

## APPENDIX

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CONFIDENTIAL CENSUS REPORT: Your report is required by Act of Congress. This Act also makes it unlawful for the Bureau to disclose any facts, including statistical information concerning the Nation's population, resources, and business activities. Your

16-243

DEPARTMENT OF COMMERCE—BUREAU OF THE CENSUS

WASHINGTON

SIXTEENTH CENSUS OF THE UNITED STATES: 1940 DRAINAGE

EXPLANATIONS AND INSTRUCTIONS

Legal requirement.—A report of every drainage enterprise in the United States is required by the Decennial Census Act of the Congress, approved June 18, 1920.

Drainage of agricultural lands is the act or process of drawing off an excess of water by underground conduits, pipes, or tiles; or by open or covered trenches in the surface of the ground; or by pumping, for the purpose of improving the condition of the soil and crops. In this connection the area drained does not include land from which water flows without artificial aid into natural watercourses; nor does it include land protected from overflow by levees, dikes, or embankments; nor areas guarded by trenches from the run-off from higher lands, unless some form of drainage works has been constructed on the protected land.

Definition of a drainage enterprise.—A drainage enterprise, for the purpose of this census, is the area—

- (1) organized in one drainage district; or
(2) assessed for the same public drain; or
(3) in corporate or in private ownership drained by works operated as one undertaking.

This census relates only to the drainage of agricultural lands. A report is to be made for each such drainage enterprise organized under a general or a special drainage law, or as a corporation, and for each drainage enterprise under private ownership draining as much as 500 acres. Do not report any privately owned enterprise draining less than 500 acres.

All questions are to be answered.—If exact information is not available give the best estimate possible and write "Est." beside the answer. Use the margin of the schedule or a separate sheet when additional space is necessary to make the answers clear, definite, and complete.

SCHEDULE No. (1)

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CODES

Class Code (2)

Levy Code (3)

Organized Code (4)

Purpose Code (5)

Completion Code (6)

Pumping Code (7)

This schedule is to be used ONLY in the following States:

Table listing states: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, Wyoming.

IF THE ENTERPRISE IS LOCATED ENTIRELY IN ONE COUNTY: Answer all questions for the whole enterprise.

IF THE ENTERPRISE IS LOCATED IN MORE THAN ONE COUNTY: Prepare a separate report for each county.

Answer Questions 1 to 9, inclusive, for the whole enterprise on each schedule.

Answer Questions 11 to 35, inclusive, for ONLY that part of the enterprise which is located in the county reported under Question 10.

I.—MANAGEMENT AND LOCATION OF ENTERPRISE

Form I: 1. Name of drainage district or enterprise; 2. Individual, board, or company controlling enterprise; 3. Location of enterprise; 4. Person furnishing information.

II.—CLASS OF ENTERPRISE

Form II: 5. Indicate type of organization; 6. Has this enterprise the power of levying taxes?; 7. Year in which this enterprise was organized; 8. If drainage was begun by a different enterprise...

III.—PURPOSE OF DRAINAGE

Form III: 9. Indicate principal purpose of artificial drainage by X: Improvement of land already in farms; Reclamation of swampland; Protection against overflow; Removal of alkali or seepage from irrigation.

# SCHEDULE

names or identity, from your census reports. Only sworn census employees will see your statements. Data collected will be used solely for preparing Census Reports Cannot Be Used for Purposes of Taxation, Regulation, or Investigation.

## IV.—SEPARATE REPORT FOR EACH COUNTY

NOTE: { If enterprise is located entirely in one county: Answer Questions 11 through 35 for the whole enterprise.  
 If enterprise is located in more than one county: Answer Questions 11 through 35 only for that part of the enterprise located in the county reported under Question 10.

10. Name of county to which the following answers apply \_\_\_\_\_

V.—LAND IN ENTERPRISE (in this county)	Code	VII.—DRAINAGE WORKS (in this county)	Code
<p>11. Area of enterprise: (The sum of b and c must equal a.)</p> <p>(a) Total _____ Acres <span style="float: right;">{A-1 B-1</span></p> <p>(b) Assessed for cost of enterprise _____ Acres</p> <p>(c) Not assessed but benefited _____ Acres <span style="float: right;">A-2</span></p> <p>(d) Why was acreage reported under "c" not assessed? <input style="width: 100px;" type="text"/> <span style="float: right;">A-3</span></p> <p>(e) If this enterprise was established for any other purpose than drainage, what area is served or to be served by the work for which costs are assessed? _____ Acres <span style="float: right;">A-4</span></p>		<p>NOTE.—Drainage works of an enterprise include all varieties of underground conduits, pipes, or lines of tile; drains of stone, wood, or other materials; and all open ditches, canals, and pumping equipment for drainage. Levees, dikes, dams, weirs, gates, and other devices for draining away or controlling surface and soil waters are to be considered "Drainage works" when, and only when, they are constructed or operated with drainage ditches, underdrains, or drainage pumps. Tile as here used includes pipes of earthenware, concrete, or other materials buried beneath the surface in such a way as to permit the excess water to flow away. Ditches include all open artificial trenches, usually with sloping sides.</p> <p>NOTE.—Under Questions 24 through 28 include all drainage works in this county being operated or maintained by this enterprise, but DO NOT include any works being operated or maintained by some other enterprise.</p>	
<p>12. Overlapping of enterprises:</p> <p>(a) Portion of total area (11a) that was included in later enterprises for which reports are obtained _____ Acres <span style="float: right;">{A-5 B-2</span></p> <p>(b) Portion of total area (11a) that has not been included in later enterprises for which reports are obtained _____ Acres</p>		<p>24. Open ditches belonging to this enterprise:</p> <p>(a) Total length constructed or improved _____ Miles <span style="float: right;">C-3</span></p> <p>(b) Additional length authorized _____ Miles <span style="float: right;">C-4</span></p> <p>25. Levees and dikes belonging to this enterprise:</p> <p>(a) Total length constructed, rebuilt, or relocated _____ Miles <span style="float: right;">C-5</span></p> <p>(b) Additional length authorized _____ Miles <span style="float: right;">C-6</span></p> <p>26. Tile drains belonging to this enterprise:</p> <p>(a) Total length installed _____ Miles <span style="float: right;">C-7</span></p> <p>(b) Additional length authorized _____ Miles <span style="float: right;">C-8</span></p> <p>27. Number of drainage wells from which water is pumped by this enterprise to lower ground water table (if none, write "None") _____ Number <span style="float: right;">C-9</span></p> <p>28. Pumping equipment (show only in county where located): <input style="width: 100px;" type="text"/> <span style="float: right;">C-10</span></p> <p>(a) Kind of power _____ (Steam, electric, Diesel, etc.) <span style="float: right;">C-11</span></p> <p>(b) Capacity of plant _____ Horsepower <span style="float: right;">C-12</span></p> <p>(c) Kind of pumps _____ (Centrifugal, rotary, turbine, plunger, etc.) <span style="float: right;">C-13</span></p> <p>(d) Number of pumps _____ Number <span style="float: right;">C-14</span></p> <p>(e) Total capacity of pumps _____ Gallons per minute <span style="float: right;">C-15</span></p> <p>(f) Average lift _____ Feet <span style="float: right;">C-16</span></p>	
<p>NOTE.—Questions 13 to 17, inclusive, apply to the acreage reported under Question 13b. The sum of a, b, and c under each of Questions 13 and 14 should equal the answer to 12b.</p>			
<p>13. Drainage condition in 1939: (Question 13 relates only to degree of wetness of the land, regardless of its actual use.)</p> <p>(a) Area unfit to raise any crop, for lack of drainage _____ Acres <span style="float: right;">A-6</span></p> <p>(b) Area drained, fit to raise normal crop _____ Acres <span style="float: right;">{A-7 B-3</span></p> <p>(c) Area partly drained, fit for partial crop only _____ Acres</p>		<p>29. Area (in 12b only) served by pumps (if none, write "None") _____ Acres <span style="float: right;">C-16</span></p> <p>30. Maintenance of drainage works:</p> <p>(a) Are the ditches maintained systematically? _____ (Yes or No) <span style="float: right;">{A-16 B-13 C-17 D-11</span></p> <p>(b) Indicate method of doing maintenance work by X:</p> <p>District forces _____ <span style="float: right;">A-17</span></p> <p>Contract let _____ <span style="float: right;">B-14</span></p> <p>Work apportioned to landowners _____ <span style="float: right;">C-18</span></p> <p>Other (give name) _____ <span style="float: right;">D-12</span></p> <p>(c) Does enterprise own excavators or other power equipment (not including automobiles and trucks) used principally for maintenance? _____ (Yes or No) <span style="float: right;">{A-18 B-15 C-19 D-13</span></p> <p>(d) Cost of operation and maintenance in 1939 (if none, write "None") _____ \$ (Omit cents) <span style="float: right;">{B-16 C-20 D-14</span></p>	
<p>14. Use of land in 1939:</p> <p>(a) Improved land _____ Acres <span style="float: right;">{A-8 B-4</span></p> <p>(b) Timber and cut-over land (all requiring clearing before it can be plowed) _____ Acres <span style="float: right;">A-9</span></p> <p>(c) Other unimproved land _____ Acres</p>		<p>31. Government aid for maintenance and rehabilitation:</p> <p>(a) Did this enterprise ever receive from any Federal agency, directly or through State or local organization, assistance in restoring its drainage works without obligation to repay the cost? _____ (Yes or No) <span style="float: right;">{B-17 C-21 D-15</span></p> <p>(b) Name of such agency: <input style="width: 100px;" type="text"/> <span style="float: right;">{B-18 C-22</span></p>	
<p>15. Land in occupied farms in 1939:</p> <p>(a) Total area _____ Acres <span style="float: right;">{A-10 B-5</span></p> <p>(b) Area planted in 1939 _____ Acres <span style="float: right;">A-11</span></p> <p>16. Area that has been assessed by this enterprise, but was idle in 1939 _____ Acres <span style="float: right;">A-12</span></p> <p>17. Area available for settlement (if none, write "None") _____ Acres <span style="float: right;">{A-13 B-6</span></p>		<p style="text-align: center;"><b>VIII.—EMPLOYMENT AND PAY ROLL</b></p> <p>32. Total amount of wages and salaries paid and payable for 1939 (if none, write "None") _____ \$ (Omit cents) <span style="float: right;">D-16</span></p> <p>33. Total number employed during the week ending April 29, 1939 (if none, write "None") _____ Number <span style="float: right;">D-17</span></p>	
<p style="text-align: center;"><b>VI.—CAPITAL INVESTED AND FINANCING (in this county)</b></p> <p>NOTE.—The following inquiries relate to the costs assessed or to be assessed against lands in this county which, in the case of an enterprise located in more than one county, may be different from the cost of the drainage works constructed in this county. The figures should show the cost of original construction plus enlargements and extensions, but not operation or maintenance. Where investment and maintenance costs have not been kept separate, the portion representing capital investment should be estimated as accurately as possible.</p>		<p style="text-align: center;"><b>IX.—FLOOD PROTECTION BY OUTSIDE AGENCIES (in this county)</b></p> <p>34. Area (in 12b only) protected from overflow by levees or dikes belonging to a levee district, State, or other outside agency (not this enterprise). (If none, write "None.") _____ Acres <span style="float: right;">{B-19 C-23</span></p> <p>35. Name of outside agency protecting area in this enterprise from overflow: _____ <span style="float: right;">B-20</span></p>	
<p>18. Cost of drainage works to January 1, 1940 _____ \$ (Omit cents) <span style="float: right;">{B-7 C-1 D-1</span></p> <p style="font-size: small;">Includes engineering, organization, rights-of-way, damages, construction and purchase of drainage works, legal services, administration, and lands and buildings, but not lands for sale or for farming. Include obligations of earlier enterprises assumed by this enterprise, and omit obligations of this enterprise assumed by later enterprises.</p>		<p>34. Area (in 12b only) protected from overflow by levees or dikes belonging to a levee district, State, or other outside agency (not this enterprise). (If none, write "None.") _____ Acres <span style="float: right;">{B-19 C-23</span></p> <p>35. Name of outside agency protecting area in this enterprise from overflow: _____ <span style="float: right;">B-20</span></p>	
<p>19. Estimated additional cost to complete works authorized _____ \$ (Omit cents) <span style="float: right;">B-8</span></p> <p>20. Total indebtedness, Dec. 31, 1939 (if none, write "None") _____ \$ (Omit cents) <span style="float: right;">D-2</span></p> <p>21. Amount of taxes and special assessments collected in 1939 (if none, write "None") _____ \$ (Omit cents) <span style="float: right;">D-3</span></p> <p>22. Arrearage, Dec. 31, 1939: _____ \$ (Omit cents) <span style="float: right;">D-4</span></p> <p>(a) Was this enterprise in arrears in payment of principal or interest on bonds or other obligations? _____ (Yes or No) <span style="float: right;">{A-14 B-9 D-5</span></p> <p>(b) Amount in arrears (if any) _____ \$ <span style="float: right;">D-6</span></p> <p>(c) Has any reduction been made in the total of cost assessed for this enterprise by reorganization, refinancing, bankruptcy proceedings, or any less formal agreement with bondholders or other creditors? _____ (Yes or No) <span style="float: right;">{B-10 D-7</span></p> <p>(d) Amount of such reduction in indebtedness _____ \$ (Omit cents) <span style="float: right;">D-8</span></p>		<p>23. Area delinquent in payment of drainage taxes, Dec. 31, 1939 (if none, write "None") _____ Acres <span style="float: right;">{B-11 D-8</span></p>	

## INSTRUCTIONS TO SPECIAL ENUMERATORS

## DRAINAGE SCHEDULE

CENSUS OF AGRICULTURE: 1940

## GENERAL INSTRUCTIONS

(See also section *Explanations and Instructions* on face of schedule)

A drainage schedule is to be filled out for each enterprise which was organized for drainage of agricultural land, or was organized for some other purpose and has undertaken drainage of agricultural land. (See definitions on the face of this schedule, drainage of agricultural land and drainage enterprise in column 2, and drainage works in column 4.) Agricultural land is to include land useable for agriculture when drained.

**Overlapping enterprises.**—An independent enterprise may include part or all of an earlier enterprise, or may be partly or wholly included in a later enterprise. A separate report, on the drainage schedule, will be obtained for each of the overlapping enterprises unless one of the enterprises is omitted from the census for some reason other than the overlapping. The amount of overlapping with later enterprises will be stated in answer to Question 12a.

**Subdistricts.**—In some States an area wholly or partly within an organized drainage enterprise may be organized as a subdistrict, under the same or a different governing board. Each such subdistrict should be considered a separate enterprise from the main or parent district in which it is situated, and a separate schedule prepared for it, if separate records have been kept.

**Two or more enterprises under the same ownership.**—The same corporate or private ownership may cover two or more drainage enterprises, for each of which a separate report should be made. All lands drained by the same outlet constructed or improved by the owner (or owners) of these lands should be reported as one enterprise. All lands in one continuous body under one ownership should be reported as one enterprise, unless different parts were constructed separately and are operated independently, in which case each part should be reported as an enterprise. Separate tracts of less than 500 acres each, with drainage works under private ownership, should not be reported unless drainage facilities serving a total of 500 acres or more of such tracts were constructed or are now operated as a unit.

**Enterprises that have not begun construction.**—For an enterprise that has been organized but has not begun construction, a report should be made if the enterprise is a going concern, answering those questions that apply to the case in hand.

**Method of making the canvass.**—Each special enumerator doing field work in the Census of Drainage will be assigned a definite territory, in which he will be held responsible for obtaining complete reports regarding all drainage enterprises. Within this territory he will arrange his itinerary so as to obtain the reports as economically as possible.

**Lists of drainage enterprises.**—Lists of drainage enterprises will be supplied for use of the special enumerators, who should use every available means to make these lists complete and to correct all errors found in these lists. If two or more districts or drains have been combined into one enterprise, this should be reported, with the names of the separate enterprises and the name of the present organization.

The additional names should be entered on the lists in order of the year of organization.

**County maps.**—To show the approximate locations of the enterprises (Question 3), and especially to aid in determining the overlapping of enterprises (Question 12) and the particular land to be considered in answering certain questions on the schedule, the boundaries of the enterprises are to be drawn on county maps which will be supplied to each special enumerator with his assignment.

In districts where there is overlapping:

Plat first the enterprise organized last—the "latest" enterprise—and put its name or number within the boundary.

Plat the remaining enterprises in order, the latest-organized first, and put its name or number on that part of each not included in the later enterprises.

Where land has been assessed in three or more drainage enterprises, and therefore identification of the boundaries of different enterprises may be difficult, the boundary of an enterprise need not be traced across the area included in two later enterprises. That is, if County Drain 10 includes land that has been assessed for County Drain 18 and for County Drain 27 (both of which already have been plated, No. 27 before No. 18), the boundary of County Drain 10 need not be shown across the area that is included in both County Drain 18 and County Drain 27.

**County reports.**—As soon as the special enumerator completes the canvass of any county, he will prepare a general statement concerning drainage conditions in the county, and include comments that may be helpful in explaining and tabulating the data on the reports (schedules) for the individual enterprises. This report, the county map, and the corrected list of enterprises will be submitted with the final reports from the county.

## INSTRUCTIONS CONCERNING SPECIFIC INQUIRIES

(The instruction numbers correspond with the question numbers on the face of the schedule)

## GENERAL INFORMATION

Enterprises located in more than one county.—Many drainage enterprises include land in more than one county. That the statistics may be tabulated correctly by counties, it is necessary that the portion in each county be reported on a separate schedule. Questions 1 to 9, inclusive, are for identification and general classification, and should be answered alike on all schedules covering parts of the same enterprise; but Questions 10 to 35, inclusive, on any one schedule relate to the land and drainage works in only one county—the county named in answer to Question 10.

1. **Name of enterprise.**—Give the name of the drainage enterprise exactly as it appears on the county or other public records, if the enterprise is a legally organized drain or district or a corporation; if it is under private ownership, give the correct name of the individual, firm, or company.

2. **Individual, board, or company controlling enterprise.**—(1) For an enterprise owned by an individual or by a private firm or company, give the name of that individual or firm. (2) For a drainage district or other enterprise organized under a drainage law, give both the name and the official title of the officer immediately in charge. (3) For any other drainage enterprise, give both the name of the company or association having control, unless it has been given in answer to Question 1, and the name of the secretary or responsible executive officer. One purpose of this inquiry is to obtain the name and address of the official or other person responsible for directing the affairs of the enterprise, from whom authoritative information can be obtained, if needed.

3. **Location of enterprise.**—Name all counties in which any part of this enterprise is situated. Designate each township in which a part of the enterprise is situated, by township and range numbers where covered by a General Land Office survey. For an enterprise comprising only a few square miles, indicate the location more definitely by giving the section numbers or otherwise designating the approximate location in the township.

The lake, stream, or ditch to be named as receiving the discharge is that into which the water flows from the lower end of the drainage construction or improvement made by the enterprise. The location of the district outlet is the point where the drainage works discharge into the natural watercourse.

4. **Person furnishing information.**—Enter here both name and official title of the individual who furnishes the information given on the schedule, whether it is or is not the same as given in answer to Question 2. In cases where the information is compiled by the special enumerator making the canvass, as from county records, he should enter his own name and title and add "from county records" or other appropriate notation.

The signature required is that of the special enumerator who obtains the report.

5. **Type of organization.**—Classify the enterprise according to its kind of government, or to its primary purpose if that was not drainage. The name of the enterprise is not a reliable guide; for example, most so-called drainage districts in Iowa should be classed as county drains.

A drainage district is governed by officials elected or appointed for the particular enterprise.

A county drain is governed by county officials.

A township drain is governed by township officials.

A State project is governed by State officials.

A commercial development is one organized to develop and sell land for profit.

An individual-ownership enterprise is an undertaking by one or more land-owners without legal organization or supervision.

An irrigation enterprise is one organized primarily to irrigate land.

Other types of drainage enterprises might include such developments as undertakings to drain marshlands for mosquito control, if they have drained or will drain lands used or usable for agriculture when the drains have been completed in accordance with plans already adopted and which the enterprise has authority to finance and carry out.

6. **Power to levy taxes.**—Answer according to whether the governing board of the enterprise has authority to compel payment of the costs levied against the lands.

7. **Year in which organized.**—Show when this enterprise was created or begun. For a district or drain established by decree or order of a court or of some public official or board, the date is that of the decree or order. For a company incorporated for the purpose of draining land, it is the date of incorporation. For an enterprise organized for some other purpose than drainage, which later found drainage to be needed, the date is that when drainage was undertaken. For an individual enterprise it is the time of beginning drainage.

8. **If drainage was begun by a different enterprise.**—If construction of the drainage works that now belong to this enterprise was begun by another enterprise, (1) give the name, date of organization, and type of organization, (2) state the relation of the present enterprise to that other, and (3) state whether a schedule has been obtained for the other enterprise or if it has ceased to exist.

If this enterprise was begun (Question 7) under a different type of organization than that under which it is operating now (Question 5), show in answering Question 8, the original type of organization and the year of reorganization.

9. **Purpose of drainage.**—The four purposes listed are to be considered mutually exclusive. Reclamation of swampland, protection against overflow, and removal of alkali or seepage refer only to improvement of land not in farms when the enterprise was organized. As here used, swampland is land normally too wet for profitable farming; overflowed land is generally, not too wet but is subject to inundation by stream floods at such times and with such frequency that farming is unprofitable. Check the principal purpose of this enterprise, not a need supplied by some other enterprise—for example, not flood protection provided by an outside agency. (See Question 34.) Only the principal purpose is asked—the one most important in bringing about organization of the enterprise. If more than one item is checked, an explanation must be made on the schedule or on a separate sheet of paper.

#### LAND AND FINANCES

10. **County to which the following answers apply.**—Name only one county, and answer Questions 11 to 35, inclusive, as though the portion in this county were a separate enterprise from the portion in any other county.

11. **Area of enterprise.**—Give, in accordance with instructions relating to Question 10 (a), the total acreage included in the enterprise; (b) the acreage assessed to pay for the enterprise; (c) the acreage included but exempted from payment of costs; (d) the reasons for such exemption; (e) the area to be drained, by an enterprise organized primarily for some purpose other than drainage. It should be assumed that all land within the boundaries of the enterprise is or will be benefited by the drainage works constructed or to be constructed by the enterprise. Land benefited but exempt from drainage assessment may include school lands not taxable, State-owned lands, rights-of-way for ditches, and perhaps other. Make the reason clear, using a separate sheet of paper if more space is needed.

12. **Overlapping of enterprises.**—Divide the total area of the enterprise (Question 11a) into two parts: (a) The portion covered in reports obtained for enterprises organized later than this one, and (b) the portion not covered in reports obtained for enterprises organized later, in order that duplication of areas can be eliminated in tabulating the statistics.

13. **Drainage condition in 1939.**—Divide the area not included in later enterprises (Question 12b) into three parts according only to its present need of drainage. A normal crop here means a crop yielding equal to that given by well-drained soil of the same character. The figures in answer to this question necessarily will be estimates, and should be the carefully considered opinion of some person or persons familiar with the drainage condition of the land.

14. **Use of land in 1939.**—Divide the area not included in later enterprises (Question 12b) into three parts according to its use or availability for farming or other purposes. Improved land here means land regularly tilled or mowed; pasture that has been cleared or tilled; fallow land; gardens, orchards, vineyards, and nurseries; land occupied by buildings, house yards, barnyards, etc.; and land occupied by ditches, levees, highways, and railways. The figures should be careful estimates by persons acquainted with the conditions.

15. **Land in occupied farms in 1939.**—Obtain the best estimate possible from persons who know that portion of this enterprise not included in later enterprises (Question 12b). Concerning large holdings embracing much unimproved land, it may be a matter of judgment as to how much of the unimproved acreage should be considered to be in occupied farms. Of any large tract that has been subdivided for sale, the subdivisions not used for farming in 1939 should be excluded. In a large plantation, portions unused for lack of tenants should be excluded. Land used for purposes other than farming, as for public highways, town sites, etc., should not be included in the answer to this question.

The area reported as planted in 1939 should include all land from which crops were harvested; all land planted, whether the crop was harvested or not; and all land in orchards, vineyards, and nurseries.

16. **Area idle in 1939.**—Obtain the best estimate possible for the acreage in this enterprise, and not included in later enterprises (Question 12b), that was not being used in 1939. Include in this idle acreage all cropland not used; all unimproved land in occupied farms except that required for pasture or for production of woodland products; all land in unoccupied farms; and all unimproved land not in farms except portions actually used intensively for grazing or other purposes. A few cattle ranging the woods or prairies at some seasons is not reason for considering the land to be in use; nor is the growing or cutting of timber, except in farm wood lots, to be considered as using the land for this inquiry. (See instruction above relating to Question 14 for definition of improved land.)

17. **Area available for settlement.**—Show the acreage, of that portion of the enterprise not included in later enterprises (Question 12b), that is drained or being drained to be sold for establishing new farms. Occupied farms should not be included, except that (1) where large holdings are to be subdivided the portions to be subdivided should be included, and (2) lands developed for sale by a land-selling company and being farmed by the company pending sale should be included.

18. **Cost of drainage works to January 1, 1940.**—Give the total of all costs paid or to be paid by this enterprise for organization and for construction, installation, or purchase of its drainage works. Include outstanding debts for materials and services received and works acquired before January 1, 1940. Include costs of earlier enterprises assumed by this enterprise, and omit costs of this enterprise assumed by later enterprises for which census reports are obtained. Do not include under this question expenditures for repairing, maintaining, or operating the works after they have been acquired.

19. **Additional cost to complete.**—Consider only those drainage works for which construction definitely has been authorized by the board governing the enterprise.

20. **Total indebtedness.**—Give the total of bonded and other amounts owed by the enterprise, for whatever purpose.

21. **Taxes collected in 1939.**—Give the total sum collected by the enterprise in 1939, from taxes and assessments whenever levied. Include interest and penalties collected with delinquent taxes and the net proceeds of tax sales.

22. **Arrearage, December 31, 1939.**—State (a) whether on that date there were obligations past due and unpaid, other than running accounts for current expenses that were not covered by written evidences of indebtedness, and (b) the sum of those past-due obligations. State also (c) whether creditors had been forced or persuaded to accept a reduction in amounts due them, and (d) the total of creditors' losses including both principal and interest on bonds, notes, and other indebtedness.

23. **Area delinquent in payment of drainage taxes.**—Show the acreage on which taxes levied by or for this enterprise were due and unpaid on December 31, 1939, and classed as delinquent under the laws of the State.

#### DRAINAGE WORKS

24. **Open ditches.**—Give (a) the length excavated or improved, and (b) the length not yet constructed but definitely authorized. Include both artificial channels and improved natural waterways, that are being maintained or used by this enterprise, but not private drains. Include ditches now belonging to this enterprise although constructed by others, and omit those constructed by this enterprise that have been taken over by others or have been abandoned. Include no ditch in more than one enterprise, even if in land assessed in more than one enterprise.

25. **Levees and dikes.**—Give the data concerning these works segregated in the same manner as stated for open ditches (Question 24). Do not include works belonging to the outside agency named in answer to Question 35.

26. **Tile drains.**—Give the data concerning these drains segregated in the same manner as stated for open ditches (Question 24).

27. **Drainage wells.**—Observe that this question relates to wells out of which water is pumped into a drain (which may be also an irrigation ditch) on or near the ground surface, and not to so-called "vertical drains" that give outlet into a relatively deep substratum for water accumulating on or near the surface of the ground.

28. **Pumping equipment.**—Give the data for all pumping plants of the enterprise that are actually located in the county named in answer to Question 10. Show (a) the kinds of power, and (b) the total capacity of the engines and motors that drive the drainage pumps. State (c) the kinds of drainage pumps, (d) their number, and (e) their total capacity. Give (f) the average height of the water surface in the discharge bay or ditch above the water surface in the suction bay, or in the drainage wells, when the pumps are operating.

29. **Area served by pumps.**—Show how much of the area given in answer to Question 12b is dependent for drainage, for any part of the time, upon the operation of the drainage pumps of this or of some other enterprise. It is the area that could not be drained adequately, at all times, without pumping.

30. **Maintenance of drainage works.**—State whether the drainage works are maintained systematically according to the opinion of some responsible official of the enterprise.

The cost of operation and maintenance should comprise the expenditures in 1939 assessed against the land in this county (Question 11a) incurred (1) for operating drainage pumping plants; (2) for cleaning, repairing, and maintaining in good condition all ditches, levees, tile drains, pumping plants, and other structures and equipment used in draining the land; (3) for purchase or rental of machinery to be used in maintaining the drainage works; and (4) for administration of the enterprise. It should include all expenditures for the year except principal and interest on bonds and notes and except costs chargeable to capital investment (Question 18).

31. **Government aid for maintenance.**—State whether aid in maintaining the drainage works of this enterprise, in this county, has been received from any agency financed in considerable part by Federal funds, and give the name of that agency. The maintenance work to be reported "Yes" does not include, for example, such work as enlarging levees by an agency that, by constructing navigation improvements or power developments, has made it necessary that the levees be enlarged.

32. **Wages and salaries.**—Show the total paid by the enterprise to its own employees, including officials and members of the governing board, for services in 1939 on or for the benefit of the area in this county (Question 11a). Do not include payments to a contractor for work done by him or his employees.

33. **Number employed.**—Show only the number of persons during the week specified, including officials and members of the governing board, on or for the benefit of the area in this county (Question 11a). Include only persons paid directly by this enterprise; do not include employees of a contractor or of a cooperating agency.

34. **Area protected from floods by works of an outside agency.**—Show the portion of the area stated in answer to Question 12b that is protected by works that this enterprise does not now control or maintain.

35. **Name of outside agency.**—Give the name of the agency that controls the works referred to in Question 34.

# SYNOPSIS OF DRAINAGE LAWS

## SUMMARY

In the 38 States included in the 1940 Census of Drainage, approximately, 81,000,000 acres of land are included in drainage enterprises organized in accordance with the provisions of State laws enacted particularly to aid in the improvement and reclamation of land for agriculture. The capital investment in the drainage works of these enterprises is \$650,000,000 (table 3, p. 1.) The following pages present a synopsis of the general drainage laws in aid of agriculture in effect on January 1, 1940. Special acts creating certain individual drainage districts, and acts for other purposes than aid of agriculture that have been used by occasional enterprises, included in the Drainage Census, are not included. (In the Censuses of 1940 and 1930, no attempt was made to separate the enterprises established under special acts from those organized under general statutes, but the Census of 1920 reported 1,829,641 acres in such special-act districts,<sup>1</sup> mostly in Arkansas, California, and Florida.<sup>2</sup>)

Such laws have been enacted for the purpose of permitting or promoting community cooperation in construction of ditches, pumping plants, and other works that are of common benefit in removing or protecting against excess water. The objectives in the enactment of drainage laws are, (1) to establish means whereby effective cooperation may be achieved to obtain drainage benefits desired; (2) to provide a method of apportioning the cost among the landowners benefited, as nearly as practicable in proportion to the benefits to be received; and (3) to authorize a plan of distributing payment for the improvement over a period of years. This last objective has become important more recently than the others, in the development of large tracts requiring costly works and involving considerable acreages not yet in production. In general, the means of obtaining cooperation is the establishment of an organization with officers or a board of control legally authorized to adopt a plan of drainage improvement, to procure construction of the necessary works, to incur indebtedness for the purposes of the organization, and to levy special taxes against the lands benefited in order to pay the costs.

Proceedings for establishment of a drainage enterprise commonly are initiated by petition of landowners expecting to be benefited by the undertaking proposed. Usually such petition must be signed by a majority of the owners to be benefited or by the owners of a major portion of the lands to be benefited. Not infrequently some official or board of the State or political subdivision is authorized to make such petition when public properties are involved. The petition must show that the work will be conducive to the public benefit, and what lands are expected to receive benefit from and pay the cost of the undertaking.

Jurisdiction to establish the project as a legal entity with the powers specified in the statute usually is exercised by a court of the county in which a portion of the land to be

benefited is situated, or by the governing board of such county. Review by some higher court, upon appeal, is provided for.

Management of the affairs of a drainage enterprise may rest in officers elected periodically by the owners of the lands in the enterprise, or by public officers—usually the county board—designated in the drainage law. The census classification of character of enterprise distinguishes these two forms as drainage-district and county-drain organizations. Some States provide for original establishment and management of small drainage enterprises by township officials.

Methods for apportioning the cost against the properties benefited vary considerably between the States. A uniform rate per acre on all the land in the enterprise is permitted by some laws in a few States, although other laws in the same States provide methods of adjusting the rates according to the different rates of benefit that will result to different tracts. One method of apportioning the cost is to divide the land into classes, commonly five in number, according to the different amounts of benefit to be received, and assess the different classes at different rates per acre, such rates being in the ratio 1:2:3, etc. Each ownership may comprise land in any or all of the classes. Another method classifies each tract or parcel of land on a percentage basis, the parcel or parcels to receive the maximum benefit per acre being designated 100 and each other designated by a number representing the rate of benefit it will receive in proportion to the maximum. The cost of the enterprise then is apportioned against the individual parcels in proportion to the area of each and its benefit designation. Yet another method is to appraise the value of the benefits that will accrue to each parcel of land or other property as a result of the proposed drainage improvement, and apportion the cost in proportion to such benefits. Under most drainage statutes, the benefits are determined separately from the damages that may result from the proposed construction. Only a few laws provide that the cost of land drainage shall be apportioned on the basis of land or property values.

In those areas where organized land drainage could be undertaken in small units and be accomplished by works that could be constructed economically by hand and team labor, the cost of the early drainage enterprise was met by allotting to each landowner benefited the construction of a certain portion of the drain designated to represent his portion of the total benefit. Under such circumstances the cash expenditures were small and the matter of financing the enterprises needed no special consideration.

With increase in farm-land values during the years, it became profitable to incur greater per acre costs for agricultural drainage. Also, development of special excavating machinery made digging of large ditches less costly. These developments furthered the organization of larger and more expensive enterprises for draining lands already in farms, and strengthened the urge to develop for sale large tracts of swamp, wet, and periodically overflowed lands which in some regions

<sup>1</sup>Fourteenth Census, U.S., vol. VII, p. 361.

<sup>2</sup>Op. cit., p. 354.

included increasing amounts of cut-over timber land. With these conditions, the matter of distributing payment for the drainage improvement works over a considerable period of years became of first importance, and most States therefore have authorized the enterprises established under drainage laws to issue and sell bonds to be paid within 10 to 30 years from the proceeds of the drainage taxes levied upon the land—"and other property," in some cases—in the enterprises. Some statutes provide that the bonds may be made sufficient to cover the interest charges for the first few (2 to 5) years, presumably until the land to be reclaimed can be developed sufficiently to begin to pay the debt.

The drainage statutes all provide for informing all landowners who will be affected, concerning each step taken toward establishment of the enterprise, and giving them full opportunity to protest the proceedings. Notice sometimes is given by personal service, but usually by mail, posting, and publication. Public hearings are held upon filing of the petition, or after preliminary investigation as to the practicability of the project and what lands will be benefited; and again after determination of the location and character of the works to be constructed, the total cost of the enterprise including damages to properties injured, and the amount of cost to be assessed against each property. Hearings at some other points in the proceedings for establishment of the enterprise and levying of the taxes therefor are provided by many of the statutes. Some require that construction shall be approved by election of the landowners to be assessed after the bids from contractors have been opened; some require that issuance of bonds, and the amount of each issue, shall be similarly approved. At elections the landowners vote, for establishment of the enterprise or for election of officers or for other business, under some laws in proportion to their acreages in the enterprises, under other laws in proportion to the benefits assessed, and under yet other laws only one vote for each owner.

Maintenance of the drainage works after construction is required by some statutes, and authorized by most of them. The amount that may be expended for maintenance in any year, without authorization by the landowners through proceedings somewhat similar to establishment of the enterprise, usually is restricted to a small portion of the cost of original construction. Cost of maintenance commonly is distributed on the same basis as original construction, but in some instances on a uniform rate per acre.

The first drainage statutes in most States, if not in all, merely provided relief for landowners who, in order to obtain outlet for draining their land, must cross the lands of other owners with whom agreement could not be reached for granting the right-of-way. These statutes did not establish public enterprises, but authorized condemnation of rights-of-way after investigation, determination of necessity, and award of damages by some designated official or legally appointed appraiser.

The dates of the first general laws authorizing the establishment of drainage enterprises for 36 of the 38 States

included in the 1940 Census of Drainage are given in the report of the 1920 Census. (Fourteenth Census of the U.S., vol. VII, p. 354.) The earliest statutes there indicated are those of 1847 in Michigan and Ohio. In the latest two States included in the 1940 Census of Drainage, Delaware and Maryland, drainage statutes were enacted as early as 1816 and 1790, respectively.

As the foregoing discussion suggests, the drainage statutes in most States have been developed gradually as larger and more costly improvements have become economically feasible. The States undertaking most recently the promotion of drainage development have patterned their statutes on those in use in other States where physical, economic, and governmental conditions seemed similar. The many amendments, revisions, and supplemental acts passed by the legislatures have resulted in some cases in provisions that are inconsistent or even contradictory, so that the meaning or requirement must be determined by decision of the courts.

The following synopsis is not an attempt to digest the drainage laws, but is rather an effort to present in condensed form in one place the principal statutory provisions relating to the procedure for establishing enterprises under these laws, the protection afforded to the rights of persons who might be injured by the proposed work, and the security offered to purchasers of bonds issued by the enterprises. The synopsis omits many minor details set forth in statutes, especially concerning procedure, and it includes ambiguities and seeming contradictions that have been or remain to be interpreted by the courts. The citations of court decisions given for some of the laws have been copied from annotated statutes, and in each case are the leading or later cases interpreting the preceding section.

