

CHAPTER 781**H.B. No. 2490**

An Act relating to creation, administration, powers, duties, and financing of the Northwest Liberty County Drainage District.

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

SECTION 1. CREATION. (a) Under Article XVI, Section 59, of the Texas Constitution and subject to approval of the qualified voters of the proposed district at a confirmation election under Section 8 of this Act, a conservation and reclamation district is created in Liberty County to be known as Northwest Liberty County Drainage District.

(b) The district is a governmental agency and a body politic and corporate.

(c) The creation and establishment of the district is found to be essential to the accomplishment of the purposes of Article XVI, Section 59, of the Texas Constitution.

SECTION 2. DEFINITION. In this Act, "district" means Northwest Liberty County Drainage District.

SECTION 3. BOUNDARIES. The district is composed of all of the territory in the following described area:

Beginning on the San Jacinto County Line, same being at the Northwest corner of the Spencer Kirkham Survey Abstract 57;

Thence East along the north line of said Spencer Kirkham Survey to the most Western Northwest Corner of the Texas Land & Oil Co. Subdivision;

Thence South with the most Western west line of said Texas Land & Oil Co. Subdivision to the most Southern Northwest Corner of same;

Thence East to the most Eastern Northwest Corner of said Texas Land & Oil Co. Subdivision;

Thence South with the most Southern West line of said Texas Land & Oil Co. Subdivision to the most Southern Southwest Corner of said Subdivision, same being to the South Line of said Spencer Kirkham Survey and the north line of A. W. Isaacks Survey;

Thence East along said Spencer Kirkham and A. W. Isaacks Surveys to the Northeast Corner of said A. W. Isaacks Survey, same being the most Southern Northwest Corner of the FJC Smiley Survey;

Thence South along the most Southern West line of said FJC Smiley Survey and the West line of E. K. Davis Survey to the Southwest Corner of said E. K. Davis Survey, same being in the North line of the Barton Tarkington Survey, Abstract 354;

Thence West along the North line of said Barton Tarkington Survey to the intersection of Ballard Road;

Thence South along Ballard Road to the intersection of Highway 321;

Thence in a Southerly direction along Highway 321 to the intersection of the North line of the Stephen Nicholson Survey;

Thence East along the North line of said Stephen Nicholson Survey to the Northeast Corner;

Thence South along the East line of said Stephen Nicholson Survey to the Northwest Corner of the John R. Faulk Survey, Ab-34;

Thence East along the North line of said John R. Faulk Survey to the Northeast Corner of said John R. Faulk Survey;

Thence South along the East line of said John R. Faulk Survey to the Northwest Corner of Leatherwood & Wells 35 Acre Tract in the William Donahoe Survey Abstract 26, said 35 Acres being recorded in Volume 713, Page 612 of the Deed Records of Liberty County, Texas;

Thence East along the North line of said Leatherwood & Wells 35 Acre tract and also along the North line of B. J. Nix 35 Acre tract as recorded in Volume 168, Page 101 of the Deed Records of Liberty County, Texas to the Northeast Corner of same;

Thence Continuing East along the most Western North line of the Nancy Ruth Ellis 196.65 Acre tract as recorded in Volume 793, Page 914 of the Deed Records of Liberty County, Texas to the most Northern Southeast Corner;

Thence North to the most Northern Northwest Corner of same;

Thence East to the East line of the William Donahoe Survey, same being the Northeast Corner of Timberline North Subdivision 2;

Thence South along the East line of said Donahoe Survey, same being the West line of the Catlet Burnett Survey to the Southwest Corner of said Catlet Burnett Survey;

Thence East along the South line of said Catlet Burnett Survey, same being the North line of the William Whitlock Survey to a point in the center of the old Tram Road;

Thence South along the Center of said Tram Road crossing the William Whitlock, Jerusha Hardin, James Haney and the William Swail Surveys to a point in the South line of said William Swail Survey, same being in the North line of William Everett Survey;

Thence West to the Northwest Corner of said William Everett Survey;

Thence South to the Northeast Corner of the I & G. N. 10 Survey;

Thence West to the Northwest of said I & G. N. 10 Survey;

Thence South to the Southeast Corner of the G. T. Tabb Survey;

Thence West to the Northwest Corner of the John Chilton Survey;

Thence South to the Northeast Corner of the Thomas J. Haggerty Survey;

Thence West to the Northwest Corner of said Thomas J. Haggerty Survey, same being in the East line of the Ed Pruitt Survey 122;

Thence South to the Southeast Corner of said Ed Pruitt Survey 122;

