) Section 1, Chapter 584, Acts of the 59th
9 Legislature, Regular Session, 1965, refers to the
10 district as "a governmental agency and a body politic
11 and corporate." The revised law omits the quoted
12 language because it duplicates a portion of Section
13 59(b), Article XVI, Texas Constitution, which provides
14 that a conservation and reclamation district is a
15 governmental agency and a body politic and corporate.

16 Revised Law

17 Sec. 9053.003. FINDINGS OF BENEFIT AND PUBLIC PURPOSE. (a)
18 The district is created to serve a public use and benefit.

19 (b) All land and other property included in the boundaries
20 of the district will benefit from the works and projects
21 accomplished by the district under the powers conferred by Section
22 59, Article XVI, Texas Constitution.

23 (c) The district is essential to accomplish the purposes of
24 Section 59, Article XVI, Texas Constitution.

25 (d) The accomplishment of the purposes stated in this
26 chapter will benefit the people of this state and improve their
27 property and industries.

28 (e) The district in carrying out the purposes of this
29 chapter will be performing an essential public function under the
30 Texas Constitution. (Acts 59th Leg., R.S., Ch. 584, Secs. 1 (part),
31 4, 22 (part).)

32 Source Law

33 Sec. 1. . . . The creation and establishment of
34 the District is hereby declared to be essential to the
35 accomplishment of the purposes of Article 16, Section

1 59, of the Constitution of Texas.

2 Sec. 4. It is determined and found that all of
3 the land and other property included within the area
4 and boundaries of the District will be benefited by the
5 works and projects which are to be accomplished by the
6 District pursuant to the powers conferred by the
7 provisions of Article 16, Section 59, of the
8 Constitution of Texas, and that said District was and
9 is created to serve a public use and benefit.

10 Sec. 22. The accomplishment of the purposes
11 stated in this Act being for the benefit of the people
12 of this State and for the improvement of their
13 properties and industries, the District in carrying
14 out the purpose of this Act will be performing an
15 essential public function under the Constitution,
16 and

17 Revisor's Note

18 (1) Section 1, Chapter 584, Acts of the 59th
19 Legislature, Regular Session, 1965, states that the
20 "creation and establishment" of the district is
21 "hereby declared to be" essential to accomplish the
22 purposes of Section 59, Article XVI, Texas
23 Constitution. The revised law omits the quoted
24 language as executed.

25 (2) Section 4, Chapter 584, Acts of the 59th
26 Legislature, Regular Session, 1965, refers to land and
27 other property included "within the area and
28 boundaries of the District." The revised law omits the
29 reference to "area" because property included in the
30 "area . . . of the District" is synonymous with
31 property included in the "boundaries of the District."

32 Revised Law

33 Sec. 9053.004. DISTRICT TERRITORY. (a) The district is
34 composed of the territory described by Section 2, Chapter 584, Acts
35 of the 59th Legislature, Regular Session, 1965, as that territory
36 may have been modified under:

37 (1) Subchapter O, Chapter 51, Water Code;

38 (2) Subchapter J, Chapter 49, Water Code;

39 (3) Section 9053.005 of this chapter or its
40 predecessor statute, former Section 16, Chapter 584, Acts of the
41 59th Legislature, Regular Session, 1965; or

1 (4) other law.

2 (b) The boundaries and field notes of the district form a
3 closure. A mistake in the field notes or in copying the field notes
4 in the legislative process does not affect:

5 (1) the district's organization, existence, or
6 validity;

7 (2) the district's right to issue any type or kind of
8 bond or to pay the principal of and interest on the bond;

9 (3) the district's right to impose a tax; or

10 (4) the legality or operation of the district or the
11 board. (Acts 59th Leg., R.S., Ch. 584, Sec. 3; New.)

12 Source Law

13 Sec. 3. It is determined and found that the
14 boundaries and field notes of the District form a
15 closure, and if any mistake is made in copying the
16 field notes in the legislative process, or otherwise a
17 mistake is made in the field notes, it shall in no way
18 or manner affect the organization, existence and
19 validity of the District, or the right of the District
20 to issue any type or kind of bonds or refunding bonds,
21 or to pay the principal and interest thereon, or the
22 right to assess, levy and collect taxes, or the
23 legality or operation of the District or its governing
24 body, which shall be a Board of Directors as
25 hereinafter provided.

26 Revisor's Note

27 (1) The revision of the law governing the
28 district does not revise the statutory language
29 describing the territory of the district to avoid the
30 lengthy recitation of the description and because that
31 description may not be accurate on the effective date
32 of the revision or at the time of a later reading. For
33 the reader's convenience, the revised law includes a
34 reference to the statutory description of the
35 district's territory and references to statutory
36 authority to change the district's territory under
37 Subchapter O, Chapter 51, Water Code, applicable to
38 water control and improvement districts, Subchapter J,
39 Chapter 49, Water Code, applicable to the district
40 under Sections 49.001 and 49.002 of that chapter, and

1 Section 9053.005 of this chapter or Section 16,
2 Chapter 584, Acts of the 59th Legislature, Regular
3 Session, 1965, from which Section 9053.005 was
4 derived. The revised law also includes a reference to
5 the general authority of the legislature to enact
6 other laws to change the district's territory.

