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# Private Acts of 1937 Chapter 355

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Sincerely,

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## Private Acts of 1937 Chapter 355

**SECTION 1.** That an improvement district is hereby created and established to be known as and styled "Madrid Bend Levee District" which shall embrace and include certain lands in Civil Districts No. 1 and No. 7 of Lake County, Tennessee, within the area described as follows: Beginning at the northwest corner of the land area of the State of Tennessee, and the southwest corner of the land area of the State of Kentucky, on the bank of the Mississippi River; runs thence east, with the Tennessee- Kentucky State line, to the margin of the Mississippi River on the east side of what is known as "Madrid Bend;" thence up stream, running southwardly and eastwardly, with the meandering margin of said Mississippi River, passing Bessie Landing and Cates' Landing, to a point on the margin of said River just north of a signal light of the U.S. Government, numbered 60.8, standing near the River Bank on the north side of a tract of land owned by Mrs. Garnet Lemonds and Mrs. Kate Wright; runs thence in a southwesterly course, passing the northwest corner of a tract of land owned by Mrs. John C. Jackson, in the center of the public road running east and west, formerly known as the district line road; thence, southwestwardly, in the same course, to a point 18 feet west of the northwest corner of Mrs. James N. Jones' barn, which is east of her residence; thence south to an angle in the public road leading from Tiptonville to Cates' Landing, west of the residence occupied by S. L. Coats; thence south, in the same course, with the east side of the right-of-way of said Tiptonville-Cates Landing Road, to a point opposite a concrete culvert under said road, at the northwest corner of a tract of land belonging to Mrs. Mary P. Hubbs; thence west, with Dietzel's north boundary line, and on in the same course, west to the margin of the Mississippi River; thence northwardly, with the meandering margin of said river, to the point of beginning on the State line. Provided, however, that all the lands within said area which are higher in elevation than the sea level elevation of the 1937 flood of the Mississippi River, at Slough Landing, Lake County, Tennessee, and lands on the outside, or river side of levees now existing or that may be constructed, and all sand bars, and bars and towheads or other low lands which periodically overflow at ordinary stages of the Mississippi River, are not to be included in said levee district so as to be taxed for the improvements hereinafter referred to.

**SECTION 2.** That the territory included within the boundaries set out in the foregoing section is hereby organized, established and incorporated into a levee district, under the name and style aforesaid, for the purpose of providing facilities, ways and means for protecting the lands in said district from overflows and floods of the Mississippi River, as nearly as may be possible.

**SECTION 3.** The County Executive of Lake County is vested with all of the nonjudicial authority over matters connected with the affairs of the Madrid Bend Levee District formerly exercised by the County Court or Chairman of the Quarterly County Court. All duties of a judicial nature formerly exercised by the County Court in regard to the Madrid Bend Levee District shall henceforth be exercised by the Circuit Court in Lake County. All references to County Court or Chairman of the Quarterly County Court found in this act shall be interpreted according to this section.

**SECTION 4.** That the Madrid Bend Levee District, by and through its Board of Directors, is hereby authorized to construct levees, and other improvements for the protection of the lands of the district from overflow; to levy assessments against the lands of the district for the payment of the cost of such improvements; to borrow money by the issuance of bonds, notes or warrants, for any legitimate purpose of the district, and to prescribe the terms and details of said obligations; to exercise the right of eminent domain and to acquire rights-of-way for such improvements, by gift, purchase, or condemnation; to employ necessary agents and representatives, including a civil engineer, or engineers, legal counsel, and clerical or administrative help, and to provide for the payment of compensation to such agents and employees; to make contracts for all proper purposes connected with the affairs of the district; to do any and all things necessary and proper to be done to carry out the purposes for which said district is set up and established, and said district, so acting by and through its Board of Directors and Chairman is hereby vested with all the powers, authority and jurisdiction which is conferred upon levee and drainage districts by the general levee and drainage laws of the State of Tennessee, as compiled in the 1932 Code of Tennessee, Section 4216 and 4406, inclusive, not in conflict with the provisions of this Act; and likewise, said Code provisions, subsequent to the provisions for the organization of the district, with reference to the powers and duties of the Chairman of the County Court are hereby made applicable to the Madrid Bend Levee District, except where such Code Sections are in conflict with this Act, or superseded by specific provisions of this Act, the same as though said Code provisions were set out herein verbatim.

