

CHAPTER 772

H.B. No. 2457

An Act relating to the creation, administration, powers, duties, functions, and financing of the Little Cypress Utility District.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. CREATION. (a) Pursuant to Article XVI, Section 59, of the Texas Constitution, a conservation and reclamation district is created to be known as Little Cypress Utility District.

(b) The district is a governmental agency and a body politic and corporate. The creation of the district is declared to be essential to the accomplishment of the purposes of Article XVI, Section 59, of the Texas Constitution.

SECTION 2. DEFINITIONS. In this Act:

- (1) "District" means the Little Cypress Utility District.
- (2) "Board" means the board of directors of the district.

SECTION 3. BOUNDARIES. The district is composed of all of the territory within the corporate boundaries of the cities of Longview, Marshall, and Kilgore and of Harrison County on the effective date of this Act. An area within the extraterritorial jurisdiction of one of those cities that is annexed to that city becomes a part of the district when annexed.

SECTION 4. FINDING OF BENEFIT. The legislature finds that all of the land and other property included within the boundaries of the district will be benefited by the works and projects that are to be accomplished by the district pursuant to Article XVI, Section 59, of the Texas Constitution and that the district is created to serve a public use and benefit.

SECTION 5. INITIAL BOARD OF DIRECTORS. (a) Within 30 days after the effective date of this Act, the governing bodies of the cities of Longview, Marshall, and Kilgore and of Harrison County shall appoint initial directors for the district.

(b) The appointing authorities shall designate the following number of initial directors to the board to serve the following terms:

- (1) the city of Longview shall appoint four directors, two of whom shall have terms expiring on January 1 following the first appointment of regular directors and two of whom shall have terms expiring on January 1 following the second appointment of regular directors;
- (2) the city of Marshall shall appoint two directors, one of whom shall have a term expiring on January 1 following the first appointment of regular directors and one of whom shall have a term expiring on January 1 following the second appointment of regular directors;
- (3) the city of Kilgore shall appoint one director who shall have a term expiring on January 1 following the second appointment of regular directors;

(4) Harrison County shall appoint one director who shall have a term expiring on January 1 following the second appointment of regular directors; and

(5) the city of Longview and Harrison County jointly shall appoint one director who shall have a term expiring on January 1 following the first appointment of regular directors.

SECTION 6. BOARD OF DIRECTORS. (a) The district shall be governed by a board of directors composed of nine members with one member appointed by the governing body of the city of Kilgore, four members appointed by the governing body of the city of Longview, two members appointed by the governing body of the city of Marshall, one member appointed by the Commissioners Court of Harrison County, and one member appointed jointly by the governing body of the city of Longview and the Commissioners Court of Harrison County.

(b) To serve as a director, a person must be at least 18 years old and except for the jointly appointed director, must be a resident of the city or county. The jointly appointed director must be a resident of or employed in Harrison County.

(c) Except for the initial directors, directors shall hold office for staggered terms of two years and each shall serve until his successor is appointed and has qualified.

(d) A director's term begins on January 1 following his appointment.

(e) A vacancy on the board shall be filled for the unexpired term by the appointing authority that regularly fills that position.

(f) Each director shall take the constitutional oath of office required of state officers.

(g) A majority of the members of the board constitute a quorum for the transaction of business of the district, but no official action of the board is valid without the affirmative vote of a majority of the members of the board.

(h) A director is not entitled to compensation for serving on the board, but he is entitled to reimbursement by the board for actual expenses incurred in carrying out his duties as determined by the board.

(i) If a city or Harrison County is excluded from the board under Section 28(f) of this Act, the membership of the board from that city or county is automatically removed from the board and the board is reduced in size accordingly.

(j) A person may not be a director if he is an officer, employee, or member of the governing body of a city or Harrison County.

SECTION 7. OFFICERS. (a) Within 15 days after new directors take office, the board shall hold a regular meeting and shall organize by electing from the members of the board one person to serve as president and one person to serve as vice-president.

(b) A person selected to serve as president or vice-president shall serve in that capacity for a term of one year.

(c) The president shall preside over meetings of the board and in his absence the vice-president shall preside.

(d) The president and vice-president shall perform the duties and may exercise the powers specifically given them by this Act or by orders of the board.

(e) The board shall appoint persons to serve as secretary and treasurer for the district. The board may combine the offices of secretary and treasurer.