7 (2) Section 3, Chapter 584, Acts of the 59th
8 Legislature, Regular Session, 1965, provides that a
9 mistake in the description of the district's
10 boundaries does not affect the right of the district to
11 issue "any type or kind of bonds or refunding bonds."
12 The revised law omits "refunding bonds" because
13 refunding bonds are included in the meaning of "any
14 type or kind of bonds."

15 (3) Section 3, Chapter 584, Acts of the 59th
16 Legislature, Regular Session, 1965, refers to the
17 district's right to "assess, levy and collect" a tax.
18 The revised law substitutes "impose" for "assess, levy
19 and collect" because "impose" is the term generally
20 used in Title 1, Tax Code, and includes the assessment,
21 levying, and collection of a tax.

22 Revised Law

23 Sec. 9053.005. EXPANSION OF DISTRICT. (a) Except as
24 otherwise provided by this section, the district may annex
25 territory as provided by Section 49.302, Water Code.

26 (b) Territory may not be annexed to the district without the
27 written consent of at least a three-fourths majority of all
28 landowners in the territory to be annexed whose land must also
29 constitute at least three-fourths of the value of all land in the
30 territory to be annexed, as shown by the tax rolls of the county in
31 which the territory to be annexed is located.

32 (c) A finding by the district that the requirements of
33 Subsection (b) have been met is:

34 (1) conclusive for all purposes; and

1 (2) not subject to judicial review. (Acts 59th Leg.,
2 R.S., Ch. 584, Sec. 16.)

3 Source Law

4 Sec. 16. Article 7880-75b, Vernon's Texas Civil
5 Statutes, as amended, shall be applicable to this
6 District in all respects except that no territory may
7 be annexed to this District pursuant to said Article
8 without the written consent of at least a
9 three-fourths majority of the landowners within the
10 territory to be annexed, such three-fourths majority
11 to be both in number of landowners and in value of land
12 as shown by the tax rolls of the county in which is
13 situated the territory to be annexed, and a finding by
14 the Board of Directors of the District as to this
15 additional requisite to annexation shall be conclusive
16 for all purposes and shall not be judicially reviewed.

17 Revisor's Note

18 Section 16, Chapter 584, Acts of the 59th
19 Legislature, Regular Session, 1965, refers to "Article
20 7880-75b, Vernon's Texas Civil Statutes, as amended."
21 Article 7880-75b was codified by Chapter 58, Acts of
22 the 62nd Legislature, Regular Session, 1971, as
23 Sections 51.718-51.724, Water Code, relating to the
24 addition of land to a water control and improvement
25 district and certain other districts by the petition
26 of less than all the landowners. Chapter 715, Acts of
27 the 74th Legislature, Regular Session, 1995, repealed
28 Sections 51.718-51.724, Water Code, and enacted
29 Section 49.302, Water Code, to govern the addition of
30 land to certain water districts, including water
31 control and improvement districts, by the petition of
32 less than all the landowners. The revised law is
33 drafted accordingly. The revised law omits the
34 reference to "as amended" throughout this chapter
35 because under Section 311.027, Government Code (Code
36 Construction Act), a reference to a statute applies to
37 all reenactments, revisions, or amendments of that
38 statute unless expressly provided otherwise.

39 Revised Law

40 Sec. 9053.006. HEARINGS FOR EXCLUSION OF LAND. (a) The

1 board is not required to call or hold a hearing on the exclusion of
2 land or other property from the district; provided, however, that
3 the board shall hold a hearing if an owner of land or other property
4 located in the district files a written request for a hearing with
5 the board secretary before the district's first bond election is
6 called.

7 (b) This section may not be construed to prevent the board
8 on its own motion from calling and holding an exclusion hearing
9 under general law. (Acts 59th Leg., R.S., Ch. 584, Sec. 7.)

10 Source Law

11 Sec. 7. It shall not be necessary for the Board
12 of Directors to call or hold a hearing on the
13 exclusions of land or other property from the
14 District; provided, however, that the Board of
15 Directors shall hold such hearing upon the written
16 request of any land or other property owner within the
17 District filed with the Secretary of the Board prior to
18 the calling of the first bond election for the
19 District. Nothing in this Section shall be construed
20 to prevent the Board on its own motion from calling and
21 holding an exclusions hearing or hearings pursuant to
22 the provisions of the General Law.

23 Revisor's Note

24 Section 7, Chapter 584, Acts of the 59th
25 Legislature, Regular Session, 1965, provides that it
26 is not necessary for the board to call or hold a
27 hearing on the exclusion of land or other property from
28 the district unless the board receives a written
29 request for such a hearing from an owner of land or
30 other property in the district before the calling of
31 the district's first bond election. The section also
32 provides that the authority not to call or hold an
33 exclusion hearing does not prevent the board on its own
34 motion from calling and holding such a hearing under
35 general law. While the provision relating to the
36 holding of an exclusion hearing on receipt of a request
37 before the calling of the district's first bond
38 election would normally be omitted as executed because
39 the district has held a bond election and the provision

1 relating to the applicability of general law would
2 normally be omitted as applicable on its own terms, the
3 revised law retains those provisions to preserve the
4 ambiguity created by the provision giving the board
5 discretion not to call or hold an exclusion hearing. It
6 is unclear whether that provision was intended to
7 apply only until the first bond election was called or
8 whether it was intended to continue to apply after that
9 election was called. The revised law is drafted
10 accordingly.