**SECTION 5.** The general control, management and supervision of the business affairs of said Levee District is hereby vested in a Board of Directors composed of five members. The County Executive shall be an ex-officio member and Chairman of said Board, and shall hold office until his successor is elected and qualified. The other four members shall serve terms of two years and until their successors are appointed and qualified. At the end of the term of said four appointed members, the County Court of Lake County

shall appoint their successors, who shall be owners of land, or interested in lands, in said district, who shall hold office for the term of two years thereafter, and until their successors are appointed and qualified, and thereafter, every two years vacancies in the office of director shall be filled by appointment by said County Court from among those owning or interested in lands in said district.

As amended by: Private Acts of 1985, Chapter 25

That if there should be a vacancy in the office of the director appointed as aforesaid, because of death, resignation, or other reason, the County Court shall appoint another director of like qualifications to fill such vacancy till the end of the two years' term, and for sufficient reason the County Court may remove a director so appointed, but not till such director has had at least five days' notice of the time of the hearing, and of the grounds on which he should be removed, as alleged, and he shall thus be entitled to be heard and to introduce proof upon the issue as to whether he should be so removed as a director; and if, on the hearing, the decision of the County Court is that he be removed, he may appeal therefrom, on giving proper cost bond, to the Circuit Court of the county, where the matter shall be heard anew and such judgment given as that Court deems just and proper. If a director is removed, the County Court shall appoint another to serve the remainder of the two years' term, having like qualifications as to ownership of lands, etc., as herein provided.

**SECTION 6.** That the Chairman of the County Court of Lake County shall be Chairman of said Board of Directors, and said Board shall elect one of the other directors, Secretary and Treasurer of the Board, and as such Treasurer he shall give bond in an amount sufficient to cover all monies coming into his hands, and conditioned to faithfully account for monies coming into his hands as such Treasurer, said bond to be approved by the County Court and payable to the County or State for the use of said District, and shall be recorded in the Levee and Drainage Record, in the custody of the Clerk of said Court.

The Secretary shall keep the minutes of the proceedings of said Board in a well bound book to be provided for the purpose, or if the Court shall so order, said proceedings may be entered in the Levee and Drainage Record, or such parts of said proceedings may be so entered, with the approval of the County Court, as may be deemed necessary. In said Levee and Drainage Record the Clerk of said Court shall keep a full and complete record of all proceedings arising under this Act, including all orders made by the County Court, or orders certified from the Circuit Court, all bonds required to be given, and all orders and judgments of the County Court touching any matter of the district may be entered upon such Levee and Drainage Book, without being entered upon the regular Minute Book of said Court.

**SECTION 7.** The Board of Directors shall appoint a disinterested and competent engineer or engineers, to represent and act for the District in all matters requiring technical engineering skill, and they are authorized to enter into a contract with such engineer, or engineers, specifying the services to be rendered and the compensation to be paid for same, and may require such engineer and engineers to make bond for the faithful performance of such contract.

**SECTION 8.** That such engineer (it being understood that such term is to be read either singular or plural) shall proceed to examine the lands embraced within the District hereinabove described, and to survey and to locate such levees, structures and improvements as may be necessary or practicable to protect said lands from overflows from the Mississippi River, and to carry out the purposes for which said Levee District is established and which will be of public benefit or utility or conducive to the public health, welfare and safety.

**SECTION 9.** That said engineer shall prepare plans and specifications of the improvements referred to in the last Section, and shall file with the Clerk of the County Court of Lake County his report and proceedings in writing, accompanied by a plat of the District, which report shall set forth the starting point, the route and termini of the levees, structures and improvements recommended to be constructed, profiles showing the height and section of the proposed improvements, the elevations of various portions of said District, the boundaries of the District, the location of each tract of land therein, the names of the owners thereof and the number of acres in each tract, together with the estimated cost of the improvements and such other facts and recommendations as may be deemed material. Said report and plat of the engineer shall also show the location of the proposed levee, or levees, and improvements with respect to the tracts of land traversed by same, together with number of acres of right-of-way on and across each tract which will be required for the construction of said improvements.

