

EHB 3314

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THE STATE SENATE
Monday, March 29, 2010

ENGROSSED

House Bill No. 3314

ENGROSSED HOUSE BILL NO. 3314 - By: Martin (Scott) and Hilliard of the House and Schulz and Gumm of the Senate.

An Act relating to conservancy districts; amending 82 O.S. 2001, Sections 564, 568, 569, as amended by Section 1, Chapter 93, O.S.L. 2008 and 630 (82 O.S. Supp. 2009, Section 569), which relate to the organization and funds of the conservancy districts; updating and clarifying statutory language; deleting description of certain employee; modifying description of types of employees and title of certain employee of a conservancy district; deleting requirement for court to approve certain employee payments; updating statutory outline; authorizing the board of directors to implement certain projects and actions; modifying requirement for court to approve certain actions by the board of directors; providing criteria for the court to consider in rendering a decree; changing minimum bid amount for master conservancy district contracts; deleting requirement for certain hearing on contract before the court; deleting requirement for certain documents to be attached to a contract; allowing the waiver of advertising of contracts under certain conditions; deleting certain approval requirement to waive advertisement of a contract; deleting procedure for court review of a contract award; authorizing a board of directors to adopt certain competitive bidding rules; deleting requirement for court approval of certain fund transfers; and declaring an emergency.

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

SECTION 1. AMENDATORY 82 O.S. 2001, Section 564, is amended to read as follows:

Section 564. The secretary shall be the custodian of the records of the district and of its corporate seal and shall assist

1 the board in ~~such~~ particulars as it may direct in the performance of
2 its duties. It shall be the duty of the secretary to attest, under
3 the corporate seal of the district, all certified copies of the
4 official records and files of the district that may be required of
5 ~~him~~ the secretary by the provisions of this act, or by any person
6 ordering the same and paying the reasonable cost of transcription
7 and any portion of the record so certified and attested shall be
8 prima facie evidence of the facts ~~therein~~ contained in the record.
9 The secretary shall serve also as treasurer of the district, unless
10 a treasurer is otherwise provided for by the board. The board may
11 also employ and ~~discharge a chief engineer who may be an individual,~~
12 ~~co partnership or corporation, or a member of the board of~~
13 ~~directors, who is a civil engineer may be designated as chief~~
14 ~~engineer of the district, an attorney, a district manager and such~~
15 any other engineers, attorneys and or other agents and assistants
16 staff as may be useful and necessary, ~~and~~. The board may provide
17 for ~~their~~ compensation of employees of the board, which, with all
18 other necessary expenditures, shall be taken as a part of the cost
19 of the improvement. The employment of ~~the secretary, treasurer,~~
20 ~~chief engineer and attorney for~~ persons or entities by the district
21 shall be evidenced by agreements in writing, ~~which, so far as~~
22 ~~possible,~~ shall specify the amounts or rates to be paid for their
23 services and ~~be approved by the court, having jurisdiction of the~~

1 ~~proceedings.~~ The ~~chief engineer~~ district manager shall be
2 superintendent of all the works and improvements, and shall make a
3 full report to the board each year, or ~~oftener~~ more often if
4 required by the board, and may make ~~such~~ suggestions and
5 recommendations to the board as ~~he~~ the manager may deem proper.

6 SECTION 2. AMENDATORY 82 O.S. 2001, Section 568, is
7 amended to read as follows:

8 Section 568. A. In order to effect the protection, reclamation
9 or irrigation of the land and other property in the district, the
10 board of directors is authorized and empowered to ~~clean:~~

11 1. Clean out, straighten, widen, alter, deepen or change the
12 course or terminus of any ditch, drain, sewer, river, water course,
13 pond, lake, creek or natural stream in or out of ~~said~~ the district;
14 ~~to fill~~

15 2. Fill up any abandoned or altered ditch, drain, sewer, river,
16 watercourse, pond, lake, creek or natural stream, ~~and to~~
17 ~~concentrate;~~

18 3. Concentrate, divert or divide the flow of water in or out of
19 ~~said~~ the district; ~~to construct~~

20 4. Construct and maintain main and lateral ditches, sewers,
21 canals, levees, dikes, dams, retardation dams, irrigation dams,
22 sluices, revetments, reservoirs, holding basins, floodways, pumping
23 stations and siphons and any other works and improvements deemed

1 necessary to construct, preserve, operate or maintain the works in
2 or out of ~~said~~ the district; ~~to construct~~