11 Revised Law

12 Sec. 9053.007. CERTAIN STATUTES NOT APPLICABLE TO DISTRICT.

13 (a) The district is created notwithstanding the provisions of
14 Chapter 160, Acts of the 58th Legislature, Regular Session, 1963
15 (former Article 970a, Vernon's Texas Civil Statutes), as those
16 provisions existed on June 17, 1965, and those provisions do not
17 apply to the district.

18 (b) Any conflict between this section and subsequent
19 amendments to provisions described by Subsection (a) or the
20 subsequent codification of provisions described by Subsection (a)
21 in the Local Government Code is governed by the rules of statutory
22 construction, including Sections 311.025(a) and 311.026,
23 Government Code (Code Construction Act). (Acts 59th Leg., R.S., Ch.
24 584, Sec. 13; New.)

25 Source Law

26 Sec. 13. This District is hereby created
27 notwithstanding any of the provisions of the Municipal
28 Annexation Act, being Article 970a, Vernon's Texas
29 Civil Statutes, and said Article 970a, shall have no
30 application to this District.

31 Revisor's Note

32 (1) Section 13, Chapter 584, Acts of the 59th
33 Legislature, Regular Session, 1965, provides that the
34 district is created notwithstanding the provisions of
35 Article 970a, Vernon's Texas Civil Statutes (Municipal
36 Annexation Act), and that Article 970a does not apply

1 to the district. While the provision relating to
2 creation would normally be omitted as executed, the
3 revised law retains the provision to preserve the
4 ambiguity relating to the applicability of the
5 provisions of Article 970a. It is unclear whether only
6 those provisions of Article 970a that relate to
7 creation of the district are intended to have no
8 applicability or whether all provisions of Article
9 970a are intended to have no applicability. The
10 revised law is drafted accordingly.

11 (2) Section 13, Chapter 584, Acts of the 59th
12 Legislature, Regular Session, 1965, refers to "the
13 Municipal Annexation Act, being Article 970a, Vernon's
14 Texas Civil Statutes." For the reader's convenience,
15 the revised law includes a reference to the enacting
16 session law citation of former Article 970a, now
17 repealed in the regular course of statutory revision.
18 To ensure that the codification of Chapter 584 does not
19 affect the relative dates of enactment necessary to
20 resolve a conflict between Chapter 584 and amendments
21 adopted to former Article 970a subsequent to the date
22 of enactment of Chapter 584 or to the subsequent
23 codification of Article 970a in the Local Government
24 Code, the revised law includes a reference to the date
25 of enactment of Chapter 584. For the reader's
26 convenience, the revised law also adds a reference to
27 the rules of statutory construction, including
28 applicable provisions of the Code Construction Act
29 (Chapter 311, Government Code) used in resolving
30 conflicts between statutes.

31 SUBCHAPTER B. DISTRICT ADMINISTRATION

32 Revised Law

33 Sec. 9053.051. BOARD OF DIRECTORS. (a) The board consists
34 of five elected directors.

1 (b) To be appointed as a director, a person must:

2 (1) be at least 18 years of age; and

3 (2) reside in this state.

4 (c) Such director is not required to reside in the district.

5 (d) Such director is not required to own land in the
6 district, but before the district awards any construction
7 contracts, each director must own land in the district subject to
8 district taxation. (Acts 59th Leg., R.S., Ch. 584, Sec. 9 (part).)

9 Source Law

10 Sec. 9. All powers of the District shall be
11 exercised by a Board of five (5) Directors. . . . No
12 person shall be appointed a Director unless such
13 person is twenty-one (21) years of age or over and a
14 resident of the State of Texas. Such Director shall not
15 be required to reside within the boundaries of the
16 District. Such Director shall not be required to own
17 land in the District prior to the awarding of
18 construction contracts by the District, but before any
19 such contract is awarded, each Director shall be
20 required to own land situated within the District and
21 subject to taxation by the District. . . . Succeeding
22 Directors shall be elected or . . . as provided for in
23 this Act. . . .

24 Revisor's Note

25 (1) Section 9, Chapter 584, Acts of the 59th
26 Legislature, Regular Session, 1965, provides that
27 "[a]ll powers of the District shall be exercised by"
28 the board. The revised law omits the quoted language
29 because it duplicates, in substance, provisions of
30 Sections 49.051 and 49.057, Water Code. Throughout
31 this chapter, the revised law omits law that is
32 superseded by Chapter 49, Water Code, or that
33 duplicates law contained in that chapter. Chapter 49,
34 Water Code, applies to the district under Sections
35 49.001 and 49.002 of that chapter.

36 (2) Section 9, Chapter 584, Acts of the 59th
37 Legislature, Regular Session, 1965, states that a
38 person must be "twenty-one (21) years of age or over"
39 to qualify for appointment to the board. The revised
40 law substitutes "18" for "21" because Section 129.001,

1 Civil Practice and Remedies Code, establishes 18 years
2 as the age of majority in this state. Section 129.002,
3 Civil Practice and Remedies Code, provides that a law
4 adopted before August 27, 1973, that extends a right,
5 privilege, or obligation to an individual on the basis
6 of a minimum age of 19, 20, or 21 years shall be
7 interpreted as prescribing a minimum age of 18 years.
8 Section 9 was enacted in 1965 and has not been amended.