**SECTION 10.** That, after the report of the engineer shall have been filed with the Clerk of the County Court, the County Court shall set a day for the hearing of objections of owners of lands within the District, to the plan set out in said engineers report, for the construction of the proposed levee or levees and improvements, and also for the hearing of claims of persons claiming damages by reason of the construction of said improvements, or compensation for lands proposed to be taken for rights-of-way needed for said improvements, and any person claiming such damages or compensation shall file such claim in the office of the County Court Clerk at least three days prior to the day set for said hearing, and

on failure to file such claim at the time specified shall be held to have waived any rights to such damages or compensation; provided, if such person be a infant or non compos mentis, and without regular guardian and the facts are made to appear by affidavit, the Court shall appoint a guardian ad litem for such person, who may file such claim for damages, if deemed proper, for the person so under disability, within the time above allowed, or within three days after he shall have been so appointed.

**SECTION 11.** That publication in a newspaper published in Lake County for two consecutive weeks, of the time and place for said hearing, shall be sufficient notice to the persons concerned as owners, lien holders, encumbrancers, mortgagees, occupants, or in any other way, whether residents or nonresidents of the State, the last publications to be at least ten days before the date set for such hearing; and such notice by publication shall have the same force and effect upon those concerned, as aforesaid, who are residents of the State, as well as non-residents, for all purposes of the proceedings, as process would have duly issued from the Court and served, personally upon them by an officer, and such publication notice need not give the names of the persons thus notified to appear, but need give only a brief statement of the purpose of the hearing, before what Court the petition is to be heard, and the time and place of the hearing; or if the County Court of Lake County shall see proper, said Court may order the Clerk of the Court to issue a summons or writ, or notice, to the Sheriff of the County, said writs to run in the name of the State, commanding the Sheriff to summons the persons named in said writ to appear before the Court on the day set by it for said hearing, and in such case, said writ, summons or notice shall name therein to be served the owners of all the tracts or lots of land in the District, as shown by the engineer's report, or by affidavit filed, and also any lien holders or encumbrancers of any land in said District, and may include persons in actual occupancy of the lands, and shall notify them of the hearing and the purposes thereof, making reference to the report of the engineer being on file as aforesaid. Either method of giving notice may be used, and either shall be equally effective.

If such writ notice is issued, it shall be served at least ten days before the time set for the hearing, but said writ shall not be issued or served upon any of the persons hereinbefore described who shall file with the Clerk a statement in writing signed by such party entering his appearance at said hearing and waiving any additional notice, or the service of the writ may be acknowledged.

In case such owner, lien holder, encumbrancer or other person interested is a non-resident of the State, or his name cannot be ascertained after diligent inquiry, then publication shall be made for such party for two consecutive weeks in some newspaper of Lake County, notifying him of said hearing and the purposes thereof, the last publication to be at least ten days before the time set for said hearing, in the same manner as set out heretofore in this Section. Proof of such publication may be made as provided by law in chancery cases. Who are actual owners, encumbrancers, or interested parties, may be made to appear to the Clerk by the affidavit of any person acquainted with the facts.

If at the time set for the hearing it shall appear to the court that any person entitled to notice as provided has not had such notice, the hearing may be adjourned until such person may be given notice, and the court shall not lose jurisdiction of the subject matter or of the person already properly notified, by such adjournment or postponement.

**SECTION 12.** That all claims for damages or for compensation for lands taken for right of way, and objections to the plan for such improvements as shown in the engineer's report, shall be in writing and filed with the Clerk at least three days before said hearing. If any such claims for damages or compensation for right of way have been filed, as required above, the Court shall appoint three viewers to assess such damages, who shall be disinterested freeholders of the county, and not related to any party claiming damages nor interested in the proposed improvement, and the engineer shall accompany said viewers and furnish such information as may be called for by them concerning the survey of said improvements.