(f) The persons appointed secretary and treasurer under this section are entitled to the compensation provided by the district's budget.

(g) After the district issues bonds, the person appointed as treasurer shall execute a bond in the amount determined by the board, payable to the district, conditioned on the faithful performance of the treasurer's duties. The district shall pay for the bond.

SECTION 8. PERSONNEL, ETC. The board shall appoint or employ all necessary engineers, attorneys, and other persons.

SECTION 9. SEAL. The board shall adopt a seal for the district.

SECTION 10. POWERS. Except as otherwise provided by this Act, the district may exercise all the rights, powers, privileges, authority, and functions conferred by general law applicable to districts operating under Chapters 30, 51, and 54, Water Code, and under the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) in the manner provided by Section 6 of that Act. To the extent that Chapter 51, Water Code, conflicts or is inconsistent with Chapter 54, Water Code, Chapter 54 prevails, and to the extent that any provision of the general law conflicts or is inconsistent with this Act, this Act prevails.

SECTION 11. ADDITIONAL POWERS. (a) In addition to the powers provided by Section 10 of this Act, the district has the rights, powers, privileges, and functions provided by this section.

(b) The district may operate, control, purchase, construct, lease, or acquire property, works, facilities, and improvements, including those that were previously existing, constructed, or acquired, inside or outside the boundaries of the district that the board finds necessary or required to carry out the authority granted by this Act and the general law.

(c) The district may enter into contracts with persons, public or private corporations, cities, counties, special districts, and other political subdivisions, agencies, departments, or instrumentalities of the state or federal government, or others, on terms and conditions the board considers desirable, fair, and advantageous for:

- (1) the purchase, sale, or both purchase and sale of raw or treated water;
- (2) the transportation, treatment, and disposal of its domestic, industrial, or communal wastes or the transportation, treatment, and disposal of domestic, industrial, or communal wastes of others, including the purposes of Chapter 30, Water Code;
- (3) the purchase, lease, use, management, control, acquisition, or operation of water supply and treatment or distribution facilities as well as sewer collection and treatment facilities, all or part of the facilities or systems owned by other political subdivisions, in accordance with terms and conditions as are mutually agreed on by the governing bodies of the contracting parties; and
- (4) the purposes of planning, making preliminary surveys, investigations, or feasibility reports, engineering, and reports.

(d) The district may acquire, develop, and use underground or surface water rights.

(e) The district may acquire existing water or sewer systems or both and may improve and extend those systems or construct water or sewer systems or both. Construction contracts are subject to competitive bids, but contracts for the acquisition of an existing water or sewer facility may be made on terms approved by the contracting parties.

(f) The district may acquire land, easements, or other property inside or outside its boundaries in Gregg, Harrison, Upshur, and Rusk counties for the accomplishment of its powers and purposes through the exercise of the power of eminent domain.

(g) As to area within the district, the district may establish standard specifications for facilities that are designed or constructed to provide:

- (1) storage, treatment, or transportation of water for domestic, municipal, or industrial purposes that will ensure that these facilities are adequate in design to serve the needs of the inhabitants of the area;
- (2) the collection, treatment, and disposal of sewage; or
- (3) for the disposal of solid wastes.

In no event shall these specifications be made applicable to area included at the time of adoption within the corporate or extraterritorial limits of any city without the approval of the governing body of that city.

Before the specifications become final the board shall hold a public hearing, after giving notice to the Texas Department of Water Resources and the Texas Department of Health, or their successors, and publishing notice in a newspaper with general circulation in the area one time at least 10 days before the date of the hearing.

Appeal from an order adopting standard specifications may be made to a district court in the county in which the principal office of the district is located, and the substantial evidence rule applies. The district is entitled to seek injunctive relief against the construction of any facilities, including extensions to any existing facilities, or if construction has begun after the adoption of the specifications, to seek injunctive relief against the operation of the facilities that do not meet the standard specifications it has approved. The standard specifications, when approved, shall be filed with the Texas Department of Water Resources.

(h) An election is not required in the district or in any city, county, special district, or other political subdivision for the approval of water, sewer, or solid waste contracts or any combination of those contracts. The contracts may be entered into without the necessity of an election by any contracting party.

(i) Payments by a city for the purchase of water or the treatment and disposal of sewage are a maintenance and operating expense of the utility system or combined systems of the city unless the contract makes other provisions.