The provisions of each law have been arranged arbitrarily herein under the headings of establishment, organization, financing, construction, maintenance, and dissolution, so far as practicable. Consequently, there is no sustained sequence in the numbers of the sections. The various subdivisions are somewhat interdependent, and for more complete understanding related subdivisions, such as "assessments" and "bonds," should be read together. Similar interdependence is particularly evident in some laws with respect to the main divisions. It is to be assumed that any person having responsibility for the legality of proceedings in the establishment or management of a drainage enterprise will acquaint himself with the full text of the statute under which the organization will operate, and with any interpretive court decisions relating thereto.

A chart of the drainage laws follows the synopsis, presenting the salient features of those laws very concisely under headings similar to those used in the synopsis, to which the chart will serve also as a partial index. The numbers in parentheses indicate the section numbers of the statute, code, or compilation as used in the synopsis. The chart includes, as the synopsis does not, brief reference to the laws of the 10 States not included in the Census of Drainage. These States comprise group II of the chart.

# DRAINAGE LAWS BY STATES

Abstracted by JAMES H. GRAVES, LL. B.

## ALABAMA

(Code of Alabama, 1940, Title 2, secs. 208-263)

### DRAINAGE DISTRICTS

#### ORGANIZATION—Jurisdiction

**Sec. 208. Public benefit:** The establishing of proper drainage is declared to promote the public health, to aid agriculture, and to be in the interests of public welfare and convenience.

**Secs. 209 and 210. Jurisdiction:** The court of probate of any county has authority to locate and establish levees, drains, and canals and to cause them to be constructed and to straighten, deepen, or widen any water course, and to construct the necessary works. It is declared that the drainage of surface waters and the reclamation of wet, swamp, and overflowed lands shall be considered a public benefit and conducive to public welfare. **Sec. 210:** The court of probate must keep a complete record of all proceedings in a book designated as the "Drainage Record of \_\_\_\_\_ County, Alabama," including therein all records except the drainage tax records and the drainage tax books.

#### ORGANIZATION—Petition

**Sec. 211. Petition to organize:** Whenever it is desired to establish a drainage district, a petition must be filed in the office of the county court of probate signed by a majority of the landowners owning more than one-third of the lands in acreage in the proposed district, or by at least one-third of the landowners owning more than one-half of the land in acreage, in a contiguous body of wet, swamp, or overflowed land or lands subject to overflow. If such land be situated in two or more counties, then the petition must be filed with the court of probate of the county in which more of said lands are situated than in any other county. The petition describes the land so as to give a general idea of its location, states that it needs drainage, and that to drain it would be a public utility and conducive to the public welfare. The probate court with the approval of the State Commissioner of Agriculture and Industries immediately appoints a competent engineer, experienced in drainage, to report to the court on the establishment of the district. Whenever the owners of a majority in acres in the proposed district petition the court for the appointment of any person qualified to act as engineer, it is the duty of the court, with the approval of the Commissioner, to appoint such person. The engineer reports to the court (1) the boundary of the region that will be benefited by the works; (2) a description of the lands according to legal or recognized subdivisions; (3) whether the works will be conducive to the public health, convenience, and welfare; (4) a general plan to accomplish drainage; (5) a map showing the territory and the proposed improvement; (6) an estimate of the cost of the improvement. No landowner signing the petition may withdraw his name without the written consent of a majority in acreage of those signing the petition.

**Sec. 212. Engineer's report—Notice:** On the filing of the engineer's report, the probate court gives notice thereof by personal service or by publication in a form set out in the

statute, stating that the lands mentioned will be affected by the formation of the district and will be rendered liable to taxation for construction and maintenance. A copy of the notice is mailed to the Commissioner of Agriculture and Industries.

**Secs. 213 and 214. Jurisdiction:** The court of probate of the county in which the petition is filed thereafter retains original and exclusive jurisdiction for all purposes, coextensive with the boundaries of the district without regard to county lines but subject to the right of appeal to the circuit court of the county in which the petition is filed. **Sec. 214:** On the day appointed for the hearing the Commissioner may appear in person or by representative and advise the court of his opinion, objection, or approval of the establishment of the district.

**Sec. 215. Objections to organization:** Any owner of real property desiring to object to the incorporation of the district may file his objections in writing. The court hears and determines in a summary manner any objections presented as to the sufficiency of the petition or the report of the engineer. If there are lands within the proposed district that will not be benefited, they will be excluded. If it appear that there are lands outside the district that will be benefited, the boundaries may be so changed as to include such lands and the owners thereof are made parties to the proceedings. The same notice is given them, and the proceedings are adjourned until a fixed day when their objection, if any, will be heard. If it appear that the purposes of this act would be subserved by the creation of the district, the court, after disposing of the objections as justice and equity require, enters its finding of record and declares the district organized as a body corporate with all the powers of public corporations including the right of eminent domain for the purpose of obtaining rights-of-way, the right of assessment, the right to issue bonds, and the right to do all acts necessary to the purposes for which the district is created. If the court find against the sufficiency of the petition, it will dismiss the petition at the cost of the petitioners and issue an itemized statement of such cost. This court action has the full force and effect of a judgment and constitutes a lien on the lands of the petitioners within the proposed district of equal dignity with general taxes. The court will order the levy and collection of a uniform acreage tax to meet the expenses incurred. Such a tax is due immediately, becomes delinquent December 31 next following, and is collected in the same manner as delinquent general taxes.

**Sec. 216. Effect of order establishing district:** The order of the court establishing the district has the full force of a judgment. The court forthwith levies a uniform tax of not more than 50 cents per acre to defray expenses of establishment, organization, survey, assessing benefits and damages, and all other necessary expenses incurred before funds are provided to pay the cost of the improvement. If other lands are included later the same acreage tax is levied against them. This tax, if not paid, is collected in the same way as delinquent general taxes and is a lien of equal dignity with such taxes. Any surplus in the fund may be placed in the general fund for construction.

## ORGANIZATION—Officers

**Secs. 217 and 218. Board of drainage commissioners:** Upon organization of a district, the probate court appoints a board of three drainage commissioners to have control of the affairs of the district. Each commissioner must be an adult owner of real property within the district, and at least one commissioner must be a resident of the county in which the proceedings are held. When the owners of a majority in acres in the district petition for the appointment of a qualified person as commissioner, it is the duty of the court to appoint such person. The board of drainage commissioners may make rules, regulations, and bylaws, not inconsistent with this act. They elect a president and secretary from their own number and employ necessary agents and attorneys. The court indicates their terms of office which are 2, 4, and 6 years respectively; and at the expiration of their terms the court likewise appoints their successors for a term of six years. The commissioners hold meetings upon the call of the president or of a majority of the board, and hold an annual meeting at the office of the judge of the probate court having jurisdiction on the 2nd Saturday in September.

**Sec. 218:** Any officer of a drainage district may be removed for cause, after due hearing, on motion filed in the court of probate having jurisdiction.

**Sec. 222. District engineer:** Within 60 days the drainage board appoints a district engineer, to whom the probate court refers the preliminary survey. The engineer makes a complete survey and reports to the drainage board with plans for the improvement and an estimate of cost. He provides a drainage map showing the location of the works, the boundaries of the district, and a description of the land and other property needed for rights-of-way or other purposes. Upon receipt of the final report of the district engineer, the drainage commissioners adopt the same or a modification thereof approved by him, and such report so adopted is the "plan of reclamation" and is filed with the probate court and incorporated into the records of the district. A copy is submitted to the Commissioner of Agriculture and Industries for examination. Prior to the adoption of the plan, the Commissioner shall file with the drainage commissioners any suggestions he deems beneficial. After such adoption, the "plan" must be filed with the board of agricultural engineers of Alabama Polytechnic Institute, Auburn, Alabama.

**Sec. 225. "Plan" filed—Viewers:** Within 20 days after the adoption of the plan, the secretary of the drainage commissioners transmits a certified copy to the probate court having jurisdiction and files a petition to appoint viewers to appraise the land within and without the district to be acquired for rights-of-way, holding basins, and other works, and to assess benefits and damages to all land and other property by reason of the execution of the plan of reclamation. Within 30 days the probate court appoints a board of three viewers, who must be disinterested owners of real property in the county or counties involved.

**Secs. 226 and 227. Duties of viewers:** The viewers, within 30 days, proceed to determine the value of all land and other property to be acquired for the use of the district. They assess the benefits and damages that will accrue to each 40-acre tract or less, and to highways, railroads, and other rights-of-way, from putting into effect the "plan." The engineer accompanies the viewers in their inspection of the lands of the district. In assessing the benefits to property not traversed by the works provided for in the "plan," they may not consider what benefit will be derived by such property after improvements or plans other than those in the plan of reclamation shall have

been constructed, but only the benefits that will be derived from the works and improvements specifically set out in the plan or as the same may afford an outlet for drainage or protection from overflow. Where the improvement follows natural drainage or existing waterways that intersect railroad rights-of-way, the railroad company shall be required to construct and maintain any necessary new bridges or culverts or to enlarge, construct, or replace old ones at its own expense. Where the works intersect railroads at some other place, the expense of bridges and culverts shall be considered by the viewers as an element of damage, the amount to be estimated and shown separately and paid for in cash as other damages. In that case the viewers notify the railroad of a conference for the purpose of agreeing on the amount of damages. If they fail to agree, that fact is reported. The viewers give due consideration to drainage works already constructed, which give complete or partial protection to lands in the new district. Public highways, railroads, and other rights-of-way, roadways and other property are assessed according to the increased physical efficiency and decreased maintenance cost by reason of the protection to be derived from the proposed works. The viewers may not alter the plan of reclamation. They report their findings in tabular form, showing the particular property to be taken and its value and the damages awarded.

**Sec. 227:** Upon the filing of the viewers' report, the probate court sets a hearing thereon, giving notice by publication in the form set out in the statute.

**Secs. 228 and 229. Exceptions to viewers' report:** The district or any interested person may file objections to the viewers' report before the hearing thereon, as to any assessment for either benefits or damages. The court hears all exceptions in a summary manner so as to carry out liberally the purposes and needs of the district; and if it appears to the court after having determined all exceptions that the cost including damages assessed is not greater than 90 percent of the benefits assessed against the land and other property, the court will approve and confirm the viewers' report as modified and amended. Finding the contrary, the court will dismiss the proceedings at the cost of the landowners and render a decree dissolving the incorporation as soon as all costs have been paid. If the uniform tax levied is not sufficient to pay the costs, the commissioners make such additional uniform tax levy as may be necessary to pay them. Any balance remaining is prorated to the landowners in the same ratio in which it was collected. The probate court transmits a copy of the viewers' report as confirmed to the drainage commissioners of the district. If the district be intercounty, a copy of the report so far as it affects any county is transmitted to the probate court of that county, where it becomes a permanent record.

**Sec. 229:** Aggrieved parties may appeal from the order of confirmation within 10 days to the circuit court of the county. Appeals can be heard only on the exceptions to the viewers' report. Appeal does not stay the proceedings, and subsequent proceedings in the circuit court affect only the interests of appellants.

## ORGANIZATION—Powers

**Secs. 220, 221, and 223. Rights-of-way—Condemnation:** The right of eminent domain is conferred where necessary to acquire rights-of-way or outlets over lands outside of the district. Damages awarded as compensation must be paid by the drainage board out of the first funds received from bonds or otherwise.

**Sec. 221:** The drainage board and its agents may enter upon lands within or without the district to make surveys and preliminary examinations of the works of the district, but are liable for actual damage done. To prevent such entry is a misdemeanor.

**Sec. 223.** Before adopting the plan of reclamation, the drainage commissioners notify any railroad whose right-of-way will be crossed by the district works and arrange a meeting at which agreement is sought with the railroad as to the character and cost of the crossing. If the drainage board and railroad cannot agree or if the railroad fails to accept notice of the conference, the drainage board determines the place, manner, and extent of the necessary crossing and specifies the same in the plan of reclamation.

**Sec. 224. Correcting plan:** The drainage board may correct errors or amend the "plan" at any time with the concurrence of the district engineer, if it appear that such amendment would more economically accomplish the purposes of the district; provided that, after assessments of benefits have been confirmed, no amendment shall be effective until approved by the probate court after hearing of all parties affected.

**Sec. 248. Lateral drains:** Landowners assessed have the right to use the works as outlets for lateral drains. If their land be separated from the outlet by intervening lands and the different owners are unable to agree on the terms and conditions under which the crossing may be made, the parties seeking the outlet may invoke the right of eminent domain. Drains so constructed become a part of the system when completed, and are maintained by the drainage commissioners.

**Sec. 250. Annexing lands:** Any body of land however large, contiguous or adjacent to an organized drainage district, may be annexed thereto as if originally included, upon the petition of one-third or more of the landowners owning 50 percent or more of the acreage, or upon petition of one-half or more of the owners owning more than one-third of the acreage to be annexed. The proceeding is the same as that for original organization. If upon hearing the report of the drainage commissioners and engineer the probate court determines that the public welfare will be promoted thereby, it will order the lands so annexed to be made a part of the district. However, if at the hearing landowners either within the original district or any part to be annexed, representing one-third of the landowners owning a majority of the acres or a majority of the owners owning one-third of the acres, object to the proposed annexation, the court will dismiss the petition for annexation and levy an acreage tax on the land proposed to be annexed to reimburse the drainage district for all expenses incurred in connection with the proceedings.

**Sec. 251. Inclusion of part of another district:** The organization of any district or subdistrict shall not be construed to prevent inclusion of the whole or any part of the lands of any such district in another district, and the taxing of such lands to whatever extent they may be benefited; provided, that due credit shall be given in the adjustment of benefits and damages for the benefits received from existing works which may form part of the plan of reclamation of such other district.

**Sec. 252. Interstate districts:** Where drainage districts in Alabama cannot be constructed or maintained in the best manner without affecting lands in an adjoining state, the drainage commissioners are given power to join with the proper officials of adjacent counties in such other State in the construction of drainage works, each to pay the proportion of the cost agreed upon.

**Sec. 253. Contract with the United States:** Drainage commissioners may contract with the United States and with persons, corporations, or state governments of this or any other state, and with other drainage districts or conservation and improvement districts in other states, for cooperation in construction and maintenance of the works of the district, and may purchase,

lease, or acquire lands in other states to secure outlets or for other purposes of this act.

#### FINANCING—Assessments

**Sec. 230. Tax levy:** As soon as the confirmed viewers' report and the judgment of the court have been furnished to the drainage commissioners as provided in section 228, they levy a tax of such portion of the benefits assessed on all lands and other property as may be found necessary to pay the costs of the improvements as set out in the "plan," plus 10 percent for delinquencies. The tax is apportioned to and levied on each tract of land or other property in proportion to the benefits assessed and not in excess of 90 percent thereof. If bonds are to be issued, the estimated amount of the interest which will accrue on said bonds is included and added to the tax; but such interest is not to be construed as a part of the cost of construction in determining whether that cost is in excess of 90 percent of the benefits assessed. The drainage commissioners then prepare and certify the "drainage tax record," which becomes a permanent record in their office and a copy is filed in the probate court of each county interested. The form of the drainage tax record is set out in the statute. If the proceeds of the levy are not sufficient to pay the cost of construction, and expenses, the drainage commissioners make such additional levy as may be necessary to complete the works according to the "plan"; provided, the aggregate of all levies, exclusive of maintenance taxes and taxes for interest on bonds, shall not exceed 90 percent of the total benefits assessed.

**Secs. 231 and 232. Annual levy—Installments:** The drainage commissioners each year thereafter levy the amount of the annual installments of the total taxes levied under section 230, which levy is collected at the same time as State and county taxes. Prior to October 1 each year, the drainage tax book certified by the probate judge of the county organizing the district is delivered to the tax collector of each county interested, and the tax thereupon has the force and effect of a judgment as in the case of State and county taxes. The form of the certificate is set out in the statute. Such taxes constitute a lien, equal in dignity with State and county taxes. Drainage taxes become delinquent December 31 next after levy, and thereafter there is a penalty of 2 percent per month or fraction thereof until paid. Delinquent lands are sold for taxes on the first Monday in February each year. Sale of such lands for drainage taxes is subject to the lien of unpaid State, county, or city taxes, and the sale for State, county, or city taxes is subject to the lien of any unpaid taxes levied under this subdivision. If at the sale there is no bid for the amount of the drainage tax, interest, penalty, and cost, the land is not sold but is re-offered the following year. **Sec. 232:** When a property has been divided, the collector may receive taxes on a part of any tract only when the deed of transfer or division shows the agreed division of taxes, and then only with the approval of the drainage commissioners.

**Secs. 234 and 235. Payment in full:** Landowners have the privilege of paying their assessments in full on or before the date fixed by the drainage commissioners, after notice. Such payment is the full amount levied less any additional tax to meet interest, and does not release the land and other property from liability to pay additional taxes when assessed as provided in this act. **Sec. 235:** Failure of a landowner to pay the assessment in full operates as consent to the issuance of bonds and, in consideration of the right to pay in installments, the landowner waives the right of defense against any tax levied for the payment of bonds on grounds of irregularity or defect in prior proceedings, except in case of appeal.

**Sec. 247. Maintenance and repair:** When the improvement is completed, it is under the supervision and control of the board of drainage commissioners. It is their duty to maintain the improvement in good repair, and for that purpose they may levy annually a tax on the lands benefited in the same manner as other taxes are levied, not to exceed 10 percent of the assessed benefits in any one year. Damages caused by any landowner or his agent through negligence are assessed against him alone, and may be collected by suit by the drainage commissioners.

#### FINANCING—Bonds

**Secs. 236 and 237. Issuance of bonds:** The drainage commissioners may issue bonds of the district from time to time for an amount equal in the aggregate to the total cost of the improvement, including preliminary organization and administration expenses, less such amount as has been paid in cash to the district treasurer. In no case, however, may the par value of the bonds issued plus cash payments to the district treasurer exceed 90 percent of the aggregate benefits assessed against the lands or other property. Bonds mature at annual intervals for 20 years, commencing after a period not longer than 5 years from their date. Bonds have all the qualities of negotiable paper within the meaning of the law merchant. The drainage commissioners file with the probate court organizing the district a certified copy of their order for the issuance of bonds, without description of the bonds, and such order becomes a permanent record in that court. **Sec. 237:** Bonds may be sold for cash at not less than 95 percent of par with accrued interest, and the proceeds are devoted to the payment for work as it progresses and for other expenses of the district provided for in this act, and for no other purpose.

**Sec. 238. Payment of bonds:** Bonds are payable at such place as the drainage commissioners may designate. It is the duty of the drainage commissioners in making the annual levy to take into account the maturing bonds and interest on all bonds and to make ample provision in advance for the payment thereof. If the proceeds of the original tax levy are not sufficient, the commissioners must make such additional levies upon the benefits assessed as may be necessary to pay maturing bonds and interest; and they may issue additional bonds in like manner as in the first instance; provided, that the total tax levy, exclusive of maintenance taxes and taxes levied to pay interest on bonds, shall not exceed 90 percent of the benefits assessed.

**Sec. 239. Default in payment of bond:** Any bonds or interest not paid when due bear interest at 8 percent until paid, and if the default continues for 60 days the holders of such bonds have right of action against the district, wherein the court may issue a mandamus directing the levy and collection of a sufficient tax to meet unpaid bonds and interest and costs. As an additional remedy in case of default in the payment of principal and interest on bonds of a district where the default has existed for 60 days and payment has been demanded, the holder of such bonds or interest coupons may ask any court of competent jurisdiction for the appointment of a receiver for such district, and it is the duty of the court to appoint such receiver to collect drainage taxes and sue for delinquent taxes and sell delinquent lands. The form of procedure for the receiver is set out in the statute in detail.

#### CONSTRUCTION

**Sec. 241. Contract for construction:** The drainage commissioners may obtain and use labor, equipment, and material, under the supervision of the district engineer, to construct and to complete all or any of the works needed to carry out the plan

of reclamation, or they may let contracts for the construction of all or any part of the work. They give notice by publication of the letting of contracts; they may reject all bids and readvertise the work; and the successful bidder is required to enter into contract with surety in the amount of 25 percent of the estimated cost of the work awarded. Contracts are based on plans and specifications submitted by the engineer in his final report, the original of which must remain on file in the probate court and be open to inspection.

**Secs. 242 and 243. Duties of engineer:** The district engineer has charge of the construction of the plan of drainage. He makes monthly estimate of the amount of work done and to be paid for, and the commissioners draw warrants in favor of the contractor for not more than 90 percent of the engineer's estimate. When the work is completed, the engineer makes an estimate of the full amount due including the amounts withheld on monthly payments. **Sec. 243:** Upon default of the contractor, the drainage commissioners may declare the contract forfeited and relet it as in the first instance. The district has right of action against such defaulting contractor and his sureties for the amount of damages sustained.

**Secs. 245 to 247. Intercepting railroads and highways:** Where the works of a district cross a public highway at its intersection with a natural waterway through which water flows during flood periods, the cost of bridges and culverts is borne by the authority required to maintain the highway and thereafter those structures are maintained by the same authority. Where the drainage works cross a public highway at other points, the district bears the cost of constructing the new bridges or culverts but they are maintained thereafter by the county or other authority controlling the highway. **Sec. 246:** Construction across a railroad is by agreement between the construction engineer and the railroad, it being the duty of the railroad to remove its roadbed and permit excavation at a time agreed on. In the event of failure or refusal of the railroad so to do, it is held to be delaying the construction of the improvements and is subject to a penalty of \$100 per day for delay, to be collected by the drainage commissioners as in the case of other penalties. Within 30 days after completion of the work, the railroad presents an itemized bill for the actual expense incurred by it in permitting the crossing of the drainage works, but not to include the construction of a new bridge or straightening or enlarging an old one except as herein provided. After the engineer has found the bill to be correct, the drainage commissioners pay it. **Sec. 247:** When it becomes necessary to repair any bridge or construct a new bridge across a railroad by reason of enlarging any watercourse or excavating any canal, or by reason of natural wear and tear and deterioration of such bridge or structure, the repair, maintenance, and improvement shall be made at the expense of the railroad.

#### DISSOLUTION

**Sec. 262. Dissolution:** Any district may be dissolved by the probate court having jurisdiction thereof whenever it is made to appear that the works need no further care or maintenance and that such maintenance would no longer be conducive to the public health, convenience, or welfare, and that the obligations of the district have been liquidated; provided, the court will not consider the dissolution of a district except upon petition of two-thirds of the owners of the real property owning not less than two-thirds of the area taxed. After the filing of such petition, opportunity must be given for objections thereto in the same manner as for organization.

## SUBDISTRICTS

**Sec. 263. Subdistricts:** Subdivision 2 of this title (sec. 263-273), under the heading "Subdistricts," (sec. 265) declares: "Each county of the state is hereby declared to be and is hereby created a drainage district." The county board of revenue commissioners with the judge of probate as chairman shall act as and exercise the powers of a board of drainage commissioners. "This shall in no way affect drainage districts organized \* \* \* under any Alabama drainage law." (L. 1936, Special Session, p. 83.) This provision is mainly for flood control and control of erosion, but does not affect drainage districts organized and operating in aid of agriculture.

## ARIZONA

[Revised Code, 1928 (ch. 81, art. 5, sec. 3515, p. 823); Revised Code Supplement, 1936; Session Laws]

## ORGANIZATION—Petition

**Sec. 3515. Organization of district:** Whenever 5 or more of the holders of title or evidence of title to agricultural lands which are susceptible of drainage by the same general system of works desire to provide drainage, they may propose the organization of a drainage district, which district when organized will have the powers conferred by this act. The equalized assessment roll immediately preceding the petition for organization is sufficient evidence of title; however, no person acquiring title for the purpose of signing the petition and voting will be permitted to do so. Such signing, however, does not invalidate the petition if there be sufficient other legal signers.

See: *Act Constitutional*: In Re bonds of drainage district #4 (1920), 22 Ariz. 31; 193 Pac. 833.

*Proceeding under Drainage Act is Statutory*: 205 Pac. 806.

**Sec. 3516. Petition proposing district:** The petition is presented to the board of supervisors of the county in which the greater portion of the lands are situated. It describes the proposed boundaries and prays for organization. Petitioners provide bond for costs in the event the district is not authorized. If, in the opinion of the supervisors, the district is necessary and feasible, they give notice of a hearing on the petition by publication in each county affected.

**Sec. 3517. Hearing on petition:** At the hearing the board of supervisors defines and establishes the boundaries of the district, but they may not modify the proposed boundaries so as to exclude lands susceptible of drainage by the same system of works, and they may not include lands which will not be benefited. Any person owning land which can be drained by the same works may make application to have his land included in the district. All the proceedings of the supervisors are set forth in their minutes and the boundaries described and determined may not be brought into question except by appeal as next provided.

**Sec. 3518. Appeals to the superior court:** Any interested party may, within 30 days, appeal from the decision of the supervisors to the superior court of the county, if he is a party to the record. If there be more than one appeal, they must be consolidated. Appeals are heard in the same manner as appeals in civil cases and the superior court enters its judgment affirming, modifying, or reversing the order appealed from. The court issues a remittitur to the supervisors, who, at their next meeting, enter on their minutes such order as is directed by the court. Appeals must be heard and determined within 30 days.

**Sec. 3519. Divisions and elections:** When the boundaries are defined and established, the supervisors divide the district

into 3 or 5 divisions as nearly equal in size as practicable and numbered consecutively. One director, who must be a resident freeholder and elector of the division, is elected by each division; but when requested in the petition, 3 directors with the same qualifications may be elected at large by the qualified voters.

**Sec. 3520. Election to determine organization:** The supervisors give notice, by publication in each county interested, of an election to determine whether the district shall be organized. The notice gives the proposed name, the boundaries of the district and of the precincts therein, and the polling places. It also gives the names of one or more persons in each division of the district to be voted for as director. Election is conducted in conformity with the general election laws of the state.

**Sec. 3521. Voter qualifications:** A voter must be qualified to vote under the general election laws and must be the owner of real property situated within the boundaries of the district, on which he shall have paid taxes as shown by the county tax rolls next preceding the date of election.

**Secs. 3522 and 3523. Canvass—Result:** The supervisors canvass the vote on the first Monday succeeding the election. A majority vote controls, and if it is obtained the supervisors thereupon declare on their minutes that such territory is duly organized as a drainage district, and the persons receiving the highest number of votes are the duly elected directors. **Sec. 3523:** The supervisors file for record with the recorder of each interested county a certified copy of their order establishing the district. This completes organization. No board of supervisors may thereafter permit the organization of another district embracing any of the lands in the first organized district without the consent of the board of directors of such prior district.

**Secs. 3524 to 3526. Contesting election:** The organization may be contested by any person owning property in the district liable to assessment. Action must be brought in the superior court of the county where the original petition was filed. If there is more than one contest, they must be consolidated and tried together. Contests must be brought within 20 days after the canvass of votes. The court determines whether the election was conducted in accordance with this statute, and interested parties may appeal within 30 days to the Supreme Court where the appeal must be determined within 60 days. **Sec. 3525:** The directors immediately qualify, and hold office until their successors have been elected and have qualified. **Sec. 3526:** The directors classify themselves by lot to determine their term of office. They organize, elect a president from their number, and appoint a secretary.

**Sec. 3527. Meetings—Financial statement:** The directors hold regular meetings every 3 months, and such special meetings as they may determine by a majority vote entered in their minutes. All meetings are public and a majority is a quorum. On the first Tuesday in March each year they publish a verified statement of the district's financial condition.

**Secs. 3531 to 3538. Election of directors:** Election is held on the first Wednesday in October of each second year after the first election. Persons receiving the highest number of votes are declared to be elected and must qualify and give bond within 10 days. Vacancies are filled by the board until the next election. **Sec. 3532:** After the original drawing of lots for classes, the term of a director is 4 years. The office of the board may be established in the county seat or other suitable place, but may not be changed when once established without notice by posting and publication. **Sec. 3533:** Notice of the

election for directors must be posted in the office of the board and in the district 15 days prior to the date of the election. The board appoints the election officials. *Secs. 3534 to 3538:* These sections provide the machinery for balloting and canvassing votes. The district may change to the election of directors at large, instead of for each division, by petition of a majority of the landowners.

#### ORGANIZATION—Powers

**Sec. 3528. Directors—Powers:** The directors conduct the business of the district, make contracts, obtain necessary assistance in surveying, locating, and constructing the works, and repair and maintain same after construction. They may enter on lands where it is necessary in the construction of the works, and may acquire and possess lands necessary to the district's system of works. They may make rules and regulations for carrying on the business of the district.

**Sec. 3529. Change of boundaries of divisions:** The board may change the boundaries of the divisions of the district, not less than 60 days before an election, provided such change is made to keep the divisions as nearly equal in area and population as practicable. Changes must be shown in the minutes of the directors.

**Sec. 3530. Eminent domain:** All of the laws of the state relating to the taking of private property for public uses may be invoked by a drainage district and the condemnation and use of such property is declared by the statute to be a public use.

**Sec. 3540. Title to property:** Legal title to all property, including water carried by the drainage works, immediately vests in the district and is dedicated and set apart for the uses thereof. Directors may hold, use, and possess all property in the name of the district and for its purposes.

**Sec. 3567. Power to build works across streams, etc:** The directors have power to construct works across streams, roads, streets, railways, and rights-of-way but must restore such property to its original condition as nearly as possible. Where agreement with owners is not possible, the directors may acquire the property needed by condemnation. Rights-of-way across state lands are dedicated to the district by the statute.

**Sec. 3572. District property not taxable:** Rights-of-way, works, water, and other property of like character belonging to a drainage district, as well as its bonds or other evidences of indebtedness, may not be taxed for State, county, or municipal purposes. (Sec. 5483, R.S. 1913.)

**Sec. 3579. Changing boundaries:** Boundaries may be changed as provided, but such changes shall not impair the organization nor adversely affect the obligations of the district.

**Secs. 3580 to 3586, 3589 and 3590. Petition to change boundaries—Inclusion:** The holders of title or evidence of title, representing one-half or more of any body of lands adjacent to the boundaries of a drainage district and which are contiguous thereto, and which taken together constitute one tract of land, may file a petition with the board of directors praying to have the contiguous lands included in the district. The petition must describe the boundaries of lands sought to be included and the several parcels owned by the petitioners, with their assent to the inclusion of the lands described. It must be acknowledged as deeds are acknowledged. *Sec. 3581:* The directors give notice of the hearing on the petition by publication and call upon interested parties to show cause why the petition should not be granted at the next meeting of the board. Costs are paid by the petitioners. *Sec. 3582:* At the hearing the board considers all objections which have been presented in writing. Failure of interested parties to show cause is taken as assent.

*Sec. 3583:* The directors require as a condition precedent that the petitioners pay to the district such sums as they would have been assessed had they been included in the original organization. *Sec. 3584:* The board may allow or reject the petition as they may deem to be for the best interests of the district. If the petition is allowed, the board describes the boundaries of the district as changed and as they will be after the inclusion of the lands, and may cause a survey to be made for that purpose. *Sec. 3585:* If cause is shown, the board may adopt a resolution to the effect that the best interests of the district require that the boundaries be changed. This resolution describes in detail the boundaries which the board deems best to include. *Sec. 3586:* Upon the adoption of the resolution, the board orders an election on the question of changing the boundaries, which election is held in the same manner as that to determine whether bonds shall be issued. If the majority be affirmative, the board orders the boundaries changed in accordance with their resolution voted on, and a certified copy of the order is filed in the office of the recorder of each interested county. *Sec. 3589:* The secretary of the board records the order in the minutes of the board, and a certified copy is admissible in evidence with the same effect as the petition. *Sec. 3590:* Legal representatives of landowners may sign the petition.

**Sec. 3597. State lands:** Lands vested in the state at the time of organization become a part of the district and the state pays all proportionate charges and assessments against them. Claims for payment are presented to the Board of Control of the state, which board, finding the claim correct, orders payment. The state auditor thereupon draws a warrant on the state treasurer, who pays it.

**Sec. 3600. Districts may be subdivided:** Petitioners for a drainage district may, if they so elect, request that the lands in the district when organized be subdivided into tracts of not less than 40 acres, to the end that benefits may be determined and the proportionate part of all assessments to be levied may be apportioned against each subdivision in the proportion that the same may be determined to be benefited. (L. 1917, ch. 57, sec. 1.)

#### FINANCING—Assessments

**Sec. 3602. Apportionment of benefits:** When any district is organized, the directors appoint an engineer and two appraisers to divide it into tracts of not less than 40 acres and apportion to each subdivision the amount of benefits which it will receive. The apportionment is by units; that is, to the land determined to be least benefited, one unit of assessment; to each tract receiving a greater benefit successively a greater number of units. No subdivision may be apportioned less than one unit nor more than 5. The surveyor and appraisers make written return to the directors and the apportionment of units is filed and is binding on all parties upon approval by the directors. The schedule so filed remains the basis of all taxes thereafter collected against the respective subdivisions.

**Sec. 3545. Election to determine levy:** If the money received from the sale of bonds be insufficient or if bonds be unavailable for the completion of the adopted plans, and additional bonds be not voted, it is the duty of the directors to provide for the completion of the works by the levy of an assessment therefor; provided, the question of such levy be first submitted to a vote of the electors. The order of submission for vote must be entered in the minutes of the board, stating the amount to be levied and the purpose thereof. Notice is by publication and posting and the election is in all respects the same as that for election of officers. A majority vote controls.

**Secs. 3554 and 3555. Yearly estimate:** The directors, at the first meeting in July of each year, furnish the supervisors and the assessor of each interested county an estimate in writing of the money needed for district purposes during the next year. The amount must be sufficient to pay interest on outstanding bonds, incidental expenses, repairs, and to pay the principal of maturing bonds. **Sec. 3555:** If there is more than one county, the total estimate is divided between the counties in proportion to the value of the real property in the district in each county, taking the equalized values of the last assessment roll as the basis. They furnish the supervisors and assessors of the respective counties a statement of the part of the estimate apportioned to their county.

**Sec. 3556. Tax levy—Rate:** The supervisors of each interested county at the time of levying the county taxes, levy a drainage district tax sufficient to raise the amount of the directors' estimate. Should the directors fail to report the amount required to meet principal and interest on bonds, the supervisors then levy a tax sufficient for that purpose. If the supervisors fail to do so, the assessor levies the tax. The rate is determined by deducting 15 percent for anticipated delinquencies from the total assessed value of the real property in the district and then dividing the sum necessary to be raised by the remainder of such total.

**Sec. 3557. Collection of tax:** The tax is entered on the assessment roll and collected at the same time and in the same manner as State and county taxes and paid into the county treasury for the use of the district.

**Secs. 3558 and 3559. District tax may be paid without paying other taxes:** Drainage district taxes and each installment thereof may be paid separately without at the same time paying State and county taxes assessed against the same property. The county treasurer must receive and receipt therefor. But nothing in this Act shall be construed to permit the payment of any of the State or county taxes without at the same time paying the district taxes against the same property. (L. 1923, ch. 46, p. 1.) **Sec. 3559:** General revenue laws apply to the levying and collecting of district taxes.

**Sec. 3560. Treasurer:** The treasurer of the county wherein the district was organized is the custodian of its funds. The treasurers of the other counties having lands within the district must upon order of the board of directors at any time, not oftener than twice a year settle with the district treasurer. The district treasurer is responsible on his official bond.

**Sec. 3561. "Funds":** A "bond fund," a "construction fund," a "general fund," and a "funding fund" are created by this section.

**Sec. 3562. Warrants:** The treasurer pays out money belonging to the district only on warrants signed by the president and secretary of the directors. He reports all money in each fund in writing at each regular meeting or when required.

**Sec. 3570. Election for special assessments:** Directors may at their discretion submit to the qualified voters at any time the question of levying a special assessment to raise money for any purpose of the district. Election is in all respects similar to that for issuing bonds. (Sec. 3541.) The notice states the amount of money required and the purpose for which it is to be used. A majority vote controls.

**Sec. 3571. Limit of indebtedness:** The directors have no power to incur any debt by bonds or otherwise not expressly granted in this act, except, before the collection of the first assessment, the board may incur indebtedness not to exceed \$2,000, bearing interest at 7 percent, to meet the expenses of organization.

**Sec. 3604. Annual tax levy:** The board of supervisors of any county in which any district or part of a district is situated must annually at the time of levying county taxes, levy a district tax sufficient to raise the amount called for in the estimate of the directors for that year. Supervisors must levy the amount in dollars and cents against each parcel shown by the schedule accompanying the estimate for that year. These amounts are a special tax against the several parcels of land and must be entered on the assessment roll. If the supervisors fail to levy the tax, the assessors must do so. Such taxes are collected at the same time as State and county taxes. (L. 1917, ch. 57, sec. 5.)

**Sec. 3605. Assessments apportioned on unit basis:** All assessments are apportioned against the several tracts of land according to the unit system of benefits herein provided. (L. 1917, ch. 57, sec. 6.)

#### FINANCING—Bonds

**Sec. 3541. Bond election:** For the purpose of constructing necessary works the directors estimate the amount needed and immediately call a special election on the question of issuing bonds. Notice is by posting and publication specifying the purpose of the election, the amount of bonds it is necessary to issue, and the denominations and rates of interest thereon. If a majority vote is in favor of issuing bonds, the directors issue them in the amount voted on. If the result of the election be against the issuing of bonds, the directors spread such result on their minutes, and whenever thereafter a petition signed by one-fourth or more of the qualified electors of the district is presented, asking a new election, such election is held in the same manner as the first.

**Sec. 3542. Term of bonds—Payment:** Bonds are to be payable in gold coin, except funding bonds, and are to be in 10 series falling due January 1 from 11 to 20 years after date in increasing percentages as to amount. Interest may not exceed 6 percent. Principal and interest is payable at the office of the county treasurer of the county where the district office is located. Bonds are in the amounts of \$100 or \$1,000 each and are negotiable. The secretary keeps a record of the bonds sold and the name of the purchaser.