9 (3) Section 9, Chapter 584, Acts of the 59th
10 Legislature, Regular Session, 1965, refers to
11 "[s]ucceeding Directors" to distinguish the
12 succeeding directors from the initial directors named
13 in that section. The revised law omits "succeeding"
14 because all provisions referring to initial directors
15 are omitted as executed and the distinction is no
16 longer required.

17 Revised Law

18 Sec. 9053.052. DIRECTOR'S BOND. Each director shall give a
19 bond in the amount of \$5,000 for the faithful performance of the
20 director's duties. (Acts 59th Leg., R.S., Ch. 584, Sec. 9 (part).)

21 Source Law

22 Sec. 9. . . . Each director shall . . . give
23 bond in the amount of Five Thousand Dollars (\$5,000)
24 for the faithful performance of his duties,

25 Revisor's Note

26 (1) Section 9, Chapter 584, Acts of the 59th
27 Legislature, Regular Session, 1965, provides that a
28 director shall subscribe to the oath of office. The
29 revised law omits that provision because Section 1,
30 Article XVI, Texas Constitution, requires all officers
31 in this state to take the oath (or affirmation) before
32 assuming office. The omitted law reads:

33 Sec. 9. . . . [Each director shall]
34 subscribe to the oath of office and

35 (2) Section 9, Chapter 584, Acts of the 59th

1 Revised Law

2 Sec. 9053.054. VOTE BY BOARD PRESIDENT. The board
3 president has the same right to vote as any other director. (Acts
4 59th Leg., R.S., Ch. 584, Sec. 9 (part).)

5 Source Law

6 Sec. 9. . . . The president . . . shall have the
7 same right to vote as any other Director. . . .

8 Revised Law

9 Sec. 9053.055. ABSENCE OR INACTION OF BOARD PRESIDENT.
10 When the board president is absent or fails or declines to act, the
11 board vice president shall perform all duties and exercise all
12 power this chapter or general law gives the president. (Acts 59th
13 Leg., R.S., Ch. 584, Sec. 9 (part).)

14 Source Law

15 Sec. 9. . . . The vice president shall perform
16 all duties and exercise all power conferred by this Act
17 or the General Law upon the president when the
18 president is absent or fails or declines to act. . . .

19 Revisor's Note
20 (End of Subchapter)

21 (1) Section 9, Chapter 584, Acts of the 59th
22 Legislature, Regular Session, 1965, provides that each
23 director shall serve until the director's successor is
24 elected or appointed and qualified. The revised law
25 omits that provision because Section 17, Article XVI,
26 Texas Constitution, requires an officer to continue to
27 perform the officer's duties until a successor has
28 qualified. The omitted law reads:

29 Sec. 9. . . . Each director shall
30 serve for his term of office as herein
31 provided, and thereafter until his
32 successor shall be elected or appointed and
33 qualified. . . .

34 (2) Section 9, Chapter 584, Acts of the 59th
35 Legislature, Regular Session, 1965, provides that a
36 majority of directors constitutes a quorum. The
37 revised law omits that provision because it duplicates
38 Section 49.053, Water Code. The omitted law reads:

1 Sec. 9. . . . A majority of Directors
2 shall constitute a quorum. . . .

3 (3) Section 9, Chapter 584, Acts of the 59th
4 Legislature, Regular Session, 1965, names the initial
5 board members, provides for filling a vacancy on that
6 board, and provides for their terms of office. Because
7 the initial board members' terms have expired, the
8 revised law omits the language as executed. The
9 omitted law reads:

10 Sec. 9. . . . Immediately after this
11 Act becomes effective, the following named
12 persons, all of whom are twenty-one (21)
13 years of age or over and residents of the
14 State of Texas, shall be the Directors of
15 the District and shall constitute the Board
16 of Directors of the District:

17 L. D. Carter
18 Ernest Coker, Jr.
19 John E. Kirkpatrick
20 Harold F. Huff
21 James K. McNatt.

22 If any of the aforementioned persons shall
23 fail or refuse to serve, die, become
24 incapacitated or otherwise not be qualified
25 to assume the duties of a Director of the
26 District under this Act, the remaining
27 Directors shall appoint a successor or
28 successors. . . . The first two of the
29 above-named Directors shall serve until the
30 second Tuesday in January, 1966, or as
31 herein provided; and the following three of
32 the above-named Directors shall serve until
33 the second Tuesday in January, 1967, or as
34 herein provided. . . .

35 (4) Section 9, Chapter 584, Acts of the 59th
36 Legislature, Regular Session, 1965, describes the
37 procedure for filling a board vacancy. The revised law
38 omits that provision because it duplicates in
39 substance Section 49.105, Water Code, which
40 establishes procedures for filling a board vacancy.
41 The revised law also omits "appointed" from the
42 provision on electing or appointing succeeding
43 directors under Section 9 because the term can refer
44 only to an appointment to fill a vacancy, which
45 duplicates Section 49.105(a), Water Code. The omitted
46 law reads:

47 Sec. 9. . . . [Succeeding Directors

1 shall be elected or] appointed [as provided
2 for in this Act.] . . . Any vacancy
3 occurring in the Board of Directors shall be
4 filled for the unexpired term by a majority
5 of the remaining Directors. . . .

