STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2456 BY: HILLIARD of the HOUSE

and

ROBERTS of the SENATE

COMMITTEE SUBSTITUTEAN ACT RELATING TO WATER AND WATER RIGHTS; AMENDING 82 O.S. 1991, SECTIONS 541 AND 569, WHICH RELATE TO MASTER CONSERVANCY DISTRICTS; CLARIFYING LANGUAGE; PROVIDING FOR REIMBURSEMENT; INCREASING PER DIEM; MODIFYING LIMITS OF CERTAIN CONTRACTS; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 82 O.S. 1991, Section 541, is amended to read as follows:

Section 541. ~~(a)~~ A. There is hereby authorized the formation of conservancy districts within this state. Each such district shall be designated as a "conservancy district" or "master conservancy district" ~~and such~~. Such districts shall not be political corporations or subdivisions of the state. All of the provisions of this chapter shall apply to all such districts except insofar as special provisions shall be made herein relating to master conservancy districts only. All provisions of this chapter prescribing the contents of pleadings or instruments and using the term "conservancy district" may be modified to use the term "master

conservancy district", when the same shall be applicable. Provided that in the event a master conservancy district is organized, the obligation including the area of a conservancy district shall become the obligation of the master conservancy district to the extent such obligations relate to water resources development and control.

~~(b)~~ B. 1. The district court of any judicial district in this state, or any judge thereof when said court is in vacation, is vested with jurisdiction, power and authority, when the conditions stated in Section 542 of this title are found to exist, to establish conservancy districts, which may be entirely within, or partly within and partly without, the judicial district in which said court is located, for all or any of these purposes:

~~(1) Of~~ a. of preventing floods~~;~~,

~~(2) Of~~ b. of regulating stream channels by changing, widening and deepening same~~;~~,

~~(3) Of~~ c. of reclaiming or of filling wet and overflowed land~~;~~,

~~(4) Of~~ d. of providing for irrigation where it may be needed~~;~~,

~~(5) Of~~ e. of regulating the flow of streams~~;~~,

~~(6) Of~~ f. of diverting or in whole or in part eliminating watercourses, or part of the flowage thereof~~;~~, or

~~(7) Of~~ g. of developing and providing water for domestic, industrial and agricultural requirements, and to persons within the territory of the district~~; and this~~. This also may include the construction, operation and maintenance of storage, distribution, treatment, supply and other works, installation, improvements and facilities necessary or incidental thereto. Provided, that no conservancy district shall construct, operate

or maintain distribution facilities within the limits of any municipal corporation.

~~And incident~~ 2. Incident to ~~such purposes~~ any purpose provided in this subsection, and to further enable their accomplishment, ~~to~~ a master conservancy district may:

a. straighten, widen, deepen, divert or change the course or terminus of any natural or artificial watercourse~~; to~~,

b. build or rebuild reservoirs, canals, levees, walls, embankments, bridges, or dams~~; to~~,

c. maintain, operate and repair any of the construction herein named~~; and to~~, and

d. do all other things necessary for the fulfillment of the purposes of this chapter.

~~(c)~~ C. Master conservancy districts may be created to include lands constituting all or any part of the area of one or more conservancy and/or irrigation districts and/or municipal corporations and/or lands not included in any such area or areas. Provided, however, that no conservancy district nor portion thereof shall be incorporated into a master conservancy district without the consent of at least fifty-one percent (51%) of the owners of land and by owners of at least fifty-one percent (51%) of the land area embraced in the conservancy district or that portion thereof to be incorporated into a master conservancy district. In addition to any or all of the purposes enumerated in subsection ~~(b) hereof~~ B of this section, master conservancy districts may be created for any or all of the following purposes:

~~(1)~~ 1. To conduct preliminary surveys and to develop a plan for the comprehensive control, regulation and/or use of water from any designated stream, watercourse or watercourse system and/or its basin;

~~(2)~~ 2. To coordinate the operations, works and facilities of two or more conservancy districts with each other and with improvements, works, and facilities of the master conservancy district;

~~(3)~~ 3. To enable the acquisition, construction and maintenance of improvements and facilities for common benefit and/or use of constituent areas;

~~(4)~~ 4. To permit two or more municipal corporations and/or conservancy districts to pool their resources to effect any or all of the foregoing; and

~~(5)~~ 5. To enter into contracts with municipal corporations, persons and public agencies for the furnishing to them of water, subject, however, to the proviso in subparagraph g of paragraph 1 of subsection ~~(b), paragraph (7) hereof~~ B of this section.