Thence West along the South line of said Ed Pruitt Survey 122 and H & T. C. Survey, Abstract 263, and the south line of the John Simmons Survey and the B. B. B. & C Survey and the Wm. H. B. Whitham Survey to the Southwest Corner of said Wm. H. B. Whitham Survey;

Thence South across the Edward King Survey to a point in the South line of said Edward King Survey;

Thence West along the South line of said Edward King Survey to the Liberty - Harris County line;

Thence in a Northwesterly direction along said County line to the Northwest Corner of Liberty County line to the Northwest Corner of Liberty County, same being is the South line of San Jacinto County;

Thence is a Northeasterly direction along said County line to the place of beginning.

This tract contains 134,750 acres of land, more or less.

SECTION 4. LEGISLATIVE FINDINGS. (a) The legislature finds that the boundaries and field notes of the district form a closure. If any mistake is made in the field notes, or in copying the field notes in the legislative process, it in no way affects the organization, existence, and validity of the district, the right of the district to issue any type of bonds or refunding bonds for the purposes for which the district is created or to pay the principal of and interest on those bonds, the right to levy and collect taxes, or in any other manner affects the legality or operation of the district or its governing body.

(b) The legislature finds that all of the land and other property included within the area and boundaries of the district will be benefited by the works and projects that are to be accomplished by the district pursuant to the powers conferred by Article XVI, Section 59, of the Texas Constitution, and that the district is created to serve a public use and benefit.

SECTION 5. APPLICABLE LAWS; SUPERVISION. (a) The district may exercise the rights, powers, privileges, authority, and functions provided by the laws of this state applicable to water control and improvement districts including those provided by Chapter 51, Water Code. If any provision of the general law is in conflict or inconsistent with this Act, this Act prevails.

(b) The rights, powers, privileges, authority, and functions granted to the district are subject to a continuing right of supervision of the state to be exercised by the Texas Department of Water Resources.

SECTION 6. GENERAL POWERS AND FUNCTIONS. (a) In addition to the powers provided by general law, the district has the rights, powers, privileges, authority, and functions provided by this section.

(b) The district may purchase, construct, acquire, own, operate, repair, maintain, improve, or extend a drainage system for the district to permit it to control, abate, and change harmful excesses of water, and to gather, conduct, divert, and control local storm water and other local harmful excesses of water, necessary or convenient to the district to carry out the authority granted by this Act and the general law. The district may not provide a waterworks or sanitary sewer system.

(c) The district may enter into contracts for a term of not more than 40 years with persons, corporations, municipal corporations, political subdivisions and agencies of the state and the United States, and others, on terms and conditions the board of directors considers desirable, fair, and advantageous for the district to purchase, construct, acquire, own, operate, repair, maintain, improve, or extend a drainage system for the district to permit it to control, abate, and change harmful excesses of water, and to gather, conduct, divert, and control local storm water and other local harmful excesses of water, and the performance of any of the rights or powers granted by this Act and the general law. The district may not enter into contracts to provide a waterworks or sanitary sewer system.

(d) An election is not required of the district or any municipal corporation or other political subdivision with whom the district contracts to approve of any contract. The district may make payment of the obligations incurred under any contract by the issuance of bonds. The district may deliver its bonds to the United States or the state, or any agency or instrumentality of the United States or the state that entered into contracts with the district.

SECTION 7. WATER CONSERVATION PROGRAM. The district shall adopt and implement a program of water conservation consistent with rules and criteria duly adopted and enforceable by the Texas Department of Water Resources for similarly situated districts in the region. A program of water conservation means the use of 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 8. CONFIRMATION ELECTION AND DIRECTORS' ELECTION. Before the district is created, the creation of the district must be approved and the initial regular directors for the district must be elected at a confirmation and directors' election called and held as provided by Sections 54.026-54.029, Water Code.

SECTION 9. EXCLUSION OF LAND. (a) The board of directors is not required to call or hold a hearing on the exclusion of land or other property from the district. However, the board shall hold an exclusion hearing on the written petition of any landowner or other property owner in the district filed with the secretary of the board before the first bond election is called for the district.

(b) The board may act on a petition in the same manner as it may act on a petition for the addition of land to a district under Sections 51.714-51.717, Water Code. Notice of hearing is not required.

(c) The board, on its own motion, may call and hold an exclusion hearing in the manner provided by Chapter 51, Water Code.

SECTION 10. TAXES. The district shall use the ad valorem plan of taxation.