6 (5) Section 9, Chapter 584, Acts of the 59th
7 Legislature, Regular Session, 1965, provides that
8 director elections shall be held "on the second
9 Tuesday in January" of each year. The revised law
10 omits that provision as superseded by Section
11 49.103(b), Water Code, enacted in 1995. That section
12 requires board elections to be held on the uniform
13 election date provided by Section 41.001, Election
14 Code, in May of each even-numbered year. The omitted
15 law reads:

16 Sec. 9. . . . An election for
17 Directors shall be held on the second
18 Tuesday in January of each year beginning in
19 1966, and two Directors shall be elected in
20 that year and in each even-numbered year
21 thereafter, and three in each odd-numbered
22 year thereafter. . . .

23 (6) Section 9, Chapter 584, Acts of the 59th
24 Legislature, Regular Session, 1965, provides that the
25 board of directors shall order annual director
26 elections. The revised law omits the reference to
27 annual elections as superseded by Section 49.103(b),
28 Water Code, for the reason stated in Revisor's Note
29 (5). The revised law omits the requirement that the
30 board order the elections because it duplicates in
31 substance Section 3.004, Election Code, which provides
32 that the governing body of a political subdivision
33 that has elective offices shall order the general
34 election for those officers. The omitted law reads:

35 Sec. 9. . . . The annual elections
36 shall be ordered by the Board of
37 Directors. . . .

38 (7) Section 9, Chapter 584, Acts of the 59th
39 Legislature, Regular Session, 1965, requires the board
40 to elect officers and assigns certain powers and

1 duties to the board's president. The revised law omits
2 those provisions because they duplicate in substance
3 Sections 49.054(a) and (c), Water Code. The omitted
4 law reads:

5 Sec. 9. . . . The Board of Directors
6 shall elect from its number a president, a
7 vice president and a secretary of the Board
8 of Directors and of the District, and such
9 other officers as in the judgment of the
10 Board are necessary. [The president] shall
11 be the chief executive officer of the
12 District and the presiding officer of the
13 Board, and

14 (8) Section 9, Chapter 584, Acts of the 59th
15 Legislature, Regular Session, 1965, requires the board
16 to adopt a seal for the district. The revised law
17 omits that provision because it duplicates Section
18 49.061, Water Code. The omitted law reads:

19 Sec. 9. . . . The Board shall adopt a
20 seal for the District.

21 SUBCHAPTER C. POWERS AND DUTIES

22 Revised Law

23 Sec. 9053.101. WATER CONTROL AND IMPROVEMENT DISTRICT
24 POWERS. The district has the rights, powers, privileges, and
25 duties provided by general law applicable to a water control and
26 improvement district created under Section 59, Article XVI, Texas
27 Constitution, including Chapters 49 and 51, Water Code. (Acts 59th
28 Leg., R.S., Ch. 584, Sec. 5 (part); New.)

29 Source Law

30 Sec. 5. The District shall have and exercise,
31 and is hereby vested with, all of the rights, powers,
32 privileges, authority and duties conferred and imposed
33 by the General Laws of this State now in force or
34 hereafter enacted, applicable to water control and
35 improvement districts created under authority of
36 Article 16, Section 59, of the Constitution; but
37

38 Revisor's Note

39 (1) Section 5, Chapter 584, Acts of the 59th
40 Legislature, Regular Session, 1965, states that the
41 district "shall have and exercise, and is hereby
42 vested with," certain rights, powers, privileges,

1 authority, and duties. The revised law substitutes
2 "has" for the quoted language because, in context, the
3 terms are synonymous and "has" is more commonly used.

4 (2) Section 5, Chapter 584, Acts of the 59th
5 Legislature, Regular Session, 1965, refers to "rights,
6 powers, privileges, [and] authority" of the district.
7 The revised law omits "authority" as included in the
8 meaning of "powers."

9 (3) Section 5, Chapter 584, Acts of the 59th
10 Legislature, Regular Session, 1965, refers to the
11 general laws of this state "now in force or hereafter
12 enacted." The revised law omits the quoted language as
13 unnecessary under accepted general principles of
14 statutory construction. The "General Laws of this
15 State" means those laws "in force" at the time the
16 provision was adopted. It is unnecessary to state that
17 the district may be granted additional powers by later
18 enacted laws because those laws apply on their own
19 terms.

20 (4) Section 5, Chapter 584, Acts of the 59th
21 Legislature, Regular Session, 1965, refers to the
22 general laws "applicable to water control and
23 improvement districts." For the reader's convenience,
24 the revised law adds references to Chapter 51, Water
25 Code, specifically applicable to water control and
26 improvement districts, and to Chapter 49, Water Code,
27 generally applicable under Sections 49.001 and 49.002
28 of that chapter to many types of districts created
29 under Section 59, Article XVI, Texas Constitution,
30 including water control and improvement districts.

31 (5) Section 5, Chapter 584, Acts of the 59th
32 Legislature, Regular Session, 1965, provides that the
33 act prevails over general law that applies to water
34 control and improvement districts and that is in

1 (4) sell water and other services.

2 (b) The district may exercise any of the rights or powers
3 granted by this chapter inside or outside the district's
4 boundaries, but only in Montgomery County. (Acts 59th Leg., R.S.,
5 Ch. 584, Sec. 17 (part).)