(j) The district may construct or otherwise acquire all works, plants, and other facilities necessary or useful for the purpose of diverting, further impounding, or storing water, processing water, and transporting water to cities and others for municipal, domestic, industrial, or other useful purposes.

SECTION 12. EMINENT DOMAIN. (a) The district may acquire land inside and outside the district to carry out the powers, rights, privileges, authority, and functions authorized by this Act by condemnation when the board determines, after notice and hearing, that it is necessary.

(b) The right of eminent domain shall be exercised by the district in the manner provided by Chapter 21, Property Code, except that the district is not required to give bond for appeal or bond for costs in a condemnation suit or other suit to which it is a party and is not required to deposit double the amount of any award in any suit.

(c) If the district, in the exercise of the power of eminent domain, makes necessary the relocation, raising, lowering, rerouting, or change in grade, or alteration of the construction of any highway, railroad, electric transmission or distribution line, telephone or telegraph properties and facilities, or pipeline, all necessary relocations, raising, lowering, rerouting, change in grade, or alteration of construction shall be accomplished at the sole expense of the district. "Sole expense" means the actual cost of relocation, raising, lowering, rerouting, or change in grade or alteration of construction to provide comparable replacement without enhancement of facilities, after deducting the net salvage value derived from the old facility.

SECTION 13. CONTRACTS. Any construction contract requiring an expenditure of more than \$5,000 shall be made only after competitive bidding as provided by Chapter 770, Acts of the 66th Legislature, Regular Session, 1979 (Article 2368a.3, Vernon's Texas Civil Statutes).

SECTION 14. BONDS. (a) For the purpose of accomplishing the functions of the district under this Act, and for the purpose of carrying out any other power or authority provided by this Act, the district may issue its negotiable bonds payable from revenues or taxes or both revenues and taxes of the district as are pledged by resolution of the board.

(b) Pending the issuance of definitive bonds, the board may authorize the delivery of negotiable interim bonds or notes, eligible for exchange or substitution by use of the definitive bonds.

(c) The bonds shall be issued as provided by the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes), shall be authorized by resolution of the board, and shall be issued in the name of the district, signed by the president or vice-president, attested by the secretary, and have the seal of the district impressed on them. The bonds shall mature serially or otherwise in not to exceed 40 years and may be sold at a price and under terms determined by the board to be the most advantageous reasonably obtainable. The interest rate on the bonds may not exceed the maximum net effective interest rate as defined by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), legally authorized at the time of issuance of the bonds. The bonds, at the discretion of the board, may be made callable before maturity at the times and prices prescribed in the resolution authorizing the bonds, and may be made registrable as to principal or as to both principal and interest.

(d) Bonds may be issued in more than one series and from time to time as required for carrying out the purposes of this Act.

(e) For the purposes stated in Subsection (a) of this section, and subject to the conditions prescribed by Section 15(a) of this Act, the district may issue bonds payable from property taxes to be levied on all taxable property in the district, or may issue bonds secured both by and payable from those taxes and the revenues of the district. If bonds are issued payable wholly or partially from property taxes, the board shall levy a tax sufficient to pay the principal of and the interest on the bonds as the principal and interest become due, but the rate of the tax for any year may be fixed after giving consideration to the money received from the pledged revenues that may be available for payment of principal and interest to the extent and in the manner permitted by the resolution authorizing the issuance of the bonds.

(f) If bonds payable wholly from revenues are issued, the board shall fix, and from time to time shall revise, the rates of compensation for water sold and services rendered by the district that will be sufficient to pay the expense of operating and maintaining the facilities of the district and pay the bonds as they mature and the interest as it accrues and maintain the reserve and other funds as provided in the resolutions authorizing the bonds. If bonds payable partially from revenues are issued, the board shall fix and from time to time revise the rate of compensation for water sold and services rendered by the district that will be sufficient to assure compliance with the resolution authorizing the bonds.

(g) The district may issue refunding bonds to refund outstanding bonds issued under this Act. The refunding bonds may be issued without having been authorized at an election. Refunding bonds may be issued by the district as provided by Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes).

SECTION 15. ELECTIONS. (a) Bonds payable wholly or partially from property taxes, except refunding bonds, may not be issued unless authorized by an election at which only the qualified voters who reside in the district shall participate and unless a majority of the votes cast at the election favor the issuance of the bonds. An election for the issuance of bonds secured

either wholly or partially by a pledge of property taxes may not be ordered until the board is able to and does publish, in the manner provided by this section, a summary of the improvements to be financed with the proceeds of bonds to be issued.