SECTION 11. ANNEXATION. (a) Land may be annexed by the district in the manner provided by Subsection (b) or (c) of this section.

(b) The district may annex land as provided by Sections 51.714-51.717, Water Code. However, the board of directors may require the petitioners to assume their pro rata share of the voted but unissued bonds of the district and to authorize the board to levy a tax on their property in payment of those unissued bonds, when issued.

(c) The district may annex land as provided by Sections 51.718-51.724, Water Code. However, the board may also submit a proposition to the qualified voters of that area to be annexed on the question of the assumption by the area of its pro rata share of the tax bonds or tax revenue bonds of the district previously approved by the voters but not issued or sold and the levy of an ad valorem tax on all taxable property within the area to be annexed along with the tax on all taxable property within the district for the payment of those bonds.

(d) If the petitioners consent under Subsection (b) of this section, or if the qualified voters at the election under Subsection (b) approve the proposition, the district may issue its voted but unissued tax bonds or tax revenue bonds, even though the boundaries of the district changed after authorization of the bonds.

SECTION 12. BOARD OF DIRECTORS. (a) The district shall be governed by a board of five directors.

(b) Except for the temporary and initial directors, each director shall serve for a four-year term.

(c) Each director shall qualify for office by taking the oath of office.

(d) The district shall obtain a blanket bond in the amount of \$25,000, for the faithful performance of the duties of each of the directors.

(e) The bond shall be filed in the office of the district and kept in its records.

(f) On the effective date of this Act, the City Council of the City of Cleveland shall appoint two residents of that city to serve on the temporary board of directors and the Commissioners Court of Liberty County shall appoint three persons who are residents of the county to serve on the temporary board of directors. If a vacancy occurs on the temporary board of directors, the vacancy shall be filled by the governing body making the original appointment subject to the limitation on residency provided by this section.

(g) The temporary directors shall take their oaths and shall obtain the blanket bond as soon as practicable after the effective date of this Act, but not later than the first meeting of the board of directors.

(h) Except as provided by Subsection (f) of this section, if a vacancy occurs in the membership of the board of directors, the remaining members of the board shall appoint a person to fill the vacancy until the next regular election of directors for the district. If the vacant position is not regularly scheduled to be filled at that election, the person elected at that election to fill the vacancy shall serve only for the unexpired term. However, if at any time the number of qualified directors is less than three for any other reason, the county judge of Liberty County shall appoint the necessary number of directors to fill all vacancies on the board.

(i) The temporary directors shall serve until the initial directors are elected and have qualified.

(j) The two initial directors receiving the least number of votes at the confirmation and directors' election shall serve until the two directors elected at the first regular directors' election have qualified for office, and the three initial directors receiving the highest number of votes at the confirmation and directors' election shall serve until the three directors elected at the second regular directors' election have qualified for office. Successors to the initial directors shall serve four-year terms.

(k) Three directors constitute a quorum at any meeting, and a concurrence of three directors is necessary in all matters pertaining to the business of the district, including letting construction contracts, drawing warrants to pay for construction work, the purchase of existing facilities, and all matters relating to construction work.

(l) The president may execute all contracts entered into by the board of directors on behalf of the district.

(m) The vice-president shall perform all duties and exercise all powers conferred by this Act or the general law on the president when the president is absent or fails or declines to act. Any order adopted or other action taken at a meeting of the board of directors at which the president is absent may be signed by the vice-president, or the board may authorize the president to sign the order or to implement the other action.

SECTION 13. COMMISSION AUTHORITY. The district is subject to the requirements of Sections 51.421 and 51.422, Water Code.

SECTION 14. BONDS. (a) The district may issue its negotiable tax bonds, revenue bonds, or tax and revenue bonds to provide funds for any or all of the purposes provided by this Act, including the acquisition of land.

(b) The bonds shall be issued in the manner provided by Sections 51.450-51.454, Water Code. However, bonds payable solely from net revenues may be issued by resolution or order of the board of directors and no election is necessary for their issuance.

(c) The bonds issued under this Act may be payable from all or any designated part or parts of the revenues of the district's properties and facilities or under specific contracts, as may be provided by the orders or resolutions authorizing the issuance of those bonds. Except to the extent of any conflict with this Act, Chapter 51, Water Code, applies to all bonds issued under this Act. This Act prevails in the event of any conflict with Chapter 51, Water Code.