The viewers appointed to assess damages, after being duly sworn to act impartially and faithfully to the best of their ability, shall proceed to view the premises and determine and fix the amount of damages to which each claimant is entitled, and file a report, or reports, in writing with the County Clerk, showing the amount of damages each claimant would be entitled to because of the construction of the proposed improvement, or compensation or damages by reason of the appropriation of lands for right of way, or earth rights.

The report of the viewers shall be filed as soon as practicable, and if any one or more of them fail or refuse to act, or does not proceed to act with promptness, the court may appoint another or others in the place of the one or more so failing or refusing to act.

In estimating the damages the viewers shall give the value of the land proposed to be taken without deduction, but incidental benefits which may result to the owner by reason of the proposed improvements may be taken into consideration in assessing the incidental damages.

**SECTION 13.** That after the filing of the report of the viewers, and of objections of property owners to the proposed plan, the Court may, on the date set for said hearing, or any other day to which the hearing may be adjourned, hear any proof that may be submitted by any persons interested in said proceedings, and upon the full hearing and consideration of the claims, reports and evidence, if in its judgment the probable cost of constructing said improvements is not a greater burden than should properly be borne by the lands benefitted by such improvements and the improvements are conducive to the public health, welfare, benefit and utility, the Court shall adjudicate all questions and enter a decree approving the plans recommended for said improvements, and directing the Directors to proceed with the execution of said plan. The Court shall also proceed to determine the amount of damages sustained by each claimant and may increase or diminish the amount awarded by the viewers, as may seem just and right. The Court shall by said decree, enter a proper order of condemnation, showing that all such lands needed for said improvements are appropriated and belong to the District for all its necessary purposes. Any party aggrieved at the decision of the County Court may appeal there-from to the Circuit Court of Lake County, by filing with the Clerk of the County Court a bond with good security in such amount as the Court may fix; provided, however, that such appeal taken and prosecuted from the judgment of the County Court awarding damages, shall not prevent the work of the District, being proceeded with, nor with the immediate appropriation, condemnation and use of the lands in question, if the District, or the Directors, or any one or more of the land owners interested, will pay, or tender the damages assessed, or will give bond, with good security payable to the party awarded damages, in double the amount of damages awarded and such costs as may be awarded on appeal.

**SECTION 14.** That the Levee District by and through its Board of Directors may, if deemed preferable, exercise the right of eminent domain and acquire real estate needed for said levee and improvements by a proceeding in the Circuit Court of Lake County, according to the procedure provided for the taking of land for railroads, roads and other works of internal improvement, as provided in Section 3109 to 3170 of the 1932 Code of Tennessee, instead of adopting the method first set out, said remedies being accumulative and not exclusive.

**SECTION 15.** That if, at such hearing the County Court is of opinion that the recommended plan for improvement is not for the best interest of the District, it may order the engineer, or a new engineer appointed by it, if deemed advisable, to make further examination and report to the Court as to said improvements, in which event the hearing shall be continued until the filing of such further report, or the Court may modify the plan, in such particulars as it may consider for the best interest of the District and enter a decree accordingly.

**SECTION 16.** That the County Court shall appoint three commissioners, one of whom shall be a competent engineer, either a resident or non-resident of the county, and two of whom shall be freeholders of the county, not living within the levee district and not interested therein, or in a like question, nor related to any party whose land is affected thereby, and said commissioners shall, as soon as practicable after their appointment, and after being sworn to perform their duty faithfully and impartially to the best of their ability, inspect and classify all the lands benefitted by the improvements proposed to be constructed in a graduated scale of benefits, naming the tract or tracts of each owner and so classifying the same, each tract to be numbered according to the benefit received, as below provided, by the proposed improvement.

**SECTION 17.** That said commissioners shall make an equitable apportionment and assessment of the cost, expenses, cost of construction, fees and damages assessed for the construction of any such improvements, and make report in writing thereof to the County Court. In making said assessment and apportionment, the lands receiving the greatest benefit shall be marked on scale of one hundred, and those benefitted in a less degree shall be marked with such percentage of one hundred as the benefit received bears in proportion thereto. This classification, when finally established, shall remain as a basis for all future assessments connected with the objects of said levee district, unless the County Court, for good cause, shall authorize a revision thereof.