(b) The election may be called by the board without a petition. The resolution calling the election shall specify the time and places of holding the election, the purpose for which the bonds are to be issued, the maximum amount of the bonds, the form of the ballot, and the presiding judge for each voting place. The presiding judge serving at each voting place shall appoint one assistant judge and at least two clerks to assist in holding the election.

(c) Notice of the election shall be given by publishing a substantial copy of the resolution in a newspaper or newspapers with general circulation in each city and the county contained in the district for two consecutive weeks. The first publication must be at least 14 days before the election. In any city or county in which no newspaper is published, notice shall be given by posting a copy of the resolution in three public places in that city or county.

(d) The returns of the election shall be made to and canvassed by the board.

(e) The Texas Election Code applies to elections held under this section except as otherwise specifically provided by this Act.

SECTION 16. ISSUANCE. After bonds, including refunding bonds, are authorized by the district, the bonds and the record relating to their issuance shall be submitted to the attorney general for his examination as to their validity. If the bonds recite that they are secured by a pledge of the proceeds of a contract, a copy of the contract and the proceedings authorizing the contract also shall be submitted to the attorney general. If the bonds have been authorized and if the contract has been made in accordance with the constitution and laws of this state, the attorney general shall approve the bonds and the contract. The bonds then shall be registered by the comptroller of public accounts. After approval and registration, the bonds and the contract, if any, are valid and binding and are incontestable for any cause.

SECTION 17. LEVY OF TAXES. The board may annually levy taxes in an amount not to exceed five cents on each \$100 of assessed valuation of property in the district to pay the principal of and interest on bonds issued by the district and the expense of assessing and collecting taxes.

SECTION 18. MAINTENANCE AND OPERATING TAX. On approval of a majority of the voters in the district at an election called for that purpose, the district may levy and collect a maintenance and operating tax in an amount not to exceed one cent on each \$100 of assessed valuation of property in the district to pay maintenance and operating expenses of the district. The maintenance and operating tax election shall be held in the manner provided by Section 15 of this Act.

SECTION 19. BOARD AUTHORITY. (a) The board may levy taxes for the entire year in which the district is created.

(b) The board shall levy taxes on all property within the boundaries of the district subject to district taxation.

SECTION 20. TAX RATE. In setting the tax rate, the board shall take into consideration the income of the district from sources other than taxation. On determination of the amount of tax required to be levied, the board shall make the levy and certify it to the tax assessor-collector.

SECTION 21. TAX APPRAISAL, ASSESSMENT, AND COLLECTION. (a) The Tax Code governs the appraisal, assessment, and collection of district taxes.

(b) The board may provide for the appointment of a tax assessor-collector for the district or may contract for the assessment and collection of taxes as provided by the Tax Code.

SECTION 22. CONTRACTS WITH ENTITIES. A contract for supplying water or services as authorized by Section 11 of this Act may be on the terms and for the time as the parties may agree, and may provide that it shall continue in effect until bonds specified in it and refunding bonds issued in lieu of those bonds are paid.

SECTION 23. DEPOSITORY. (a) The board shall designate one or more banks to serve as depository or depositories for the funds of the district. All funds of the district shall be deposited in the depository bank or banks, except that funds pledged to pay bonds may be deposited with the trustee bank named in the trust agreement relating to the bonds, and except that funds shall be remitted to the bank of payment for the payment of principal of and interest on bonds.

(b) To the extent that funds in the depository banks and the trustee bank are not insured by the Federal Deposit Insurance Corporation they shall be secured in the manner provided by law for the security of county funds, unless the resolution or trust agreement, or both, securing the bonds require that any or all of the funds be secured by obligations of or unconditionally guaranteed by the United States.

(c) Before designating a depository bank or banks, the board shall issue a notice stating the time and place at which the board will meet for the purpose of designating a depository and inviting the banks to submit applications to be designated depositories. The term of service for depositories shall be prescribed by the board. The notice shall be published one time in a newspaper or newspapers with general circulation in the district at least 10 days before the date of the meeting.