(d) The board of directors may additionally secure the bonds by a deed of trust or mortgage lien on part or all of the physical properties of the district, franchises, easements, water rights and appropriation permits, leases, contracts, and all rights appurtenant to that property vesting power in the trustee named in the deed of trust or mortgage lien to sell the property for payment of the indebtedness, power to operate the property, and all other authority necessary for the further security of the bonds. Regardless of the existence of the deed of trust or mortgage lien on the property, the trust indenture may include provisions prescribed by the board of directors for the security of the bonds and the preservation of the trust estate, may make provision for amendment or modification and the issuance of bonds to replace lost or mutilated bonds, may condition the right to expend district money or sell district property on approval of a registered professional engineer selected as provided in the trust indenture, and may make provision for investment of funds of the district. If there is a sale under a deed of trust or mortgage lien, the purchaser is the absolute owner of the property, facilities, and rights purchased and is entitled to maintain and operate the property and facilities.

(e) In the orders or resolutions authorizing the issuance of revenue, tax revenue, revenue refunding, or tax revenue refunding bonds, the board of directors may provide for the flow of funds, the establishment and maintenance of the interest and sinking fund, reserve fund, or other funds, and may make additional covenants with respect to the bonds and the pledged revenues and operation and maintenance of those improvements and facilities, including provisions for the operation or the leasing of all or any part of those improvements and facilities and the use or pledge of money derived from the operation contracts and leases as the board considers appropriate. The order or resolutions also may prohibit the further issuance of bonds or other obligations payable from the pledged revenues or may reserve the right to issue additional bonds to be secured by a pledge of and payment from those revenues on a parity with, or subordinate to, the lien and pledge in support of the bonds being issued subject to conditions set forth in the orders or resolutions. The orders or resolutions may include other provisions and covenants as the board may determine, and the board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of any of those bonds.

(f) From the proceeds of the sale of any bonds issued, the district may withhold or set aside out of the bond proceeds an amount for the payment of interest and administrative and operating expenses expected to accrue during the period of construction as that period is estimated by the district's engineer before the passage of the order of the board of directors providing for issuance of those bonds. The period for which bond proceeds are set aside for those purposes may not exceed three years. There may also be withheld or set aside from those bond proceeds an amount necessary to pay all expenses incurred and to be incurred in the issuance, sale, and delivery of the bonds.

(g) Money in the interest and sinking fund and the reserve fund, and in other funds established or provided for in the bond orders or resolutions, may be invested in the manner and in those securities as provided by the bond orders or may be placed in interest-bearing time deposits. Until the bond proceeds are needed to carry out the bond purposes, those proceeds may be invested in securities of the United States government or any agency of the United States and may be placed in interest-bearing time deposits. Revenue bonds, tax revenue bonds, revenue refunding bonds, or tax revenue refunding bonds may be registrable as to principal or as to both principal and interest.

(h) By orders or resolutions adopted by its board of directors, the district may issue revenue refunding bonds or tax revenue refunding bonds to refund revenue bonds or tax revenue bonds issued by the district. The refunding bonds shall be approved by the attorney general as in the case of original bonds and shall be registered by the comptroller of public accounts on the surrender and cancellation of the bonds to be refunded. In lieu of surrender of the bonds the orders or resolutions authorizing their issuance may provide that they shall be sold and the

proceeds deposited in the place or places at which the underlying bonds are payable, in which case the refunding bonds may be issued. If the bonds have been duly called for payment before maturity according to their terms, an amount sufficient to pay the interest of and principal on the underlying bonds to their maturity dates or to their option dates must be deposited in the place or places at which the underlying bonds are payable and the comptroller of public accounts shall register the refunding bonds without the surrender and cancellation of the underlying bonds.

(i) After bonds have been 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, and after the attorney general has approved the bonds, the bonds shall be registered by the comptroller of public accounts. After the bonds have been approved by the attorney general, registered by the comptroller of public accounts, and delivered to the purchaser, they are incontestable except for forgery or fraud. If the bonds recite that they are secured partially or otherwise by a pledge of the proceeds of a contract made between the district and another party or parties, a copy of the contract and the proceeding authorizing the contract may or may not be submitted to the attorney general along with the bond record. If submitted, the approval of the attorney general of the bonds constitutes an approval of the contract, and the contract shall be incontestable for any cause except for forgery or fraud.

(j) The district's bonds shall be sold only after taking public bids.

SECTION 15. EMINENT DOMAIN. (a) The district may exercise the power of eminent domain to acquire by condemnation a fee simple or other interest in property located inside the district if the property interest is necessary to the exercise of the authority conferred by this Act.

(b) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code.