3 5. Construct or enlarge or cause to be constructed or enlarged
4 any and all bridges that may be needed in or out of ~~said~~ the
5 district; ~~to construct~~

6 6. Construct or elevate roadways and streets; ~~to construct~~

7 7. Construct any and all ~~of said~~ works and improvements across,
8 through or over any public highway, canal, railroad right-of-way,
9 track, grade, fill or cut, in or out of ~~said~~ the district; ~~to remove~~

10 8. Remove or change the location of any fence, building,
11 railroad, canal or other improvements in or out of ~~said~~ the
12 district; and ~~shall have the right to hold~~

13 9. Hold, encumber, control, ~~to~~ acquire by donation, purchase or
14 condemnation, ~~to~~ construct, own, lease, use and sell real and
15 personal property, and ~~to~~ acquire, construct, own, lease, use or
16 sell any easement, riparian right, railroad right-of-way, canal,
17 cemetery, sluice, reservoir, holding basin, mill dam, water power,
18 wharf, holding basin or franchise in or out of ~~said~~ the district for
19 right-of-way, or for any necessary purpose, or ~~to~~ acquire, own,
20 lease, use and sell any real estate for material to be used in
21 constructing and maintaining said works and improvement, ~~to~~ replat
22 or subdivide land, open new roads, streets and alleys, or change the
23 course of any existing one; ~~provided, however, that said~~ .

1 B. All engineering, planning, design and execution, the
2 operations of the district, and the construction, operation, and
3 maintenance of infrastructure to serve the purpose for which the
4 district was established, or to serve any purposes as may have been
5 amended from time to time as provided for in this act, may be
6 implemented at the discretion of the board of directors under the
7 administration of the district manager. Except for engineering,
8 operations, and the construction, operation and maintenance of
9 infrastructure to implement its approved purposes, the board of
10 directors shall not exercise any of ~~said~~ the powers specified ~~herein~~
11 in this section without first ~~having~~ filing in the court having
12 jurisdiction a full and complete petition stating in detail the acts
13 intended to be done, ~~and upon.~~ Upon the filing of ~~said~~ the
14 petition, a notice shall be published in the county or counties in
15 ~~said~~ the district, as hereinbefore provided, setting forth the
16 nature of the relief prayed for, which notice shall be published for
17 not less than thirty (30) days, and shall specify a date on which
18 ~~said~~ the petition will be heard by ~~said~~ the court, ~~and in.~~ In the
19 event a protest is filed, ~~said~~ the court shall hear all parties
20 interested and make its decree ~~thereon and said.~~ The court shall
21 base its decision on the petition, granting the relief sought in
22 whole or in part, or denying the relief prayed for, upon whether the
23 proposed action of the district lies within the scope of its

1 authority pursuant to this act and the agreements and decrees
2 establishing the district and governing its operation. The decree
3 may be appealed to the Supreme Court of the State of Oklahoma, as is
4 provided in ~~our~~ the statutes relating to civil procedure. ~~The~~
5 ~~decree of said Court on said hearing shall, either grant in whole or~~
6 ~~in part, or deny the relief prayed for.~~

7 SECTION 3. AMENDATORY 82 O.S. 2001, Section 569, as
8 amended by Section 1, Chapter 93, O.S.L. 2008 (82 O.S. Supp. 2009,
9 Section 569), is amended to read as follows:

10 Section 569. A. When it is determined to let the work of a
11 master conservancy district by contract, contracts in amounts to
12 exceed ~~Twenty five Thousand Dollars (\$25,000.00)~~ Fifty Thousand
13 Dollars (\$50,000.00) shall be advertised after notices calling for
14 bids have been published once a week, for three (3) consecutive
15 weeks completed on date of last publication, which shall not be less
16 than fourteen (14) days from the first publication, in at least one
17 newspaper in each county, where any part of the work under terms of
18 the contract is to be performed, ~~and the~~. The board may let the
19 contract to the lowest and best bidder, who shall give a good and
20 approved bond, with ample security, equal in amount to the total of
21 the bid, conditioned on the carrying out of the contract, ~~to~~
22 completion, and shall file the bond and contract with the secretary
23 of the district in amount and conditions as provided by law,