(d) The board, at the meeting, shall consider the applications and the management and condition of the banks filing them, and shall designate as depositories the bank or banks that offer the most favorable terms and conditions for the handling of the funds of the district and that the board finds have proper management and are in a condition to warrant handling of district funds. Membership on the board of an officer or director of a bank does not disqualify that bank from being designated as a depository.

(e) If no applications are received by the time stated in the notice, the board shall designate a bank or banks inside or outside the district on terms and conditions as it may find advantageous to the district.

SECTION 24. PERMITS. The district may acquire water, wastewater, and solid waste permits.

SECTION 25. WATER AND WATER SUPPLY. The district may purchase water or a water supply from any person, firm, corporation, or public agency, from the state, or from the United States or any of its agencies. The district may, within the discretion of the board, contract with one or more large users of water to acquire a water supply on an agreed allocation of storage space between the district and the user, or may contract independently for the district's water supply.

SECTION 26. TAX EXEMPTION. The accomplishment of the purposes stated in this Act being for the benefit of the people of the state and for the improvement of their property and industries, the district in carrying out the purposes of this Act will be performing an essential public function under the Texas Constitution and is not required to pay any tax or assessment on the project or any part of the project, and the bonds and their transfer and the income from the bonds, including the profits made on the sale of the bonds, are free from taxation in this state.

SECTION 27. RULES. The board may adopt reasonable rules to carry out its powers and duties under this Act including rules to:

- (1) secure, maintain, and preserve the sanitary condition of all water in and to flow into any reservoir owned by the district that by contract or otherwise it may control;
- (2) prevent waste of water or the unauthorized use of water; and
- (3) regulate residence, boating, and camping, and all recreational and business privileges, along or around any reservoir or any body of land or easement owned or controlled by the district.

SECTION 28. CONFIRMATION ELECTION; BONDS. (a) The board shall call an election within the boundaries of the proposed district to determine if the proposed district will be created. Except as provided by this section, the district may not exercise the powers and duties provided by this Act until the creation of the district is confirmed.

(b) Notice of the confirmation election shall state the day and places for holding the election and the proposition to be voted on. The board shall publish the notice of the election one time in one or more newspapers of general circulation in the proposed district. The notice must be published at least 35 days before the date set for the election.

(c) The ballot for the election shall be printed to provide for voting for or against the proposition: "The creation of the Little Cypress Utility District."

(d) Immediately after the confirmation election, the presiding judge of each polling place shall make returns of the election to the board, and the board shall canvass the returns and declare the result.

(e) If a majority of the qualified voters voting on the question in the city of Longview, and at least one other city or Harrison County, favor creation of the district, the board shall declare the district created and shall enter the results in its minutes. If not, the board shall declare that the creation of the district was defeated and shall enter the results in its minutes. The board also shall file a copy of the election results with the Texas Department of Water Resources.

(f) If the district is created but the qualified voters of a city or Harrison County do not vote in favor of creating the district, that city or the county is excluded from the district.

(g) If the district is defeated at an election, the board may call and hold additional confirmation elections, but another election to confirm creation of the district may not be called and held by the board before the first anniversary of the most recent confirmation election. If the district is not created within five years after the effective date of this Act, this Act expires.

SECTION 29. CONSERVATION PROGRAM. The district shall adopt and implement a program of water conservation consistent with rules and criteria adopted and enforceable by the Texas Department of Water Resources for similar districts in the region. "A program of water conservation" means the practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future uses.

SECTION 30. ABOLITION. The district may be abolished in the manner provided by Chapter 541, Acts of the 51st Legislature, Regular Session, 1949 (Article 1118n-5, Vernon's Texas Civil Statutes), if its outstanding indebtedness or obligations have been assumed as provided by that statute and the area of the district is totally within the boundaries of cities.

SECTION 31. LEGISLATIVE FINDING. The legislature specifically finds and declares that the requirements of Article XVI, Sections 59(d) and (e), of the Texas Constitution have been performed and accomplished in due course, time, and order, and that the legislature has the power and authority to enact this Act.

SECTION 32. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 17, 1985, by the following vote: Yeas 134, Nays 0, 1 present, not voting; and, pursuant to the provisions of Article XVI, Section 59(d) of the Constitution of Texas, a copy of H.B. No. 2457 was transmitted to the Governor on April 19, 1985, and the recommendation of the Texas Water Commission was filed with the Speaker of the House on May 23, 1985; passed by the Senate on May 26, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 14, 1985

Effective: Immediately