**Sec. 3543. Sale of bonds:** The directors may sell bonds from time to time as may be necessary and advantageous, to raise money for construction and for the acquisition of works and in carrying out the objects of the district. They declare by resolution entered on their minutes their intent to sell the specified amount of bonds at a certain time and place, and give notice thereof by publication in the county where their office is located and elsewhere as they may deem necessary. Sealed proposals are received by the board prior to the date set. A deposit may be required with each bid. Sale is to the highest bidder, or the board may reject all bids. No bond may be sold for less than 95 percent of its face value.

**Sec. 3544. Lien of bonds:** Bonds are a lien upon the real property in the district and the lien of any issue has preference over that of any subsequent issue. They are paid from revenues derived from assessments upon the real property of the district and all such property is liable to assessment therefor. Nothing herein is to be construed as a tax upon the State, school, or university lands within the district.

**Secs. 3546 to 3550. Funding bonds:** Whenever a district has outstanding bonds or other obligations, payment thereof may be provided by the issuance of funding bonds. **Sec. 3547:** A petition must be presented to the directors, signed by a majority of the qualified electors, setting forth the amount of bonds,

coupons, or other indebtedness proposed to be funded, with a general description thereof, and the total amount of bonds sought to be issued. Such amount may not be greater than the total indebtedness proposed to be funded. The petition is entered on the minutes of the directors. *Sec. 3548:* After the recording of the petition, the directors call a special election on the question of issuing funding bonds. Notice is by posting and publication with the amount and purpose of the proposed issue stated therein. The election is the same as for the original bond issue. A two-thirds majority is required for the issuance of funding bonds. If more than one-third be against the question, the result must be so declared. In either case the result is recorded in the minutes of the directors. *Sec. 3549:* When issued, funding bonds are payable in gold coin in 20 series. On January 1, after the expiration of 20 years, 5 percent of the whole amount becomes due and on January 1 each year thereafter an additional 5 percent, until all are paid. The bonds are negotiable, bear 6 percent interest, are in denominations not less than \$100 nor more than \$500. *Sec. 3550:* It is unlawful to exchange any funding bond for less than 95 percent of its face value.

**Secs. 3551 to 3553. Exchange of funding bonds:** When funding bonds are issued, they are deposited with the treasurer of the county where the district was organized, and he is empowered to deliver them in exchange for the bonds or other indebtedness to be funded only after such bonds or indebtedness have been delivered to him and he has been ordered by the board of directors so to do by resolution duly spread on their minutes. After delivery the treasurer cancels the old bonds or indebtedness and reports that fact, with identification, to the directors at their next meeting. When funding bonds are issued for the purpose of sale to the highest bidder, the directors may sell them from time to time as may be necessary and advantageous to raise money to pay bonds, coupons, or other indebtedness outstanding at the time of the filing of the petition for the issuance of such funding bonds. Resolution of intention to sell and notice is the same as in the sale of the original bonds. Such bonds may not be sold for less than 95 percent of their face value, including accrued interest. All money so received must be paid to the treasurer and kept in a separate fund called the "funding fund" and applied exclusively to the payment of indebtedness outstanding at the time of the filing of the petition for funding bonds.

**Sec. 3563. Payment of bonds:** When interest coupons are presented, the treasurer pays same from the "bond fund." Whenever that fund contains \$10,000 in excess of the amount required to pay interest coupons due, the directors have the treasurer advertise for the surrender for redemption of bonds of the district. The lowest bid is accepted but no bond may be redeemed above par. Should there be no redemption, the money is invested in other approved interest-bearing bonds.

**Secs. 3573 to 3578. Validation of bonds:** Within 30 days after the order directing the issuance of bonds, the directors must bring an action in the superior court of the county in which their office is located to determine the validity of such bonds. It is a proceeding *in rem* and jurisdiction is acquired by publication in the county in which the action is pending and is complete after the first publication. Within 30 days interested parties may appear and contest the validity of the bonds. Either party has the right of appeal within 30 days, and the appeal must be determined by the Supreme Court within 3 months. (L. 1921, ch. 138.) If the directors do not act to validate the bonds, any assessment payer, after 30 days and within 90 days, may bring such action. The court hears and determines the

sufficiency of all proceedings; and, if there is more than one action, they must be consolidated. Upon the hearing the court will disregard errors and omissions which do not effect the substantial rights of the parties. The state laws of pleading and practice prevail. Costs may be apportioned between the parties or taxed against the losing party in the discretion of the court. The validity of bonds may not be contested in any other manner than that herein provided.

**Secs. 3591 to 3594. Reduction in bonded indebtedness:** If the bonded indebtedness is greater than the district needs to complete its works, the directors may call a special election on the question of reducing the bond issue. The election is the same as for issuing bonds and the notice must state the amount of authorized bonds and the amount of the proposed reduction. The validity of the bonds is not affected. Unused bonds must be destroyed after the reduction of bonded indebtedness has received an affirmative majority.

#### CONSTRUCTION

**Sec. 3564. Contracts:** After adopting the plan for the works, the directors give notice by publication in each interested county and elsewhere as they deem necessary, calling for bids for construction and describing the work to be done. Bids are opened in public and work let to the lowest responsible bidder, or all bids may be rejected and the directors may construct the work under their own supervision. Contracts for material must be awarded to the lowest responsible bidder. Contractors give bond to be approved by the directors, for 50 percent of the contract price.

#### DISSOLUTION

**Sec. 3599. Districts may be dissolved:** The board of directors or any landowner may file with the board of supervisors in the county in which the largest part of the lands are situated, a verified petition stating: (1) the date of organization; (2) that all indebtedness has been paid and no obligations are outstanding; (3) the amount of money remaining undisposed of in the treasury; (and either of the following:) (4) that all lands are being adequately drained by works constructed by the district or by other persons or organizations, and that such works are being maintained by agencies other than the district; (5) that all lands or substantially all have been included in an irrigation district invested with the power of drainage; (6) or that satisfactory provision for drainage of all of the district lands has been made and continuance of the organization is no longer required. The supervisors fix a hearing on the petition, with notice by publication in each county affected, the first publication not to be less than 21 days before the hearing. The supervisors hear the evidence and, if they find the allegation sustained, enter upon their records an order declaring the district dissolved. If they find otherwise, the petition is dismissed. The order of dissolution terminates all of the legal powers and functions of the district. Funds remaining either are turned over to a drainage or irrigation district formed to take the place of the district being dissolved, or are paid back *pro rata* to the taxpayers, as may be provided by the order of dissolution. (L. 1925, ch. 8, sec. 1.)

### ARKANSAS

(*Popes Digest, Statutes of Arkansas—1937, and Supplement—1938, Chapter 52, art. 1*)

#### DRAINS

##### ORGANIZATION—Petition

**Sec. 4455. Districts:** Three or more owners of real property within a proposed drainage district may petition the county

court to establish such district. The petition describes generally the region to be included and the petitioners give bond to pay costs if the district is not formed. The court appoints an engineer selected by the petitioners, if satisfactory to the court, who gives bond for the faithful performance of his duties.

The engineer makes a survey to ascertain the limits of the region that would be benefited by the drainage, and files his report with the court showing the general character of the works that would be required. The county clerk thereupon gives notice by publication, calling on all interested persons to appear at a certain date and show cause for or against the establishment of the district. If the court after hearing all witnesses deems the drainage to be to the best interest of the parties affected, it will enter an order on its record establishing the district. The preliminary expenses are paid by the county, to be repaid from the first assessment.

If a proposed district lies in more than one county, the petition is addressed to the circuit court of the county in which the largest portion of the land is situated, and all proceedings are had in that court. If the court does not act promptly on the petition, it may be compelled to do so by mandamus proceedings. (L. 1921 amending Act 1911, p. 193.) The court apportions the costs between the counties in proportion to the benefits assessed to each, and notice is published in a newspaper of general circulation in each county. (The statute provides that where the district includes land in more than one county, the words "county court" and "county clerk" shall mean Circuit Court and Circuit Clerk, respectively.)

See: *Jurisdiction: Bayou Meto D. Dist. v. Ingram*, 165 Ark. 318; 264 S.W. 947.

*Notice: Burns v. Fisher*, 171 Ark. 1012; 287 S.W. 205.  
*Mahan v. Wilson*, 169 Ark. 117; 273 S.W. 383.

*Petition: Robinson v. Mud Slough Dr. D.*, 174 Ark. 369; 295 S.W. 360.  
*Smith v. Lawrence*, 175 Ark. 712; 300 S.W. 386.

*Bonds: Indian Bayou Dr. D. v. Dickie*, 177 Ark. 728; 7 S.W. (2d) 794.  
*Drainage Dist. v. Mcchts. & Planters Bank*, 176 Ark. 474; 2 S.W. (2d) 1079.  
*Grady Dr. D. v. Free*, 178 Ark. 346; 10 S.W. (2d) 854.

*No assessment against county roads: 179 Ark. 91; 14 S.W. (2d) 226.*

**Sec. 4456. Who may sign petition:** If the petition is signed by a majority either in number, acreage, or value of the holders of real property within the district, it is the duty of the court to establish the district without further inquiry. If the petition is not so signed, it is the duty of the court to investigate and establish the district if in its opinion such establishment will be advantageous to the holders of real property therein. Married women and legal representatives may sign the petition, and a corporation signature is good if its corporate seal is attached. (Act April 28, 1911, p. 193, sec. 2.)

See: *Jacks Bayou Dr. D. v. St. L. I. M. & S. Ry. Co.*, 116 Ark. 30.  
*Jones v. Fletcher*, 132 Ark. 328.

**Sec. 4457. Effect of order:** The order of the court establishing the district has the full force and effect of a judgment. Any landowner may appeal within 20 days, but in the absence of appeal the judgment is conclusive and binding upon all of the real property within the district and upon the owners thereof. Any owner may also appeal from any order refusing to establish a district.

See: *Wulff v. Claiborne*, 107 Ark. 325.  
*Chicago Mill & Lumber Co. v. Dr. D.*, 117 Ark. 292.

**Sec. 4501. Subdistricts:** When three or more owners of lands wholly or partly within a drainage district petition the county

court to establish a subdistrict to embrace their property, and post a bond for the expenses, the county court enters an order directing the commissioners of the main district to have a survey made and ascertain the limits of the region that will be benefited. The commissioners report generally the character of the territory, the benefits to be derived, the character of the works required, and the expense of constructing them. The court clerk gives notice by publication to landowners in the subdistrict to show cause for or against its establishment. The court hears parties affected, and if of the opinion that formation of the subdistrict would promote the public welfare and be to the best interests of the owners of said land, will establish the subdistrict under the provisions of sections 4456 and 4463. The main district pays for preliminary estimate and publication and is repaid from the first money received by the subdistrict.

**Sec. 4502. Commissioners of subdistricts:** The court appoints the commissioners of the main district in which the greater portion of the subdistrict is situated to act as commissioners of the subdistrict. The petition for the organization of the subdistrict must be filed in the county in which the main district was organized.

See: *Magnitude of the improvement immaterial: Mahan v. Wilson*, 169 Ark. 117; 273 S.W. 383.

#### ORGANIZATION—Officers

**Secs. 4458 and 4459. Commissioners:** When the court establishes a district it appoints three landowners within the county as a board of commissioners to assess benefits and damages resulting from the improvement. If a majority in value of the owners of real property petition for the appointment of a particular person as commissioner, it is the duty of the court to make such appointment. The court must remove any commissioner on petition of a majority in value of the owners of property within the district. **Sec. 4459:** "Real property" as used in this act means the same as in the act providing for the collection of county and State revenues and embraces all railroads and tram roads.

**Sec. 4460. Plan:** As soon as the board has formed its plan of improvement and estimated the cost thereof, they file it with the county clerk. The plan must be accompanied by a map showing the location of the ditches and specifically describing them.

**Sec. 4490. More than one county—Commissioners:** In case of a district in more than one county, all three commissioners must be the owners of real property within the district. (L. 1913, p. 738, sec. 6.)

#### ORGANIZATION—Powers

**Sec. 4472. Authority of commissioners:** The boards of commissioners have control of the construction of the improvements in their districts. They may advertise in local papers or papers published in other states for proposals to do any of the work by contract. No work exceeding \$1,000 in cost may be let without public advertisement. They may reject any proposal. The court may remove any commissioner for cause stated in writing, with opportunity to the commissioner to answer and to appeal, and may appoint a successor. (Act of May 27, 1909, p. 830.) (*Hopkins v. Hellums*, 108 Ark. 460.)

**Sec. 4476. Authorization of plans—Bonds:** The commissioners may alter the plan of work by filing changed plans with the county clerk and giving notice by publication of such filing. If the commissioners or any landowner deem that the changed plans have made the assessments inequitable, they may petition the county court to have a reassessment of the property. In no event shall a reduction of assessment be made after the

assessment of benefits has been confirmed. Any reduction must be paid for in damages and the claim for such damages shall be subordinate to the holders of bonds which have theretofore been issued. Property owners have the right of appeal from the reassessment. (Act of March 13, 1913.)

See: Hudson v. Simonson, 170 Ark. 243; 279 S.W. 780.  
Bayou Meto Dr. Dist. v. Ingram, 165 Ark. 318; 264 S.W. 947.  
Protho v. Williams, 147 Ark. 535; 229 S.W. 38.  
Indian Bayou Dr. D. v. Walt, 154 Ark. 335; 242 S.W. 575.

**Sec. 4478. Lateral ditches—Intervening lands:** Any landowner may build ditches to drain his land into the main ditch, and if intervening landowners refuse permission, he may bring action in the Circuit Court to condemn a right-of-way in the same manner as other condemnation proceedings. The jury must deduct from the damages the benefits that will accrue to the intervening landowner and such landowner has the right to use the ditch.

**Sec. 4479. Omitted lands:** When lands in the district for any reason were not assessed benefits or were not assessed to the extent of the benefits received, or when any corporation or individual outside of the limits of the district shall drain lands into the district ditches, the commissioners will assess the benefit or the enhanced benefit received by such lands in the same manner as benefits were originally assessed. (Sec. 4461.) Vested rights in natural drainage may not be interfered with.

**Sec. 4480. Outlet:** When necessary for a proper outlet, the commissioners may construct ditches or other works on lands beyond the jurisdiction of the court, or which for other reasons cannot be included in the district, so as to secure the objects of the improvement. They have the right to condemn the right-of-way for such construction. The drain beyond the limits of the district is the property of the district and no lateral drains may connect thereto without compensation to the district to be fixed by the court. (See sec. 4934 on Eminent Domain.)

**Sec. 4481. Continuation of district:** Upon completion, the district does not cease to exist but continues for the purpose of preserving the works and enlarging them from time to time as may be advantageous. Commissioners may from time to time apply to the court for the levying of additional taxes, at which time the proceedings are the same as for the original levy.

See: *Authority to enlarge:* Indian Bayou Dr. D. v. Walt, 154 Ark. 335; 242 S.W. 575.  
Gray v. Doyle, 167 Ark. 495; 269 S.W. 579.  
Clay v. England, 172 Ark. 373; 288 S.W. 895.  
Lesser Goldman Collon Co. v. Cache River Dr. D., 174 Ark. 160; 249 S.W. 711.  
Indian Bayou Dr. D. v. Dickie, 177 Ark. 728; 7 S.W. (2d) 794.

**Sec. 4497. Sale of land for taxes:** On the sale of land for taxes of a drainage district, the land is first offered subject to the lien of all district assessments then existing thereon. If there is no purchaser, the commissioner appointed to make the sale reports that fact to the court, and the land may not again be offered for sale until the lapse of one year nor until an attorney *ad litem* has notified the commissioners or directors of the interested district and trustees of all bondholders having liens thereon that the land has been offered for sale and no purchaser found. When the report of the attorney is made showing compliance with this provision, the court orders the sale of the land free of incumbrances of the assessments of all other improvement districts that are subordinate to the lien that is foreclosed, but subject to subsequent installments of assessments for benefits in the plaintiff district. After payment of the foreclosed lien and costs, the court distributes the remainder of the sale price equitably. If the board of directors of any district having a lien on the land, or the

trustees of any bondholder having such lien, are not notified of the application for the sale they may at any time within 3 years have the sale set aside and the land resold.

See: Oliver v. Gann, 183 Ark. 959; 39 S.W. (2d) 521.  
Bd. of Comrs. v. Bd. of Drktrs., 181 Ark. 898; 28 S.W. (2d) 721.

**Sec. 4519. Special act districts included:** All drainage districts created by a special act are made drainage districts under the terms of Act 279 of May 27, 1909, with all the powers and liabilities conferred by that act, provided this act shall not be construed to take away from any improvement district created by special act any power conferred on it nor to displace any commissioner or director. (Act 227 of March 23, 1927.)

**Secs. 4526 and 4531. General power to include lands:** When any lowland or lake has been drained into the ditches of a drainage district which has completed its works, lands benefited by such drainage may be added to the drainage district; but no lands paying taxes in another drainage district may be added. (Act #180, March 22, 1927.) **Sec. 4531:** Sanitary districts may be included but the amount of assessment is limited on lots and blocks served by sewers to \$.50 per year on a lot 50x150 ft.

**Sec. 4532. Procedure to include lands drained:** The commissioners, when they find that land has been benefited by connecting with the works of the district, may file with the clerk of the chancery court of the county where the land is situated, a petition setting forth the reasons why such land should be annexed to the district. After notice by publication the court hears all interested parties and then enters its decree granting or denying the petition. If the land is annexed, it thereafter constitutes a part of the district. **Sec. 4533:** The assessor of the district proceeds to assess the benefits to such land. If there is no assessor then the board of commissioners assesses it. The assessment is in conformity with sections 4561-63 and appeal is in the same manner. The commissioners may equalize the assessment. The commissioners may have a reassessment of the benefits of the entire district so as to equalize the burden. The reassessment of benefits follows the original assessment in procedure.

#### FINANCING—Assessments

**Sec. 4461. Assessment of benefits:** The commissioners assess the land within a district and inscribe in a book provided for the purpose the description of each tract, the name of the owner, the amount of benefits assessed against it, and an estimate of the probable amount the owner will have to pay. Their assessment embraces not only the land but all public roads, railroads and other improvements on the land that will be benefited by the drainage system. Where already constructed drainage works are to be used, the commissioners assess their value, which is paid by the district in cash or reduced assessments. The commissioners also assess damages, and where they make no return of damages, it is equivalent to a finding by them that there are none.

See: Oats v. Dist., 135 Ark. 149.  
Dickerson v. Dist., 138 Ark. 471.  
Hudson v. Simonson, 170 Ark. 243; 279 S.W. 780.

**Sec. 4462. Lands outside of district:** If the commissioners find that other lands not embraced within the boundaries of the district will be benefited, they assess the benefits and damages to such land and report same to the court. The court then gives notice by publication to the owners of the land to show cause why it should not be included in the district. The court investigates the question of benefits to the outside land and makes a finding thereon from which either party may appeal

within 20 days. If the finding be in favor of the commissioners, the limits of the district are extended to embrace the lands involved.

**Sec. 4463. Confirmation of assessments:** When their assessment is completed, the commissioners file it with the clerk of the court, where it becomes a public record. The county clerk gives notice by publication of an order to appear and show cause why the report should not be confirmed. Any owner may appear and present objections. The court makes findings confirming or changing the assessment, which findings have the force and effect of a judgment. Either party may appeal within 30 days. (Acts 1909 as amended by L. 1913, p. 738.)

See: *Sufficient publication: Johnson v. Tucker Lake L. & D. Dist.*, 168 Ark. 889; 271 S.W. 965.

*Dr. Dist. v. M. & P. Bank*, 176 Ark. 474; 2 S.W. (2d) 1079.

**Sec. 4464. Assessment of damages by jury—Condemnation:** The property owners are construed to have accepted the award of damages by the commissioners unless within 30 days demand is made in writing for assessment by jury. In that event, the commissioners institute in the Circuit Court an action to condemn the land and have the right to pay into court the sum fixed by it and to then proceed with the work without awaiting the action of the jury. (Acts 1909, p. 829.)

**Sec. 4465. Court order for assessment—Installments—Lien:** At the time the assessment of benefits is filed, or thereafter when called for by the commissioners, the court will enter an order, which has all of the force of a judgment, assessing a tax upon the real property in the district sufficient to pay the estimated costs of the improvement plus 10 percent for contingencies. This tax must be paid by the real property in the district in the proportion of the assessment of benefits, and in annual installments not to exceed 25 percent of the assessment in any one year.

The tax so levied is a lien upon the real property in the district and is entitled to preference over all other demands, executions, incumbrances, or liens, whensoever created, and continues until such assessment with any penalties or costs has been paid. The remedy against such assessment is by appeal within 20 days; and on the appeal the presumption is in favor of the legality of the tax. Any owner of real property within the district may compel compliance with this section by mandamus. Should the commissioners deem it inconvenient to immediately begin the construction of the works after the confirmation of the assessment of benefits, they may report to the court the rate of taxation necessary to pay the preliminary expenses of the district, whereupon the court will levy such tax with 10 percent added for contingencies, and the tax is extended on the tax books of the county and collected in the same manner as other taxes. (Act of May 22, 1923.)

**Sec. 4466. Levy and collection of tax:** Whenever it is deemed prudent not to proceed immediately with the construction and not to abandon the proceedings, the court or the board of commissioners are empowered to levy and collect a tax based upon the benefits and collectible from the real property of the district in proportion to the respective assessments of benefits against the several pieces of property, for the purpose of paying the preliminary expenses. This tax is collected in the same manner as the tax for construction. If any district is abandoned before it makes final assessment for benefits, the preliminary expenses are taxes against the real estate upon the basis of the assessment for county purposes. (Act of March 22, 1923.)

**Sec. 4468. Collection of taxes:** The amount of the drainage taxes is annually extended on the "drainage tax book." This

book contains a description of each tract of land with the amount of the annual installment due on said tract and levied for that year. Notice of any change in description must be given the county clerk by the commissioners. (Act of March 25, 1937.)

See: *Collector must accept general taxes alone when tendered: Howell v. Lamberson*, 149 Ark. 183; 231 S.W. 872.

**Sec. 4469. Collection of taxes:** The county clerk annually turns the drainage tax book over to the tax collector of each county, at the same time that he delivers the real estate tax book of the county. Drainage taxes are collected at the same time as state and county taxes and a separate list thereof is issued. Drainage taxes are paid over to the commissioners of the various drainage districts at or before the time that the collector makes settlement with the county treasurer. Penalty is provided against the collector for failure to collect the drainage taxes or to enter them on the tax books.

**Sec. 4470. Payment by treasurer—Warrants:** The district treasurer makes disbursement only on warrants signed by the chairman of the board of commissioners. All warrants are dated and numbered consecutively, recorded, and state on their face the name of the payee, the amount, and the purpose for which the warrant is drawn. No warrant may be paid unless there are sufficient funds in the treasury to pay all other warrants bearing a lower number. No warrants may be made payable or be paid in anything but currency. No warrant may be increased because of depreciation in the market value thereof. (Acts 1909, p. 829, sec. 11.)

**Sec. 4471. Increase of tax levies:** If the taxes first levied prove insufficient to complete the improvement or to pay the bonds and interest as they become due, the board reports the deficiency to the court and the court thereupon levies upon the property previously assessed a tax sufficient to complete the improvement and pay the bonds and interest, which tax is collected in the same manner as the first levy; but the total levy shall in no case exceed the benefits assessed on such property. The performance of these duties may be enforced by mandamus at the instance of any interested person. (Act March 28, 1911, p. 198.)

See: *Increased levies must be within the assessed benefits: Griffin v. Little Red River Dr. D.*, 157 Ark. 590; 249 S.W. 16.

**Sec. 4482. When assessments payable—Enforcement:** District drainage taxes are payable between the first Monday in January and the 10th day of April each year. If any taxes are not paid at maturity, the collector shall not include them in the taxes for which he will sell land but shall report the delinquency to the Board of Commissioners, who must add thereto a penalty of 25 percent. The board enforces collection by chancery proceeding in a court of the county where the lands are situated. That court gives judgment for the taxes and penalty with 6 percent interest from the end of the 60 days allowed for the collection thereof. The judgment provides for the sale of delinquent lands by a commissioner of the court after advertisement. The proceedings are *in rem* and it is immaterial that the ownership of land be incorrectly alleged. Judgment is enforced only against the land and not against any other property of the defendant. All delinquencies may be included in one suit with notice by publication. The form of notice is set out in full in the statute. Should the commissioners fail to commence suit within the 60 days after delinquency, the holder of any bond may bring suit in the same manner.

**Sec. 4483. Enforcement—Redemption:** The statute sets out minutely and in detail the method of conducting the suit for

foreclosure and the character of the title conveyed. In the event the bid for any property is not sufficient to pay the assessment with interest, penalties, and costs, the commissioner of the court bids the same off in the name of the board of directors of the drainage district, bidding the whole amount due, and executes his deed to the district. The deed when recorded must be received in evidence and shows an indefeasible title in the district, unassailable either in law or equity; provided, within 2 years after final decree the owner of the land sold may file a petition alleging the payment of taxes on the land for the year in which they were sold, and upon the establishment of that fact, the court will vacate the decree; and provided, any landowner shall have the right of redemption within 5 years, which runs from the day the lands are offered for sale and not from the confirmation of the sale. (Acts 1909, p. 829, sec. 24.)

**Sec. 4494. Interest included in tax—Payment of assessments:** The interest which will accrue on bonds issued by districts and subdistricts must be included and added to the tax, but the interest to accrue on account of the issuing of said bonds shall not be construed as a part of the costs of construction in determining whether the costs are in excess of the benefits.

When assessments of benefits are made, the landowners have the privilege of paying them in full within 30 days. But all such assessments are made payable in installments so that not more than 25 percent shall be collectible against the wishes of the landowner in any one year. The deferred installments bear interest at 6 percent and are payable only in installments as levied. The levy of assessments may be by way of proportional amounts of the total assessed benefits, and interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of benefits and interest. (L. 1913, p. 728, sec. 10.)

**Sec. 4524. Assessment of benefits—Collection—Preliminary expense:** For the purpose of paying principal and interest of any bonds issued for preliminary expenses, either original or refunding, when an assessment of benefits has not been made, the court, when asked by the commissioners of the district, will enter an order having the effect of a judgment decreeing that there shall be assessed and collected a tax upon the real property of the district sufficient to pay such bond issue as same matures, plus 10 percent for contingencies, based upon the valuation as shown by the last county assessment. Collection is in the same manner as state and county taxes. Such tax is a lien on the real property in the district from the date of the levy. Appeal within 30 days may be had but the presumption is in favor of the legality of the tax. (L. No. 59, Acts of 1927.)

**Sec. 4527. Reassessment of benefits:** The commissioners have power to reassess the benefits not oftener than once a year in the same manner as the original assessment is made. All appeals must be taken within 30 days from the action of the court thereon. (Act #203 of March 23, 1927, sec. 2.)

**Sec. 4528. Reassessment and extension—Procedure:** If the commissioners have filed plans for additional works, no proceeding shall be taken looking to the confirmation of the assessment of benefits based thereon until after a petition has been filed with the court signed by a majority in number, acreage, or value of the landowners, praying that the plan shall proceed. If no such petition is filed within one year, the commissioners must withdraw the revised plan. If the petition is filed, the clerk gives notice by publication of a hearing thereon. The form of the notice is set out in the statute. The court, after determining that the petition is adequate, hears all objections there to and decides whether the assessment of benefits is

equitable and just. Appeal from either side to the circuit court must be filed within 30 days, and appeal from the decision of that court also within 30 days.

**Sec. 4529. Judgment—Reassessment:** When such reassessment of benefits has been confirmed, it is the assessment of benefits until another reassessment has been made. Taxes are levied and collected in the same manner as on the original assessment and are a first lien on lands of the district from the time made.

See: *Constitutional*: Dr. D. #18, Craighead Co. v. McMeen, 183 Ark. 984; 39 S.W. (2d) 713.

*Sale of forfeited lands*: Watson v. Barnett, 191 Ark. 990, 88 S.W. (2d) 811.

*Use of funds*: Green v. Wulff Dr. D. #4, 193 Ark. 1087; 104 S.W. (2d) 1076.

Tarleton Dr. D. #15 v. American Investment Co., 186 Ark. 20; 52 S.W. (2d) 738.

*Reassessment*: Dr. D. #18 v. McMeen, 183 Ark. 984; 39 S.W. (2d) 713.

State ex rel. Murphy v. Cherry, 188 Ark. 664; 67 S.W. (2d) 1024.

*Lien*: Tarleton Dr. D. #15 v. American Investment Co. ante. Harris v. Little Red River Levee Dist. #2, 188 Ark. 975; 69 S.W. (2d) 877.

*Collection and Enforcement*: Oliver v. Gann, 183 Ark. 959; 39 S.W. (2d) 521.

Deaner v. Gwaltney, 194 Ark. \_\_\_; 108 S.W. (2d) 600.

Union Investment Co. v. Hunt, 187 Ark. 357; 59 S.W. (2d) 1039.

*Redemption*: Levee Dist. #2, 188 Ark. 975; 69 S.W. (2d) 877. Bauer v. Gwaltney, 191 Ark. 1030; 88 S.W. (2d) 1005.

#### FINANCING—Bonds

**Sec. 4467. Bonds to pay preliminary expenses:** If the directors or commissioners find it desirable, they may issue coupon bonds or other negotiable evidences of indebtedness to raise money to pay preliminary expenses; and such bonds or evidences of indebtedness may be issued from time to time in payment of the preliminary work done. They may secure the payment of such obligations by a pledge of the assessment of benefits when they shall have been confirmed.

**Sec. 4474. Bonds:** To hasten the work, the board may borrow money at not exceeding 6 percent interest and may issue negotiable bonds therefor and pledge all assets for the payment thereof. It may issue to contractors to do the work its negotiable instruments bearing interest at not more than 6 percent. Bonds may not run more than 30 years. The issue may be divided so that a portion thereof will mature each year as assessments are collected, or all may mature at the same time if proper provision is made for a sinking fund.

See: *Advertisement of sale of bonds not required*: Boyce v. Clapham, 219 S.W. 24.

**Sec. 4484. Bonds secured by lien—Enforcement:** Bonds are secured by lien on all the lands, railroads, and tramroads in the district. The board of directors must levy an annual tax so long as is necessary to pay any bonds issued or obligations contracted. Such levy and collection may be enforced by mandamus.

If any bond or interest coupon is not paid within 30 days after maturity, it is the duty of the chancery court in the proper county, upon application of the holder of such bond or coupon overdue, to appoint a receiver and collect the taxes aforesaid. The proceeds of such taxes are applied to the payment of the interest first, and then to the overdue principal. The receiver may be directed to foreclose the lien on the lands. (L. 1919, p. 829, sec. 25.)

**Sec. 4485. May not pledge bonds—Sinking fund:** It is unlawful for any officer to pledge any bond or coupon as security for the payment of any debt or obligation whatever. It is unlawful

to use the proceeds of any bond for any purpose except as specifically and expressly directed by this Act. Violation of this provision is a felony. The entire revenue of the district from all sources and "all real estate, railroads, and tramroads subject to taxation in the district is by this act pledged." The board of directors is required to set aside annually, from the first revenues collected from any source whatever, a sufficient amount to pay the interest on the bonds and to create a sinking fund for their ultimate retirement, if a sinking fund is contracted for. (L. 1919, sec. 26.)

**Sec. 4487. Warrants—Annual report:** Commissioners must keep the original itemized bills when all warrants have been paid and must make a sworn financial statement to the county clerk each year. The books and records of the district must be examined at least once each year by the state bank examiner.

**Sec. 4520. Refunding bonds:** Any drainage district having outstanding bonds, certificates of indebtedness, or unsatisfied judgments is authorized to issue refunding bonds for the purpose of paying the indebtedness with interest. The refunding bonds may bear interest not to exceed 6 percent and mature within not to exceed 30 years from date of issue. (Act #16 of February 16, 1927, sec. 1.)

**Secs. 4521 to 4523.** Refunding bonds may not be issued for a greater amount than necessary to pay past due outstanding bonds and future outstanding bonds to mature over a period of not exceeding 5 years after the issuing of the refunding bonds. The amount of such issue may include necessary discounts and expenses in connection with the issue. **Sec. 4522:** Refunding bonds are secured by a lien on the assessment of benefits like other bonds, and the issue does not affect the assessment of benefits. **Sec. 4523:** Refunding bonds may be issued to pay bonds sold prior to the assessment of benefits for preliminary expenses.

See: *Keith v. Dr. D. #7 of Poinsett Co.*, 183 Ark. 786; 38 S.W. (2d) 755.  
*Oliver v. Western Clay Dr. D.*, 187 Ark. 539; 61 S.W. (2d) 442.  
*Dr. D. #7 of Poinsett Co. v. Hutchins*, 184 Ark. 521; 42 S.W. (2d) 996.

CONSTRUCTION

**Sec. 4473. Contractors—Payments—Bond:** Contractors must give bond in an amount required by the board, and the board may not remit any penalty or forfeiture of said bond upon completion of the contract. The board may appoint necessary agents and fix their compensation. They may buy necessary material and equipment and in general make such contracts in the prosecution of the work as may best subserve the public ends. The board may draw its warrants in favor of the contractor for not more than 80 percent of the work reported by their engineer to be finished, reserving the remainder until completion and acceptance.

See: *Liability for negligence: Wood v. Dr. Dist.*, 110 Ark. 416.

*Contractor's bond, how construed: Union Indemnity Co. v. Forger & Hanson*, 174 Ark. 1110; 298 S.W. 1032.  
*Holcomb v. Amer. Security Co.*, 184 Ark. 449; 42 S.W. (2d) 765.  
*Green v. Wulff Dr. D. #4*, 193 Ark. 1087; 104 S.W. (2d) 1076.

DISSOLUTION

**Sec. 4525. How district may be abolished:** The board of Commissioners when they deem it inadvisable or impractical to construct improvements contemplated by the organization, may, when all of the indebtedness has been paid, file a petition with the court praying that the district be abolished and giving their reasons therefor. The court clerk gives notice by publication

of a hearing on the petition and the court hears the evidence and grants the petition or dismisses the same in its discretion. Overruling of one petition does not bar the filing of another.

CALIFORNIA

[General Laws of California (Deering) 1937, and General Laws Supplement, 1939]

DRAINAGE

1. Act No. 2200—Drainage Law of 1885 (Stat. '85, p. 204)
2. Act No. 2202—Drainage District Law, 1903 (Stat. '03, p. 291)
3. Act No. 2203—Drainage District Improvement Act, 1919 (Stat. '19, p. 731)
4. Act No. 2204—Drainage District Act of 1923 (Stat. '23, p. 196)
5. Act No. 2205—Irrigation District Drainage Law (Stat. '07, p. 569)
6. Reclamation District Act of 1872 (Title VIII, art. II, secs. 3446-3493)

1. ACT NO. 2200—DRAINAGE LAWS OF 1885 (Statutes 1885, p. 204)

ORGANIZATION—Petition

**Sec. 1. Petition—Procedure:** Whenever the owners of two-thirds of any body of land susceptible of one mode of drainage desire to drain the same, they may present to the board of supervisors of the county in which the greater portion thereof is situated, at a regular meeting of the board, a petition setting out a description of the land, the number of acres in the district and in each tract, the name of the owner, and the name of three persons whom they desire to serve as trustees for the first three months. The petition must be verified by at least one signer and be published for four weeks prior to hearing thereon with notice of such hearing. (As amended Statutes of 1909, p. 25.)

**Sec. 2. Intercounty districts:** When the district is situated in more than one county, the trustees must, after the petition has been granted, forward a copy to the board of supervisors of each county interested and such boards must not allow another district to be formed within the territory without the consent of the trustees.

**Sec. 3. Excluding and including lands:** If the supervisors find upon the hearing that lands have been improperly included in the district, they will, before fixing the boundaries, exclude such lands. They will also include adjacent lands upon petition of any owner presented at the hearing, if deemed for the best interests of the district. Finding that the petition should be granted, the supervisors will, by order, define the boundaries of the district and declare it duly formed. The persons named in the petition are to be trustees for the first three months or until their successors are appointed.

**Secs. 4 to 6. Recording petition:** The petition and the order defining the boundaries must be recorded in the office of the recorder of each county having land in the district. **Sec. 5:** After the approval of the petition, the landowners by majority vote of the acreage must adopt bylaws for governing and controlling the district and for the future election of trustees. The bylaws must be signed by a majority ownership in acreage. **Sec. 6:** Bylaws and all amendments must be filed for record in the office of the recorder of the county in which the district was organized.

ORGANIZATION—Officers

**Secs. 7 and 8. Trustees:** The trustees organize by electing one of their members president, and they also elect a clerk. They employ an engineer to make surveys and plans, locate the works, and estimate the cost thereof. They may modify or change the

original plan when necessary; construct, maintain, and keep in repair all necessary works; and do all things required for the proper drainage of the lands. The trustees may draw warrants in payment of their services but such warrants are void until countersigned by the board of supervisors of the county.

Sec. 8: The trustees report the plan of the work and the estimate of the cost to the supervisors of each county interested.

#### ORGANIZATION—Powers

Secs. 15 to 19. Eminent domain: The work is executed under the direction of the board of trustees. They must keep account of all expenditures and such accounts and all contracts are open to inspection of the board of supervisors and any interested person. The trustees may acquire by purchase all property necessary to carry out the plan of drainage. They may acquire by condemnation necessary rights-of-way for the works, and they may take material for construction and maintenance from lands outside as well as lands inside of the district. The proceedings for condemnation must be had under the general statutes. (Title VII, part 3, Code of Civil Procedure.)