6 Source Law

7 Sec. 17. In no manner limiting the right, power
8 or authority of the District as heretofore granted,
9 the District is specifically granted the right, power
10 and authority to purchase and construct, or to
11 purchase or construct, or otherwise to acquire
12 waterworks systems, sanitary sewer systems, storm
13 sewer systems and drainage facilities, or parts of
14 such systems or facilities, and to make any and all
15 necessary purchases, constructions, improvements,
16 extensions, additions, and repairs thereto, and to
17 purchase or acquire all necessary land, rights-of-way,
18 easements, sites, equipment, buildings, plants,
19 structures and facilities therefor and to operate and
20 maintain same, and to sell water and other services.
21 The District may exercise any of the rights, powers,
22 and authorities granted in this Act within or without
23 the boundaries of the District, but only within the
24 boundaries of Montgomery County, Texas. . . .

25 Revisor's Note

26 (1) Section 17, Chapter 584, Acts of the 59th
27 Legislature, Regular Session, 1965, provides that
28 "[i]n no manner limiting the right, power or authority
29 of the District as heretofore granted," the district
30 has certain powers. The revised law omits the quoted
31 language because it is an accepted general principle
32 of statutory construction that a grant of a right,
33 power, or authority does not act as a limitation. The
34 general principle applies to this revision.

35 (2) Section 17, Chapter 584, Acts of the 59th
36 Legislature, Regular Session, 1965, provides that "the
37 District is specifically granted the right, power and
38 authority to" take certain actions. The revised law
39 substitutes "the district may" for the quoted language
40 because the substitution is more concise and is a
41 substantive equivalent of the language it replaces.

42 (3) Section 17, Chapter 584, Acts of the 59th

1 Legislature, Regular Session, 1965, refers to "rights,
2 powers, and authorities." The revised law omits
3 "authorities" because, in context, "authorities" is
4 included in the meaning of "powers."

5 Revised Law

6 Sec. 9053.103. LIMIT ON EMINENT DOMAIN POWER. The district
7 may exercise the power of eminent domain only in Montgomery County.
8 (Acts 59th Leg., R.S., Ch. 584, Sec. 12 (part).)

9 Source Law

10 Sec. 12. The power of eminent domain of the
11 District shall be limited to Montgomery County,
12 Texas. . . .

13 Revised Law

14 Sec. 9053.104. COST OF RELOCATING OR ALTERING PROPERTY. If
15 the district's exercise of the power of eminent domain, the power of
16 relocation, or any other power granted by this chapter makes
17 necessary relocating, raising, rerouting, changing the grade of, or
18 altering the construction of a highway, railroad, electric
19 transmission line, telegraph or telephone property or facility, or
20 pipeline, the necessary action shall be accomplished at the sole
21 expense of the district. (Acts 59th Leg., R.S., Ch. 584, Sec. 12
22 (part).)

23 Source Law

24 Sec. 12. . . . In the event that the District,
25 in the exercise of the power of eminent domain or power
26 of relocation, or any other power granted hereunder,
27 makes necessary the relocation, raising, rerouting or
28 changing the grade of, or altering the construction
29 of, any highway, railroad, electric transmission line,
30 telegraph or telephone properties and facilities, or
31 pipeline, all such necessary relocation, raising,
32 rerouting, changing of grade or alteration of
33 construction shall be accomplished at the sole expense
34 of the District.

35 Revised Law

36 Sec. 9053.105. NOTICE OF ELECTION. Notice of an election
37 may be given under the hand of the board president or secretary.
38 (Acts 59th Leg., R.S., Ch. 584, Sec. 20.)

39 Source Law

40 Sec. 20. Notice of all elections may be given

1 under the hand of either the president or the secretary
2 of the District.

3 Revisor's Note
4 (End of Subchapter)

5 (1) Section 9, Chapter 584, Acts of the 59th
6 Legislature, Regular Session, 1965, requires the board
7 to employ certain employees. The revised law omits
8 that provision because it duplicates in substance part
9 of Section 49.057, Water Code. The omitted law reads:

10 Sec. 9. . . . The Board shall appoint
11 all necessary engineers, attorneys,
12 auditors and other employees. . . .

13 (2) Section 21, Chapter 584, Acts of the 59th
14 Legislature, Regular Session, 1965, provides that the
15 board shall canvass the returns of all elections. The
16 revised law omits that requirement because it
17 duplicates in substance Section 67.002, Election Code,
18 which requires the governing body of a political
19 subdivision that orders an election to canvass the
20 returns. Section 21 also provides a time frame for the
21 canvass to take place. The revised law omits that
22 provision as superseded by Section 67.003, Election
23 Code (enacted by Section 1, Chapter 211, Acts of the
24 69th Legislature, Regular Session, 1985). Chapter 67,
25 Election Code, applies to district elections under
26 Sections 1.002(a) and 67.001 of that code and
27 supersedes that provision of Section 21 because
28 Section 1.002(b), Election Code, provides that the
29 Election Code supersedes a conflicting statute unless
30 the statute expressly provides otherwise. The omitted
31 law reads:

32 Sec. 21. The returns of all elections
33 may be canvassed by the Board of Directors
34 of the District at any time within seven (7)
35 days after the holding of an election, or as
36 soon thereafter as reasonably practicable.