~~(d)~~ D. 1. Immediately following organization of a master conservancy district, the first board of directors shall be appointed by the district judge and shall consist of such number of persons as the district judge shall designate to provide equitable representation for the component areas and/or for users contracting for a substantial service from the district, and said directors shall serve until their successors have been selected and qualified. At the first meeting the directors shall elect a president, vice-president, secretary and treasurer from their number, and shall adopt bylaws for the governing of the business of the district, subject to approval by the district judge, and attend to such other business as may come before said board. The president shall be the chief executive officer of the district, shall preside at the meetings of the board and shall perform all other functions which are necessary and proper for carrying out the provisions of this act, subject to approval of the board. The vice-president shall act as president whenever the president is absent, or otherwise incapacitated, or fails to act. The secretary shall be custodian of

the district seal, attest to the signature of the president when law requires that it be attested to and shall be charged with the duty of keeping accurate and detailed minutes of meetings of the board. The treasurer shall be custodian of all monies, funds and credits of the district and shall keep the books and records of the district in proper form~~; provided that all~~.

2. All officers and employees handling funds of a master conservancy district shall be bonded in a penal sum of not less than Twenty-five Thousand Dollars ($25,000.00), such bond to be a corporate surety bond approved by the judge of the district court establishing the district, for the faithful performance of their duties~~; said~~. The bond premiums shall be paid by the district and benefits accrue to said district~~; provided, further, that all~~.

3. All officers and employees shall execute the customary oath of office, which shall be filed with the secretary of the district.

4. Within two (2) years after the first board of directors has been appointed by the district judge, the district judge shall appoint members to the board as hereinafter provided and fix the total number of such directors for equitable representation. Provided, however, each component area, including municipal corporations, cities, towns, irrigation districts, and users contracting for a substantial service from the district may elect their respective representation to the board of directors.

5. Each component area, including municipal corporations, cities, towns, irrigation districts, and users contracting for a substantial service from the district shall be entitled to representation on the board of directors, in accordance with the ratio which their individual, actual and contingent water storage for which it has contractual obligations to the master conservancy district bears to the total water storage for which there are contractual obligations with said district. In fixing the number of directors to represent a master conservancy district, each component

area or user contracting for a substantial service from the district shall be entitled to at least one director, but no such area or user shall be entitled to more than three directors. The total number of directors and the representation of each such area or user may be changed by the district judge whenever a reallocation is considered by said judge to be necessary for providing proper representation. Provided, however, that ~~where~~ if a master conservancy district has been organized on or before January 5, 1957, under the provisions of this title, which has as a part of its purpose the inclusion of a proposed irrigation district or districts, each such proposed district shall be entitled to one representative on the board of directors of the master conservancy district for a period of five (5) years from the effective date of this act; provided, however, that if the proposed irrigation district or districts, as hereinabove described, are not legally organized and have not executed a contract for the repayment of the irrigation costs with the master conservancy district within the aforementioned five-year period, then said offices of directors representing the irrigation interests shall be discontinued and shall have no further representation on said board of directors; provided, further, that if the proposed irrigation districts are organized and have contracted with a master conservancy district under the laws of this state, then said directors shall be elected or selected as provided in this section pertaining to the second board of directors.

The governing body of each such area or user such as a municipal corporation, city, town, irrigation district, conservation district, and/or other user may select or cause to be elected the person or persons to represent them on the board of directors of the master conservancy district and shall submit the name or names of those selected to the district judge who shall appoint said person or persons to membership on the board of directors; provided, however, that only a freeholder who is a qualified elector of this state as

provided by law and residing within any county in which the district or any part thereof is located shall be eligible.