Sec. 20. Drainage entirely by owners: Whenever land susceptible of drainage by one method is entirely owned by parties who desire to drain it and to manage the undertaking without trustees, such parties may file a petition provided for in sections 1 and 2, stating that they intend to undertake such drainage on their own responsibility. If the petition is granted, the parties have all of the rights, immunities, and privileges possessed by boards of trustees. (L. 1909, p. 30.)

Sec. 20-a. Changing boundaries—Including and excluding lands: Drainage districts may include lands not embraced in the original organization or exclude lands so embraced as provided in this section; and such inclusion or exclusion shall not affect any of the district's rights nor impair nor discharge any obligation for or upon which the district may become liable had such change of its boundaries not been made.

The owners of lands susceptible of the same mode of drainage as the lands within the district, contiguous to the boundaries of the district, may separately or jointly file with the supervisors of the county where the district was organized, a petition for inclusion in the district. The petition must state the grounds for inclusion and must be acknowledged in the same manner as conveyances of land. The supervisors' clerk gives notice of the filing of the petition by publication in each of the counties affected and also by mail to each property owner or landowner in the district. The notice fixes the time when any objectors may appear and show cause, at a regular meeting of the board, why the petition should not be granted and the boundaries of the district changed accordingly. At the hearing the supervisors hear all objections to the petition and the proceedings are recorded by the board. Failure to object to the petition is deemed to be assent except as to holders of warrants of the district. The expenses of the proceeding are paid by the petitioners. The supervisors determine whether it is to the best interests of the district to include the lands or any part of them mentioned in the petition and, after determining all objections and finding in favor of the inclusion, they will issue an order of record that the lands mentioned be included in the district; provided, if the holders of legal title represent 10 percent of the total acreage embraced within the exterior boundaries of said district file with the supervisors written objections to the inclusion of such land, it is the duty of the board to deny the petition.

Before making an order including such lands within the boundaries of the district, the supervisors require the petitioners

to pay to the county treasurer of the county where the district was formed an equitable amount determined by them as and for a contribution to the cost of the work already done in the district. In addition, the supervisors, when there is a lien on the lands within the district, must determine the amount that the lands to be included should be assessed for the payment of the lien, and they enter an order making the assessment, which constitutes a lien against the lands included with the same force and effect as the lien of the original assessment against lands in the district.

On a petition by one or more owners in fee of lands within a district to exclude their lands, the supervisors will hold a hearing similar to that for inclusion of lands and issue their order in accordance with their findings in the matter. If there be outstanding bonds or assessments of the district at the time of filing the petition or final determination, whether such obligations are due or not, the order of the board excluding the lands will not release them from the lien of the bonds or assessments, but such lien remains in full force. (L. 1923, p. 30.)

#### FINANCING—Assessments

Sec. 9. Commissioners: Upon the filing of the trustees report, the supervisors of the county in which the district was formed appoint three commissioners, being disinterested residents of the county or counties, to view the lands and assess to each tract a proportionate share of the whole expense. They also assess the benefits which will accrue to each tract. Such assessments when collected are paid to the county treasurer, and paid out by him for the construction of the work upon warrants of the trustees approved by the supervisors.

Sec. 10. Warrants: Warrants are drawn by the trustees and approved by the board of supervisors and presented to the treasurer for payment. If not paid on presentation, they are registered and bear interest at 6 percent until paid and are paid in the order of their registration. Warrants may be used in the payment of assessments without regard to the order of their registration. Assessments are paid to the treasurer of the county where the particular tract of land is situated.

Sec. 12. Additional assessments: If the original assessment is insufficient to complete the drainage, or if further sums are required from time to time for maintenance and repair, the trustees must present to the supervisors of the county where the district was formed a statement of the work to be done and its estimated cost, and a statement of the expected cost of maintenance, repairs, and administration; and the board may make an order directing the commissioners, or new commissioners named, to assess the amount of the estimated cost as a charge against the lands in the same manner as the original assessment. (L. 1937, p. 1668.)

Sec. 13. Equalization of assessments: The commissioners make a list of the charges against each tract in the district showing: a description of the tract, the number of acres, the names of the owners if known, or a statement that they are unknown, and the amount assessed against each tract. (No mistake in the name of the owner renders the assessment invalid.) The commissioners cause the list to be published and posted in each county interested, with a notice that in 10 days they will meet as a board of equalization for the purpose of equalizing assessments. They may continue the session for not to exceed 10 days in all.

Sec. 14. List—Lien—Installments—Notice: (a) The original list of assessments must be filed in alphabetical arrangement first, with the treasurer of that county in which the district is organized, and then a copy, certified by the commissioners,

must be filed with the treasurer of each county interested.

(b) From and after the filing of the list, the charges assessed upon any tract of land within the district constitute a lien thereon. The list must remain in the office of the treasurer at least 30 days. (c) During the time the list remains in the office of the county treasurer, any person may pay the amount assessed against his land to the treasurer of the county in which it is situated without interest charges, and in cash or warrants of the district. (d) The trustees may order the assessment paid in installments at such times and in such amounts as they may deem proper. If, at the end of 30 days or longer, period fixed by the trustees, any first installment has not been paid in cash or in warrants, the treasurer may return the list to the trustees. When additional installments are ordered, the same procedure is followed. (e) Unpaid installments or assessments bear 7 percent interest from the date of the return of the assessment list to the board of trustees. (f) After the lists are returned to the trustees with any assessment or installment reported by the treasurer as unpaid, the trustees by resolution fix a date between 30 and 90 days thereafter when such installments will be delinquent. The secretary sends notice to all delinquent landowners in the form set out in the statute. (g) Service of notice may be in person or by mail or by publication for two weeks. (h) If any such installment or assessment be not paid within the time ordered by the board, then the same and accrued interest thereon shall be delinquent and a penalty of 10 percent of the principal and interest is added. The remaining unpaid and uncalled portions of the assessment also become due and delinquent at the same time. (i) Immediately after the installment has become delinquent, the trustees publish in one notice a list of all delinquents, containing the names of the owners, descriptions of the properties, the amounts due, and notice that the property will be sold on a date stated, in front of the courthouse, to pay the amount due. At the time stated, the trustees sell the property to the highest bidder for gold coin of the United States. The trustees, having sold the property, pay the county treasurer the amount due thereon for the benefit of the district and return any surplus to the landowner. (j) If no bid is sufficient to pay the amount due on the property, the district becomes the purchaser and certificate of sale is executed to the district and recorded in the office of the county recorder. The property may be redeemed by any interested party within one year upon payment of the charges against it and 2 percent per month interest thereon from the date of the sale. (k) If not redeemed within one year, the purchaser or the district is entitled to a deed executed by the trustees and the effect of such deed is to convey said property free of all liens and encumbrances except taxes and district assessments. The trustees may sell such property so acquired at public auction, after notice, but not for less than the amount for which it was sold together with any subsequent assessments. (l) Assessments heretofore made in any district are validated and shall be collected in the manner provided by law at the time they were made. (L. 1937, p. 1669.)

**Secs. 19-a and 19-b. Reapportionment:** Trustees have power to reapportion the assessment upon any portion of land that has been subdivided into smaller parcels in such manner as will charge each parcel with a just proportion of the assessment previously made. **Sec. 19-b:** Where original assessments are declared invalid for any reason, or have been omitted, a new assessment may be levied and the lands are charged in subsequent assessments with such proportion of the former assessment as the benefits derived bear to the whole amount of the former assessment. Payments made on assessments declared invalid become a credit on the subsequent assessment of the same land.

## DISSOLUTION

**Sec. 20½. Disincorporation:** When a petition for disincorporation of a district is signed by a majority of the electors and presented to the trustees of a district, they submit the question of disorganization to an election in the same manner as an election for trustees. If two-thirds of the electors vote in favor of disincorporation, the trustees enter that fact on their minutes and forward a copy thereof to the board of supervisors of the county in which the district was formed, who file it with their clerk and from the date of such filing, the district is deemed disincorporated; provided, if there is any outstanding indebtedness of the district of any kind, taxes must be levied to pay the indebtedness in the same manner as if there had been no disincorporation; but for all other purposes the district is dissolved after the filing of the trustees' entry with the supervisors' clerk.

## 2. ACT NO. 2202—DRAINAGE DISTRICT LAW, 1903

(Statutes 1903, p. 291)

## ORGANIZATION—Petition

**Secs. 1 and 2. Who may sign:** Whenever 50 or a majority of the holders of title or evidence of title to agricultural lands other than swamp and overflowed lands, which are susceptible of a general mode of drainage by the same system of works, desire to provide drainage, they may propose the organization of a drainage district under this act. The equalized county assessment roll next preceding the presentation of the petition is sufficient evidence of title; provided, no person acquiring land in the district for the purpose of enabling him to join in the petition or to become an elector shall be allowed to sign the petition or to vote at any election. Illegal signing, however, does not invalidate the petition. **Sec. 2:** The petition is presented to the board of supervisors of the county in which the greater portion of the lands in the proposed district are situated and sets forth the boundaries of the district, with a prayer for organization. Bond must accompany the petition in double the amount of the probable cost of organization, conditioned to pay costs if for any reason the district is not organized. The petition must be presented at a regular meeting of the supervisors after having been published in each county interested at least two weeks, with notice stating the date of the meeting at which it will be presented.

**Sec. 3. Hearing:** The supervisors hear the petition at such meeting and may adjourn for not more than 4 weeks in all, and on the final hearing they make such changes in the boundaries as they deem advisable and fix said boundaries. They may not modify the boundaries so as to exclude any territory susceptible of drainage by the same system, nor may any land be included which will not be benefited. Any person whose lands are benefited may have them included, upon application, in the discretion of the board.

**Sec. 4. Appeal:** The order of the supervisors may be appealed to the superior court of the county within 10 days; and if there is more than one appeal, they will be consolidated. The appeal is heard in the same manner as appeals from justice courts and the superior court may affirm, modify, or reverse the order of the supervisors appealed from. Thereupon remittitur is issued to the supervisors directing what order the board shall enter in the premises, which order must be entered on their minutes. Appeals must be heard and determined within 30 days.

**Secs. 6 to 10. Election for organization and directors:** The supervisors give notice of an election to determine whether the district shall be organized, designate the name of the district, describe its boundaries and the polling places therein, and name

an election board for each precinct. The notice is published in each county affected. The election is conducted in accordance with general law without any particular form of ballot. **Sec. 7:** No person may vote unless he possesses the qualifications required of electors under the general law. **Sec. 8:** The supervisors canvass the vote and, if a majority vote is in favor of organization, the board by order entered on its minutes declares the territory duly organized as a drainage district and the persons receiving the highest number of votes duly elected as directors. **Sec. 9:** A certified copy of such order is immediately filed in the office of the county recorder of any county having lands in the district, and a copy is forwarded to the board of supervisors of each county. No board shall thereafter allow another district to be formed including any of the lands without consent of the directors of the district in which the lands are situated. **Sec. 10:** The election may be contested by any person owning property within the district liable to assessment, and the directors are made parties defendant. The contest is brought within 20 days in the superior court of the county where the petition was signed. The superior court must speedily try the contest and determine whether the election was regular and enter its judgment accordingly. Further appeal to the supreme court may be had within 30 days and that appeal must be determined by the supreme court within 60 days.

#### ORGANIZATION—Officers

**Secs. 5 and 12. Directors:** When the boundaries of a district have been defined and established, the board by order divides the district into 3 or 5 divisions, as nearly equal in size as practicable, numbering them consecutively. One director is elected by each division. Directors must be resident freeholders of the division for which elected; provided, when requested in the petition, three directors, who shall be resident electors and freeholders of the district, shall be elected at large by the qualified electors of the district. **Sec. 12:** The directors classify themselves into two classes by lot, as nearly equal in number as possible, and the term of office of the class having the lesser number expires on the first Tuesday in March of the next odd-numbered year after the year in which the meeting is held. The term of the other class expires on the first Tuesday in March of the second odd-numbered year. The directors organize as a board by electing a president from their number and appointing a secretary.

**Secs. 13 to 26:** These sections relate to the biennial election of directors, providing in great detail for the notice, form of ballot, canvassing of returns, and statement of results.

#### ORGANIZATION—Powers

**Sec. 52. Crossing streams, etc.:** The directors have the power to construct necessary works across watercourses, highways, railroads, and other ditches in such manner as to afford security for life and property; but they must restore the affected works to their original state as near as may be and not unnecessarily impair their usefulness. Railroads and highway supervisors must unite with the directors in forming intersections and crossings; and where they cannot agree, the directors may resort to condemnation. Rights-of-way through State lands are dedicated.

**Sec. 56. Restrictions:** The directors have no power to incur debt in any manner other than as provided in this act. Any such debt is void. For purposes of organization, before the collection of the first assessments, the directors may incur indebtedness not exceeding \$5,000 and cause warrants of the district to issue therefor bearing 7 percent interest.

**Sec. 57. Tax exemption:** The right-of-way, works, reservoirs, and public plants, and other property of like character belonging to any drainage district shall not be taxed for State, county, or municipal purposes.

**Secs. 64 to 74. Change of boundaries—Exclusion:** The boundaries of a district may be changed to exclude land included in the district at the time of organization, but no such change or exclusion shall impair the effect of its organization or any of its rights or privileges nor impair any contract or lien or charge upon which the district was or may be liable had the change not been made or the land not been excluded. **Sec. 65:** The owners of the fee of one or more tracts of land within the district may jointly and severally file with the board of directors a petition praying that their lands or other lands contiguous thereto may be excluded and taken from the district. The petition states the reasons for exclusion and the boundaries of the tracts, and must be acknowledged in the same manner as conveyances of land. **Sec. 66:** The directors give notice of the petition by publication in each county affected. The notice gives the names of the petitioners and the description of the land sought to be excluded, and notifies all interested persons to appear at the next meeting of the board and show cause in writing why the change in boundaries should not be made. **Sec. 67:** The board hears the petition and all evidence in its behalf and in support of all objections filed. The evidence must be recorded in shorthand and filed with the board. The failure of any person interested, other than the holders of outstanding bonds, to file objections is deemed as assent to the exclusion of such land; and the filing of the petition is deemed assent by the petitioners. The cost of the proceeding is paid by the petitioners. **Sec. 68:** Upon the hearing, if the board deems it to the best interests of the district not to exclude said lands it will deny the petition. Finding the contrary, and if no person interested shows cause against exclusion or withdraws objections filed or fails to establish such objections, then the board will forthwith make an order that the lands or some defined portion thereof be excluded from the district. **Sec. 69:** Holders of outstanding bonds may give their assent in writing to the exclusion of said lands or any part thereof and lands so excluded are thereafter released from the lien of the bond. The bondholders' assent must be acknowledged in the same manner as conveyances of land. The assent must be filed with the board and recorded in its minutes, and a certified copy of said minutes is admissible in evidence and may be recorded in the office of the county recorder of the county where the lands are situated. **Sec. 70:** The board, having excluded the land, makes an entry on its minutes describing the boundaries, and for that purpose may cause a survey to be made. A certified copy of the entry is filed with the recorder of each county affected. Exclusion does not affect the status of the district in any manner. If the land excluded from a district embraces the greater portion of any division of the district, then the office of director for such division becomes vacant at the end of 10 days. The vacancy is filled by appointment by the board of supervisors of the county where the office of the board is located, from the district at large. The appointed director holds office until the next regular election. **Sec. 72:** Thirty days before the next general election, the directors make an order dividing the district into three or five divisions as nearly equal in size as practicable, numbered consecutively, and one director is elected by each division. The directors also establish voting precincts, which may be changed by them from time to time. **Sec. 73:** Guardians, executors, and administrators may sign a petition for exclusion of land when

so authorized by the proper court. **Sec. 74:** Exclusion of land does not operate to release it from any obligation to pay or any lien thereon of valid outstanding bonds or other outstanding indebtedness of the district at the time of the filing of the petition. For the purpose of discharging such obligations, the lands excluded shall be considered a part of the district, and payment of their quota of such outstanding obligations may be enforced notwithstanding the order of exclusion. Such lands, however, are not liable for obligations of any kind or nature incurred after the filing of the petition. This provision does not apply to outstanding bonds, the holders of which have assented to the exclusion.

**Secs. 76, and 79 to 86. Inclusion of lands:** The holders of title representing one-half or more of lands adjacent to the boundaries of a district, which are contiguous and together constitute one tract of land, may file with the directors a petition in writing, asking that such lands be included in the district. The proceeding is then by publication of notice and hearing on the petition in the same manner as for exclusion of land. (Secs. 84 to 74, inclusive.) **Sec. 79:** Before granting the petition, the directors may require that the petitioners pay to the district such sum (determined by the board) as the lands would have been required to pay as assessments had they been included at the time of organization. **Secs. 80 to 86:** If the directors believe it to be to the best interests of the district to include the land, they adopt a resolution to that effect describing the external boundaries of such land. The board then orders an election on the question of whether the lands shall be included, with the usual notice and proceedings in elections. A majority of the votes cast controls the election, and if inclusion be voted, the board thereupon orders the boundaries changed in accordance with the resolution adopted by the board. The change is recorded in the recorder's office of each county affected. Inclusion does not affect the legal status of the district. After the inclusion of land, the directors must, 30 days prior to the next general election, make an order redividing the district into three or five divisions as the case may require, approximately equal in size and numbered consecutively. One director is thereafter elected by each division.

**Sec. 97:** In addition to their other powers, drainage districts have authority to borrow money from the United States for the purpose of financing or refunding any and all obligations of the district and to enter into contract with the United States or any agency thereof. (L. 1935, p. 854.)

#### FINANCING—Assessments

**Sec. 40. Directors' estimate of money needed:** Before the first meeting of the board of supervisors in September of each year, the directors file with the supervisors and the county auditors an estimate in writing of the money needed for the expenses of the district for the ensuing fiscal year, including the sum to be placed in the sinking fund to pay principal and interest of bonds outstanding. (L. 1935, p. 854.)

**Sec. 41. Intercounty districts:** Where the district is intercounty, the amount required must be divided by the board of directors in proportion to the value of the real property of the district in each county as shown by the equalized assessment rolls for that year. Where the assessed valuation is on a different basis in different counties, the directors, by resolution, determine the proportion of the required amount to be levied on the lands in each county after notice and hearing. The directors furnish the supervisors and the county auditors with a written statement of the amounts apportioned to each county. (L. 1929, p. 1361.)

**Secs. 42 and 43. Tax levy:** The supervisors of each county must annually levy a drainage district tax sufficient to raise the amount apportioned to such county by the board of directors. They determine the rate of tax by deducting 15 percent for anticipated delinquencies from the total assessed value of the real property in the district within the county and dividing the amount required by the remainder of such total. **Sec. 43:** The tax is collected at the same time and in the same manner as state and county taxes.

**Sec. 45. "Funds.":** The statute creates a "bond fund," a "construction fund," a "general fund," and a "funding fund." The treasurer of the county where the district was organized makes payment from such funds upon warrants signed by the president of the board of directors and attested by the secretary.

**Sec. 55. Special election for assessments:** The directors may call a special election at any time on the question of a special assessment to raise money for any of the lawful purposes of the district. Such elections are conducted in conformity with section 27. (See next paragraph.) If two-thirds of the electors vote in favor thereof, the directors proceed to levy taxes to raise the required funds, and the money is paid to the district treasurer to be used for the purpose specified in the notice of election.

#### FINANCING—Bonds

**Sec. 27. Bond election:** For the purpose of constructing necessary works and acquiring the property and rights necessary for the district, the directors must, as soon as possible after organization and whenever thereafter the construction fund has been exhausted, estimate and determine the amount of money necessary to be raised. They then call a special election on the question of whether bonds shall be issued in the amount so determined. Notice is by posting and publication and the election is conducted in the same manner as the election of officers. If the majority voting at the election be in favor of issuing bonds, the directors cause them to be issued. If the majority be against bonds, the result is declared and recorded.

**Sec. 28. Form of bonds—Medium of payment:** All bonds are payable in lawful money of the United States. The directors prescribe the form of the bonds and of any coupons attached. An "issue" of bonds is all of the bonds issued in accordance with the proposal approved by the electors of the district. Each issue is numbered consecutively and the bonds of each issue are likewise numbered consecutively. Bonds must mature within 40 years and bear not to exceed 6 percent interest. The secretary must keep a record of all bonds sold, their numbers, date of sale, price received, and the name of the purchaser. (L. 1939, ch. 1030.)

**Sec. 29. Sale of bonds:** The board may sell the bonds from time to time as may be most advantageous to raise money for the construction of works and the acquisition of property and rights-of-way. It declares the intention to sell a specified amount of bonds by resolution entered on its minutes, and gives notice by publication for three weeks of the time and place at which sealed proposals for the purchase of such bonds will be received. The board awards the purchase of bonds to the highest responsible bidder. It may reject all bids, and may not sell any bonds for less than 90 percent of par value.

**Secs. 30 and 31. Lien of bonds:** The bonds are a lien on the property of the district, and the lien of any issue of bonds is a preferred lien to that of any subsequent issue. Bonds are paid by revenues derived from the annual assessments of real property of the district and all the real property shall be and remain liable to be assessed for such payment. **Sec. 31:** If the money raised by bonds be insufficient for completing the plan of

drainage and additional bonds be not voted, the directors must levy additional assessments therefor; provided, there must first be an estimate by the board of the amount required and then the levy must be submitted to a vote of the electors. The election is in the same manner as for officers. A majority of the vote cast controls the result which is declared by the directors and entered of record.

**Secs. 32 and 36. Refunding indebtedness:** Whenever the district has outstanding bonds or other indebtedness, payment may be provided by the issuance of new bonds. In order to fund the indebtedness, a petition is presented to the directors, signed by a majority in number of the holders of title to real property in the district, stating the purpose of refunding and the amount of bonds sought to be issued. The petition is entered in the minutes of the board. A special election is held on the question of refunding in the same manner as elections of officers. It requires a two-thirds vote to carry the proposal to refund. The result of such election being favorable, refunding bonds are issued, payable in not more than 40 years and bearing 6 percent interest. (L. 1937, p. 1475.) **Sec. 36:** No bonds may be sold or exchanged for less than 90 percent of par value. Bonds are deposited with the treasurer of the county where the district was organized, who may not deliver them in exchange for any indebtedness until the evidence of such indebtedness has been delivered to him and the board has ordered such exchange by resolution on its records. Bonds remaining unsold for one year, and their cancellation being necessary in the refunding of the obligations of the district, may be cancelled by resolution of the board of directors. (L. 1935, p. 853.)

**Sec. 48. Redemption of bonds:** Coupons are paid from the bond fund. Whenever that fund amounts to \$10,000 in excess of the amount needed to meet interest coupons, the directors may advertise for and purchase outstanding bonds not matured at the lowest value at which they may be offered for liquidation. Bids being equal, the lowest numbered bond has the preference. If no bonds are offered, the treasurer may invest the bond fund in bonds of the State or United States.

**Secs. 58 and 59. Validation of bonds:** Within 30 days after the passage of a resolution to issue bonds, the directors may file suit in the superior court of the county where the district was organized to determine the validity of such bonds. All interested parties are made defendants. The proceeding is *in rem*; jurisdiction of all parties is required by publication of a summons once a week for three successive weeks, and is complete 20 days after the full publication. Interested parties may contest the action at any time within said 20 days. **Sec. 59:** If the directors have not brought validation proceedings within 30 days after the issuance of any bonds, within 90 days after such issuance any district assessment payer may bring such action. The supervisors have the right to appear and contest the action. (L. 1929, p. 1382.)

**Sec. 88. Election to reduce bonds:** When the directors determine that the authorized bonded indebtedness of a district is greater than it is likely to need to complete its system as planned, and there being no outstanding bonds, the directors may call a special election to vote on the proposition to reduce the bonded indebtedness to such sum as the board may determine to be sufficient. If a majority of the votes cast be for reduction of the bonds, then the directors may sell only the amount of bonds stipulated in the notice of the special election. On a contrary vote the authority to sell bonds remains as it was before the special election was held. In case there are outstanding bonds, a district desiring to reduce its authorized bonds may take advantage of this section only by obtaining

the assent of the bondholders in the same manner as provided in section 69. When, after completion of the system and payment of all indebtedness, any bonds voted remain unsold and not necessary to be sold for the purpose of the district, the directors may call a special election on the question of destroying such bonds. If a two-thirds majority of the votes cast are in favor of destroying said bonds, the president in the presence of a majority of the board must destroy them, deducting their amount from the total authorized to be issued, and no part thereof may thereafter be reprinted or reissued.

#### CONSTRUCTION

**Sec. 49. Bids for construction:** After the adoption of the plan, the directors give notice by publication, calling for bids for construction of the work or any part thereof. The work must be let to the lowest responsible bidder, or the directors may reject all bids and construct the works under their own superintendence. All contractors must give bond in the amount of 50 percent of the contract price. All expenses of acquiring property and constructing the works are paid out of the "construction fund." No director may be interested in any contract, under penalty of fine and imprisonment.

#### 3. ACT NO. 2203—DRAINAGE DISTRICT IMPROVEMENT ACT, 1919

(Statutes 1919, p. 731. Amended by 1921, p. 894; 1927, p. 220; 1929, p. 1320; 1933, p. 2098.)

#### ORGANIZATION—Petition

**Sec. 1. Petition—Plans—Map:** When 20 or more property owners, or the owners of a majority of the land, within a district proposed to be organized, which district contains wet or overflowed lands or lands needing surface or underground drainage and that are susceptible of drainage and will be benefited by the construction of improvements, shall file with the board of supervisors of the county in which the lands are situated a petition for the establishment of such works as may be necessary, defining the property in a general way and the approximate boundaries of the proposed district, the board will grant or deny the petition within 60 days. If the petition is granted, the supervisors instruct the county surveyor to prepare plans and specifications for the improvement. The surveyor's plans must contain a map of the district showing clearly the exterior boundaries. Such boundaries may include more or less territory than shown by the petition and shall include all lands which, in the opinion of the surveyor, will be benefited. The location, size, and type of the works must also be shown.

**Sec. 2. Intercounty districts:** When the lands lie in more than one county, the petition is presented to the supervisors of the county in which the greater portion of the lands are situated. It must be signed by 10 property owners or the owners of a majority of the lands of the district within each of the counties to be affected. Jurisdiction lies with the supervisors of the county having the largest acreage in the proposed district. The officers of the county having jurisdiction shall be the officers of the district with the powers and duties herein provided. The counties other than that having jurisdiction collect the assessments levied each year upon the lands within their respective boundaries and pay same over to the county having jurisdiction. When a municipality will be benefited by the works of the district, territory therein which is benefited may be included in the district. When the lands within a proposed district lie entirely within the boundaries of two or more municipalities, the supervisors have jurisdiction to form and maintain a drainage district within the municipalities; provided, the consent of the legislative body of each municipality

expressed by resolution adopted by a two-thirds vote of all of its members must be obtained prior to the passage of the resolution of intention provided for in section 6. Any work or improvement contemplated herein may be done either within or without the boundaries of the district if necessary to drain or protect lands within the district.

**Sec. 3. Action on petition:** The supervisors by resolution on their minutes may grant or deny the petition. It may not be granted unless the public health and welfare will be promoted, and the resolution must so state. If the petition includes any portion of an incorporated municipality, the supervisors must find by resolution that such portion of said municipality will be benefited by the works.

#### ORGANIZATION—Officers

**Secs. 4 and 5. Surveyor—Engineer—Attorney:** The county surveyor is the engineer of construction of the district and his deputies are deputy engineers of construction. He surveys the works and estimates the cost thereof and furnishes plans and specifications. The supervisors may appoint a consulting engineer to assist the engineer of construction and an attorney for the district or the board, by resolution entered on their minutes. **Sec. 5:** Before the passing of any resolution of intention, plans and specifications prepared by the engineer of construction must be filed with the supervisors. If the work is of such nature as to be within the jurisdiction of the state reclamation board, the approval of that board must be had before the plans are adopted.

#### ORGANIZATION—Powers

**Sec. 6. Resolution of intention:** Before ordering any work to be done under this act, the board of supervisors must pass a resolution of intention. The form of the resolution is set out in the statute. It gives notice of the general location of the improvement, and the character of the work proposed to be done in accordance with the plans and specifications on file with the clerk; it states that bonds will be issued for the costs and incidental expenses, giving the amount and number of the installments thereof; that a special fund for the payment of the bonds will be provided by special assessments upon the land within the district; and gives notice that at the time fixed interested parties will be entitled to be heard and the board will finally determine the matter. (Amended by Statutes of 1921, p. 895; 1927, p. 223.)

**Sec. 6a. Contribution by the county:** As a part of the resolution of intention, the supervisors may provide that the county will pay out of its general fund a stated portion of the cost if the board shall find that the expenditure will benefit and promote the public health of the community or will protect any public road from damage by reason of overflow. If it is provided in the resolution that the amount to be paid by the county shall be due upon the completion of the works, then that amount shall be deducted from the amount for which bonds would otherwise be issued. (L. 1921, p. 896.)

**Sec. 7. Publication by resolution of intention:** The resolution of intention must be published at least twice in a newspaper of general circulation in the county or counties affected. It must also be posted along the line of the works at distances of not more than 300 feet apart, but not less than three notices in all. After 20 days have elapsed from such posting and publication, the board of supervisors has acquired power to proceed with the hearing. The determination of the board to proceed is *prima facie* evidence of the existence of all of the facts upon which the power of the board depends except such as must be of record or are rebutted by the record.

**Sec. 8. Objections:** Any property owner interested may file written objections to the ordering of the work as an entity but not merely to some part thereof. The objections of any person who ceases to be a property owner before the hearing will not be considered. Property owners are only those who own property which will be liable to assessment. The board hears first objections to the plans and specifications, and then objections to the boundaries of the district.

**Secs. 9 to 11. Finding of board—Boundaries:** At the conclusion of the hearing the board, by resolution on its minutes, declares its findings and determines in its discretion whether the works shall be ordered or the proceedings abandoned. If they determine that the works should be ordered, they further determine the boundaries of the district and approve the plans and specifications. If the boundaries are changed, the engineer of construction furnishes a new map or plat showing such boundaries as changed. Boundaries may not be changed to include territory not within the boundaries as shown on the original map and set forth in the resolution of intention as published and posted. The board by resolution may order the work to be done and call for sealed proposals for construction, referring bidders to the plans and specifications as adopted by the board at the conclusion of the hearing on the resolution of intention. **Sec. 10:** The notice inviting proposals for construction is published and posted. All bids must be accompanied by certified check for 10 percent of the amount bid. **Sec. 11:** Bids are opened in public and the board may reject all of them if that is deemed for the public good. It may accept the proposal of the lowest responsible bidder and award the contract. If the successful bidder neglects or refuses to execute a contract for the work within 15 days, the deposit with the bid is declared forfeited to the county.

#### FINANCING—Assessments

**Sec. 12. Estimate of cost and assessment:** After executing the contract for construction, the supervisors direct the engineer of construction to estimate the total cost of the improvement, including expenses of every kind, and assess the same in proportion to the benefits on the lands in the district. The engineer proceeds to view the lands in the district, and he examines witnesses under oath. He assesses the costs in proportion to the benefits to be derived insofar as he can estimate them, including benefit to lands, whether operating property or not, of any public utility within the district. He states the amount to be assessed on each parcel separately, and divides the total assessments into yearly installments of amounts clearly sufficient to retire the bonds and pay the interest thereon. The engineer makes a written report to the board, with a detailed plat of the district on which each parcel is designated and described by number and reference.

The board fixes a time for a hearing on the engineer's report; and notice is by publication. The form of the notice is set out in the statute. Interested parties may file written objections, at least one day prior to the hearing, to the assessment as a whole or on the several parcels of land. The board may correct or modify the report or call for a new report, and their action thereon is final and conclusive as to all matters therein and no assessment may be set aside, except upon such hearing, for error or defect in the proceedings prior thereto, where notice of the hearing has been given.

Upon adoption of the report, the board levies a special assessment upon the lands found to be benefited in the amount set forth in the engineer's report as adopted by the board. A certified copy of the special assessment as levied by the board is filed with the recorders and with the tax collectors of the

counties interested. The assessment for the first year immediately becomes due and payable and constitutes a lien on the lands assessed. Thereafter installments for each succeeding year become due in October and immediately constitute a lien upon the lands assessed. All money paid upon assessment is placed in a special fund with the county treasurer of the county in which the district was organized, in the name of the district, and may be used only to pay bonds and interest and incidental costs of that district. After bonds are retired, any surplus remaining is paid into the maintenance fund of the district.

The assessments are collected in the same manner as State and county taxes after notice by the tax collector by publication. The first installments become delinquent in the ensuing April. Annually thereafter the tax collector publishes like notice of installments due and collects them in like manner. When installments become delinquent, the tax collector proceeds to collect them with 10 percent penalty added in the same manner as delinquent State and county taxes are collected. The entire assessment against a parcel of land as well as the installment for the current year may be paid in full at any time with interest to date of payment together with a premium of 3 percent of the principal then unpaid, and the tax collector will issue receipt therefor. (L. 1921, p. 896; L. 1933, p. 2099.)

Sec. 23a. Maintenance: The supervisors each year levy an *ad valorem* tax on the taxable property in each drainage improvement district organized under this act in an amount sufficient to maintain and repair or improve the works during the current year. The sums collected is kept separately in a "maintenance fund." In intercounty districts the amount collected is turned over to the county having jurisdiction. (L. 1933, p. 2107.)

Secs. 14 and 15. Final hearing: When the work is completed, a declaration of that fact is filed with the clerk of the board of supervisors together with an itemized statement of the cost and the gross amount of bonds proposed to be issued. Such declaration is verified and signed by the engineer of construction and by the contractor. The supervisors then fix a time for hearing, to be known as the final hearing, to determine whether the works shall be accepted and to determine the aggregate amount for which bonds shall be issued. Notice is by publication and posting and the form of the notice is set out in the statute. Any party may file written objections on the ground that the work has not been completed or done according to the contract. Sec. 15: When, upon the hearing, the board is of the opinion that the work has been completed according to the contract they, by resolution, so state and accept said work, making a final order that bonds be issued to pay for same.

#### FINANCING—Bonds

Secs. 16, 16a, and 17. Issuance of bonds: Upon the expiration of 20 days after the making of the final order accepting the work (see section 15 of the Act) the clerk of the board of supervisors furnishes the county treasurer an attested copy of said final order and the treasurer proceeds to issue bonds bearing the date of the final order to the aggregate principal sum stated in such order. The form of the bonds is set out in the statute. The supervisors are empowered to determine the number of years, not to exceed 20, within which the bonds shall be paid, and to fix interest thereon not exceeding 7 percent. The first payment of principal may become due in from 1 to 5 years after date. The number of installments of principal must be named in the resolution of intention. Installments of principal may not differ more than \$1,000 from the amount obtained by dividing the whole issue by the number of installments. Each installment except the last must be an even multiple of \$100. Sec. 16a: The treasurer of the county in which the district was

organized must advance the maturity of any bonds to the first day upon which interest thereon becomes due, and pay and cancel the bonds whenever there shall be sufficient surplus money in the interest and sinking fund in excess of that necessary to pay semiannual interest. Sec. 17: Bonds by their issuance are conclusive evidence of the regularity of all proceedings prior thereto, and no tax levied to pay bonds shall be set aside by reason of any informality or defect in the proceedings prior to the issuance of said bonds.

Sec. 18. Costs paid by contractor: All costs of every kind for engineering, employees, and publication and all other expenses shall be paid by the county. The amount thereof becomes a charge upon the contractor and must be repaid by him to the county before the delivery to him of bonds by the county treasurer; provided, if the cost is not paid within 10 days, the bonds may be sold at not less than 95 percent of their face value to satisfy such cost, any surplus over such expenses to be paid to the contractor.

#### 4. ACT NO. 2204—DRAINAGE DISTRICT ACT OF 1923

(Statutes 1923, p. 196)

#### ORGANIZATION—Petition

Sec. 1. Persons who may initiate proceedings: Whenever 50 or a majority of the holders of title or evidence of title holding a majority in acreage, or two-thirds of the holders of title or evidence of title holding one-third in acreage of the land in any body of wet, swamp, or overflowed lands, or lands otherwise needing drainage, or irrigated lands which contribute to the need for drainage, or other lands within the proposed district, situated within one or more counties of the state, the whole or any part of which may be within or without the exterior boundaries of any municipal corporation, shall desire to form a drainage district for agricultural or sanitary purposes, which said district shall be conducive to the public health, convenience, or welfare, or of general public benefit, they may proceed under this act. The equalized county assessment roll next preceding the filing of the petition is sufficient evidence of title. Where the property is assessed to unknown owners or the assessment roll does not give the true name or gives the name of only a portion of the owners, the known owners of record are considered the owners for the purposes of this act. The owners of undivided interests may sign for such interests and shall be considered as true owners. Persons holding property in a trust capacity under appointment of the court may sign any petition when authorized by the order of the court. Any transfer of title for the purpose of establishing or defeating the petition not made in good faith and for valuable consideration is held to be a fraud and the grantee will not be considered to be the owner of the land.

Sec. 2. Contents of petition: The petition is presented to the board of supervisors of the county in which the greater portion of the acreage is situated, and must recite that the public welfare will be promoted by the proposed improvement. The petition must also show the name and the boundary line of the proposed district; and if there are nonresidents of the county, the petition must be accompanied by an affidavit giving the name and post office address of such nonresidents if known, and if unknown must contain a statement that upon diligent inquiry the names and addresses cannot be ascertained. The petition must be accompanied by bond approved by the supervisors in double the amount of the probable costs of organization and conditioned to pay costs if the district is not organized. The petition may consist of any number of separate instruments, but consolidated before presentation to the supervisors. Signatures

may be withdrawn at any time before publication under section 4 by filing a declaration of intent to withdraw, acknowledged as real estate conveyances are acknowledged.