In making such classification, said commissioners are authorized to divide the land of the owner lying in one body into more than one tract, and classify such subdivision thereof, if they are of opinion that portion of such tract will be more benefitted than other portions, and especially when such entire tract is a large one, and that it will be more equitable and just to so classify it in subdivisions. In the report of such commissioners they shall specify each tract of land by boundaries or brief description and the ownership thereof as the same appears on the tax books of the county or as the same has been previously adjudged in the proceeding. Whenever any public highway is beneficially affected by the proposed improvements, the Commissioners shall make a lump sum assessment, according to benefits accruing and such assessments shall be paid by the Board of Highway Commissioners of Lake County, or by the county. Said assessment shall be made on the basis of benefits accruing to the public highways within the district as compared to and in proportion to the benefits accruing to other lands in said district.

**SECTION 18.** That, any objection to such assessment and apportionment shall be filed in writing with the County Court Clerk on or before noon of the day the matter of said assessment and apportionment is set for hearing by the Court. The assessment may be made without notice, as taxes are assessed without notice in such cases, but publication shall be made in some newspaper published in the county, for two consecutive weeks, notifying all parties concerned in any way, of the date set for hearing said matter of assessment and apportionment by the Court, when they may be heard, if they desire; the last of said publications shall be at least five days before the day set for the hearing, and said publication to be in lieu of and instead of, notice personally served, but shall not give the name of the parties, but only a brief statement of the date and purpose of such hearing.

When the day set for the hearing shall have arrived, and the hearing is not continued by the Court for good reason, as it may be, the County Court shall proceed to hear and determine all exceptions or objections made and filed to said report or any parts thereof, as may appear to the Court be just and equitable; and the County Court shall assess such apportionments so fixed by it upon the lands within such levee district.

If the first assessment made by the Court for the original cost of the improvement as provided is sufficient, or additional improvements are needed from time to time, by reason of new situations arising, the Court may make additional assessments in the same ratio as the first.

If for any reason the Court annuls or sets aside such report of the commissioners, it may order them to make a new report, or may remove them and appoint new commissioners to act as in the first instance.

**SECTION 19.** That the assessment shall be levied upon the lands of the owners so benefitted in the ratio aforesaid and shall be collected in the same manner as taxes for county purposes, except as herein specially provided, and the funds so collected shall be kept as a separate fund, and shall be paid out only for the purposes properly connected with such improvement and on the order or warrant of the Chairman of the County Court, or Chairman pro tem, in the event that the Chairman is incompetent or cannot act at the time.

**SECTION 20.** That an appeal may be taken to the Circuit Court of Lake County from the order of the County Court fixing the assessments or benefits upon the lands in the same manner and time as herein provided for appeals from the assessment of damages.

Any land owner, tenant or encumbrancer who appeals from such order fixing the assessment of benefits shall execute bond, with good security, for costs and damages, in such amount as the Court may fix, and the oath provided by law for poor persons shall not be allowed in lieu of such bond.

Such appeal shall not prevent the collection of such assessments being proceeded with, nor stay such collection in any way, if the district or any land owner execute bond with good security, payable to such appellant, and conditioned to hold such appellant harmless against loss, and to abide by and perform the judgment of the Court, if such appeal is successfully prosecuted.

If the County Court shall determine that the estimated cost of the levees and improvements is greater than should be levied in a single year upon the lands benefitted, the Court may fix the amount that shall be levied and collected each year, and may issue levee bonds of the county, bearing not more than six per centum annual interest, said interest payable semiannually, and may devote the proceeds of such bonds to the payment of the expenses and work as it progresses, or to the payment of the cost of rights of way, and other expenses. The County Court may issue and sell either bonds or, time warrants, or notes, for the purpose of raising funds with which to pay for said improvements, rights of way, and other necessary expenses, and should the cost of such work exceed the estimate, a new apportionment of the assessment may be made and levied and other bonds, warrants or notes, issued and sold in like manner, but in no case shall said obligations run longer than twenty years.