(c) In a condemnation proceeding brought by the district, the district is not required to pay in advance or give bond or other security for costs in the trial court, to give bond for the issuance of a temporary restraining order or a temporary injunction, or to give bond for costs or supersedeas on an appeal or writ of error.

(d) In exercising the power of eminent domain, if the district requires relocating, raising, lowering, rerouting, changing the grade, or altering the construction of any railroad, highway, pipeline, or electric transmission and distribution, telegraph, or telephone lines, conduits, poles, or facilities, the district must bear the actual cost of relocating, raising, lowering, rerouting, changing the grade, or altering the construction to provide comparable replacement without enhancement of facilities after deducting the net salvage value derived from the old facility.

SECTION 16. DEPOSITORY. The board of directors shall select any bank or banks in the state to act as depository or depositories for the funds of the district. To the extent that funds in the depository bank or banks are not insured by the Federal Deposit Insurance Corporation or its successors, or the Federal Savings and Loan Insurance Corporation or its successors, they shall be secured in the manner provided by law for the security of county funds. The fact that a director of the district is a shareholder in a bank does not disqualify the bank from acting as a depository of the district.

SECTION 17. ACCOUNTS. A complete system of accounts shall be kept by the district, and an audit of its affairs for each year shall be prepared by an independent certified public accountant or a firm of independent certified public accountants of recognized integrity and ability. The fiscal year of the district shall be established by the board of directors. The cost of the audit shall be paid by the district. Copies of the audit shall be delivered as follows:

- (1) one copy to each member of the board of directors;
- (2) on request, one copy to the holder or holders of at least 25 percent of the then outstanding bonds of the district;
- (3) five copies to the office of the district, one of which shall be kept on file and shall constitute a public record open to inspection by any interested person within normal office hours; and
- (4) one copy to the Texas Water Commission.

SECTION 18. DISTRICT OFFICE. (a) The board of directors shall designate, establish, and maintain a district office as provided by Section 51.094, Water Code, and in addition may establish a second district office outside the district. Either or both district offices may be a private residence, office, or dwelling, in which event the private residence, office, or dwelling is declared to be a public place for matters relating to the district's business.

(b) If the board of directors establishes a district office outside the district, it shall give notice of the designation of that district office by filing a copy of its order establishing the location of that district office with the Texas Water Commission and in the water control and improvement

district records of the county in which the district is located, and by publishing a notice of the designation of that office in a newspaper of general circulation in that county.

(c) If the location of the district office outside the district is changed, notice of the change shall be given in the same manner as notice of the original location.

SECTION 19. SALE PRICE AND TERMS OF BONDS. Bonds of the district may be sold at the price and on the terms determined by the board of directors, except the bonds may not be sold for an amount less than that provided by law.

SECTION 20. BOND ELECTIONS. Elections to authorize the issuance of bonds by the district shall be held as provided by Chapter 51, Water Code, and the Texas Election Code. If the first bond election fails, Section 51.781(a), Water Code, or any other general law relating to dissolution of the district when a bond election fails, does not apply.

SECTION 21. ELECTION RETURNS. The returns of all elections shall be canvassed by the board of directors as soon as reasonably practicable after the elections.

SECTION 22. BONDS AND NOTES AS INVESTMENTS AND SECURITY FOR INVESTMENTS. (a) District bonds and notes are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) savings and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; and

(9) sinking funds of cities, counties, school districts, and other political subdivisions of the state and other public funds of the state and its agencies, including the permanent school fund.

(b) District bonds and notes are eligible to secure deposits of public funds of the state and cities, counties, school districts, and other political subdivisions of the state. The bonds or notes are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

SECTION 23. CHARGES AND FEES. The district may adopt and enforce all necessary charges and fees, including standby charges or rentals, in addition to taxes, for providing any district facilities or services. All necessary charges and fees, including standby charges or rentals, and taxes imposed by the district constitute a lien on land against which the charges or assessments have been established. No law providing limitation against actions for debt applies under this section.

SECTION 24. APPLICATION OF MUNICIPAL ANNEXATION ACT. The district is created notwithstanding the provisions of the Municipal Annexation Act (Article 970a, Vernon's Texas Civil Statutes), and that Act does not apply to this district.

SECTION 25. TAX EXEMPTION. Since the purposes for which the district is created are for the benefit of the people of this state and for the improvement of their properties and industries, and in carrying out the purposes of its creation the district will be performing an essential public function under the constitution, the district is not required to pay any tax or assessment on its properties or any part of its property or on any purchases made by the district.

SECTION 26. 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. 2490 was transmitted to the Governor on May 6, 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