**Sec. 3. Engineer to investigate:** The petition is presented at a regular meeting of the supervisors, and they appoint a competent drainage engineer selected by the petitioners and approved by the board. The engineer investigates and reports as to: (1) The limits of the region that would be benefited by the improvement; (2) whether the improvement would be conducive to the public welfare; (3) the general character of the works necessary; and (4) the probable cost of construction. His report includes a map of the territory that should be included in the district. This report is preliminary only.

**Sec. 4. Hearing on engineer's report:** At their next meeting after the filing of the engineer's report, the supervisors fix a hearing on the petition not less than one nor more than two months after the order. They give notice by publication in the manner provided in section 6. Within five days the clerk of the supervisors sends a copy of the notice and of the engineer's preliminary report, including all maps and estimates, to the state engineer who must make, at the cost of the proposed district, an investigation to determine the feasibility of the project. He reports his findings in writing to the supervisors before the date set for the hearing. If the report be adverse, the supervisors may adjourn the hearing one month and it may then be dismissed or continued for not to exceed 8 weeks in all, during which time the supervisors may modify the petition to conform to the recommendation of the state engineer and grant the same. Failure of the state engineer to report does not invalidate the proceedings and the supervisors may not delay the proceedings for a longer period than allowed herein, except upon written request of the state engineer for an extension of time in which to examine the proposed district.

**Sec. 5. Hearing:** At the hearing the supervisors determine whether the petition is in due form, and the affidavit of three or more petitioners that they are acquainted with the locality, have examined the petition, and that it is signed by the required number of landowners may be taken as *prima facie* evidence of the regularity of the petition. The board hears all competent evidence presented in favor of or against the petition, and makes such changes in the proposed boundaries as it deems advisable and defines and establishes such boundaries. But the board may not modify the boundaries so as to exclude any lands which may be benefited by the proposed work, or any irrigated lands which, through the use of water thereon, contribute to the need for drainage in the proposed district. The board may not deprive itself of jurisdiction. Any person controlling land that will be benefited by the proposed improvement may petition the board to have such land included. If such petition is granted, the landowners are considered to have signed the original petition and are subject to the conditions imposed on other petitioners. After hearing all evidence the board by resolution either dismisses or grants the petition as offered or amended. Dismissal is without prejudice to the filing of a new petition covering the same or other matters at this or any future meeting of the board. Upon passing the resolution, the supervisors make an order setting forth all of the facts, and enter it on their minutes and file a copy with the state engineer. A certified copy of the order is immediately filed in the office of the county recorder of each county in which any lands are situated, and from and after such filing of the resolution granting the petition the organization of the district is complete.

**Sec. 6. Notice—Generally:** Notice required by this act comprises: (1) publication once a week for two consecutive weeks in

a newspaper published in each county containing district land; (2) posting a printed copy for not less than 10 days in five or more public places in the district, at least two notices in each county interested; (3) mailing a printed copy of the notice to each nonresident owner whose address is known. The affidavit of the clerk is sufficient evidence of compliance with these requirements.

**Sec. 7. Validity of organization:** The directors or any landowner at any time after the organization is completed may bring action in the superior court of the county in which the district was organized to determine the validity of the organization. Action is by petition reciting the boundaries of the district, the steps taken in organization, and a prayer that the district be declared to be a drainage district, legally organized and existing. The proceeding is *in rem* and jurisdiction of all parties is had by publication of a summons once a week for three weeks in a newspaper within the county. Jurisdiction is complete within 10 days after the publication of such summons. At any time before the expiration of said 10 days, any interested party may contest the validity of the organization. Such action shall be speedily tried and judgment rendered declaring that the district is or is not legally organized and existing under this act. Any party may appeal within 30 days after judgment. At any time after the execution of any bonds of the district by the directors, before or after the sale of the same, the directors or any interested party may bring a like action to determine the validity of the bonds. Upon similar proceedings the court renders judgment, subject to appeal, that the bonds are or are not legally executed and valid obligations of the district.

#### ORGANIZATION—Officers

**Secs. 8 to 10. Directors—Appointment and elections:** Within two weeks after the granting of a petition for the formation of a district, the county supervisors appoint three qualified persons to act as directors of the drainage district, whose terms of office are designated as 3 years, 2 years, and 1 year respectively after the date of the first annual meeting. At the last regular meeting of the supervisors preceding the annual meeting as provided in section 28, the supervisors appoint one qualified person to succeed the director whose term expires at the time of said annual meeting; and he shall hold office for three years and until his successor is appointed and qualified. Vacancies are filled by the supervisors for the unexpired term; but upon petition of 15 percent of the property holders, an election is called to fill such vacancy. If the director to be elected is succeeding one whose term expires at the time of the annual meeting, the petition must be filed before their last regular meeting in November and the election must be held prior, by not more than two weeks, to the date of the annual meeting as provided for in section 28. **Sec. 9:** Directors must be landowners in the district and qualified electors of the state. **Sec. 10:** Each director must take oath of office and file a bond in the sum of \$2,000 approved by the supervisors.

**Secs. 11 to 13. Organization of directors:** Immediately after taking oath of office, the directors meet and organize as a board and elect a president, secretary, and treasurer from their own number. Duties of each officer are set out in detail in the statute. **Sec. 12:** The directors hold regular monthly meetings at a time fixed by resolution, which time may not be changed except by a resolution passed at least one month prior to the change. Special meetings may be held as required after notice to all members of the board. All meetings are public and a majority constitutes a quorum. At their last meeting before the annual meeting, they render and publish a verified statement of the

financial condition of the district and forward a copy to the state engineer and to the supervisors of each county in which any part of the district is situated. *Sec. 13:* Directors may call a special election after notice on any subject when they deem it to be for the best interests of the district to have a vote of the landowners. A majority of the votes cast governs the action of the directors. They may also call mass meetings to express opinions on any subject relating to the affairs of the district, with notice; but it is left to the discretion of the directors to take action on the opinions expressed by such mass meeting.

#### ORGANIZATION—Powers

*Sec. 14. Qualification of voters:* Any holder of title or evidence of title to lands or other property within the district may vote at any election or meeting in person or by proxy. Authorized agents of corporations and persons holding property in trust under order of court may vote. Each person is entitled to cast one vote for each \$100 or fraction thereof of equalized benefits as provided in section 22. But when a vote is taken prior to such equalization of benefits, each person is entitled to cast one vote for each acre held by him.

*Secs. 15 and 16. Directors' powers:* It is the duty of the directors to conduct the business affairs of the district, execute necessary contracts, appoint an engineer and attorney and other employees as may be required, and fix their compensation and prescribe their duties. They have the right to enter on any land to make surveys and locate the works of the district. They may acquire by purchase, lease, or condemnation, or other legal means the lands and other property necessary for the construction, maintenance, and improvement of the necessary works of the district. They may construct the drains and other works and do all lawful and necessary acts to accomplish drainage and protection of lands within the district. They may sue and be sued in the name of the district. They establish equitable by-laws for the control of the district and create separate and distinct funds to be known as the "general fund," "construction fund," "bond fund," and "maintenance fund." *Sec. 16:* Directors appoint an attorney as soon as practicable, either an individual or partnership, and may specify his compensation or leave the fixing thereof to the board of supervisors of the county where the district was organized.

*Sec. 17. Engineer—Plan:* The directors as soon as practicable appoint an engineer, who may be an individual, partnership, firm, or corporation, and fix his compensation. He makes necessary surveys, prepares plans and specifications, and has charge of construction. He makes such report as the directors may require and also makes an annual report before the regular meeting of the directors preceding the annual meeting, showing the progress of the work. Upon receipt of the final report of the engineer with plans and specifications for draining, reclaiming, or protecting the lands of the district, the directors may adopt such report or a modification thereof and thereafter the report shall be the "plan for drainage," and be made a part of the records of the district. If the works to be constructed are within the jurisdiction of the State Reclamation Board, the approval of that board must be obtained before the plan is adopted.

*Sec. 26. Condemnation proceedings:* In condemnation proceedings the directors proceed in the name of the district under title 7 of part 3 of the Code of Civil Procedure, the provisions of which are made applicable, and it is specifically declared that the use of property which may be appropriated under this Act is a public use subject to the regulation and control of the State in the manner prescribed by law.

*Sec. 27. Directors—Powers—Construction:* The directors have full authority to construct the works of the district and maintain them. They are authorized to employ men and machinery and take direct charge of constructing the works and improvements, or to let contracts for all or any part thereof to the lowest and best bidder after advertisement. They may reject all bids, and after the second rejection call a mass meeting of property owners to discuss methods for carrying out the plan. Each bid must be accompanied by certified check or bond for 5 percent of its amount. The successful bidder executes bond for one-half of the contract price, conditioned to carry out the contract. If during the progress of the work it is found that it will be to the advantage of the district to make changes in the plans as adopted, such changes may be made with the approval of the board of directors; provided, changes that will cause a less benefit to any land or other property than that approved by the board of supervisors shall be made only after instituting proceedings similar to those provided in section 22.

*Sec. 28. Annual meetings:* On the second Tuesday in January of each year is held an annual meeting of the owners of land in the district, called by the directors in the manner provided in section 6, to hear the annual report of the directors and conduct other business. The president of the directors acts as chairman of the meeting.

*Sec. 33. Right to waters collected:* The directors have the right to file upon, appropriate, and obtain title in the name of the district to any and all waters developed and collected by the works constructed, such water to be known and designated as drainage water. The directors may use, lease, or otherwise dispose of such drainage water; provided, that no disposition shall be made that will deprive the district of title thereto. The directors have no power to guarantee the amount of such drainage water. Any proceeds from the disposition of such water may be used for the benefit of the district as the directors may order.

*Sec. 38. Existing drains taken over:* At the time of the construction of the works set forth in the plan of reclamation, existing drains, systems, and works, if necessary to the drainage or protection of any land in the district, must be connected with and made a part of the works of the district. No drains or works within or without the district, constructed after the completion of the "plan of drainage," shall be connected with the district without the consent of the board of directors. Appeal is to the board of supervisors having jurisdiction and their decision is final and binding on all parties.

*Sec. 39. Consolidation:* Two or more irrigation districts in the same or different counties may be consolidated into one district and such new district and its directors have the rights, powers, and privileges of any district organized under this act. In order to consolidate, the directors of each district give notice to the landowners of a time and place when a vote will be taken on the question of consolidation. If a majority of the votes cast in each district are favorable, the boards of directors of the districts present a petition to the supervisors of the county in which the greatest amount of land is situated, accompanied by complete minutes of the meeting, the names of the landowners, and the boundaries of the district. After notice a hearing is set at which any interested party may file objections to the regularity or sufficiency of any of the proceedings. If such objections are overruled, or none are presented, the supervisors grant the petition by order on their minutes and the districts are thereby united as one district with an appropriate designation. All of the provisions of this act apply to consolidated districts. The supervisors appoint

three directors out of the boards of directors of the original districts, or such directors may be elected in accordance with the alternative method in section 8. A certified copy of the order of the supervisors is filed with the county recorder of each county interested and with the state engineer. If objections to the petition are sustained, it is dismissed and the cost is paid by the districts.

**Secs. 40 and 41. Reorganization:** Any district organized under the provisions of any law may be reorganized under this act. A consent is first presented to the supervisors of the county where the district was organized, signed by 50 or a majority of the holders of title, who hold a majority of the lands of the district. The proceedings thereafter are similar to those for original organization. No such change of organization affects in any way the validity of any debt, liability, or obligation under the former organization. All such obligations attach to the reorganized district. **Sec. 41:** In reorganized districts the directors reapportion the assessment of benefits and award of damages and otherwise follow the proceedings provided for in this act. Taxes already collected, however, or levied and due at the date of the approval of said reassessment of benefits may not be reapportioned but remain as levied.

**Sec. 42. Change of boundaries:** Boundaries may be changed, but not to impair the organization of the district nor its rights or obligations. The holders of title to one-half or more of any adjacent body of land may file a petition in writing with the board of directors, praying to be included within the district. Such petition must be acknowledged in the same manner as conveyances of real property. The proceeding is then closely similar to that for original organization, with notice and hearing by the directors. As a condition precedent, the directors may require that there be paid to the district an amount estimated to be equal to the taxes which the landowners would have paid if included in the original organization.

#### FINANCING—Assessments

**Sec. 18. "Organization tax"—Notice of assessment:** The directors, as soon as appointed and qualified, levy a uniform tax to be known as the organization tax, not to exceed \$2.00 per acre upon each acre in the district, to be used to pay expenses incurred in organizing the district, making surveys, assessing benefits, and awarding damages, and incidental expenses before other funds are available. The organization tax is due immediately and payable at the office of the treasurer; it becomes delinquent 60 days after the date of the notice, and thereafter bears interest at 12 percent. The secretary prepares a list of such taxes, signed and certified by the president and secretary under seal of the district, which thereafter becomes a permanent record in the secretary's office. The directors immediately give notice of such list in the manner prescribed in section 6, describing the property, the acreage, and the amount of tax and stating the place and date for paying the tax. No more than one organization tax may be levied in any one district; provided, if the boundary lines are extended, the same uniform tax applies to the lands annexed. Any surplus in the organization tax is placed in the general fund and credited to the assessment for the construction fund. **Sec. 19:** Delinquent organization taxes are immediately certified by the secretary to the tax collector of each county in which the lands are situated, and he collects such taxes in the same manner and at the same time as delinquent state and county taxes.

**Secs. 20 and 21. Assessment of benefits:** After the adoption of the plan for drainage, the directors assisted by the engineer proceed to view the lands of the district and determine the value of all lands or other property within and without the district

to be acquired or used for rights-of-way for the work set forth in the plan, and to assess the amount of benefits and award the amount of damages that will accrue to each tract or subdivision, railroad, and other interest or property from carrying out the plan. The directors may, if it be more equitable, adopt a certain number of acres as a maximum tract to be assessed separately. If they determine that the benefit to the lands in the district will be uniform and equal, they may assess the benefits at a uniform amount per acre. The assessed benefits to railroads and other rights-of-way, excepting canals carrying water for irrigation, power, domestic, or other use and their respective rights-of-way, shall be based on the increased physical efficiency and the decreased maintenance cost to result from the improvements; provided, the assessed benefits shall not exceed per acre the benefits assessed to adjoining lands. To ascertain the benefits to canals carrying water for irrigation, power, domestic, or other use and their respective rights-of-way, the directors shall consider the relation between the probable amount of water lost by seepage or waste from said canals to the detriment of lands and other property within the district and the probable total amount of said water causing such detriment. If the district embraces irrigated land, the directors in determining the benefit to any tract consider the protection of the tract itself against future injury, or the provision for caring for the seepage or waste waters from the tract which may be of injury to other lands.

The board prepares a report of its findings, showing in tabular form the owner, a description of the property, the number of acres in each tract assessed, the amount of benefits assessed, the amount of damages awarded, and the assessment for the construction fund which must be in proportion to the assessment of benefits. In the establishment of the construction fund the directors, with the engineer, estimate the cost of the works set out in the plan, including cost of rights-of-way and other works, discount on bonds, interest on bonds for not exceeding two years, interest on warrants, such other expenses as may be right and proper, and delinquencies and incidentals estimated as 15 percent of the total. The report must also contain an estimate of the amount of bonds to be issued. **Sec. 21:** The report is filed with the clerk of the board of supervisors of the county in which the district was organized, and the supervisors give notice as prescribed in section 6 to all interested persons of the time and place of a hearing on said report where remonstrances may be filed.

**Sec. 22. Hearing on assessment—Lien:** Any interested person may appear and advocate or remonstrate against the report on assessments of benefits or awards of damages. All remonstrances must be in writing and be filed before the date of the hearing. If the supervisors determine after hearing all remonstrances that the assessment of benefits and the assessments for the construction fund and the awards of damages are just and reasonable, that the estimated cost of construction is not excessive and is less than the benefits assessed against the lands and other property in said district, that the plan for drainage is adequate and feasible, and that the proposed bond issue is necessary and ample, they by order approve and confirm said report as submitted or as modified, equalizing and finally determining the assessment of benefits made and levied on each tract of land and other property in the district, and approve the bond issue proposed therein. If the assessments for construction are found excessive or are greater than the assessments of benefits, the supervisors by order dismiss the proceedings; or they may, upon the unanimous recommendation of the directors, declare the district dissolved, but not until all outstanding indebtedness is paid.

From and after the filing of the assessment report with the recorder, the charges assessed upon any tract of land within the county constitute a lien thereon and such filing is notice to all persons. No subsequent act of the directors may invalidate said assessment or lien, but the directors may be compelled by mandate or other proper proceedings to perform their duties as required by law.

The clerk of the board of supervisors transmits a certified copy of the order and a copy of the report as approved to the secretary of the board of directors of the district and it becomes a part of the permanent record of the district. The clerk transmits a like copy to the recorder of each county affected, so far as it affects lands in such county, and the same is filed for record. Upon dissolution under this section, funds remaining in the treasury are apportioned equally as to each acre of the district and paid to such owners by warrants drawn on the treasurer.

**Sec. 29. Budget:** The directors in the preparation of the annual report submit a budget showing the amount necessary to be levied against the lands and other property within the district for the current year. The budget provides funds for constructing and maintaining the drainage works, liquidating warrants and interest thereon, paying interest on the bonded indebtedness and retiring any maturing bonds, and for management and control of the district, with 15 percent of the total added for incidentals and possible delinquencies. Before the first Monday in February of each year the budget is certified to the board of supervisors of the county having jurisdiction, and at the time of levying county taxes they levy a drainage district tax sufficient to raise the amount of the budget. This tax is computed in proportion to the benefits shown by the equalized assessment of benefits, and is entered on the assessment roll and collected at the same time and in the same manner as state and county taxes, and paid into the county treasury for the use of the district. In the case of intercounty districts the budget is divided by the directors in proportion to the assessment of benefits on the lands in each county, and to the supervisors of each county is certified that part of the budget apportioned to such county. The treasurer of each county pays to the treasurer of the county in which the district was organized all drainage taxes received by him. The county treasurer of the county in which the district was organized retains such portion of said taxes as is required for the bond fund, and at least twice a year pays the balance to the treasurer of the drainage district.

**Sec. 30. Warrants:** Warrants are issued consecutively and bear the date of issue and the name of the fund from which payable, and state the purpose for which issued. Warrants not paid when presented for lack of funds have that fact endorsed on their back and draw interest at 7 percent thereafter until funds are in hand to pay them with interest. When there is sufficient money in the treasury to pay all outstanding warrants, the treasurer gives notice thereof by publication and posting. After the date of the first such publication and posting, warrants cease to draw interest.

**Sec. 36. New plans—Additional assessments:** Where the works called for in the plan of drainage are insufficient to accomplish the objects of the district, the directors have power to formulate amended plans for works that will accomplish the desired result, and additional assessments may be made in conformity to the provisions of sections 17 and 20. If for any other reason the assessments for the construction fund are inadequate additional assessments may be made and bonds sold, in conformity with the foregoing provision; provided, the total assessments

for the construction fund shall not exceed the assessment of benefits.

**Sec. 37. Reapportionment of benefits:** The directors, upon their own motion or on petition of the landowners against whom 50 percent or more of the benefits have been assessed, may make a reapportionment of the assessed benefits; provided, that at least five years shall have elapsed since the last previous assessment of benefits was equalized; and provided further, that the total assessment of benefits shall not be reduced. The procedure is the same as for the original assessment of benefits.

#### FINANCING—Bonds

**Sec. 23. Bond plan submitted to commission:** Immediately after the approval by the supervisors of any bond issue or any report of the directors to the district, the directors submit a certified copy of said report to the commission authorized by law to approve bonds of irrigation districts for certification as legal investments for savings banks and other purposes. The provisions of the act creating the commission are made applicable to drainage districts organized under this act; and the commission is authorized to make the same examination and report as in the case of irrigation districts. The commission reports to the board of drainage directors such matters as in their judgment may be desirable; provided, it may state generally the conclusions of said commission regarding the nature of the soil proposed to be drained or protected as to its fertility and susceptibility of drainage; the plans, works, and costs necessary for a complete and satisfactory project; and the advisability of proceeding with the bond issue. If the estimate of the amount of the bond issue includes any amount for the payment of interest on bonds of such issue, as provided in section 20, and such estimate for the payment of interest is approved by the state commission, it is lawful for the directors, if the bond issue is thereafter approved by the electors of the district, to use for the payment of interest so much of the proceeds of the sale of bonds as may be approved for that purpose in the report of the commission.

**Sec. 24. Directors follow recommendation of commission:** If the commission modifies the plans or the amount of the bond or prescribes the conditions to insure the success of the project, or finds the bond issue not advisable, it so states in its report to the directors. After receiving the report or after 90 days have elapsed since the directors' report to the commission, the directors, if they so determine and declare by resolution that the proposed plan or a modification thereof is satisfactory, make an order determining the amount of bonds that shall be issued; provided, if any district issues bonds to carry out the plans approved by the commission, it is unlawful for the district thereafter to make any material change in the plans without the consent of the commission; and if any changes in plans are made which cause a less benefit to any land or other property than that approved by the supervisors under section 22, the directors may proceed only after instituting and conducting proceedings similar to those provided for in section 22.

**Sec. 25. Bond election:** Upon the approval of any bond issue by the irrigation district bond commission, the directors call an election on the question of issuing said bonds. Regular notice is given, stating the amount of the bonds and the voting places in the precincts established by the directors. Prior to the election, the directors cause a roster of the voters to be made, containing the names of the electors, the number of votes each is entitled to cast, and the name and number of the precinct where the elector is entitled to vote. A copy of said roster is conspicuously posted in each polling place. The

election is in conformity with the general election laws, but no informality will invalidate the election if it is fairly conducted. A majority of the votes cast controls.

**Sec. 34. Bond issues:** Bonds may not exceed in total amount 90 percent of the assessments for the construction fund. They may mature at any time designated by the directors, within 20 years from their date, and bear 6 percent interest. They may be in either coupon or registered form, and in denominations of multiples of \$100 but not exceeding \$1,000. Both principal and interest are payable at the office of the treasurer of the county where the district was organized. Directors may sell bonds at not less than 90 percent of par value at public or private sale, to the highest and best bidder, after advertisement for three weeks that bids will be opened at a specified time and place. The funds derived from bonds must be used for the cost of construction and for interest on the bonds.

**Sec. 35. Bond fund:** The bond fund comprises that portion of the annual levy made for the purpose of paying principal and interest on the bonded indebtedness, and any penalties and indemnities collected and interest thereon. It is the duty of the treasurer of the county where the district was organized to pay bonds and interest when due.

#### CONSTRUCTION

**Sec. 31. Crossing highways, etc.:** When it becomes necessary to construct any portion of the works set out in the plan for drainage across any highway, railroad, or other right-of-way, the directors serve notice on the persons controlling such highway, railroad, or right-of-way of their intention to make such crossing and at what time. If the persons notified desire to construct such crossing within the time stated in the notice, they may submit plans for the approval of the engineer of the district, who will modify those plans and the requirements of the district subject to approval by the board of directors. The parties controlling said highway, railroad, or right-of-way must construct said crossing according to the approved plan or the board of directors will cause the crossing to be constructed according to the plans and specifications of the engineer of the district but in such manner as to cause no unnecessary injury or interference with the use of such property and to afford security for life and property. The cost of constructing any crossing is paid by the drainage district provided such crossing would not be necessary except for the works of the district. Such crossing when constructed must be maintained by the highway, railroad, or other owner of the right-of-way, in a manner approved by the directors of the district.

#### DISSOLUTION

**Secs. 47 to 52. Petition:** Any district organized under this act in which action has been taken by the board of directors, subsequent to those provided for in section 22, may be dissolved by the following procedure:

The directors present a verified petition to the superior court of the county in which the district was organized, signed by not less than three-fourths of the holders of title owning not less than three-fourths in acreage as shown by the last preceding assessment roll, praying for dissolution. The petition sets forth the entire indebtedness of the district and holders of such indebtedness so far as known. The petition also sets out the entire assets of the district, including all uncollected assessments.

Action on the petition is in the nature of a proceeding *in rem* and jurisdiction of all parties is had by publication in each county interested. Interested parties may appear and contest the dissolution. The court in its decree has power to

make orders to carry out the discharge of the indebtedness and distribution of the property of the district, and to declare any portions of such indebtedness to be liens upon several parcels of land.

Any surplus, after disposition of the property of the district and payment of all indebtedness, is distributed to the assessment payers in the proportion in which each has contributed to the costs of the improvement.

#### 5. ACT 2205—IRRIGATION DISTRICT DRAINAGE LAW (Statutes 1907, p. 569)

**Sec. 1. Authority:** Any irrigation district may provide for drainage made necessary by irrigation, and has the same powers respecting such drainage as it has respecting irrigation. All such laws shall be construed and enforced so as to apply to such drainage as well as to irrigation.

**Sec. 2. Board of directors—Duties:** It is the duty of the board of directors of the irrigation district to provide for drainage, and to do all necessary and proper acts for the construction, maintenance, and management of drainage works.

#### 6. RECLAMATION DISTRICT ACT OF 1872

(Article II, Swamp and overflow salt-marsh and tide lands, and Reclamation Districts; secs. 3446-3493<sup>1</sup>/<sub>2</sub>, pp. 462-532)

This law was enacted in 1872 and is the foundation upon which the present reclamation laws are based. There have been many changes and additions and the present codes of reclamation have been evolved by amendments and additions designed to encourage agricultural developments.

By an Act of December 24, 1911, a Reclamation Board was created to pass upon and approve plans for reclamation along the Sacramento River or its tributaries. Thereafter reclamation districts of which any part was within the Sacramento and San Joaquin Drainage District had to have their plans approved by the Reclamation Board, whereas all reclamation districts outside of that Drainage District had to have the approval of the supervisors of the county having the largest area in the district. In general terms this Act of 1872 is similar to Act No. 2202, Drainage District Law of 1903 (Statutes 1903, p. 291, *ante.*), and it does not appear to be necessary to add any synopsis of the earlier act.

**Sec. 3455. Report of plans of reclamation works and proceedings thereon:** Any districts located in whole or in part within the Sacramento and San Joaquin Drainage District must proceed as follows: (1) The board of trustees must report to the board of supervisors of the county in which the greater part of the district is situated, and file with the county clerk of said county three copies of the original plan or plans of the work of reclamation, and three copies of every new or supplemental plan, together with the estimate of cost of any such plan. (2) Within five days the county clerk must certify two copies of said plan to the secretary of the Reclamation Board. (3) The Reclamation Board then holds a hearing to consider objections to the plan, after notice by publication and posting. (4) At the hearing the Reclamation Board receives evidence with respect to the plan and must approve, modify, or reject the plan, but they have no power to amend, modify, or reject it on the ground that it provides for a levy that in their judgment is of excessive strength; but no claim for compensation shall thereafter be made against the Reclamation Board or the Sacramento and San Joaquin Drainage District for any part of such levy which said Board may consider to be in excess of what is required to comply with its plans for flood control. (5) The action of the Board is final and not thereafter subject to attack either before the Board or in any court.

**Districts outside of the Sacramento and San Joaquin Drainage District:** When no part of the district is situated within the boundaries of the Sacramento and San Joaquin Drainage District, the trustees report the plan to the board of supervisors of the county in which the greater portion of the district is situated. The supervisors appoint three disinterested commissioners who view and assess the lands and apportion the assessments according to benefits.

## COLORADO

(Statutes Annotated—1935, and Cumulative Supplement—1940, Chapter 57, p. 1243)

### DRAINAGE AND DRAINAGE DISTRICTS

#### ORGANIZATION—Petition

**Sec. 1. Petition to organize:** The owners of agricultural lands susceptible of drainage by the same system of works may propose the organization of a drainage district by presenting a petition to the county commissioners of the county in which the greater portion of such lands are situated, praying that the commissioners will cause the question of organization to be submitted to a vote of the landowners within the described boundaries, or that a drainage district may be established without election as provided in section 10 of this chapter.

See: *Colo. Inv. etc. Co. v. Riverview Dr. D.*, 83 Colo. 468; 266 Pac. 501.

*Coates v. Bd. of Co. Comrs.*, 71 Colo. 241; 205 Pac. 943.

**Secs. 2 and 3. Contents of petition:** The petition must be signed by a majority of the owners of the lands in the proposed district, whether resident or nonresident of such county, as well as by the owners in the aggregate of a majority of the total number of acres sought to be included. The petition describes the boundaries generally and alleges that the land can be made more useful by drainage. It must be accompanied by a map showing each tract of land and the name of the owner. The petitioners name a committee of three or more of their number to present the petition and give notice of a hearing thereon. The equalized county assessment roll is sufficient evidence of ownership. Entrymen on United States lands are competent signers of the petition. Bond in double the probable cost of organization, conditioned to pay costs if the district is not organized, must accompany the petition. **Sec. 3:** County commissioners may require cash in lieu of bond.

**Sec. 6. Publication:** Prior to the presentation to the county commissioners, the petition must be published in the county for two weeks and notice given of the time and place of presentation thereof.

**Sec. 7. Hearing:** If at the time set in the notice it appears that the petition is adequately signed and notice has been properly given, the county commissioners hear the petition and any applications for inclusion or exclusion of lands. They may adjourn the hearings from time to time not to exceed four weeks in all.

**Secs. 8 and 9. Boundaries:** The county commissioners may change the boundaries of a proposed district by including lands that can be drained or will be benefited by the same works, upon application of the owners thereof. They may exclude land that will not be benefited. They may not exclude lands mentioned in the petition that will be benefited and are susceptible of drainage. **Sec. 9:** When they have determined the boundaries, the commissioners make an order defining them, establishing the district, and giving it a name.

**Sec. 10. Drainage system without an election:** When the prayer of the petition is for the formation of a drainage district

without holding an election, and it appears that a large portion of the land to be included is unoccupied or many of its owners are not resident on the land, so an election would be impracticable, the board is authorized to cause a drainage system to be constructed. The commissioners manage the enterprise until, upon petition signed by the owners of a major portion of the land, they call an election of directors to whom they thereupon transfer control of the district.

#### ORGANIZATION—Election

**Secs. 11 to 20. Election—Notice—Divisions:** When asked in the petition, the commissioners call an election to determine the question of the organization, giving notice of the same. The notice states the name of the district, its boundaries, the polling places, the election officials, the date of the election, and the names of at least three persons eligible to be elected directors. **Sec. 12:** Three directors are elected, who must be the owners of land within the district. The commissioners may, and if requested in the petition must, divide the district into three divisions as nearly equal as convenient; and each division elects one director who must be a landowner in that division. **Sec. 13:** The commissioners designate the polling places and precincts. **Sec. 14:** They appoint three judges of election for each precinct, who must be landowners in that precinct. **Sec. 15:** Notice is by publication in each county interested. **Sec. 16:** Every owner of land in the district, who is a citizen of the United States or has declared his intention to become a citizen, and is a resident of Colorado, is entitled to vote in the precinct where he resides, or, if a nonresident, in the precinct where the greater portion of his land is situated. **Sec. 17:** The commissioners canvass the vote on the second Monday after the election. A majority vote controls in perfecting the organization and electing the officers. **Sec. 18:** The commissioners cause a certified copy of their order declaring the district to be organized to be filed with the county clerk of each county affected, and thereafter no land in such district may be included in another district without the consent of the owner of such land. **Sec. 19:** From and after such filing, the district is complete. **Sec. 20:** No action affecting the validity of the organization may be maintained after the expiration of one year from the date of the filing of the commissioners' order.

**Sec. 21. Judicial notice:** From and after the filing of the order of the commissioners establishing the district, the courts must take judicial notice of its organization; a certified copy of the order is *prima facie* evidence of the regularity and legal sufficiency of all acts, matters, and proceedings therein set forth.

**Sec. 22. Election—Officers:** The directors elect a president from their own number and appoint a secretary. They have complete management of the affairs of the district. The directors construct the drainage system and may acquire the necessary property and rights-of-way by condemnation. They may appropriate, divert, and use water for beneficial purposes, including any water gathered or discharged by the works of the district, under the same rules of law applicable to individuals. Directors have one year in which to file their claim to any water. They may not contract for work to cost more than \$5,000 unless such contract is approved in writing by the owners of land equal in number to a majority of the vote cast at the last district election, and no contract for more than \$10,000 without it first being approved by a majority vote at an election; provided, the directors have power to contract with the state or the United States for surveys for a proposed drainage system or its construction in whole or in part, the contract to provide for the payment to the state or the United States of the actual cost of

such work. Contracts, however, must be first ratified at an election by the qualified electors. (*Olney Springs Dr. D. v. Auckland*, 83 Colo. 510; 267 Pac. 605.)

**Secs. 29 to 46** provide for giving notice of all elections, canvassing the vote by the directors, and declaring the result and filing it with the county clerk.

**Sec. 47. Treasurer:** The county treasurer of the county in which the office of the district is located is *ex officio* treasurer of the district, and is liable on his official bond. The county treasurer of each interested county collects assessments for the district at the same time and upon the same list as required for other taxes, and transmits to the district treasurer once each month all money collected for the district.

#### FINANCING—Assessments

**Secs. 50 to 52, and 54. Warrants:** The treasurer pays out money only on warrants issued by the directors, signed by the president and secretary under seal. *Sec. 51:* When there are no funds in the treasury to pay warrants, they are so stamped on their face and bear 6 percent interest thereafter until paid. *Sec. 52:* All claims against the district must be verified. The treasurer keeps a register of all warrants, showing the date, name of payee, and amount; when paid, they are cancelled on their face. All warrants must be made payable to bearer, and are paid in the order of their presentation. *Sec. 54:* The treasurer makes a financial report at each regular meeting of the board and at other times when required.

**Sec. 55. Assessment of benefits:** As soon as the plan has been adopted and before construction is begun or bonds voted, the directors make a special assessment of benefits by classifying the land in 40-acre tracts and numbering them according to the benefit to be received. Those tracts receiving the most and about equal benefits are numbered 100, and the other tracts are marked with their proportionate percentage of benefit. This classification when established remains the basis for the levy of taxes for district purposes. The directors may make a new classification when injustice appears to have been done.

See: *Colo. Inv. etc. Co. v. Riverview Dr. D.*, 83 Colo. 468; 266 Pac. 50.  
*Wilcox & Son v. Riverview Dr. D.*, 93 Colo. 115; 25 Pac. (2d) 172.

**Sec. 56. Objections to classification—Hearing:** The directors make personal service on all landowners residing within the district who are affected, giving notice of the time and place where objections to the classification of the various parcels of land will be heard. Service of nonresidents is by mail, and by publication where the address is not known. The affidavit of any creditable person as to service of notice, and that of the newspaper as to publication, is sufficient.

**Sec. 57. Correcting assessments:** The directors hear all objections of interested persons and correct the assessments in accordance with justice and right, if injustice has been done. If not satisfied that there is injustice, the assessments stand as made and the directors enter an order to that effect. Appeal may be had within 10 days to the county court of the county where the lands are situated, accompanied by bond to pay the taxes as finally levied and the cost occasioned by the appeal if the directors are sustained by the court.

**Sec. 58. Hearing—Special jury:** Appeals to the county court may be heard at any term thereof after 10 days from the date the appeal was taken. The costs are to be divided at the discretion of the court between the district and the landowners taking the appeal. As a special jury to try the case, the court summons six landowners living outside of the district, who are not interested in the lands or the works of the district, nor kin to

any party interested, but have knowledge of the costs and benefits of farm drainage. Vacancies may be filled by the court under the same limits of qualification. If both parties agree, the case may be tried by three qualified jurors. The jury examines the classification as determined by the board of directors and hears testimony for and against it. The jury corrects any error in classification, but if no injustice has been done confirms the classification as made. The determination is in writing, and is filed with the court. This classification, when established, is recorded with the drainage records; provided, the county judge may hear applications for appeal to the district court, and grant or refuse them in his discretion. If appeal is not taken or is refused by the county judge, the jury's decision is final and conclusive. If appeal is granted, the decision of the district court is final. Bond must be given for costs on appeal, and the landowners appealing must pay the costs if the classification of the jury is sustained. Procedure by the district court is like that by the county court with six jurors having the same qualifications, and the decision of such jury is conclusive without further right of appeal. The classification as determined and entered in the records of the district is thereafter the basis on which all assessments are made.

**Sec. 59. Effect of appeal:** Taking an appeal does not operate to delay collection of any taxes from which no appeal has been taken, nor to delay the work or the issuance of bonds.

**Sec. 60. Modification of classification:** The directors modify their classification to conform to the changes made on appeal, and certify such modified classification to the county clerk of each county affected for filing in his office.

**Sec. 61. Special assessments:** The board of directors, before July 1 of each year, determines the amount of money required to meet the current expenses of the coming year, including construction, maintenance, operation, deficiencies, and principal and interest of bonds, and by resolution order such amounts to be raised by special assessment. The assessment is apportioned among the several tracts of land according to the acreage of each and its classification on the graduated scale, so that each tract may bear proportionate burden according to its benefits. They make a special assessment roll, the form of which is given in the statute.

**Sec. 62. Assessment list:** The assessment roll is completed before July 15, and on the first Tuesday in August the directors hear complaints and correct errors in the assessments, but they may not change the classification of any land on the graduated scale at such hearing.