1 conditioned on the carrying out of the contract. ~~This contract~~
2 ~~shall not be let to another than the lowest bidder until a hearing~~
3 ~~before the court occurred with notice to all parties interested, as~~
4 ~~ordered by the court and an order obtained from the court. Such The~~
5 contract shall be in writing, and ~~shall be accompanied by or shall~~
6 ~~refer to plans and specifications for the work done, prepared by the~~
7 ~~chief engineer. The contract shall be approved by the board of~~
8 directors and signed by the president of the board and by the
9 contractor, and shall be executed in duplicate. Provided, that in
10 In the case of sudden emergency when it is necessary in order to
11 protect the district or when the board determines that the contract
12 must be implemented by a sole source or in any situation in which
13 the Public Competitive Bidding Act of 1974 would allow a state
14 agency to do so, the advertising of contracts may be waived ~~upon the~~
15 ~~unanimous consent of the board of directors, with the approval of~~
16 ~~the court or the judge in vacation, and provided, further, that the~~
17 ~~action of the board of directors in awarding a contract shall, upon~~
18 ~~application of any interested taxpayer, be reviewed by the district~~
19 ~~court at a time and place specified by the judge of the court and~~
20 ~~the order of the district court may be appealed from, by either the~~
21 ~~board of directors or any interested taxpayer, to the Supreme Court~~
22 ~~of the State of Oklahoma in the same manner as other appeals under~~
23 civil procedure.

1 B. The board of directors of any conservancy district may adopt
2 rules establishing a district competitive bidding process not in
3 conflict with the provisions of this section.

4 SECTION 4. AMENDATORY 82 O.S. 2001, Section 630, is
5 amended to read as follows:

6 Section 630. ~~(a)~~ A. The monies of every conservancy district
7 organized ~~hereunder~~ pursuant to this act shall be administered
8 through the following funds:

9 ~~(1) Preliminary~~ 1. A preliminary fund, by which is meant the
10 funds borrowed in accordance with Section 632 of this title, which
11 shall be used for the payment of expenses incurred for the purposes
12 for which ~~such~~ the funds may be borrowed; ~~(2) Improvement~~

13 2. An improvement fund, by which is meant the proceeds of
14 levies made against the special assessments of benefits equalized
15 and confirmed under the provisions of this act which have not been
16 pledged for the retirement of bonds, notes, warrants or agreements
17 or the payment of interest thereon and the proceeds of all bonds,
18 notes or warrants issued, which shall be used for defraying
19 expenditures incurred in the execution of the official plan and the
20 relocation of utilities, acquisition or construction of properties,
21 works, and improvements of the district including the cost of
22 preparing the official plan and the appraisal, except as paid out of
23 the preliminary funds, the entire cost of construction and

1 superintendence, with all charges incidental thereto, and the cost
2 of administration during the period of construction and may also be
3 used for defraying preliminary expenses in accordance with Section
4 632 of this act title; ~~(3) — Bond~~

5 3. A bond fund, by which is meant the proceeds of levies made
6 against the special assessment of benefits equalized and confirmed
7 under the provisions of this act which has been anticipated in the
8 issuance of bonds, notes or warrants together with all other
9 receipts pledged for the retirement of bonds, notes or warrants or
10 the payment of interest thereon, which shall be used only for such
11 purposes; ~~(4) — Maintenance and~~

12 4. A maintenance fund, which is a special assessment to be
13 levied annually for the purpose of upkeep, administration and
14 current expenses as hereinafter provided.

15 ~~(b)~~ B. Any surplus monies in any fund of a conservancy district
16 may be transferred to any other fund by the board ~~with the approval~~
17 ~~of the court,~~ but no transfer shall be made from the bond fund
18 prior to the final maturity of the bonds, notes or warrants payable
19 therefrom, and no transfer shall thereafter be made which would
20 reduce the balance in ~~such~~ the fund below the amount required for
21 the payment of all obligations outstanding against ~~such~~ the fund.

22 ~~(c)~~ C. No vouchers shall be drawn against the maintenance fund
23 of a conservancy district until assessments have been levied as

1 provided by this act, ~~no.~~ No bonds shall be issued against the bond
2 fund until an assessment-levying resolution shall have been properly
3 passed by the board of directors and duly entered upon its records,
4 and not until the property owners shall have been given an
5 opportunity for a period of not less than thirty (30) days to pay
6 the assessments so levied against their respective properties.

7 SECTION 5. It being immediately necessary for the preservation
8 of the public peace, health and safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

11 COMMITTEE REPORT BY: COMMITTEE ON ENERGY & ENVIRONMENT, dated
12 3-25-10 - DO PASS, As Coauthored.