**SECTION 21.** That the terms and times of payment of the bonds or other obligations, so issued shall be fixed by the Board of Directors of the district, and such bonds or other obligations shall be signed by the Chairman of the County Court and countersigned by the Clerk of said County Court, and shall be verified either by the county seal or seal of the County Court Clerk. Any bonds so issued shall be issued for the benefit of the district and shall show in the face thereof that they are to be paid only by assessments levied and collected on the lands within the district, and shall be issued in such denominations and with such maturities as may be fixed in the resolutions adopted by the Board and approved by the County Court, and said bonds and the assessments levied on the land of the district to pay same, shall be liens on said lands in the district.

**SECTION 22.** That all matters involving the disposition of the proceeds of bonds, or other obligations so to be issued, and moneys collected by assessments on said lands, the compensation of the County Trustee for receiving, collecting and disbursing such moneys, the compensation of engineers, Counsel, and other employees and officials, and all other details connected with the administration of the affairs of the

district, including the procedure for collecting taxes and assessments, delinquent, or otherwise, shall be regulated by the general levee and drainage laws of the State as contained in Sections 4216 to 4406 of the Code of 1932, in so far as such sections are applicable and not inconsistent with specific provisions of this Act: Provided, however, that the Board of Directors are authorized to fix the compensation of viewers, appraisers and other employees at a greater or less sum than the rate of pay fixed in said Code, if the circumstances warrant same.

**SECTION 23.** That contracts may be let for the proposed improvements as a whole or in sections or installments, or, if the Board of Directors elect to construct some or all of said improvements by force account, they may do so. The Board may, by resolution, determine the manner and terms governing the making of said improvements.

**SECTION 24.** That the Madrid Bend Levee District is hereby, vested with jurisdiction and control over, the existing levee, including earth levees, sand bag levees, mud box levees, and the entire levee system, extending from the terminum of same near Slough Landing downstream, passing Cates Landing and Bessie to the terminus of same northeast of Bessie, near Kirby's South boundary line, subject to any and all rights existing in the Mississippi River Commission, or the Federal Government.

The Levee District is empowered to co-operate with the Mississippi River Commission, and all Federal or other agencies and to make contracts with them, for the purpose of restoring, reconstructing, enlarging and extending said levee, and for the construction of any other levees needed and for the protection of the lands in said district.

Said levee district is authorized to acquire and furnish for the use of the Mississippi River Commission, or other agencies, all rights of way and earth rights for the construction and reconstruction of levees, by purchase, gift or condemnation, whether within or without the boundaries of said district, for all the necessary purposes of the project.

**SECTION 25.** That it shall be unlawful for any person, or corporation, in any way to damage, injure, obstruct, or trespass upon said existing levee, or any levee to be constructed in the future by said district or said co-operating agencies, or to interfere with the maintenance of same, and any person or corporation violating this section shall be guilty of a misdemeanor and be fined not less than Ten nor more than Fifty Dollars, and may be enjoined and restrained from so interfering with or damaging said levee by the Chancery or Circuit Courts having jurisdiction of the subject matter.

**SECTION 26.** That the Madrid Bend Levee District, by and through its Board of Directors, is authorized to co-operate with any levee board, or other agency having in charge the control of the Western Point Dike, in Fulton County, Kentucky, so as to connect the levees in Kentucky and Tennessee, and form one continuous system, and to make contracts for the mutual benefit of the overflowed areas in both States.

**SECTION 27.** That the powers herein conferred on said Levee District created by this Act are not limited to the provisions hereof, and said Levee District and its Board of Directors are hereby clothed with such additional authority as may be necessary in order to carry out the general purposes and powers set out in this Act, including all powers vested in improvement districts under the general Levee and Drainage laws of Tennessee, as set out in the 1932 Code of Tennessee, or any amendments thereto, not in conflict herewith.

**SECTION 28.** That all laws and parts of laws in conflict with this Act be and the same are hereby repealed.

**SECTION 29.** That this Act take effect from and after its passage, the public welfare requiring it.

Passed: March 3, 1937.

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