**Sec. 63. Alternative method of assessment:** The directors may adopt the following method of assessment as an alternative: As soon as the plans for the system have been determined and before actual work has begun or bonds have been voted, the directors may assess the amount of benefits which will accrue to each tract of 40 acres according to legal subdivisions. The assessed benefits represent, in the judgment of the directors, the increase in value of each tract of land by reason of the contemplated drainage. The directors prepare a report of their findings tabulated in the form that is set forth in the statute. The directors also estimate the cost of the work set out in the plans, including organization and administration. One copy of the directors' estimate is filed with the recorder of the county where the district is organized and one copy in the office of the district. The secretary of the district gives notice of the directors' findings by publication in each county affected, the form of the notice being set out in the statute. Landowners have 10 days in which to file exceptions to the report. Such

exceptions are heard by the board of directors and determined in a summary manner so as to carry out the purposes of the act and the needs of the district. If it appears to the directors after hearing that the estimated cost of construction is less than the benefits assessed, they approve and confirm the report as modified or amended. The secretary transmits the confirmed report to the county clerk and recorder of each county affected for permanent record. Appeal may be taken in the same manner as provided in sections 57, 58, and 59, and modifications are made in the report in order to conform to the findings of such appeal.

Where the works as set out in the plan are found insufficient, the directors may formulate amended plans containing new works or enlargement of existing works, and additional assessments may be made in the same manner in proportion to the increased benefits accruing.

After the list of confirmed benefits has been filed with the various recorders, the directors levy a tax on all land to which benefits have been assessed in the proper proportion and in the amount necessary plus 10 percent for emergencies. The tax must be apportioned to each tract in proportion to the benefit assessed thereon and not in excess thereof. If bonds are issued, the amount of interest which will accrue thereon is added to the tax. But the interest to accrue shall not be construed as a part of the cost of construction in determining whether the costs of the improvement are equal to or in excess of the benefits assessed. When bonds are issued, the tax is divided into such number of annual installments as will meet the requirements of punctual payment of interest and principal of bonds as they accrue.

If the proceeds of the original tax are insufficient to meet principal and interest of bonds issued, the directors make additional levy to pay such obligations and interest. The board of directors may make additional assessments to complete the works set out in the plan or additional work necessary, but in no case shall the total of such levy exceed the total of the benefits assessed. As soon as the said total tax is levied, the secretary prepares a list of all taxes in a book, the form of which is prescribed, and certifies it under seal and it becomes a permanent record in the office of the district and in the proper assessors' offices.

**Sec. 64. Maintenance tax under alternative plan:** Where the alternative method of assessment (sec. 63) has been adopted and the tax has been levied to pay for the completion of the works, thereafter taxes may be levied for maintenance and operation expenses and deficiencies as provided in sections 61 and 62, except that the amounts to be raised shall be apportioned among the several tracts in proportion to the benefits assessed, and that the amount assessed to pay bonds and interest shall be determined as provided in section 63 and shall so appear in the assessment roll provided in section 61. (L. 1923, p. 280.)

**Sec. 65. Assessments—How made:** On or before September 1 of each year the secretary transmits to the county assessor of each county affected a certified copy of so much of the assessment book as relates to his county, together with a certified copy of the order of the board of directors. Thereupon the county assessor enters on his record as part of the assessment roll the assessment so certified in the same manner as state and county taxes are entered.

**Sec. 66. Delinquency—Sale—Redemption:** The laws of the State for the collection of general taxes apply to drainage taxes. The provisions for collecting drainage taxes are to be deemed and construed to be for the purpose of carrying into effect the police powers in this chapter granted to drainage

districts and shall not be construed as a special tax under the taxing power; provided, in the case of sale for delinquency and no bids received, the property shall be struck off to the district and the certificate of sale delivered to its secretary for record in the district office. The district becomes entitled to a tax deed in the same manner and subject to the same equities as a private purchaser. Redemption is in the same manner as in the case of lands struck off to the county for county taxes. (L. 1921, p. 275, amending L. 1911, p. 329.) [Constock v. Olney Springs Dr. D., 97 Colo. 416; 50 Pac. (2d) 531.]

**Secs. 67 to 70. Sale of property acquired for taxes:** The president of the board of directors, when authorized by resolution of the board, may convey real property acquired at tax sales on such terms as agreed on without authorization from the electors of the district, and the deed to such property when attested by the secretary under the district seal conveys the entire title held by the district. (L. 1929, p. 555.) **Sec. 69:** Proceeds of the sale are paid into such fund as the directors by resolution may direct. (L. 1929, p. 536.) **Sec. 70:** The board of directors may employ necessary means to perfect title to property taken by tax deed.

**Sec. 71. State lands—Assessments—Delinquency:** The treasurer of any drainage district wherein actual physical construction has been begun or completed and in which there are state lands upon which the drainage taxes have not been paid shall, before August 1 of each year, mail to the Board of State Land Commissioners a list with a description of each 40-acre tract of state lands against which any assessment is delinquent. The statute then provides the method for payment of such taxes upon State lands. (L. 1933, p. 448.)

#### FINANCING—Bonds

**Secs. 81 and 82. Bond issue—Election:** For the purpose of constructing the drainage system and to pay the first year's interest on bonds authorized, the directors may estimate the amount necessary and call a special election by the qualified electors to determine the question whether bonds in such amount shall be issued. **Sec. 82:** Notice of the election is by posting in each precinct and by publication, and the election is the same in all respects as the election for directors (secs. 11 to 17.) (L. 1911, p. 324.)

**Secs. 83 and 84. Bonds—Where payable—Interest:** A majority vote being in favor of the issuance of bonds, the directors immediately issue them in the amount specified, payable in series beginning at the expiration of 11 years, at which time not less than 5 percent of the whole amount must be paid, with an increasing percentage payable each year thereafter until at the expiration of 20 years the issue has been paid in full. The yearly percentages are of the entire bond issue and not of the amount unpaid. Bonds bear interest not to exceed 8 percent, payable semiannually. Principal and interest of the bonds are payable at the office of the county treasurer of the county where the district was organized, and at such other places as the directors may designate. (L. 1921, p. 280, amending L. 1911, p. 325.) **Sec. 84:** Bonds are negotiable in form and in denominations of \$100 and \$500; they are signed by the president and secretary, and bear the district seal. They are numbered consecutively and bear date of the day of issuance. The secretary must keep a record of all bonds sold, the dates of sale, and the names of purchasers.

**Sec. 85. Bonds maturing in less than 20 years:** Provision may be made by majority vote of the qualified electors for bonds to mature in any number of years less than 20 and to arrange for the payment thereof in series. (L. 1911, p. 326.)

**Sec. 86. Additional bonds—Election—Priority:** When money provided by any previous issue of bonds becomes exhausted and it is necessary to raise additional money for authorized purposes, additional bonds may be issued after submitting the question at a special election by the qualified electors in the same manner as the original issue. The lien of any bonds issued, and interest, is prior to that of any subsequent issue. (L. 1911, p. 326.)

See: *No provision for additional levies to pay new issues*; Wilcox & Son v. Riverview Dr. D., 93 Colo. 155; 25 Pac. (2d) 172.

**Secs. 87 and 88. Sale of bonds:** The directors may sell bonds from time to time in such quantity as necessary and advantageous to carry out the purposes of the district. They, by resolution, declare their intention to sell a specified amount of bonds, give notice of the time and place of the opening of bids by publication in Denver, and elsewhere at their discretion. **Sec. 88:** The notice states that sealed proposals will be received until the time fixed, at the office of the district. When bids are opened, bonds are awarded to the highest responsible bidder, but the directors may reject all bids.

**Sec. 89. Real property liable for bonds and interest:** Bonds and interest are paid from annual assessments on the real property in the district, and the property remains liable to be assessed for such payment as provided in this act. Bonds and interest coupons are receivable in payment of assessments levied. (L. 1911, p. 327; L. 1931, p. 326.)

See: *Water rights for irrigation are real property*; Comstock v. Olney Springs Dr. D., 97 Colo. 416; 50 Pac. (2d) 531.

**Sec. 90. Prior bonds under other acts validated:** This section validates bonds authorized and issued under the Acts of 1911 and 1921 as amended, whether they have been sold or not.

**Sec. 94. Confirmation of organization and bonds:** The directors may commence special proceedings in the district court of the county where the office of the district is situated by which the acts of the directors in the issuance of bonds, whether sold or not, may be judicially examined, approved, and confirmed. The proceedings conform to those for the ratification of bonds of irrigation districts. (L. 1911, p. 329.)

**Sec. 95. Refunding bonds:** The directors have power to issue refunding bonds for the purpose of redeeming or compromising outstanding bonds of the district and unpaid interest thereon whether same be due or not due, or payable at the option of the district or by consent of the bondholder. Refunding bonds may not exceed in amount the bonds outstanding and unpaid and matured interest thereon at the time of issuing. Interest on refunding bonds may not exceed the rate on the bonds refunded and in no case shall such interest exceed 6 percent. (L. 1933, p. 450, sec. 1.) Such refunding bonds are issued in lieu of the bonds and interest refunded, and shall evidence the same indebtedness, shall be supported by the same liens, assessments, appraised benefits, and levies. Except as to time of payment, they shall be payable from such revenues in the same manner as the bonds refunded, but shall not constitute a blanket indebtedness or lien on lands within the district unless so provided on the face of the bonds. (L. 1933, p. 451.)

**Sec. 97. Election for refunding bonds:** Whenever it is desired to issue refunding bonds, the directors call a special election of the qualified voters of the district at which is submitted the question of issuing such bonds, or the question may be submitted at a general election. The election conforms in all respects to that for directors (secs. 11 to 17), provided that no informality shall invalidate the election if it shall have been otherwise fairly conducted. Notice is by publication and

posting, and such notice gives complete information as to the bonds and interest sought to be refunded. A majority vote decides the issue. (L. 1933, p. 451.)

**Secs. 98 to 100. Form of refunding bonds:** Whenever refunding bonds are authorized, the directors provide by resolution for the date, denomination, rate of interest, maturity, places of payment (within or without the state), and the form of the bonds. They are coupon bonds bearing semiannual interest. The district treasurer records all bonds in a book kept for that purpose. (L. 1933, p. 452.) **Sec. 99:** Refunding bonds mature serially, the first payment thereof to be within not more than 5 years and the last not more than 35 years from date, provided each bond is redeemable at the option of the district 5 years prior to its maturity and on any interest paying date thereafter. Interest ceases 30 days after publication of notice of call. Maturities must be in substantially equal annual amounts of principal or in such amount as will require substantially equal annual assessments for principal and interest throughout the period, commencing not later than 5 years after the date of issuance. (L. 1933, p. 453.) **Sec. 100:** Refunding bonds may be exchanged for outstanding bonds and interest, or may be sold, in which latter event the proceeds are used exclusively for the payment of principal and interest on bonds refunded and for improvement of the district. In no case shall the principal amount of refunding bonds exceed the amount of outstanding bonds and matured interest coupons surrendered and cancelled simultaneously with the issuance of the refunding bonds. Any exchange or sale of refunding bonds shall be made in such manner as to cause no loss of interest to the district. (L. 1933, p. 453.)

**Sec. 101. Constructive consent of bondholders:** If the directors desire to obtain constructive consent of unknown and known holders of bonds desired to be retired or refunded, they declare by resolution, before disposing of the refunding bonds, their intention, to sell or dispose of such bonds. They cause the resolution to be entered on their minutes, and give notice of the proposed disposition of such bonds by publication for four consecutive weeks in three newspapers published in Colorado, one of which shall be in Denver and one in the county in which the directors' office is situated. (L. 1933, p. 454.)

**Sec. 102. Constructive consent (continued):** Before authorizing the issuance of such refunding bonds, the directors, if they desire to obtain constructive consent, require that the known holders of not less than 80 percent of the total in amount of all such bonds or unpaid interest that are to be retired or refunded, shall submit to the board an offer to deliver all such bonds in exchange for bonds or cash not exceeding the amount of the total of such bonds and unpaid interest, or to accept in full payment a sum of money or refunding bonds representing the proportion which such total proposed refunding bond issue shall bear to such total outstanding bonds and interest proposed to be refunded, based on the par value of such proposed refunding bonds or cash; such creditors and such owners of such bonds and interest to agree to absorb the loss between the amount of the total outstanding bonds and interest and the amount of the refunding bonds at par, or cash, and to receive such refunding bonds or cash in full payment of the outstanding bonds and interest; and such creditors to agree to make such proper *pro rata* distribution of the refunding bonds as shall be required to retire the total outstanding bonds and interest proposed to be refunded.

The offer must be in writing and is irrevocable after submission to the directors until after the board has opportunity to authorize the issuance of refunding bonds to discharge such outstanding bonds on acceptance of such offer. \* \* \* For the

purpose of obtaining the constructive consent of the unknown holders of bonds, the directors file in the district court an action *in rem*, setting forth the plan adopted by the district for retiring or refunding such bonds. The petition states that the percentage of the bondholders (not less than 80) have filed their written consent to the proposed plan. Notice of the petition is by publication. If there is no dissent within 90 days from the first publication of the notice, the unknown owners are deemed to have consented to the refunding. (See statute for minute details.)

**Sec. 105. How refunding bonds paid:** Refunding bonds and interest are paid from annual assessments levied on the real estate in the district, and such real property remains liable to be assessed for such payment; provided, however, that except when refunding bonds are issued for unpaid matured interest, no existing liens or liabilities created by an original issue of bonds shall be increased by issuing bonds to refund such original bonds. In collecting annual assessments to pay refunding bonds, the procedure is the same as in collecting the original assessment except that amounts for principal and for interest shall be ordered, certified, and collected separately. (L. 1933, p. 458.)

**Sec. 106. Taxes—How paid:** The county treasurer collects drainage taxes at the same time as general taxes. A property owner may pay county and school taxes separately from drainage taxes, and vice versa. The treasurer keeps record of the principal and interest payments separately. Assessments for interest are not construed to be a part of the cost of construction or a charge against any benefits theretofore appraised. (L. 1933, p. 459.)

**Sec. 107. Lien of refunding bond assessments:** The lien of assessments to pay refunding bonds and interest is on a parity with general taxes, and no sale for nonpayment of general taxes extinguishes the lien of refunding bond assessments. The lien of the assessments against appraised benefits for the payment of an original issue of bonds continues and persists for the benefit of the owners of the refunding bonds, which owners shall be subrogated to all of the rights and remedies of the owners of bonds refunded, except that if there shall be a reduction in the amount of the outstanding bonds, there shall be a corresponding reduction in the amount of the lien. (L. 1933, p. 459.)

**Sec. 108. Insufficient funds—Proportionate payments:** In the event that there are not sufficient funds to pay the installments of principal or interest when due, the treasurer must apply the money in the respective funds in proportionate payments on all bonds or coupons then due, endorsing the payment on the bonds or coupons. After respective maturities, the treasurer must make disbursements whenever he has sufficient funds to pay 5 percent of the total principal or 25 percent of the total interest due at maturity. (L. 1933, p. 460.)

**Sec. 109. Matured refunding bonds may be used in paying assessments:** Refunding bonds of any maturity may be used at face value in paying assessments levied to pay principal of refunding bonds, provided bonds so used must have all future interest coupons attached and no credits can be allowed for such coupons. Interest coupons maturing in any year may be used at face value to pay interest assessments which become due and payable in that year. (L. 1933, p. 460.)

**Sec. 111. Manner of release from lien:** This section provides methods by which any tract of land may be released from the lien of refunding bonds. The principal method is: If the bonds to be refunded were issued upon the basis of an assessment for benefits under this Act or under the Act of 1911 as originally enacted, the proportionate share of the outstanding debt chargeable

to the particular tract to be released shall be determined by the directors, upon application of the owner. (The method of making this determination is set out in detail in the statute.) When the amount is determined, the directors enter in their records a certificate of such determination and the treasurer on receiving a certified copy thereof will accept refunding bonds of any maturity at face value, or cash, in full payment of the final amount so determined. The treasurer issues receipt therefor, which may be filed with the assessor and recorded with the county clerk. After such payment, the particular tract of land is forever released from the lien of the bonds evidencing the particular debt and from all assessments to pay principal and interest thereon.

#### CONSTRUCTION

**Secs. 74 and 75. Bids—Advertising:** After adopting the plan and providing for payment for the same, or a part thereof, by assessments or bonds, the directors give notice by publication for 20 days, calling for bids for the construction of said work. If less than a whole, then the portion to be constructed is stated in the notice. The notice sets forth plans and specifications and states that contracts will be let to the lowest responsible bidder. The bids are opened in public. The directors award the contract to the lowest bidder, or they may reject all bids and proceed to construct the work under their own supervision. In the latter case, materials are secured by advertisement and purchased from the lowest bidder. **Sec. 75:** The contractor must give bond for not less than 10 percent of the contract price. All work is done under direction of the engineer employed by the district, subject to the approval of the directors.

**Secs. 76 to 80. Eminent domain:** The directors have power to construct the works across water courses, streets, highways, railroads, canals, or other ditches. If no agreement can be reached with the owners of such property as to the amounts to be paid therefor, or the points and manner of crossing, then the same shall be determined as provided by law for taking of private property for public uses under the right of eminent domain, the right to the exercise of which is conferred on drainage works. **Sec. 77:** Rights-of-way across state lands are dedicated. (L. 1911, p. 327.) **Sec. 78:** Right of eminent domain is given as to lands outside of the drainage district when needed for its works. (L. 1921, p. 284.) **Sec. 79:** Compensation for condemned property is to be determined by proceedings as provided by law for the exercise of the right of eminent domain. **Sec. 80:** No officer may be interested in a contract of the district, under penalty of being guilty of a felony.

#### DISSOLUTION

**Secs. 116 and 117. Procedure:** Whenever a majority of the owners, representing a majority of the total acres, petition the board of directors for a special election to submit to the qualified electors the proposition to dissolve, it is the duty of the directors, upon proof that all indebtedness of the district of every kind has been paid, to call the election. Notice setting forth the objects of the election is posted in six places and published in each county affected for 30 days. No district may be dissolved which has outstanding indebtedness unpaid. (L. 1911, p. 330.) **Sec. 117:** The directors canvass the vote on dissolution, and if a majority is for dissolution, they enter in their records an order declaring the district to be dissolved, in the form prescribed in the statute, and file the same for record in the office of the county clerk and recorder in each county affected. Thereupon the district stands dissolved. (L. 1911, p. 331.) If a majority at the election is not for

dissolution, the directors may make an order to that effect in their record but do not file it with the county recorder.

(NOTE: The Laws of 1939, p. 445, relate to bankruptcy of irrigation and drainage districts and authorize them to take advantage of the provisions of the bankruptcy act and of the Acts of Congress of August 16, 1937, and June 22, 1938, relating to bankruptcy. Districts may issue new bonds if the plan of composition approved by the United States District Court so provides.)

## DELAWARE

(Revised Code of 1935; Session Laws)

I—Chapter 105. Article 1—Ditches  
 II—Chapter 65. Article 2—Corporations for Draining and Reclamation of Low Lands  
 III—Chapter 65. Drainage Districts

### I—DITCHES

(Chapter 105, art. 1)

#### ORGANIZATION—Petition

**Sec. 1. Draining lowland:** Whenever one or more of the owners of any low ground shall desire to drain same, the superior court, on their petition, will appoint three commissioners to view the premises and, if they deem it proper, lay out ditches for that purpose.

**Sec. 2. Commissioners:** The commissioners take with them a competent surveyor and specify the courses, distances, and sizes of every ditch laid out. They estimate the cost of constructing the ditches, assess the damages and name the parties to whom payable, and estimate the proportion of cost that each person benefited should pay. They make return in writing, showing the boundary lines of the low grounds and of each taxable's portion thereof, and of all land benefited, and the approximate number of acres. All commissioners must act, but a majority may decide any question. When an old ditch is improved, the commissioners make proper allowance in abatement of taxes to landowners bordering on it for work done on the old ditch whereby the cost of the new ditch is diminished. The commissioners give notice to each person liable to be taxed for the new ditch, of the time and place where they will meet on some part of the lands before final assessment of taxes. Where there are nonresident landowners, it is sufficient to give notice to the tenant upon the lands, and in the absence of a tenant such notice is by posting on the land.

**Sec. 3. Damages:** The commissioners award damages to all persons injured by the making of such ditch, and such damages must be paid or tendered before the ditch is cut.

#### ORGANIZATION—Officers

**Sec. 7. Election of managers and treasurer:** The commissioners making any return that has been confirmed (secs. 5 and 8, post) must, within one month after confirmation, convene the persons liable to contribute to such ditch for the purpose of choosing two managers and treasurer of the ditch to serve for one year and until others are chosen. Notice is by posting. The managers and treasurer are chosen from among the taxables. At that meeting the taxables determine the time and place for holding stated meetings thereafter. It is then the duty of the managers to give notice of such meetings by written or printed handbills signed by them and posted in four public places six days before each meeting. Failure to give the above notice incurs forfeiture of pay by the managers and a fine of \$10. On the death or removal from the county of both managers, the treasurer is charged with giving such notice. At all meetings taxables may vote in person or by proxy, in proportion as each is liable to contribute; that is, each taxable is entitled to one vote for

each dollar of tax paid by him. Wilful disturbance or interference at any meeting constitutes a misdemeanor punishable by fine of from \$5 to \$50.

**Sec. 9. Managers—Powers:** The managers, or either of the managers and the treasurer, must proceed to make and open ditches according to the return confirmed, or to repair same as may be necessary, and they have all needed powers for that purpose. All payments are by order drawn by them on the treasurer. Any person assessed for a tax may discharge same by work done by direction of the managers, and their certificate of such work done is received by the treasurer as payment of the tax.

**Sec. 10. Treasurer:** The treasurer collects all sums assessed and has the same power as the collector of county rates. He gives bond in double the amount of the assessments. He settles with the taxables at their annual meeting and retains 5 percent of the amount collected for his services.

#### ORGANIZATION—Powers

**Sec. 11. Cross ditches:** A landowner taxed for a ditch that does not pass through his land may at his own expense open and keep open cross ditches into the same; provided, such cross ditches may not cut through the lands of intervening owners without their consent, unless it be laid out and the damages assessed by the commissioners appointed to lay out the main ditch or by three other commissioners appointed by the superior court in the same manner. The persons applying for the cross ditch must pay the costs thereof and must tender the damages awarded, but any person benefited by such cross ditch shall contribute and pay so much of such costs and damages as the commissioners shall determine to be a fair proportion.

**Secs. 12 to 18. Obstructing ditches, etc:** The wilful breaking or obstruction of a ditch is a misdemeanor, punishable by fine and imprisonment. It is lawful for taxables interested in a public ditch to enter upon the lands of any person through which such ditch may pass and remove obstructions from it. Any person hindering such removal shall forfeit \$100 and costs. Any person through whose fault and neglect a ditch is obstructed so as to hinder and prevent the free passage of water is liable for the expenses and charges to which any of the taxables shall be subject in removing the obstruction.

**Sec. 19. Dredges:** The taxables of any ditch, canal, or drain, whether organized under special act, general law, or order of the superior court, at any meeting or at any called meeting, may by vote of two-thirds of the taxables of said ditch direct the managers to acquire a barge or dredge, with power equipment, adapted to constructing or improving such canal, ditch, or drain. Each taxable is entitled to one vote for each dollar of his tax paid. A special fund for this purpose is raised in the same manner as the ditch tax.

#### FINANCING—Assessments

**Sec. 4. Contributors—Apportionment:** All persons benefited by the ditch are liable to contribute for the costs of making the same, of the damages awarded, and of the proceedings. The commissioners determine who will be benefited, and apportion the costs according to such benefits.

**Secs. 5 and 6. Review:** The superior court may, before confirmation of the return of the commissioners, grant orders of review on application of any three parties interested, returnable to the first day of the next term of the court. (There is a special exception for Kenton Hundred in Kent County.) **Sec. 6:** If any public road crossed by the ditch will be benefited so that the public should maintain a bridge over it, the commissioners so state in their return and the bridge is built and maintained at public cost.

**Sec. 8. Return—How long effective:** The return as confirmed by the court remains in force for seven years thereafter as the basis of any subsequent assessment that may be made by the managers for keeping or repairing the ditch, and until another order be granted by the court upon the application of one or more taxables. Commissioners appointed for a new assessment may not employ a new surveyor unless one is asked for in the petition. One or more taxables of a ditch or drainage company laid out under the provisions of a special charter by the legislature, or under the general corporation law, have the right to apply to the superior court for an order for a new assessment as provided for ditches laid out under this section, notwithstanding the charter of such company provides otherwise.

## II—DRAINAGE CORPORATIONS

(Chapter 65, art. 2)

### ORGANIZATION

**Sec. 96. Certificate of incorporation:** Any number of persons not less than three, all of whom must be owners of all or part of the lands intended to be drained or reclaimed, may form a corporation with perpetual succession for the purpose of ditching, draining, and bringing such lands into cultivation, and have all of the powers and privileges conferred and be subject to all of the duties and liabilities imposed. For that purpose they make and sign certificates of incorporation in which must be stated: (1) the name of the corporation; (2) the route of the ditches and the lands through which they will run. The certificate may also contain provisions for the conduct of the affairs of the corporation and for regulating its powers and those of its managers, taxables, or officers. The corporation has no capital stock nor directors but is managed by the officers herein provided for.

Before proceeding to accomplish its purposes, such corporation must apply to the superior court of the county in which the lands desired to be drained, or the greater portion of them, are situated, for the appointment of commissioners as provided in section 1 of chapter 105. (See under heading "Ditches.") All of the provisions of chapter 105 are applicable to such corporations; provided, that if any drain heretofore created and laid out under special act or under chapter 105 shall compose the whole or any part of the drains or ditches hereafter to be organized under this section, it is not necessary for the commissioners appointed to view the premises or to have that portion of said drains or ditches surveyed and plotted as provided in section 2 of chapter 105 which refers to the plot and return; and provided further, that the managers and treasurer provided for in chapter 105 shall be the managers and treasurer of the corporation, and there may be as many of such managers as the corporation by vote of its members shall deem proper, but not less than three instead of two as provided in chapter 105. Immediately after the election of such managers, they elect one of their number president of the corporation, and such president and managers possess all of the powers usually vested in such officers and in addition such powers and duties as may be provided for in the certificate of incorporation or the bylaws. The managers and taxables may make such bylaws as they think proper and alter and amend them at pleasure.

Any corporation under the provisions of this section may, when authorized by a majority vote of its taxables, borrow money and issue bonds of the corporation to secure the same. Such bonds are in form and amount as prescribed by the corporation by the vote of its taxables, sealed with the seal of the corporation, and attested by the president and secretary.

No tax for the use of the State may be collected from the corporation provided for under this section, or from corporations created for the drainage and reclamation of low land, for the amendment or renewal of the charter of such corporation. Certificates of incorporation may be amended as provided for in section 26. (L. 1928, ch. 105.)

## III—DRAINAGE DISTRICTS

(Chapter 65, art. 2)

### ORGANIZATION—Petition

**Sec. 97. Jurisdiction to establish—Public benefit:** The resident associate judge in any county has jurisdiction to establish levee or drainage districts and to locate drains and improve any drain or watercourse for the purpose of reclaiming wet or overflowed lands. The drainage of swamps and the removal of surface water from agricultural lands and the reclamation of tidal marshes are declared to be a public benefit and conducive to the public health and welfare.

**Sec. 98. Petition:** A petition signed by a majority of the resident landowners in a proposed district, or by the owners of one-half of all of the lands in acreage that will be affected or assessed for the expense of the improvement, is filed in the office of the prothonotary of any county in which a part of said lands are situated. The petition sets forth the body of lands to be drained; that they are subject to overflow or too wet for cultivation; that the public welfare will be promoted by draining the same or by improving a natural watercourse; and gives the route and termini of the proposed improvement. Bond is filed, not to exceed \$100 per mile of the proposed works, conditioned to pay the costs of the proceedings if the petition is not granted. In case the resident associate judge does not grant the prayer of the petition, he will direct the prothonotary to give notice of a hearing on the same by posting and publication. Upon the return day the judge appoints a disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties affected, not interested nor related to any of the parties, as a board of viewers to examine the land and make preliminary report. In intercounty districts the resident judge of either county has jurisdiction, and venue is in the county in which the petition is first filed. The chief engineer of the highway department is directed, upon application in writing by one or more of the petitioners, to detail a competent engineer of his department to render such service as may be necessary in the establishment of the district.

**Sec. 99. Report of viewers:** The viewers proceed to make a thorough examination of the lands described in the petition and other lands if necessary to properly locate the improvement, along the route described in the petition or any other route found more practicable. They may make surveys necessary to determine the boundaries and elevations of the several parts of the district, to enable them to make a tentative plan for development. Within 30 days they make return to the resident judge and their report is placed on the public file in the prothonotary's office. The report must set forth: (1) whether the proposed district is practicable; (2) whether it will benefit the public health or any public highway or be conducive to the public welfare; (3) whether the proposed improvement will benefit the lands sufficiently to warrant the cost thereof; (4) whether all lands benefited are included in the proposed district. They file with the report a sketch showing the general location of the ditches and improvements, and estimate of the cost of the same, and a list of the landowners who will be affected thereby so far as can be ascertained.

**Sec. 100. Hearing on viewers' report:** The resident judge considers the viewers' report within two weeks, with the engineer and two viewers present. If the report is that the drainage is not practicable or not conducive to the public welfare, and the judge approves such findings, the petition is dismissed at the cost of the petitioners. If the viewers' report is favorable to the establishment of the improvement and the resident judge shall so find after hearing all of the evidence, he will direct the viewers to make a complete survey with plans, specifications, and estimates of the cost and will fix a time for filing such final report, not more than 60 days thereafter unless the time be extended by the resident judge.

**Sec. 101. Full survey to be made:** The engineer and viewers have power to employ assistants to make the complete survey of the district. The courses and distances of each ditch are noted and accurately plotted and mapped. The line of the levels and frequent bench marks are established, recorded in the field books, and shown on the map. A drainage map is prepared showing the location of the ditches and other works and the total cubic yards of excavation or fill in each mile. The map also shows the total yardage of excavation and fill for the entire district and an estimate of the total cost.

**Sec. 102. Damages:** The engineer and viewers also assess the damages for lands taken or inconvenience imposed because of the improvement, or any other legal damages. Damages are considered separate and apart from the benefit the land would receive because of the proposed work, and must be paid by the drainage commissioners when funds shall come into their hands.

**Sec. 105. Hearing on final report of viewers:** When the final report is completed and filed, it is examined by the resident judge and if found to be in due form and in accordance with law, it is accepted. Otherwise it is referred back to the engineer and viewers for further information to be reported at a fixed date. When accepted, the resident judge fixes a hearing thereon within 15 days, with notice by publication and posting throughout the district and at the court house door. A copy is filed with the prothonotary, and is open to the inspection of any landowner or interested person.

**Secs. 106 and 107. Exceptions to final report:** At the hearing any interested party may file written objections to the report. The resident judge considers the report and the objections and makes such changes as may be necessary to render substantial justice to all of the landowners. If in the opinion of the resident judge the cost of construction plus the damages assessed is not greater than the benefits that will accrue to the lands affected, the judge will confirm the report and declare the district established. Finding the contrary, the judge will dismiss the petition at the cost of petitioners. **Sec. 107:** The prothonotary must provide a suitable book to be known as the "drainage record" in which to transcribe every part of the proceeding in order to make a continuous record of the case. One copy of all maps and profiles is attached to the drainage record and one copy is kept on file by the prothonotary and open to inspection.

#### ORGANIZATION—Officers

**Sec. 108. Board of drainage commissioners:** After the district is declared established and the survey and plans approved, the court appoints three persons who are designated as the board of drainage commissioners. They must first be elected by the landowners within the district, or a majority of them, in such manner as the court may prescribe. Each owner is entitled to one vote for each acre of land or fractional part thereof owned by him in the district as determined by the engineer and viewers under section 103. The court appoints the three persons

receiving a majority of the votes. If no three receive a majority, the court completes the board by appointing any from among those voted for. Any vacancy is filled in like manner. The three drainage commissioners, when so appointed, automatically become a body corporate under the name of the "Board of Drainage Commissioners of \_\_\_\_\_ District," with all of the powers usually pertaining to corporations. They elect one of their number as chairman and one as vice-chairman, and elect a secretary who may or may not be a member of the board. The treasurer of the county is *ex officio* treasurer of the drainage commissioners.

**Sec. 109. Superintendent of construction:** The drainage commissioners appoint a competent superintendent of construction, who gives bond approved by the resident judge in an amount commensurate with the cost and conditioned for the faithful performance of his duties.

#### ORGANIZATION—Powers

**Secs. 114 to 118. Eminent domain:** If it is necessary to acquire an outlet or right-of-way over land not affected by the drainage and the same cannot be acquired by purchase, then the right of eminent domain is conferred on drainage districts and the required right-of-way or outlet may be condemned. The procedure is substantially that provided for condemnation of rights-of-way for railroads. **Secs. 115 to 117:** Provision is made for crossing the rights-of-way of railroads and boulevards, the form of notice to be given such corporation, and the method of cooperation between such corporation and the drainage commissioners. **Sec. 118:** Owners of land assessed have the right to use the drains and ditches as an outlet for lateral drains from their lands. If such land is separated from the main ditch by intervening land and the owners of both are unable to agree concerning the crossing ancillary proceedings may be filed and the drainage commissioners will make report thereon to the resident judge, who will approve, alter, or modify the commissioner's finding.

**Sec. 121. Control:** When an improvement is completed, it is under the control and supervision of the board of drainage commissioners. It is the duty of the board to keep the improvement in good repair, and for repairs and maintenance they may levy assessments on the lands benefited in the same manner and in the same proportion as the original assessment, in amount not to exceed 25 percent of the original assessment. If repair is made necessary by the act or negligence of any landowner through whose land the drain passes, the cost thereof is assessed against and collected from that owner alone. It is a misdemeanor for any person to obstruct or damage any of the works of a drainage district.

**Sec. 123. Loans from United States:** Drainage districts are empowered to avail themselves of any government aid, and to solicit the cooperation of the United States in the prosecution of drainage and the reclamation of agricultural lands.

**Sec. 124. Revolving fund:** To encourage the starting of drainage enterprises, a "drainage district fund" is created in the amount of \$2,000, appropriated by the State, from which loans can be made for expenses of organization, not to exceed \$2,000 for any one district. (Note: The revolving fund under the heading "Ditches" is \$10,000 with a limit of \$2,000 to be loaned for any one district.) The money is returned to the State treasury through the county treasurer, who collects same from the petitioners' bond if the district is not established, or from the board of drainage commissioners, from the first proceeds of the sale of bonds, if the district is established.

**Sec. 125. No increase in tax rate:** The assessment of lands in a drainage district for county, school, or municipal purposes shall not be increased by reason of the increased value arising

from better drainage afforded by the construction of the drainage works until the bonds issued by the drainage commissioners shall have been paid in full.

#### FINANCING—Assessments

**Sec. 103. Classification of lands:** It is the duty of the engineer and viewers to personally examine the land in the district and classify the same with reference to the benefits that will be received from the construction of the works. The degree of wetness of the land, its proximity to the ditch or natural outlet, and the fertility of the soil shall be considered in determining the amount of the benefit it will receive. Lands are separated into five classes, the highest benefit being Class A; the next, Class B; etc. The holdings of any one owner need not be all in one class. Each owner's total number of acres benefited must be determined, and his number of acres in each class. The total number of acres in each class in the entire district must be prepared in tabular form. The scale of assessments per acre on the different classes is in the ratio of 5-4-3-2-1; so that as often as 5 mills per acre is assessed against Class A, 4 mills per acre is assessed against Class B, etc. This shall form the basis for assessment of benefits to lands for drainage purposes; provided, if the viewers find that by reason of conditions in the district substantial injustice will be done a landowner by strict conformity to the 5-class rule, the classification may be changed by increasing or diminishing the number of classes to conform to such conditions. In this event, explanation is made by the viewers to the judge, indicating the ratio of assessment for such changed classification as compared with the 5-class rule, and in calculating the assessment against any landowner, the judge will follow the classification as changed by the viewers.

**Sec. 110. Estimate of costs:** After the classification and ratio of assessment have been confirmed by the resident judge at the time of the final hearing and any appeals have been adjudicated, the drainage commissioners ascertain the total cost of the improvement including damages awarded, all costs and incidental expenses, engineer's cost, payment to the superintendent of construction, the necessary expenses of maintenance for three years after completion, and interest on the drainage bonds for three years. Thereupon the drainage commissioners certify to the prothonotary the total estimated costs, and their certificate is recorded in the drainage record and is open to the inspection of landowners.

**Sec. 111. Assessment:** When the drainage commissioners have made their estimate of the total costs, they immediately prepare in duplicate 10 assessment rolls or drainage tax lists to cover the period of the bond issue, giving the names of the owners of land in the district so far as the records show and a brief description of the several tracts assessed. The first assessment roll provides for the payment of interest on the bond issue to accrue the third year and the installment of principal to fall due at the expiration of the third year after issue, together with handling costs; the second assessment roll makes like provision for the fourth year; etc. Each assessment roll specifies the time when collectible, is numbered in order, and the amounts assessed against each of the several tracts of the land must be in accordance with the benefits received as shown by the classification and ratio of assessment. As each assessment is to be collected, the roll is signed by the chairman and secretary of the board, and the prothonotary appends an order directing collection of it. One copy is filed with the drainage record, and one copy delivered to a suitable person selected by the drainage commissioners who, after giving bond to the commissioners, proceeds to make the collection. For this purpose he has all of

the powers vested in the collector of county taxes or receivers of taxes and county treasurers. Such assessments have the force and effect of liens as in the case of state and county taxes. They constitute a first and paramount lien, second only to state and county taxes. The assessments become due in January, and are delinquent if not paid by April 30th next; and it is the duty of the collector to sell the lands so delinquent. The law relating to the collection of state and county taxes applies to drainage assessments.