1 SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

2 Revised Law

3 Sec. 9053.151. TAX METHOD. (a) The district shall use the
4 ad valorem plan of taxation.

5 (b) The board is not required to call or hold a hearing on
6 the adoption of a plan of taxation. (Acts 59th Leg., R.S., Ch. 584,
7 Sec. 8.)

8 Source Law

9 Sec. 8. It shall not be necessary for the Board
10 of Directors to call or hold a hearing on the adoption
11 of a plan of taxation, but the ad valorem plan of
12 taxation shall be used by the District.

13 Revised Law

14 Sec. 9053.152. DEPOSITORY. (a) The board shall select one
15 or more banks or trust companies in this state to act as a
16 depository of bond proceeds or of revenue derived from the
17 operation of district facilities.

18 (b) The depository shall, as determined by the board:

19 (1) furnish indemnity bonds;

20 (2) pledge securities; or

21 (3) meet any other requirements. (Acts 59th Leg.,
22 R.S., Ch. 584, Sec. 15.)

23 Source Law

24 Sec. 15. The Board of Directors of the District
25 shall select any bank or trust company in the State of
26 Texas to act as depository of the proceeds of the bonds
27 or revenues derived from the operation of the
28 facilities of the District, and said depository shall
29 furnish such indemnity bonds or pledge such securities
30 or meet such other requirements as determined by the
31 Board of Directors of the District. The District may
32 select one or more depositories.

33 Revised Law

34 Sec. 9053.153. PAYMENT OF TAX OR ASSESSMENT NOT REQUIRED.
35 The district is not required to pay a tax or assessment on:

36 (1) a district project or any part of the project; or

37 (2) a district purchase. (Acts 59th Leg., R.S., Ch.
38 584, Sec. 22 (part).)

1 the reason stated in Revisor's Note (2) to Section
2 9053.004.

3 Revised Law

4 Sec. 9053.202. EXCHANGING BONDS FOR PROPERTY OR WORK. The
5 district may exchange bonds, including refunding bonds:

6 (1) for property acquired by purchase; or

7 (2) in payment of the contract price of work performed
8 or materials or services provided for the use and benefit of the
9 district. (Acts 59th Leg., R.S., Ch. 584, Sec. 18 (part).)

10 Source Law

11 Sec. 18. . . . The District may exchange bonds
12 or refunding bonds for property acquired by purchase,
13 or in payment of the contract price of work done or
14 materials furnished or services furnished for the use
15 and benefit of the District, but

16 Revisor's Note

17 (1) Section 18, Chapter 584, Acts of the 59th
18 Legislature, Regular Session, 1965, provides that
19 district bonds, including refunding bonds, may be sold
20 at a price and on terms determined by the board,
21 provided that the bonds are not sold for less than 95
22 percent of their face value. Section 18 also provides
23 that where district bonds are exchanged for property
24 acquired by purchase, or in payment of the contract
25 price of work done or materials or services furnished,
26 the exchange must be based on the district's receipt of
27 property, materials, or services equal to not less
28 than 95 percent of the face value of the district bonds
29 exchanged or used as payment. The revised law omits
30 those provisions because they are superseded by
31 general law. Section 1201.022, Government Code, as
32 amended in 2001, provides that an issuer may sell
33 public securities "under the terms determined by the
34 governing body of the issuer to be in the issuer's best
35 interests." Section 1201.022, Government Code,
36 applies to district bonds under Sections 1201.002 and

1 (c) The district continues to exist and retain its full
2 power to function and operate regardless of the outcome of a bond
3 election. (Acts 59th Leg., R.S., Ch. 584, Sec. 19.)

4 Source Law

5 Sec. 19. The provisions of Article 7880-77b,
6 Vernon's Texas Civil Statutes, as amended, or any other
7 general law, pertaining to the calling of a hearing for
8 the determination of the dissolution of a district
9 where a bond election has failed shall be inapplicable
10 to this District, and this District shall continue to
11 exist and shall have full power to function and operate
12 regardless of the outcome of any bond election. Upon
13 the failure of any bond election, a subsequent bond
14 election may be called after the expiration of thirty
15 (30) days from the date of the bond election which
16 failed.

17 Revisor's Note

18 Section 19, Chapter 584, Acts of the 59th
19 Legislature, Regular Session, 1965, provides that
20 "[t]he provisions of Article 7880-77b, Vernon's Texas
21 Civil Statutes, as amended," do not apply to the
22 district. Article 7880-77b was codified by Chapter
23 58, Acts of the 62nd Legislature, Regular Session,
24 1971, as Sections 51.781-51.792, Water Code, which
25 address the dissolution of a district before the
26 issuance of bonds. The revised law does not refer to
27 Section 51.792, Water Code, because that section was
28 repealed by Section 85(6), Chapter 1248, Acts of the
29 71st Legislature, Regular Session, 1989. The revised
30 law is drafted accordingly.

31 Revised Law

32 Sec. 9053.204. BONDS EXEMPT FROM TAXATION. A bond issued
33 under this chapter, the transfer of the bond, and income from the
34 bond, including profits made on the sale of the bond, are exempt
35 from taxation in this state. (Acts 59th Leg., R.S., Ch. 584, Sec.
36 22 (part).)

37 Source Law

38 Sec. 22. . . . the bonds issued hereunder and
39 their transfer and the income therefrom, including the
40 profits made on the sale thereof, shall at all times be
41 free from taxation within this State.