6. Vacancies occurring of unexpired terms of office on the board of directors shall be filled through appointment by the district judge upon the recommendations of the component area or user authorized to make the original selection. The district judge shall determine whether persons who have been recommended for appointment hereunder are qualified as provided herein.

7. The board of directors first appointed, and those subsequently appointed, or elected, are hereby authorized and empowered to appoint a manager and such additional personnel as may be necessary and proper for conducting the business of said district; provided, however, that no employee of the district may be a member of the board.

8. Upon expiration of the two-year term of office of directors first appointed by the district judge, the next succeeding board of directors shall be elected or appointed so that as nearly as possible one-half (1/2) of their number shall serve a term of two (2) years and the remainder for a term of four (4) years. The board of directors shall meet and determine their respective term of office by lot. Thereafter, at the expiration of their respective term of office, directors shall be elected or appointed for a term of four (4) years.

9. On the first Wednesday following each biennial election or appointment of the members of the board of directors by the district judge, as the case may be, they shall meet and organize as a board and elect officers for service as provided above for the first board.

10. The board of directors shall perform official actions by resolution and a majority of their number shall constitute a quorum for the transaction of any and all business of the district. All official actions including final passage and enactment of all

resolutions must be approved by a majority of the board of directors present, a quorum being present, at a regular or special meeting.

11. The board of directors shall hold regular meetings once a month, the date thereof to be established in the district's bylaws or by resolution. The president or any three members may call such special meetings as may be necessary in the administration of the district's business, provided that at least five (5) days prior to the meeting date the secretary shall have mailed notice thereof to the address which each member shall file with the secretary. Notices of special meetings may be waived in writing by any director.

12. Each director shall ~~receive mileage~~ be reimbursed for all necessary and reasonable expenses incurred in the performance of his duties pursuant to law, as provided for in the State Travel Reimbursement Act ~~and a fee~~. In addition to any reimbursement for necessary and reasonable expenses received by the director pursuant to this paragraph, each director shall be entitled to receive a per diem of ~~Twenty-five Dollars ($25.00) for attending each meeting of the board, provided that not more than Fifty Dollars ($50.00) and mileage shall be paid to any director for meetings held in any one (1) calendar month~~ Fifty Dollars ($50.00) per meeting for not more than two meetings a month.

SECTION 2. AMENDATORY 82 O.S. 1991, Section 569, is amended to read as follows:

Section 569. When it is determined to let the work of a conservancy district by contract, contracts in amounts to exceed ~~One Thousand Dollars ($1,000.00),~~ Seven Thousand Five Hundred Dollars ($7,500.00) shall be advertised after ~~notice~~ notices calling for bids have been published once a week, for three (3) consecutive weeks completed on date of last publication, which shall not be less than fourteen (14) days from the first publication, in at least one newspaper in each county, where any part of the work under terms of

the contract is to be performed, and the board may let said contract to the lowest and best bidder, who shall give a good and approved bond, with ample security, equal in amount to the total of the bid, conditioned on the carrying out of the contract, to completion, and shall file the said bond and contract with the secretary of said district in amount and conditions as provided by law, conditioned on the carrying out of the contract. But this contract shall not be let to another than the lowest bidder until a hearing before the court has been had with notice to all parties interested, as ordered by the court and an order obtained from the court. Such contract shall be in writing, and shall be accompanied by or shall refer to plans and specifications for the work done, prepared by the chief engineer. Said contract shall be approved by the board of directors and signed by the president of the board and by the contractor, and shall be executed in duplicate. Provided, that in case of sudden emergency when it is necessary in order to protect the district, the advertising of contracts may be waived upon the unanimous consent of the board of directors, with the approval of the court or the judge in vacation; and provided, further, that the action of said board of directors in awarding a contract shall, upon application of any interested taxpayer, be reviewed by the district court at a time and place specified by the judge of said court and the order of said district court may be appealed from, by either the board of directors or any interested taxpayer, to the Supreme Court of the State of Oklahoma in the same manner as other appeals under civil procedure.

SECTION 3. This act shall become effective July 1, 1992.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-2-2119 MJM