#### FINANCING—Bonds

**Sec. 119. Notice of issue:** The board of drainage commissioners gives three weeks' notice by posting and publication that they will issue bonds for the total cost of the improvement, giving the amount of the bonds and the rate of interest and date of maturity. Any landowner may, within 30 days, pay to the county treasurer the full amount for which his land is liable, to be ascertained from the classification sheets and the certificate of the board showing the total cost of the improvement, and have his land released from liability to be assessed for such cost. The land continues liable for any future assessment for maintenance or for any increased assessment authorized by law. At the end of three weeks the drainage commissioners may sell the bonds for an amount equal to the total cost less the amount which shall be paid in cash, plus an amount sufficient to pay interest on said bonds for three years next following the date of issue.

Bonds are payable in ten equal annual installments, the first installment to mature at the end of three years from date of issue. Bonds may not be sold at less than par value. The proceeds are devoted to payment for the work as it progresses, the interest on said bonds for the first three years, and other expenses as authorized in this chapter. If any installment of principal or interest is in default for six months, the holders of same have right of action against the district or the drainage commissioners, wherein the court may issue a writ of mandamus against the district and its officers, including the treasurer and tax collector, directing the levying of a tax or special assessment in such sum as may be necessary to meet unpaid installments of principal and interest and court costs. Bondholders may sue officers of the district on their official bonds for failing to perform the duties of their offices.

#### CONSTRUCTION

**Sec. 120. Bids—Advertisement:** The drainage commissioners advertise in an engineering and contracting paper of wide circulation for bids for the construction of the improvement, either as a whole or in parts, and the contract is let to the lowest responsible bidder. The board may reject all bids and readvertise the contract. The drainage commissioners make terms of payment and fix the contractor's bond.

#### FLORIDA

*(Compiled General Laws, 1927, and Permanent Supplement, 1940; Vol. 1, p. 496, art. 1, sec. 1451, et. seq.)*

(Section 1524 of the compiled general laws provides that the Governor, Comptroller, State Treasurer, Attorney General, and Commissioner of Agriculture shall constitute the Board of Drainage Commissioners of the State of Florida.)

#### ORGANIZATION—Petition

**Sec. 1452. Jurisdiction to establish:** The circuit court of the county in which the greater portion of the land to be included in a drainage district is situated has exclusive jurisdiction, coextensive with the boundaries of the district and without regard to county lines, to establish and control drainage districts, upon proper petition therefor.

**Sec. 1451. Petition:** The State Board of Drainage Commissioners (see sec. 1524 above) or a majority of the owners, in number or in acres, of any contiguous body of land may file a petition with the circuit court, giving the name of the proposed drainage district; the number of years it is to continue; its boundaries; a description of the land; the number of acres owned by each petitioner; a statement that the petitioners obligate their land for the payment of taxes assessed for organization, construction, and maintenance; and praying that such land be organized into a drainage district.

See: *Authority of Court:* Municipal Bond & Mtg. Corp. v. Bishop's Harbor Dr. D., 133 Fla. 430; 182 So. 794.

*Number of petitioners:* Idem.

*Powers:* Halifax Dr. D. of Volusia Co. v. State, 134 Fla. 471; 185 So. 123.

**Sec. 1453. Notice:** The clerk of the circuit court gives notice by publication of a hearing on the petition, and any landowner who has not signed it may file objections in writing. The objections are heard by the court in a summary manner, and if it be of opinion that formation of the drainage district will be an advantage to the landowners and to the public welfare, objections will be overruled and the court will declare and decree the district to be a public corporation of the state for a term not exceeding the time mentioned in the petition; but no district may be established without approval of the owners of a majority in acres of the land in the district. No person may have the petition dismissed as to him without the consent of a majority in acres of the landowners. A copy of the decree establishing the district is filed with the Secretary of State and with the clerk of the circuit court of each county affected.

#### ORGANIZATION—Officers

**Sec. 1454. Board of Supervisors—Election:** Within 20 days the clerk of court, after notice by publication, calls a meeting of the landowners for the purpose of electing a board of 3 supervisors composed of landowners in the district, at least two of whom must be residents of the county or counties in which the district is located or of an adjoining county. At the election each acre represents one share, and each owner is entitled to one vote for each acre owned. The State Board of Drainage Commissioners has the right to vote any state lands. Ownership of a majority of acreage is necessary to constitute a quorum for the purpose of holding an election. In the event of the failure of a quorum, the State Board of Drainage Commissioners will appoint three competent persons as supervisors.

See: *Authority and Legal Existence:* Atlantic Land & Improvement Co. v. Peace Creek Dr. D., 135 Fla. 694; 185 So. 618.

**Sec. 1459. Engineer:** Within 30 days after organization, the supervisors appoint a chief engineer who has control of the engineering work of the district. He makes necessary surveys of the lands within the district and of adjoining lands that would be benefited, and prepares maps and profiles and the complete plans and estimates of cost for drainage the lands described in the petition and the lands adjacent thereto that will be benefited. The Chief engineer makes a report in writing once each year, or oftener if required, and upon making his final report the supervisors adopt it or some modification of it and such adopted report is the plan of drainage.

**Sec. 1461. Plan of reclamation:** Within 20 days after adopting a plan of reclamation, a certified copy is transmitted to the clerk of the court organizing the district; and the supervisors at the same time petition the court to appoint a board of three commissioners to appraise the land within and without the district to be acquired for drainage works, and to assess the

benefits and damages to all lands within the district. The court appoints as such appraisers three persons not interested in the district nor related to landowners therein.

#### FINANCING—Assessments

**Sec. 1463. Appraisal of benefits:** The appraisers assess the benefits and damages accruing to each 40-acre tract or other subdivision of the land. They report, in tabular form, prescribed by the statute, an estimate of the cost of the work, including damages and organization and administration expenses. If the report covers assessments on lands not included in the district, the supervisors must file a petition asking that the boundaries of the district be extended to include such land, and the proceedings on such petition are the same as for the original petition.

Exceptions to the report of the appraisers may be filed by any party in interest. If no exceptions are filed, or if upon the hearing on the report it appears to the court that the cost of construction will be less than the estimated benefits, the court will confirm the report after amending it in accordance with any sustained exception. Appeal to the Supreme Court may be had within 30 days. Certified copies of the decree of confirmation are transmitted to the supervisors and to the county clerk of each interested county for permanent record.

**Sec. 1460. Cost of organization:** The supervisors may levy a uniform tax not to exceed 50 cents per acre, to be used for the expenses incurred before the board is authorized to provide funds for the total cost of the improvement. This assessment is collected in the same manner as drainage taxes and is a lien upon the land assessed. When money is necessary before this assessment can be levied and collected, the supervisors may borrow money and issue notes or bonds therefor, pledging any and all assessments for the refund thereof. When an installment of taxes has been levied for payment of any obligation or of maintenance charges, the supervisors are authorized to borrow 75 percent of such taxes on notes bearing not more than 8 percent interest and payable out of the installments when collected.

See: *Amount of tax:* Campbell v. State, 133 Fla. 638; 183 So. 340.

*Judgments:* Campbell v. State, 124 Fla. 244; 138 So. 33.

*Mandamus:* Idem.

*Injunction:* Atlantic Land & Improvement Co. v. Peace Creek Dr. D., 135 Fla. 694; 185 So. 618.

**Secs. 1467 and 1470. Tax levy:** When the report of the appraisers is confirmed, the board of supervisors levies a tax of such portion of the benefits assessed as may be found necessary to carry out the plan of reclamation and to provide 10 percent additional for emergencies. The tax must be levied in proportion to the benefits assessed and not in excess thereof. In case bonds are issued, the tax is levied in such sum that the principal of the bonds does not exceed 90 percent of the levy. The total amount of bonds to be issued may not be more than 90 percent of the assessed benefits. State land is taxed in the same manner as other land.

The secretary of the board of supervisors prepares a list of the taxes levied and records it in the drainage tax book. The collector of each county receives the drainage tax book, and collects the taxes listed therein at the same time and in the same manner that he collects state and county taxes. All taxes remaining unpaid after the first Monday in April of the year in which they are levied carry a penalty of 2 percent per month until paid. *Sec. 1470:* Drainage taxes are a lien upon lands assessed, equal in dignity to state and county taxes.

See: Campbell v. State, 133 Fla. 638, ante.

*Amount of tax:* Halifax Dr. D. of Volusia Co. v. State, ante.

*Assignment of Certificate:* State v. Sloan, 135 Fla. 179; 184 So. 781.

**Sec. 1497. Readjustment of benefits:** When the owners of 25 percent or more of the acreage in the district file a petition with the circuit court citing that there has been a material change in the values of property in the district since the last assessment of benefits, and asking a readjustment of benefits, the court will hold a hearing on such petition and the procedure is the same as for the original assessment of benefits. If a readjustment of benefits is ordered, the assessment is not limited to the aggregate of the original assessment, but the limitation of 10 percent for maintenance applies to the readjusted assessments. There may not be a readjustment more frequently than once in 5 years.

#### FINANCING—Bonds

**Sec. 1493. Bonds—Taxes:** The supervisors may issue bonds of the district when in their judgment it seems best, in an amount not to exceed 90 percent of the taxes levied exclusive of the amount levied for interest. Bonds bear 6 percent interest and they mature in annual intervals within 30 years commencing after a period of not later than 10 years. They may be sold at not less than 95 percent of their face value with accrued interest. A sufficient portion of the drainage taxes is apportioned to and set aside for the payment of bonds when due. If the drainage tax is insufficient to meet bonds issued subsequent to June 1, 1927, additional taxes proportioned to the amount of the drainage taxes may be levied in such amount as may be necessary to pay the bonds. The holder of bonds delinquent for 60 days may apply to any court of competent jurisdiction for a receiver for the district, who will collect the taxes and foreclose liens against the lands, and apply the proceeds first to interest and then to *pro rata* payment of matured bonds. When all obligations are paid in full, the receiver is discharged. No bonds may be issued without the approval of the Board of Drainage Commissioners of the State.

See: *Constitutionality*: Little River Valley Dr. D. v. First State Savings Bank of Morenci, Mich., 123 Fla. 581; 167 So. 376.  
*Construction*: Halifax Dr. D. of Volusia Co. v. State, 134 Fla. 471; 185 So. 123.  
*Illegal Districts*: Municipal Bond & Mtg. Corp. v. Bishop's Harbor Dr. D., 133 Fla. 430; 182 So. 794.  
*Mandamus*: Morgan v. State, 126 Fla. 534; 171 So. 310.

#### CONSOLIDATION

**Sec. 1498. Consolidation:** Adjacent districts may be consolidated whether in separate counties or not. The board of supervisors of each district calls an election in the same manner as for the original board of supervisors. If a majority of the acreage voted in each district is in favor of consolidation, the board of supervisors of each district presents a petition to the circuit court of the county in which the greatest amount of land is situated, accompanied by a complete return of such election with the names of the original districts, the dates of incorporation, the names of the owners of the land, and a description of the boundaries of the district. After notice and hearing in the same manner as for the organization of the district, and objections being not sustained, the court makes an order uniting the districts under an appropriate name and they become one district with all the rights and powers conferred by this Act. The new district is subject to the liens, liabilities, and obligations of the original district. A new board of supervisors is elected, and all orders are spread on the minutes of the board and a certified copy thereof is filed in the circuit court of each county and with the Secretary of State.

**Sec. 1499. Extending corporate existence:** When necessary to extend the corporate existence of a district beyond the period limited in the original petition, the supervisors call a meeting

of the landowners, and if a majority of the acres represented vote in favor of extending the corporate existence the board presents a petition to the circuit court for that purpose. The meeting is conducted in the same manner as in the election of the board of supervisors. If the petition is granted, the clerk of the court transmits a copy of the decree to the board of supervisors, to the Secretary of State, and to the circuit court of each county having land in the district.

**Sec. 1472. Subdistricts:** If any drainage district organized under this Act be wholly or partly within the boundaries of a district theretofore established, the last organized district is designated a subdistrict of the other, and the lien of the taxes assessed for said subdrainage district is of equal dignity with the taxes assessed for the district first established; provided, that the sale of any land for state and county taxes does not operate to release the land from the lien of subsequent installments of drainage taxes, which lien may be enforced as though no sale had been made.

#### DISSOLUTION

**Sec. 1488. Dissolution:** Drainage districts incorporated for a definite term would, in the absence of proceedings to extend their corporate existence, become defunct at the expiration of the stated term.

When objections are filed to the appraisers' report, if the court finds that the estimated cost of the improvement will exceed the benefits it will declare the incorporation of the district to be dissolved as soon as all costs and obligations have been paid. If the uniform tax levy is not sufficient to pay all obligations, the supervisors may levy additional uniform taxes.

## GEORGIA

(Annotated Code, Chapter 23; and Cumulative Pocket Part, 1939)

### SYSTEM OF COUNTY DRAINAGE

#### ORGANIZATION—Petition

**Sec. 2503. Creation of court to establish drainage systems:** The clerk of the superior court together with the Board of Commissioners of Roads and Revenues, or, if there be no such board, with the Ordinary of the county, constitute a court with the power and authority to establish drainage districts in this state. The drainage of swamps and agricultural lands is declared to be a public benefit and conducive to the public health, convenience, and welfare. (L. 1911, p. 108.)

See: *Constitutional*: 85 S.E. 909; 119 S.E. 644.

**Sec. 2504. Petition:** A petition signed, by a majority of the resident landowners of a proposed district or by the owners of three-fifths of all land which will be affected or assessed for benefits, is filed in the office of the clerk of the superior court of any county in which a part of the land is situated. The petition describes the lands to be drained and states that public health, convenience, and welfare will be promoted by draining them. It sets forth, as far as practicable, the starting point, route, and terminus of the drainage ditch and of the laterals if they be necessary. Petitioners must give bond to pay the costs in the event the district is not organized. The clerk issues a summons to all landowners not signing the petition and gets service by publication on those who cannot be personally served.

See: *Evidence*: 103 S.E. 197.  
*Negligence*: 95 S.E. 14.

**Secs. 2505, 2506, and 2508 to 2512. Viewers:** Upon the return day, the court appoints a disinterested, competent engineer and

two resident freeholders of the county as a board of viewers to examine the land and make a preliminary report. *Sec. 2508:* When the lands are located in two or more counties, the same jurisdiction lies but the venue is in the county where the petition is filed. *Sec. 2508:* The viewers examine the land described in the petition and any other lands along the route of the proposed work, make survey if necessary to determine the boundaries, and make a written report to the clerk within 30 days setting forth: (1) whether the proposed drainage is practicable; (2) whether it will be of benefit to the public health or any public highway or conducive to the general welfare; (3) whether such improvement will benefit the land; (4) whether or not all of the lands which will be benefited are included in the proposed district. They file a map showing the location of the ditch and the land that will be affected. (See Inclusion of lands, 117 S.E. 236.) *Sec. 2509 and 2510:* If the report be that the drainage is not practicable or will not be a public benefit, the court will dismiss the petition at the cost of the petitioners; but the same petitioners may again present the petition after the expiration of 6 months, upon a showing that conditions have changed. *Sec. 2511:* If the viewers report the drainage practicable and of public benefit, the court makes a finding to that effect and fixes a day when the petition may be heard. *Sec. 2512:* Notice is by publication and posting, stating the date on which the court will hear evidence for or against the viewers' report. Nonresident landowners must have written notice at least 30 days before the hearing.

*Sec. 2513. Hearing:* The court hears any objections presented, and if there appears to be any land which will not be affected by the drainage, it will be excluded. If there is land not within the district but benefited, the boundaries may be changed to include the same, and the owner of such land also must be summoned to the hearing. The viewers may attend the hearing and give information. When the facts and the boundaries of the district have been determined to the satisfaction of the court the district is declared to be established and is given a name or a number.

*Secs. 2516 to 2518. Survey—Plan:* After the hearing on the report of the viewers and the establishment of the district, the report is referred back to the engineer and viewers for a complete survey with plans and specifications for the work, which must be completed within 60 days. (See 121 S.E. 298.) *Sec. 2517:* The details of the survey are set out in the statute, and among the requirements are profiles of the proposed work and an estimate of the cubic yards in each fill or excavation for each mile or fraction thereof, and an estimate of the cost of the whole work. *Sec. 2518:* The viewers also assess all damages to be occasioned by the works, separate and apart from any benefits to be derived, which damages are paid by the drainage commissioners when funds come into their hands.

*Sec. 2519. Benefits:* The engineer and viewers personally examine the land in the district and classify it with respect to the benefits it will receive from the construction of the system. In the case of drainage, the degree of the wetness of the land, its proximity to the ditch or canal or a natural outlet, and the fertility of the soil are to be considered in determining the amount of benefit it will receive. Lands are separated into 5 classes, the land receiving the highest benefit being Class A, the next Class B, etc. The holdings of one landowner need not all be in one class, but the number of acres in each class must be shown, though not necessarily marked on the ground or on the map. The total number of acres owned by each person in each class, and the total number benefited, must be determined and presented in tabular form. The scale of

assessments on the various classes are from 5 to 1; that is, as often as 5 mills per acre is assessed against Class A land, 4 mills is assessed against Class B, etc. The viewers keep an accurate account of the cost of the survey.

*Secs. 2522, 2523, 2354, and 2355: Report of viewers—Hearing:* When the final report of the viewers is completed and accepted by the court, 20 days notice of the hearing thereon is given by publication and posting and a copy is held in the office of the clerk for inspection by any interested party. *Sec. 2523:* At the hearing any landowner may file objections to the report in writing, and the court will review the report and objections and make necessary changes to do substantial justice to all landowners. If, in the opinion of the court, the damages and costs of construction do not exceed the benefits to be derived, it will confirm the report. The contrary appearing, the court dismisses the proceedings at the cost of the petitioners. (119 S.E. 644; 117 S.E. 236.) *Sec. 2354:* Aggrieved parties have the right of appeal within 10 days to the superior court. (84 S.E. 169.) *Sec. 2355:* The clerk of the superior court provides a suitable book known as the "Drainage Record" in which all records and orders are transcribed. He also keeps files of all maps and profiles.

#### ORGANIZATION—Officers

*Secs. 2526 to 2528. Board of Drainage Commissioners:* After establishment of the district and approval of the survey and plan, the court appoints three drainage commissioners who must first be elected by a majority of the landowners in the manner prescribed in the Act. The court must appoint those receiving a majority of the votes cast, and as many others from among those voted for in the election as is necessary to obtain three commissioners. Vacancies are filled after election in like manner. (113 S.E. 447; 151 S.E. 369.) *Sec. 2527:* The three drainage commissioners immediately become a body corporate under the name of the Board of Drainage Commissioners of \_\_\_\_\_ District, and they possess all the powers usually pertaining to corporations. *Sec. 2528:* The board organizes and elects a chairman and vice-chairman from their number, and a secretary who may or may not be a member of the board. The treasurer of the county where the petition was filed becomes *ex officio* treasurer of the district, unless the board selects a bank or trust company in Georgia to act as treasurer.

#### ORGANIZATION—Powers

*Sec. 2514 and 2515. Right-of-way—Eminent domain:* The district is granted the power of eminent domain if it becomes necessary to acquire rights-of-way through lands not affected and which cannot be obtained by agreement. Damages or compensation awarded are paid by the drainage commissioners out of the first funds available from the proceeds of bonds or otherwise. (95 S.E. 14.) *Sec. 2515:* Persons owning land within the district that they think will not be benefited and should not be included, may appeal to the Superior Court of the county, giving bond to pay costs if the appeal is not successful.

*Sec. 2539. Maintenance:* Completed works are under the control and supervision of the drainage commissioners. It is the duty of the commissioners to repair and maintain the works and they may levy an assessment for that purpose in the same manner and in the same proportion as the original assessment. Repairs made necessary by the acts or negligence of any landowner are assessed solely against him, and the cost may be recovered by suit. (116 S.E. 602.)

*Sec. 2540. Laterals:* Any landowner assessed has the right to use ditches as outlets for lateral drains from his land. If any owner be separated from the main ditch by the lands of

another, he may secure rights-of-way for laterals to the main ditch by agreement or court action. Such laterals become a part of the system and are under the control of the drainage commissioners.

**Sec. 2549. Commissioners' duties as to levy and collection:** It is the duty of the drainage commissioners to see that executions to enforce payment of all unpaid assessments are issued by the tax collector not later than January 15 of each year, and immediately placed in the hands of the proper levying officers, and to see that the levy of execution is promptly made and followed by advertisement and sale of the land of each person failing to pay in full by February 15 in each year. It is their further duty to see that all county officers promptly and faithfully discharge their respective duties. (L. 1923, p. 84.)

#### FINANCING—Assessments

**Sec. 2541. Assessment for costs:** After the classification of the land and the ratio of assessment has been confirmed by the court, the commissioners prepare an assessment roll or drainage tax duplicate showing the description of the land, name of the owner, and the amount of the assessment against each tract. The board ascertains the total cost of the improvement, including damages awarded and incidental expenses, and deducts therefrom any special assessment made against any railroad or highway, and the remainder is the amount to be paid by the lands benefited. The amount assessed against each tract is according to the benefit received as shown by the classification and ratio of assessment. There is appended to the drainage tax roll an order to collect the assessment which order has the force and effect of a judgment. The roll is made in duplicate and one copy filed with the drainage record and one delivered to the Sheriff for collection. During any year in which bonds or interest are due, the levy is 5 percent more than the total of the principal and interest due in that year, for the purpose of meeting contingencies. When this excess assessment accumulates until the aggregate surplus in the hands of the treasurer amounts to more than 10 percent of the total bonds of the district outstanding, such surplus above 10 percent may be available for maintenance and upkeep of the works of the district. Any part of this fund remaining when the final installment of interest and bonds is due shall be applied to payment of the same, and the final assessment proportionately reduced. (L. 1921, p. 185.) (144 S.E. 242; 117 S.E. 329; 121 S.E. 641.)

**Sec. 2542. Payment of assessments:** If the total cost of the work is less than 25 cents per acre on all of the lands in the district, the assessment is collected in one installment by the same officers and in the same manner as state and county taxes and is payable at the same time. If the total cost exceeds 25 cents per acre, the commissioners give notice by publication and posting that they propose to issue bonds to pay the cost of construction, giving the amount of bonds, rate of interest, and date of maturity. Any landowner may pay the amount of his assessment in full within 30 days, and have his lands released from the lien. (L. 1918, p. 147.)

**Sec. 2543. Waiver of defense against assessment:** Every person owning land that is assessed for the improvement, who neglects to pay the full amount of his assessment within the time specified, is deemed to consent to the issuance of bonds and, in consideration of the right to pay his assessment in installments, waives his right to any defense against the collection of said assessment because of any defect in the proceedings, except in case of appeal taken. (96 S.E. 418.)

**Sec. 2551. Existing liens:** No liens existing at the time of the assessment under this Act are affected unless such lien

holder is served with notice like other landowners in the district. When so served, such lien holder is entitled to all the rights of members in the affairs of the district until such lien is discharged. (L. 1925, p. 179.)

**Sec. 2552. Reassessment:** Where the court has confirmed an assessment and it has been modified by superior jurisdiction, but cannot be collected for some unforeseen reason, the commissioners have power to modify the original assessment to conform to the superior ruling and the cost of any deficit that may be caused is met by a relevy in the same ratio as the original assessment.

**Sec. 2565. Additional assessments:** Where the cost of completion cannot be met by the original assessment, as from failure to estimate the amount of rock in the district or from other costs unknown at the time of the original assessment, it is the duty of the commissioners to levy an additional assessment to meet the necessary expense in the same manner and in the same proportion as the original assessment, and collect it in the same way. (L. 1919, p. 147.)

**Sec. 2566. Borrowing to meet bond payments:** The commissioners have the right to borrow money necessary to meet promptly payments of principal and interest on bonds as they mature, and to give their notes secured by the unpaid assessments already levied to pay such bonds or coupons. (L. 1921, p. 185.)

#### FINANCING—Bonds

**Secs. 2544 and 2545. Bonds—How issued—Rate:** At the expiration of 30 days after the notice, the commissioners may issue bonds for the full amount of the assessment not paid to the county treasurer, together with interest thereon, cost of collection, and incidental expenses. Bonds bear 6 percent interest and must be paid in 10 equal installments. The first installment of principal matures at the expiration of 3 years, and 1 installment each succeeding year for 9 years. The commissioners may sell bonds at not less than par and pay for the work as it progresses. No bonds may be issued until the tax levy has been made to meet principal and interest at maturity. (L. 1918, p. 147.) (See 120 S.E. 310; 131 S.E. 931.) **Sec. 2545:** The bonds are for the exclusive use of the districts specified on their face, and must be numbered by the commissioners and recorded in the Drainage Record, which record must set out specifically the land in the district on which the taxes have not been paid in full and which is assessed for the payment of bonds and interest.

**Secs. 2546 and 2547. Lien—Collection:** The assessments constitute a first and paramount lien, second only to State and county taxes. Drainage taxes are collected in the same manner and by the same officers as State and county taxes. Any purchaser at a drainage-tax sale acquires title to the land, subject only to State and county taxes (and city taxes if the land is located in an incorporated town) and the unpaid assessments due or to become due. All executions issued under this Act constitute special liens upon the land within the district, subject to the provisions of this Act. All assessments are due and payable on or before December 20 in each year preceeding the maturity of the installment of principal and interest of bonds or other indebtedness which the assessment is levied to pay. Assessments bear 7 percent interest from December 20 until paid. (L. 1925, p. 179.) (See 118 S.E. 720; 131 S.E. 911; 119 S.E. 644; 121 S.E. 641; 135 S.E. 720; 166 S.E. 664.) **Sec. 2547:** In districts in more than one county, the assessments are payable in the county where levied and the collector in that county issues executions which may be levied by any sheriff or constable in the county where the land is situated. (L. 1925, p. 179.)

**Sec. 2548. Remedies of bondholders:** If any installment of principal of interest of bonds shall not be paid when due, the holder of such bonds has right of action against the district or the board of commissioners, wherein the court may issue a writ of mandamus against the district and its officers, including the tax collector and treasurer, directing the levy of a tax or special assessment and collection of the same, in such sum as may be necessary to meet unpaid installments of principal, interest, and costs. The right is given the holder of bonds in default to institute suit against any officer on his official bond for failure to perform any duty imposed by this Act. The bonds of officials may be increased by the board of county commissioners. (L. 1921, p. 185.)

**Sec. 2561. Interest on bonds:** When bonds do not exceed \$100,000, the rate of interest may be fixed by the Board of Commissioners at not more than 8 percent. (L. 1913, p. 85; L. 1917, p. 100; L. 1920, p. 148.)

**Sec. 2562. Validity:** Bonds may be validated as other bonds are under the provisions of the State laws. (L. 1913, p. 85.) Sections 2563 to 2573 provide in detail the procedure for the validation of bonds.

#### CONSTRUCTION

**Sec. 2529 and 2530. Superintendent of Construction:** The Board of Commissioners appoints a competent person as superintendent of construction and he must give an approved bond for \$10,000 conditioned upon the faithful performance of his duties. **Sec. 2530:** The board gives notice by publication in the district, and elsewhere as they deem expedient, of the time and place of letting the contract for construction, specifying the work to be done and the time fixed for its completion. At the appointed time they meet, and with the superintendent of construction let the work to the lowest responsible bidder, either in whole or in sections as they may deem most advantageous. No bid may be entertained that exceeds the estimated cost unless it is shown that the original estimated cost was erroneous. They may reject all bids and again advertise the work if they deem that for the best interest of the district. (See: 120 S. E. 298.)

**Secs. 2531 to 2538:** The successful bidder enters into a contract with the board and gives bond in an amount equal to 25 percent of the estimated cost. **Sec. 2532:** The superintendent of construction makes monthly estimates of work done, furnishing a copy to the board, and 5 days thereafter the board makes payment to the contractor for not more than 90 percent of the work so estimated to be completed. When the whole work is completed and accepted, the remainder of the contract price is paid. **Sec. 2533:** Upon default in the performance of work by the contractor, he may be sued on his bond in the Superior Court for damages, and recovery may be had against him and his surety. In such event the work is relet in the same manner as originally. **Sec. 2534:** The contractor for any portion of the work has the right of entry upon lands where necessary, and the right to cross private lands and remove private or public bridges or fences, but must replace them. If the right-of-way is through timber, the owner may remove the same before the work begins; otherwise it becomes the property of the contractor and may be removed by him. **Sec. 2535:** Where the work crosses a highway the cost of removing and replacing bridges must be borne by the district. Whenever any highway within the district is benefited, the viewers appointed to classify the land report the amount of benefit. Notice of the amount assessed is sent to the commissioner of roads and revenues or to the ordinary of the county where the road is located, and they have the right to file objections in the same manner as a landowner. **Sec. 2536:** Where the drainage work crosses a railroad,

provision is made for a meeting between officials of the road and the board. If no agreement as to damages can be reached, the viewers determine the place and manner of crossing and fix the amount of damages, if any. The fact that the railroad may be required to build a new bridge or strengthen an old one shall not be considered as damages. The viewers also assess the benefit which will accrue to the railroad right-of-way and other property by reason of better drainage, but no benefits shall be assessed because of increased business that may come to the railroad because of construction. The benefits are assessed in a fixed sum determined solely by the physical benefit that that property will receive, and such sum is reported by the viewers as a special assessment and may be collected as any debt is collected in a court of competent jurisdiction. **Sec. 2537:** A railroad company has the right to file objections to the report of the viewers and to appeal from the findings of the board of commissioners in the same manner as a landowner; but such appeal shall not delay construction. **Sec. 2538:** A specific provision is made for crossing of railroad rights-of-way with dredges in the construction of the works of the district, and for distribution of the cost of such crossing.

#### IDAHO

(Annotated Code, 1932, and Session Laws;  
Chapter 25, secs. 41-2501 to 41-2564)

#### DRAINAGE DISTRICTS

##### ORGANIZATION—Petition

**Sec. 41-2505. Petition for organization:** The petition for organization of a drainage district is presented to the clerk of the district court in the county where the greater portion of the lands is situated, designating the tentative boundary of the district and approximating the number of acres. It contains a description of the proposed work showing the outlet and general route of the main ditch and states that the establishment of such a district will be conducive to the public health, convenience, and welfare or will increase public revenues. The petition must be signed by the owners of not less than one-third of the acreage. Community property may be represented by the record owner.

See: Maxwell v. Terrell, 37 Ida. 767; 220 Pac. 411.  
Neal v. Drainage Dist. #2, 42 Ida. 624; 248 Pac. 22.

**Sec. 41-2506. Withdrawal of names:** Petitioners must file an approved bond in the sum of \$500, conditioned to pay costs if the district is not established. No person is permitted to withdraw his name or lands from the petition without paying into the court his *pro rata* share of all costs to the date of such withdrawal.

**Secs. 41-2507 and 41-2508. Hearing:** The court gives notice of the hearing on the petition by publication. **Sec. 41-2508:** At the hearing any interested person or corporation may file objections to the organization. Objections are limited to determining whether the organization of such district would be an advantageous method of reclaiming the land, whether there is a reasonable probability that the objects sought will be accomplished, and whether the proposed system would be conducive to public health, welfare, or convenience, or would increase the public revenue. The court hears evidence for or against the petition and makes its findings. If the district is established, the judge enters an order of record, which is filed in each county interested, defining the temporary boundaries of the district and describing the land therein; and such order has the effect of a *lis pendens*. The district may be established even if the outlet for the system is without the county in which the district is located, or without the state, or in a

foreign country. (*Booth v. Groves*, 43 Ida. 703; 255 Pac. 638, and cases *ante.*)

**Sec. 41-2509. Decree:** If, upon the final hearing on the petition, the judge of the district court of the county wherein the proposed district is situated finds that the district will be to the public benefit or to the benefit of a majority in acreage of the land included in its boundaries, he declares the district organized, gives it a name which includes the name of the county and state, and causes the court clerk to file a certified copy of the order with the Secretary of State. The organization is then deemed to be complete.

#### ORGANIZATION—Officers

**Secs. 41-2510 to 41-2512. Drainage commissioners:** The judge of the district court within 10 days appoints three drainage commissioners who reside in the county where the district is located. They qualify as county officers qualify, and give bond in the sum of \$5,000 approved by the judge. The commissioners organize as a board and determine their terms of office by lot, the terms being 1, 2, and 3 years, respectively. Annually thereafter the judge of the district court of the county where the district is situated appoints one drainage commissioner for the district for a term of 3 years. *Sec. 41-2511:* The commissioners appoint one of their number president and one secretary, and they may meet in any county or counties in which the district is located. *Sec. 41-2512:* Vacancies are filled for the unexpired term by the judge of the district court.

See: *Constitutional: Elliot v. McCrea*, 23 Ida. 524; 130 Pac. 785.

**Secs. 41-2516 to 41-2518. Engineer and surveyor:** The commissioners may employ an engineer and other helpers at the expense of the district in making their report to the court. *Sec. 41-2517:* The commissioners are not confined to the plans laid out in the petition, but may locate and lay out the work as in their judgment is best designed to promote the public health or welfare and to drain the land with the least damage and greatest benefit. The court by written order may alter or modify any plan reported by the commissioners. *Sec. 41-2518:* The commissioners may enlarge the boundaries to embrace the lands benefited, or may contract the boundaries to exclude lands not benefited, but not so far as to render the petition dismissible.

#### ORGANIZATION—Powers

**Sec. 41-2501. Corporate powers:** Any portion of a county requiring drainage may be organized into a drainage district, and when so organized it shall be designated by a number and the name of the county and state; may sue and be sued in the name of the board of commissioners; and may have perpetual succession. After organization the district is controlled and managed by its commissioners, who have power to conduct its affairs as provided by law.

See: *Constitutional: Elliot v. McCrea*, 23 Ida. 524; 130 Pac. 785. *In re: Drainage Dist. #1*; 30 Ida. 351; 164 Pac. 1018. *Burt v. Farmers Co-op. Irr. Co.*, 30 Ida. 752; 168 Pac. 1078. *Nampa, etc. Irr. Dist. v. Petrie*, 37 Ida. 45; 223 Pac. 531. *Sebern v. Moore*, 44 Ida. 410; 258 Pac. 176.

**Sec. 41-2502. Appropriation of water:** The commissioners of a drainage district are authorized to file upon and appropriate water created or made available for irrigation purposes by the construction of the drainage works, whenever it can be applied to beneficial use upon land within the district without impairing prior existing rights. Such water must be equitably and ratably distributed to the land in the same proportion that the assessment for drainage of each tract bears to the whole assessment within the district; provided, where lands have adequate water rights and the water made available by the drainage

works may be beneficially used upon other land, the commissioners may supply such other lands with water upon their assuming to pay their proportionate share of the drainage assessment, and credit other lands creating such water supply with their ratable proportion of the actual cost of delivery thereof. (L. 1923, Ch. 14.)

**Sec. 41-2503. Appropriating irrigation water:** Commissioners are authorized to assess upon land within the district benefited by appropriation of water, a sufficient amount to pay the expenses thereof; to be levied and collected in the same manner as other drainage assessments. (*Booth v. Clark*, 42 Ida. 284; 244 Pac. 1099.)

**Secs. 41-2519 to 41-2523. Commissioners' report—Notice of hearing:** If the commissioners find that the costs will exceed the benefits, the petition is dismissed. If the commissioners find that the whole cost will be less than the increase in value to accrue, they so report and the court makes an order for a hearing where all interested parties may appear for or against the confirmation of the report. Notice is by publication and personal service or by registered mail to each landowner. *Sec. 41-2520:* Any person affected may appear and remonstrate against confirmation of the report, such remonstrance to be in writing and verified by affidavit and to set forth the grounds for objection. *Sec. 41-2521:* The court gives precedence to the hearing over other civil actions pending, and upon demand may impanel a jury and take its verdict on the question whether damages awarded are adequate or the assessment made is too high, and the court and jury may assess damages and fix assessments. *Sec. 41-2522:* If the finding be against the validity of the proceeding, the same is dismissed. If the finding be in favor of the validity, the court, after modifying the report to conform, confirms the same. The order of confirmation is final and conclusive and the proposed work is established, subject to appeal to the Supreme Court. *Sec. 41-2523:* The court may permit the commissioners to file a supplementary report after reasonable notice to parties in adverse interest.

**Secs. 41-2524 to 41-2529. Appeals:** Every person feeling himself aggrieved by the judgment for damages or the assessment of damages may appeal to the Supreme Court as in civil cases, within 30 days. No bond is required and no stay may be allowed. *Sec. 41-2525:* When the petition is dismissed, the court renders judgment for costs against the district. In that event the commissioners may appeal. *Sec. 41-2526:* Any person awarded damages may apply for an order directing the payment of same, but no such order will be entered until clear title to the land involved is established. *Sec. 41-2527:* All state, county, and school lands and the lands of other public corporations have the same rights as private persons, and their lands are subject to the rights of eminent domain in the same manner. *Sec. 41-2528:* Benefits assessed against lands of the state or its subdivisions may be paid by the proper authority of such public corporations in the same manner as assessments against private parties. (See sec. 42-724 for lands mortgaged to secure loans of state endowment funds.) *Sec. 41-2529:* When land in a drainage district cannot be assessed because title is in the United States, or lands are not yet proved up, or Indian lands, the commissioners at a future date, when such land is under the jurisdiction of the drainage district, may assess said land for all benefits bestowed as if they were originally assessable. Notice of intent to assess is filed with the recorder of the county and is notice to all subsequent purchasers or incumbrers.

**Sec. 41-2539. General powers:** All districts have the right of eminent domain. They have the right to survey, plan, locate, and estimate the cost of work necessary, and to construct same.

Natural water courses may be altered and developed for the interests of the district. Commissioners may contract for the necessary works and work may be performed within or without the district, or outside the counties in which it is organized, or outside the state or the United States.