1 the reference to the bonds being negotiable because
2 Section 1201.041, Government Code, applicable to
3 district bonds under Sections 1201.002 and 1201.003,
4 Government Code, provides that a public security is a
5 negotiable instrument. The revised law omits the rest
6 of this provision because it duplicates in substance
7 Section 1202.006, Government Code. Section 1202.006,
8 Government Code, applies to district bonds under
9 Sections 1202.001 and 1202.003(c), Government Code.
10 The omitted law reads:

11 Sec. 11. When any kind of bonds or
12 refunding bonds have been approved by the
13 Attorney General of Texas, registered by
14 the Comptroller of Public Accounts of the
15 State of Texas, and issued by the District,
16 such bonds or refunding bonds shall be
17 negotiable, legal, valid and binding
18 obligations of the District and shall be
19 incontestable for any cause.

20 (3) Section 23, Chapter 584, Acts of the 59th
21 Legislature, Regular Session, 1965, lists the entities
22 for which district bonds are legal investments and
23 provides that district bonds may secure deposits of
24 public funds of political subdivisions of this state.
25 The revised law omits the provision relating to the
26 eligibility of district bonds to be considered as
27 investments for various entities because it duplicates
28 Section 49.186(a), Water Code. While Section 23 lists
29 "guardians" and Section 49.186(a), Water Code, does
30 not, Section 49.186(a) includes "fiduciaries," and a
31 guardian is a fiduciary. The revised law omits the
32 provision relating to securing deposits of funds of
33 political subdivisions because the provision is
34 impliedly repealed by Chapter 2257, Government Code
35 (enacted in 1989 as Article 2529d, Vernon's Texas Civil
36 Statutes), which governs eligible collateral for
37 deposits of funds of certain public agencies,
38 including political subdivisions, and permits those

1 deposits to be secured by obligations issued by
2 conservation and reclamation districts. The omitted
3 law reads:

4 Sec. 23. All bonds and refunding
5 bonds of the District shall be and are
6 hereby declared to be legal, eligible and
7 authorized investments for banks, savings
8 and loan associations, insurance companies,
9 fiduciaries, trustees, guardians, and for
10 the sinking funds of cities, towns,
11 villages, counties, school districts, or
12 other political corporations or
13 subdivisions of the State of Texas. Such
14 bonds and refunding bonds shall be eligible
15 to secure the deposit of any and all public
16 funds of cities, towns, villages, counties,
17 school districts, or other political
18 corporations or subdivisions of the State
19 of Texas; and such bonds shall be lawful and
20 sufficient security for said deposits to
21 the extent of their face value, when
22 accompanied by all unmatured coupons
23 appurtenant thereto.

24 Revisor's Note
25 (End of Chapter)

26 (1) Section 6, Chapter 584, Acts of the 59th
27 Legislature, Regular Session, 1965, provides that it
28 is unnecessary for the board of directors to hold an
29 election to confirm the district's creation. The
30 revised law omits that provision as executed. The
31 omitted law reads:

32 Sec. 6. It shall not be necessary for
33 the Board of Directors to call or hold a
34 confirmation election for the confirmation
35 of the District.

36 (2) Section 14, Chapter 584, Acts of the 59th
37 Legislature, Regular Session, 1965, recites
38 legislative findings that the procedural requirements
39 for the creation of the district under Section 59(d),
40 Article XVI, Texas Constitution, including proper
41 legal notice and the filing of recommendations, have
42 been accomplished. The revised law omits that
43 provision as executed. The omitted law reads:

44 Sec. 14. It is determined and found
45 that a proper and legal notice of the
46 intention to introduce this Act, setting
47 forth the general substance of this Act, has

1 been published at least thirty (30) days and
2 not more than ninety (90) days prior to the
3 introduction of this Act in the Legislature
4 of Texas, in a newspaper having general
5 circulation in Montgomery County, Texas;
6 that a copy of such notice and a copy of this
7 Act have been delivered to the Governor of
8 Texas who has submitted such notice and Act
9 to the Texas Water Commission, and said
10 Texas Water Commission has filed its
11 recommendation as to such Act with the
12 Governor, Lieutenant Governor and Speaker
13 of the House of Representatives of Texas
14 within thirty (30) days from the date such
15 notice and Act were received by the Texas
16 Water Commission; and that all the
17 requirements and provisions of Article 16,
18 Section 59(d), of the Constitution of the
19 State of Texas have been fulfilled and
20 accomplished as therein provided.

21 (3) Section 24, Chapter 584, Acts of the 59th
22 Legislature, Regular Session, 1965, provides that the
23 act is severable. The revised law omits that provision
24 because the same result is produced by application of
25 Section 311.032, Government Code (Code Construction
26 Act), which provides that a provision of a statute is
27 severable from each other provision of the statute
28 that can be given effect. The omitted law reads:

29 Sec. 24. If any word, phrase, clause,
30 paragraph, sentence, part, portion, or
31 provision of this Act or the application
32 thereof to any person or circumstance shall
33 be held to be invalid or unconstitutional,
34 the remainder of the Act shall nevertheless
35 be valid, and the Legislature hereby
36 declares that this Act would have been
37 enacted without such invalid or
38 unconstitutional word, phrase, clause,
39 paragraph, sentence, part, portion, or
40 provision.