#### FINANCING—Assessments

**Sec. 41-2514. Assessing benefits and damages:** As soon after their appointment as may be, or within such time as the court may direct, the commissioners examine the lands to be drained and upon which the works are proposed to be constructed, and determine and report: (1) whether the route and termini of the proposed work are proper and feasible, and if not, what are proper and feasible; (2) the estimated cost of the work, including incidental expenses; (3) the probable cost of keeping the work in repair after construction; (4) what lands will be injured and the aggregate amount of such injury, and award to each tract the damages determined by them; (5) what lands will be benefited and whether the benefit will equal or exceed the aggregate cost of the improvement. They apportion and assess the estimated cost against each tract of land benefited. If any particular part of the proposed work is to be assessed against any particular tract or any municipality or corporation, the commissioners so specify; and if any municipality or corporation should bear a part of the expense or will derive a special benefit from any part of the work, they so report and assess the amount of such benefit. They report whether the proposed district as set out in the petition will embrace all the land benefited or damaged, and what, if any, additional land will be benefited or damaged and the amount thereof, as if the land had been included in the petition.

See: *Constitutionality: Drainage Dist. #2 v. Extension Ditch Co.*, 32 Ida. 314; 182 Pac. 847.

*Elements of benefit: Drainage Dist. #1*, 29 Ida. 377; 161, Pac. 315.

*In re: Drainage Dist. #3*; 43 Ida. 803; 255 Pac. 411.  
*Burt v. Farmers Co-op. Irr. Co.*, 30 Ida. 752; 168 Pac. 1078.

**Sec. 41-2515. Assessments against highlands:** In determining the amount which each tract will be benefited, the commissioners consider the damage done to lowlands from seepage and saturation by irrigation water from the highlands, and the necessity of carrying off the waste water. The highlands are considered benefited to the extent and in the amount that they are responsible for damage to the lowlands from seepage and saturation from irrigation water. (*In re: Drainage Dist. #1 and Burt v. Farmers Co-op. Irr. Dist.*, ante.)

**Secs. 41-2530, 41-2531, and 41-2533: Additional levy:** In the event that the amount levied is not sufficient to complete the contemplated works, the board may levy an additional assessment sufficient to complete them and to pay all additional costs in connection therewith. The additional assessment is made in the same proportion as the original assessment and collected in the same manner. **Sec. 41-2531:** Where the work set out in the plans is found insufficient, a new estimate of benefits may be made, based on the new work proposed; and an additional assessment may be made in proportion to the estimated benefits accruing to such land because of additional work. **Sec. 41-2533:** The District Court may, upon proper application, compel the performance of any duty imposed by this chapter by mandatory injunction.

**Sec. 41-2534. Assessments incontestible:** Collection of assessments made and confirmed by the court may not be restrained nor obstructed because of any defect in the prior proceedings, but such order is conclusive as to the regularity of all proceedings unless there be an appeal within 30 days.

**Sec. 41-2535. Assessment roll:** Upon the entering of the order confirming the apportionment of costs and awarding damages, the

clerk of the court immediately prepares a transcript containing a list of all lands so assessed and awarded damages and certifies the same to the recorder of the county in which the lands are situated. Such list specifies the amount of the assessment upon each tract and describes all easements required by the district and the amount of damages awarded to the owners thereof. The recorder enters such order of record, which is notice of the lien of said assessment and establishes the right of the district to such easements upon payment of the damages awarded.

**Sec. 41-2536. Assessment liens:** A similar transcript is filed by the court clerk with the auditor of each county, who enters it upon the tax rolls like other taxes. The drainage tax is subject to the same interest and penalties as other taxes and to the same rights of redemption. Such drainage taxes, however, do not become due and payable except at such times and in such amounts as may be designated by the drainage commissioners of the district, which is done by written notice to the auditor. Such assessments then become due at the same time as general taxes and are added by the auditor to the tax roll; provided, no one call for assessments may be in excess of 20 percent of the amount necessary to establish and complete the drainage system.

See: *Elliot v. McCrea*, 23 Ida. 524; 130 Pac. 785.

*Booth v. Clark*, 42 Ida. 284; 244 Pac. 1099.

**Sec. 41-2537. Assessment to pay judgment of dismissal:** Upon dismissal of the proceedings, the commissioners levy a tax on all of the real estate in the district based on the last equalized assessment roll to pay the costs of the proceedings and of levying the tax. If such tax is not paid within one year the court upon application of any interested party will cause the land to be sold in payment in the same manner as provided for other taxes, with the same right of redemption.

#### FINANCING—Bonds

**Secs. 41-2549 to 41-2551. Warrants:** The commissioners may issue warrants in payment of the indebtedness of the district in the same form as county warrants. They draw legal interest from the date of presentation for payment. No warrant may be issued for less than its face or par value. **Sec. 41-2550:** The county treasurer endorses the date of presentation on warrants when presented, and if there be not sufficient funds to pay them, they immediately begin to bear interest. When the treasurer has funds and there are warrants outstanding, he must advertise for the presentation of as many warrants as he has funds to meet. Thirty days after the first publication of such advertisement, the warrants cease to bear interest. Warrants are to be paid in the order of their endorsement. **Sec. 41-2551:** This section legalizes all warrants issued by districts theretofore organized, provided they are reported to the District Court by the commissioners who incurred the indebtedness and issued the warrants; and they must be certified as correct by the district judge of the county where the district was organized. After certification the district must order a levy made for payment of the warrants, and the levy is collected in the same way as general taxes. There are certain restrictions as to assessing land in districts organized under a subsequent drainage law and embracing more than the original acreage.

**Sec. 41-2552. Bonds:** Upon the establishment of a district and system of drainage, the commissioners are authorized to issue bonds to pay for the total cost of the work or a part thereof, together with the cost of organization including damages assessed and expenses for rights-of-way. Bonds are payable in not less than 5 years nor more than 20 years from their date. No bond may be sold for less than par and the total amount of

bonds may not exceed 90 percent of the assessments levied against the lands of the district.

**Secs. 41-2553 to 41-2555. Funding bonds:** The commissioners may issue bonds for the purpose of funding outstanding warrants or obligations of the district. Immediately after money from the bonds is received by the treasurer, he issues call by publication for the outstanding obligations that are to be refunded, and they cease to bear interest at the end of 30 days from such publication. **Sec. 41-2554:** Bonds are numbered consecutively and in denominations of not less than \$100 nor more than \$1,000. They are negotiable and bear interest at not to exceed 7 percent. The board fixes the maturity of bonds at not exceeding 20 years, and an amortizing period which may not be less than three-fourths of the maximum maturity. In the discretion of the board, provision may be made for the payment of interest only during the first one-fourth of the period covered by the last maturities. Maturities must be so arranged that, during at least the latter three-fourths of the period covered by the last maturity, the principal shall be amortized in annual or semiannual installments so arranged that the combined principal and interest payments during the amortization period shall be approximately the same each year. **Sec. 41-2555:** Such bonds may be exchanged at not less than par for an equal amount of warrants of the district.

**Sec. 41-2556. Sinking fund:** At least 5 years before the bonds are due the commissioners are required annually to levy an assessment sufficient to liquidate the bonds at maturity. Such levy is kept as a separate fund for the sole purpose of liquidating said bonds.

**Sec. 41-2557. Calling of bonds:** It is the duty of the treasurer, whenever he has on hand \$5,000 of the special fund for the payment of bonds and when said bonds shall have run for a period of 3 years, to advertise in the newspaper doing the county printing for the presentation to him for payment of as many bonds as he is able to pay with the funds on hand, to be paid in numerical order. After 30 days from the first publication of said notice, said bonds cease to bear interest. (*Sebern v. Cobb*, 41 Ida. 386; 238 Pac. 1023.)

**Secs. 41-2558 and 41-2559. Levy for interest:** The commissioners must levy annually an assessment sufficient to pay the interest coupons on the bonds as they fall due. Said coupons are considered for all purposes as warrants drawn on the funds of the district. When they are presented to the county treasurer and no funds are available to pay same, he endorses them in the same manner as other warrants and thereafter the coupons bear interest at the same rate as other warrants so presented and unpaid. **Sec. 41-2559:** The county treasurer must register all bonds in a book kept for that purpose. He must enter the number of the bond, date of issuance, date of maturity, amount and rate of interest, and to whom and where payable.

#### CONSTRUCTION

**Sec. 41-2538. Construction and maintenance:** The board of drainage commissioners has exclusive charge of the construction and maintenance of all drainage systems of the district and are the executive officers thereof with power to bind the district.

**Secs. 41-2540 to 41-2544. Contracts for construction:** Commissioners have the power to construct the works and acquire all assistance and material necessary therefor. They may let any or all of the work to responsible contractors and enter into agreements for construction. **Sec. 41-2541:** Contractors must give bond to the amount of 50 percent of the contract price for the faithful performance of the work and payment of all just claims for material, labor, and services in connection therewith. **Sec. 41-2542:** The work is to be conducted expeditiously

and neither the commissioners nor the contractor may change the route or the conditions of the work so as to effect any radical change in the plan without written consent of all of the landowners benefited and damaged thereby. **Sec. 41-2543:** Any substantial change in the system of improvements deemed necessary by the board during the progress of the work must have the written consent of all of the landowners; otherwise, the board must file a petition therefor with the District Court, setting forth the proposed changes and praying to be permitted to make them. Thereafter the proceeding is practically the same as that for the confirmation of the original report of the commissioners. (*Field v. Drainage Dist. #1*, 46 Ida. 248; 267 Pac. 443.) **Sec. 41-2544:** Payment of not more than 90 percent of the amount due for work actually completed may be made from time to time during the period of construction; 10 percent is retained until completion and acceptance.

**Sec. 41-2545. Private drains:** Landowners within the district have the right to connect their private drains with the system, and may acquire rights-of-way over the lands of others for that purpose by petition addressed through the commissioners to the court, where the proceedings are similar to those for organization. Provision is made for connecting the system with that of a lower drainage district by petition and court action, such connection to be at the expense of the upper district.

**Secs. 41-2560 and 41-2561. Maintenance:** No drainage system may be operated for profit, but solely for the benefit and welfare of the property owners. **Sec. 41-2561:** The board annually estimates the cost of maintenance including repairs for the succeeding year, and certifies the amount to the auditor of the county on or before the third Monday in September. Such amount is apportioned to the landowners in proportion to the benefits originally assessed, and added to the general taxes and collected therewith.

**Sec. 41-2562. Levy and limitation of assessments:** The commissioners may levy assessments for necessary expenses incurred by them, and add thereto sufficient to pay any deficiency of the preceding year or to pay outstanding warrants, provided any assessment to pay warrants shall not exceed 20 percent of the original cost of organization and construction in addition to the assessments which may be levied under section 41-2536, and such assessments must be apportioned and collected in the same manner as other assessments.

## ILLINOIS

[*Annotated Statutes of Illinois (Smith and Hurd) 1935, and Cumulative Pocket Part, 1939, Chapter 42*]

### DRAINAGE DISTRICTS

#### ORGANIZATION—Petition

**Sec. 2. Petition:** Whenever a majority of the owners of the lands in a district, who are of legal age and represent one-third in area of said lands, or when one-third of such owners representing a majority of the area desire to construct works for drainage across the lands of others for agricultural, sanitary, or mining purposes, or desire to maintain and repair a drain already constructed, or desire to establish a combined system of drainage for such purposes, they may file in the county court of the county in which the greater portion of the lands are situated a petition setting forth the proposed name of the district; the necessity for the drainage; a description of the starting point, route and terminus of the drain; a general description of the lands that will be affected, with the names of the owners thereof where known; and a prayer for the

appointment of commissioners under this Act. (L. 1879, p. 120 as amended by L. 1913, p. 260.)

See: *Nature of drainage districts*: Corcoran v. Mud Creek D.D., 336 Ill. 211; 168 N.E. 509.

Turner v. Hunt D.D., 87 F. (2d) 167.

Eldred Dr. & Levee D. v. Wilcoxson, 365 Ill. 249; 6 N.E. (2d) 149.

Prange v. Omeara, 368 Ill. 362; 14 N.E. (2d) 220.

Richmond v. Dr. Comrs. of Union Dist. #1, 295 Ill. App. 338; 15 N.E. (2d) 6.

**Sec. 3. Notice—Evidence:** The clerk of the county court gives three weeks' notice of the filing of the petition by posting and publication, stating when and in what court the petition was filed, the salient features of the petition including names and boundaries, and the date set for a hearing thereon. If there are nonresident owners whose addresses are unknown, an affidavit stating that upon diligent inquiry their residences have not been found is sufficient. A copy of the notice is sent to each nonresident whose address is known, within 3 days after publication. (L. 1933, p. 5074.)

See: *Necessity of notice*: Hickey v. Spring Creek D.D., 356 Ill. 204; 190 N.E. 282.

People v. Zoller, 337 Ill. 362; 169 N.E. 228.

*Sufficiency of notice*: People v. Ehler, 338 Ill. 67; 170 N.E. 1.

**Sec. 4. Jurisdiction—Amendment—Withdrawal:** The county court in which the petition was filed holds a hearing thereon on the date set in the notice, and determines all matters and all subsequent proceedings. Adjournment may be had from time to time for good cause. Upon application of the petitioners, the court will permit amendment of the petition; but no petitioners. (L. 1933, p. 507.)

See: *Jurisdiction*: Okaw Valley Outlet D.D. v. Springman, 345 Ill. 400; 178 N.E. 64.

People v. Ehler, 338 Ill. 67; 170 N.E. 1.

People v. North Fork Irr. D., 331 Ill. 68; 162 N.E. 184.

*Amendments*: Soldier Creek Dr. & Sanitary Co. v. Ill. Gen. R.R. Co., 323 Ill. 350; 154 N.E. 153.

**Sec. 5. Hearings—Findings:** Any party whose lands are affected may appear for or against the petition and may present evidence in regard thereto. The court hears all objections and determines whether the petition is sufficient as to signatures and ownership of land. The affidavit of 3 petitioners who are acquainted with the locality, stating that the requisite signatures and the requisite acreage are represented in the petition, will be sufficient evidence for the court. Deeds made for the purpose of establishing or defeating the petition are fraudulent and will not establish ownership. If the court finds the petition is properly signed, such finding is conclusive upon the landowners that they have assented to the petition. If it further appears to the court that the proposed work will be beneficial in the drainage of land, the court appoints three competent persons as commissioners, not more than two of whom are to be from the same county for an intercounty district. The commissioners lay out and construct the proposed work. If the court dismisses the petition, the costs must be paid by the petitioners. (L. 1909, p. 182.) (Danaher v. Phillips, 318 Ill. 204; 149 N.E. 302.)

**Secs. 7, 8, and 9. Commissioners:** The commissioners take oath, elect one of their members chairman, and may elect a member as secretary. A majority of their number is a quorum for all purposes.

**Sec. 10. Commissioners' report:** The commissioners immediately examine the land to be drained and the lands over which the works are to be constructed and report: (1) Whether the route and termini of the proposed drainage works are feasible and

proper and, if they are not, what route will be feasible and proper; (2) the probable cost, including incidental expenses and the costs of the proceedings; (3) the probable annual cost of upkeep; (4) what lands will be damaged and the probable aggregate amount of such damage; (5) what lands will be benefited and whether the aggregate amount of benefit will equal or exceed the cost of construction; (6) whether the proposed district set out in the petition will embrace all of the lands damaged or benefited and, if it does not, what additional lands will be so affected. In the event the petition is for the purpose of repairing and maintaining drainage works already constructed, the commissioners report whether said work, with proper repair, can be made adequate, as well as the probable maintenance cost and aggregate of benefits. They report also whether the annual benefits will equal or exceed the annual costs and expenses, and whether the proposed district will embrace all benefited lands. The report is filed with the clerk of court. (L. 1909, p. 182.)

See: *Construction*: England Pond Dr. D. v. Hurst, 344 Ill. 610; 176 N.E. 733.

**Sec. 11. Dismissal of proceedings:** If the commissioners find that the costs, expenses, and damages will more than equal the benefits, proceedings are dismissed at the cost of the petitioners.

**Sec. 12. Survey:** Finding that the benefits will exceed the costs and expenses, the commissioners have surveys, plans, and specifications made and report the starting point, route, and terminus of the works and the portion, if any, which should be tiled. They file their report and conclusions thereon with the court.

**Sec. 13. Plan—Boundaries—Inclusion:** The commissioners are not confined to the location, extent, or manner of construction proposed in the petition, but may locate and plan the works in such manner as to cause the least damage and the greatest benefit to the lands affected. Any plans may be altered upon application of an interested party or of the commissioners, and additional work may be established by order of the court. If the commissioners find that the plans will not embrace all of the land which will be benefited, or that they will include lands not benefited and not necessary, they may extend or contract the boundaries so as to include or exclude such land; and the boundaries may be altered at any time before the adoption of the plan by the court; provided that such change must not result in changing the majority of landowners holding the required acreage. Any person owning land contiguous to the district may apply in writing to have his land annexed. The court will hear the application, and if it is made after the general assessment of benefits the court will hear evidence and assess benefits or award damages and may order the assessments paid in installments corresponding as nearly as possible to the time of the payment of general assessments. Such assessments are liens like the general assessment. (L. 1913, p. 260.)

See: People v. North Fork D.D., 331 Ill. 68; 162 N.E. 184.  
Comrs. of Sangamon & Drummer D.D. v. Houston, 284 Ill. 406; 120 N.E. 253.

**Sec. 14. Filing report—Contesting confirmation:** After the appointment of the commissioners, the matter is adjourned until the day fixed for the filing of their report. There may be further continuances to a day certain, of which all interested parties must take notice. Upon filing of the report, the court fixes a day not less than 10 days nor more than 4 weeks thereafter for a hearing thereon. If the commissioners have recommended that additional lands be included in the district, the owners of said lands are given notice by the commissioners in accordance with section 3 of this Act. At the hearing all

persons may appear and contest the confirmation of the report or show that additional drains or other works should be constructed or that the report should be modified in any particular. They may offer competent evidence in support of their contentions. The report of the commissioners is *prima facie* evidence of the facts therein set forth. (L. 1909, p. 182.)

See: *Sproul v. Springman*, 316 Ill. 271; 147 N.E. 131.  
*People v. Darst*, 285 Ill. 533; 121 N.E. 159.  
*Burroughs v. Donner*, 282 Ill. 299; 118 N.E. 400.

**Sec. 15. Confirmation of report:** If the court be of opinion that the objections are not well taken or if no objections are made, it will order the report to be confirmed. Otherwise the court will modify the report to conform to the equities. The court may make specific directions as to the manner in which a report must be revised and may make all necessary orders in the premises. If the report is referred back to the commissioners for amendments, it must be for a certain day on which the amended report must be filed.

**Sec. 17. Order of confirmation—Appeal:** If after hearing all objections and all applications for the annexation of other lands, the court finds that the drainage or levee district should be organized, then an order is entered in the form set forth in the statute, organizing the district. Upon entering such order the district becomes organized by the name set forth in the petition and the boundaries fixed by the order confirming the commissioners' report, and it is thereafter a body politic and corporate with perpetual succession. Appeal may be taken from the order to the supreme court by any party affected. The reversal of such order on appeal does not impair nor invalidate the organization as to those other persons not appealing, nor may the appeal delay the work insofar as it affects their lands. Other owners may thereafter be brought into the district and assessed under sections 58, 60 and 61, when their lands should properly be included in the district. (L. 1935, p. 706.)

See: *Construction and application: Maulding v. Skillet Fork River Outlet Union Drain D.*, 313 Ill. 218; 145 N.E. 227.

*Jurisdiction: Okaw Valley D.D. v. Springman*, 345 Ill. 400; 178 N.E. 64.  
*People v. Ehler*, 338 Ill. 67; 170 N.E. 1.

*Appeals: Seger v. Beardsworth*, 348 Ill. 619; 181 N.E. 351.  
*People v. Zoller*, 337 Ill. 362; 169 N.E. 228.

**Secs. 17-a to 17-e. Consolidation—Petition:** Any two or more districts organized under any act may consolidate and organize as a single district in the following manner: Whenever one-tenth of the adult owners of lands within the proposed consolidated district, and who in the aggregate own one-fifth in area of the lands in each of the existing districts that are to be included in the consolidation, they sign a petition and file it with the county clerk of the county in which a majority of the land of the proposed consolidated district is situated. The petition sets out the name of the districts to be consolidated, the reasons for the consolidation, the boundaries of the proposed consolidated district, and a general description of the works proposed to be constructed and maintained. The petition also requests the appointment of commissioners for the consolidated districts. (L. 1929, p. 371.) **Sec. 17-b:** Notice is given in the same manner as for the organization of the original districts, and names the districts to be consolidated and describes the works to be constructed, repaired, or maintained. **Sec. 17-c:** The court holds a hearing in the same manner as for original organization under section 4. The court determines whether the petition is properly signed under section 17-a; whether adult landowners owning in the aggregate more than one-half the total acres of land in the proposed consolidated district favor the

consolidation; whether the districts to be included in the consolidation are contiguous; and whether the consolidation will be beneficial to a majority of the landowners in such consolidated district. Failing to find any of these requisites, the court will dismiss the petition at the cost of the petitioners. Finding all of the requirements met, the court enters an order dissolving the several existing districts and consolidating them into a single district having the name prayed for in the petition for consolidation. The court then appoints three commissioners and the consolidated district thereupon becomes organized as a district with the rights and duties of any other district. (L. 1929, p. 271.) **Sec. 17-d:** If any of the districts merged in the consolidated district have outstanding bonded or other indebtedness, any funds in its treasury must be used to retire such indebtedness. If such funds be insufficient, the indebtedness is paid from funds derived from any special assessment theretofore made. If the funds are still insufficient, the court may authorize the commissioners of the consolidated district to make a special assessment against the lands of the debtor district to be used only for the payment of such indebtedness. **Sec. 17-e:** Consolidation does not affect the bonds, contracts, nor assessments of a district, all of which are taken over by the consolidated district; and all assessments collected are paid over to the consolidated district for the payment of such obligations of the debtor district.

#### ORGANIZATION—Officers

**Sec. 61. Commissioners appointed:** On the first Monday in September in districts heretofore or hereafter organized, the county court appoints three commissioners for each district, one commissioner to serve one year, one to serve two years, and one to serve three years from the date of the first appointment under this section. Thereafter the court appoints one commissioner for each district each year to serve three years and until his successor is appointed. However, the court must appoint only such persons as have been petitioned for by adult landowners representing a majority of the acreage in the district; provided, that the petition is filed on or before the first day of September. If the petition is not filed, the court, within 10 days after September 1, will appoint some suitable person as commissioner without any petition. After the works have been fully completed, the court may appoint just one commissioner for the district for a term of three years, who will have all of the powers of the three commissioners provided for. Whenever, upon petition of landowners, it appears that additional work is needed in the district, the court may again appoint three commissioners. (L. 1913, p. 260.)

#### ORGANIZATION—Powers

**Secs. 26 to 28. Powers of commissioners:** Upon organization, the district in its corporate name by its commissioners may sue and be sued, make contracts, and perform all acts necessary for the purposes of this statute. **Sec. 27:** After confirmation of the assessment roll and before any collections are made, the commissioners appoint a treasurer who may not be one of their number. He gives bond to the state, for the use of all interested persons, in a sum not less than twice the amount of the assessments that may be in his hands during his term of office. **Sec. 28:** The treasurer's term is for two years. He may be removed by the court upon application of a majority of the commissioners. The commissioners fix his compensation before appointment. The treasurer may pay out no money except upon order of the commissioners, and must keep proper books and records.

See: *Powers in general: Turner v. Hunt D.D.*, 87 F. (2d) 167.

**Sec. 36. Letting contracts:** The commissioners are empowered to do all necessary acts in the construction of the district works or in enlarging, cleaning, and maintaining same. Where the work is the construction of a principal work costing more than \$500, contract must be let to the lowest responsible bidder after advertisement. The commissioners may not be interested in any contract. No work constructed hereunder may impair the usefulness of any bay or harbor connected with a navigable stream.

**Sec. 37. Powers of commissioners:** The commissioners may use money collected from assessments for the purpose of compromising suits arising under this act and may employ necessary agents and attorneys for conducting other proceedings. They may also use such assessments for construction, maintenance, and repair, with approval of the court. Additional assessments may be levied when it appears to the court that previous assessments have been inadequate. When it becomes necessary to raise funds in order that any district may avail itself of financial assistance from the United States, it may be done on petition from a majority of the landowners representing at least one-third in area or from one-third of the adult landowners representing a major portion in area. Or the commissioners may file petition to the court in the manner prescribed in section 3 and the court will impanel a jury to make the additional assessment necessary. (L. 1917, p. 367.)

See: *Eldred Dr. & Levee D. v. Wilcoxson*, 365 Ill. 249, 6 N.E. (2d) 149.

In re *Meredosia Levee & D.D.*, 301 Ill. App. 619, 22 N.E. (2d) 774.

*Farrow v. Edred Dr. & Levee D.*, 359 Ill. 347, 194 N.E. 515.  
*Turner v. Hunt D.D.* (U.S.C.C.A., Ill.) 87 F. (2d) 187.

**Sec. 40. Removal of commissioners:** The court may for good cause remove any commissioner appointed by it, and fill the vacancy. (L. 1885, p. 108.)

**Sec. 41. Report by commissioners:** The commissioners, when required by the court and at least once a year, make a report showing collections and disbursements. The court sets the time; not more than 3 weeks after the report is filed and gives 10 days notice thereof, for a hearing on the report at which time objections thereto may be presented. The court may require the commissioners to present evidence in support of the report. Upon failure of the commissioners or the commissioner to make such report, the court, upon application of an interested party or on its own motion, may remove such commissioners from office. (L. 1885, p. 108.)

**Sec. 42. Commissioners' meetings:** The commissioners hold their meetings in the county or counties where the district is situated. They receive \$5.00 per day traveling expense while on the business of the district.

**Sec. 46. Entry upon lands:** The commissioners from the time of their appointment may go upon any lands in the district for the purpose of making surveys and drainage plans and for constructing the proposed works. Any person preventing them is subject to fine.

**Sec. 49. Justice of the Peace's jurisdiction:** When the cost of the proposed work will not exceed \$2,000, the petition may, if the petitioners so elect, be filed with a Justice of the Peace in the county where the land to be affected or the major portion thereof is situated. All proceedings may be had before the Justice of the Peace, who performs all the duties prescribed for the county clerk in case the petition is filed before the court. The Justice of the Peace does not have jurisdiction to hear objections to the assessment roll confirmed by the jury. Such objections are filed within 10 days by the Justice of the Peace or the commissioners with the clerk of the county court. (L. 1885, p. 108.)

**Sec. 57-a. Exclusion:** When contiguous lands which cannot be benefited by the system of drainage are included in an organized district, such lands may be detached from the district. The landowner or the commissioners may file a petition in the county court where the district was organized, giving a description of the land and stating that it is to the best interests of the district or the owner that the said land be detached. The petition must be sworn to and have two affidavits of credible persons attached, and must give the name of all owners of lands to be detached who are not residents of the county in which the petition is filed. It must also be accompanied by a map showing all lands in the district and the lands which it is sought to detach. The court, after notice, holds a hearing on the petition and interested parties may appear and present objections thereto. If the court finds that the lands are within the boundaries of the district, that they are contiguous, lie wholly outside of the lands in such district which are benefited, and that the land cannot be benefited by the system of drainage, it will enter an order detaching same from the district. All changes so made must be shown upon a map and recorded in the drainage record. (L. 1925, p. 359.)

**Sec. 58. Subdistricts:** If, after construction, the commissioners find that portions of the district need more complete drainage, they make a special report thereon and organize a subdistrict without the necessity of a petition by landowners. Upon written application of affected landowners who are a majority in number and own more than one-third of the land, or who own a major portion of the land and constitute one-third or more of the landowners affected, it is the duty of the commissioners to examine such lands and make a special report thereon. The commissioners may pay necessary expenses not to exceed \$500 from district funds. Hearing is had on the special report after notice, and if it is approved by the court, a special assessment of benefits and damages to said land is made in the same manner as the original assessment; provided, if the district does not own a pumping plant, the annual benefit assessed may not be more than 30 cents per acre. Special assessments are kept in a separate fund. Bonds may be issued against them. (L. 1929, p. 375.)

See: *North Wichert D.D. v. Chamberlain*, 340 Ill. 644, 173 N.E. 90.

*Subdistrict #1 of Feehanville D.D. v. Katz*, 342 Ill. 395, 174 N.E. 384.

*Village of Mt. Prospect v. Reese*, 342 Ill. 216, 174 N.E. 48.

**Sec. 65. Outlet districts:** When any river or stream constitutes a common outlet for two or more organized drainage districts and also the outlet for the drainage of lands not organized, and when it will benefit both kinds of land, an outlet drainage district may be organized under this Act to deepen, widen, straighten, or improve such stream or water course, and all lands benefited may be included in such district. Any allegation that such lands are already included in a drainage district is not a valid objection to their inclusion. Commissioners may be appointed with like powers as other drainage commissioners. Such assessments may be levied on the land benefited, but solely for the purpose of widening, deepening, straightening, or improving the channel of said stream or water course. The outlet district may acquire rights-of-way for its improvement in the same manner as drainage districts. Such district must pay just compensation for any of the works of an organized drainage district that they may damage or appropriate. (L. 1917, p. 365.)

See: *Maulding v. Skillet Fork River Outlet Union D.D.*, 313 Ill. 216; 145 N.E. 227.

*Sproul v. Springman*, 316 Ill. 271; 147 N.E. 131.  
*People v. Holmes*, 348 Ill. 204; 180 N.E. 780.

**Sec. 74. Districts by mutual agreement:** Owners of land requiring combined drainage and protection from overflow may form drainage and levee districts by mutual agreement of their own, by an instrument in writing acknowledged and recorded in the drainage record. They may also ask the county court to appoint three commissioners whose powers will be the same as the commissioners of organized drainage districts, and the agreement may include the names of the desired commissioners. (L. 1927, p. 422.) (*Fautch v. Zempel*, 332 Ill. 192; 163 N.E. 546.)

**Sec. 75. Inclusion of benefited lands:** Drainage districts under this act, where the works included the construction of levees and the installation of pumps, may include within their boundaries all lands protected by reason of the levees and pumping plants regardless of whether any of the lands are included in any other organized district, the works of which consist only of ditches and drains and do not include levees and pumping plants. (L. 1919, p. 455.)

#### FINANCING—Assessments

**Sec. 18. Assessment of benefits and damages—Assessment roll:** After the order provided for in section 17 has been signed, the commissioners proceed to acquire rights-of-way and releases of damages by agreement as far as possible. They prepare the Commissioners' Roll of Assessments and Benefits, which shows the amount of benefits assessed against each tract, the number of acres therein, the amount of any damages allowed to each tract, and, if directed by the court, an assessment of the "annual amount of benefits" that each tract will receive by the maintenance and operation of the works. All railways, highways, and municipal corporations are included.

See: *Sangamon & Drummer D.D. v. Houston*, 284 Ill. 406; 120 N.E. 253.

*Comrs. of McGee Creek etc. v. Wabash Ry. Co.*, 319 Ill. 379; 150 N.E. 259.

*North Michert D.D. v. Chamberlain*, 340 Ill. 644; 173 N.E. 90.

*People v. Ch. & E.I. Ry. Co.*, 315 Ill. 536; 146 N.E. 440.  
*Cache River D.D. v. Douglas*, 337 Ill. 540; 169 N.E. 726.

**Sec. 19. Filing roll—Hearing:** Upon filing the roll with the clerk of court, the commissioners give 10 days notice of the time and place where they will appear before the same court in which the petition was filed for the purpose of having a jury impaneled in accordance with section 6 of an act entitled "An Act to Provide for the Exercise of the Right of Eminent Domain," of April, 1872, and for a hearing before the jury of all questions of benefit and damage.

Upon the hearing the commissioners and all other interested persons have the same right to challenge jurors as parties in other civil cases in the county courts. The jury being properly sworn, the commissioners present and file the assessment roll as their claim against the several tracts of land in the district and such filing makes out a *prima facie* case. All parties to the proceedings are permitted to present competent evidence as to the benefits or damages. Thereupon the court instructs the jury as to the law and the form of their verdict.

See: *Evidence: Beaver Pond D.D. v. Gray*, 341 Ill. 66, 173 N.E. 115.

*Jury: Indian Creek D.D. #2 v. C.B. & Q. Ry. Co.*, 295 Ill. 339, 129 N.E. 105.

**Sec. 20. Organization of jury—Verdict:** The jury, if requested so to do, examines the land and ascertains the benefits which will accrue and the damages which will be sustained by each tract. When directed by the court, they ascertain the "annual amount of benefits" to each tract by reason of the maintenance and operation of the proposed works. The jury make out their verdict showing the name of the owner, description of the

premises, number of acres, and amount of benefit assessed or damages allowed against each tract and each railroad, highway, or municipal corporation. Thereupon the court confirms the verdict and enters judgment thereon, which judgment is a lien upon such lands until paid. Appeal is allowed to the county court as in appeals from writs of error in proceedings for the sale of land for taxes. The granting of an appeal to any one or more persons does not operate to defer the collection of the judgment in other cases. When the appeal is decided in favor of the district, the court orders the judgment so rendered to be made a part of the original judgment.

See: *Hunt D.D. v. Harness*, 317 Ill. 292, 148 N.E. 44.

*Bay Bottoms D.D. v. Cache River D.D.*, 295 Ill. 301, 129 N.E. 152.

*People v. North Fork Outlet D.D.*, 331 Ill. 68, 162 N.E. 184.  
*Gray v. Beaver Pond D.D.*, 334 Ill. 383, 166 N.E. 90.

**Sec. 21. Assessment on benefits for repair:** The amount assessed for keeping the works in repair in any one year may not in the aggregate be greater than the amount that would be produced by 30 cents per acre on all of the land in the district. In case such assessment is not made at the time of organization, it may be made thereafter in the same manner as additional assessments are made. Where the amount of benefits assessed and the assessments for repair are insufficient to complete the work, the "annual amount of benefits" assessed, after all necessary expenses of maintenance for any year, may be applied to complete the works when required for protection from overflow, or to pay interest on notes or bonds issued under this act. (*Brooks v. Hatch*, 261 Ill. 179, 103 N.E. 745.)

**Sec. 22. Assessment of benefits and damages:** The jury must award and assess the benefits and damages against each tract separately in the proportion in which such tract will be benefited or damaged. No land may be assessed for benefits greater than its proportionate share of the cost of the work and the expenses of the proceedings, nor in any greater amount than it will be benefited. When directed by the commissioners or the court impaneled the jury for the assessment of any additional benefit or damage, or to make assessments in favor of or against any one or more tracts, the jury may consider prior assessments that have been voided by omission or error or irregularity of the proceedings and may include them with other assessments.

See: *Assessment in General: People v. North Fork Outlet D.D.*, 331 Ill. 68, 162 N.E. 184.

*Objections to Assessments: People v. Allen*, 330 Ill. 433, 161 N.E. 867.

**Sec. 23. Payment in installments—Bonds—Lien:** At the time of confirming the assessments, it is competent for the court to order their payment in installments in such amounts and at such times as will be convenient in the construction of the works or for the payment of bonds issued. Otherwise the assessments become due within 30 days after the confirmation. The installments bear interest not to exceed 6 percent from 30 days after confirmation. Landowners may anticipate payment of the assessments and interest; provided that, in case bonds have been issued, satisfactory arrangements can be made with bondholders for premature retirement of a corresponding amount thereof; and that such payment will not cause a shortage of funds for the payment of interest or principal on maturing bonds. The court may direct that interest on deferred installments shall be collected yearly in advance.

Assessments are a lien upon the land assessed the same as other taxes, which lien continues until paid. The proceedings in the court are sufficient notice of such lien. When all assessments are paid, the treasurer of the county issues a release

in full discharge from all further liability, which release may be recorded in the county where the lands are situated.

See: *Lincoln Lansing D.D. v. Stone*, 364 Ill. 41; 2 N.E. (2d) 885, [L. 1939 (July 22) p. 527.]

*Prange v. O'Meara*, 368 Ill. 362, 14 N.E. (2d) 220.

*Turner v. Hunt D.D.* (U.S.C.C.A., Ill.) 87 Fed. (2d) 167.

**Sec. 24. Amount of annual benefits—When payable—Proceedings:** Annual benefits assessed for repairs are due September 1 of each year and are a lien from and after confirmation of the report. The court requests a report from the commissioners as of July 1 each year on the condition of the works and an estimate of the amount necessary to keep the works in repair and pay expenses for the coming year. If the entire annual assessed benefit is not needed, then the court fixes the amount to be paid and the excess is remitted and may not thereafter be collected. The amount fixed by the court must not in the aggregate amount in any one year to more than a levy of 30 cents per acre on agricultural lands, \$3.00 on lands of industrial or public nature, \$1.00 on lots or improved land with buildings, and 25 cents per lot on vacant lots plotted as subdivisions. In case the land is in danger from overflow, if any part of the annual benefits has been remitted as above, the commissioners may borrow money to be used for protective purposes on the "annual amount of benefits" to become due the first of September following, and may give notes of the district therefor at 6 percent interest and running not more than one year. The report and estimates of the commissioners as to the amount necessary for the coming year must be made by the first Monday in July. (L. 1923, p. 507.)

See: *People v. Candy*, 296 Ill. 263, 129 N.E. 728.  
*Brooks v. Hatch*, 265 Ill. 346, 106 N.E. 956.

**Sec. 29. Interest on assessment installments:** When assessments are payable in installments, they bear interest from 30 days after confirmation of the assessment roll until paid. Such interest may be collected as part of the assessment. Where no bonds have yet been issued, the commissioners may, under the direction of the court, apply the collected interest to construction and maintenance or other expenses and indebtedness. (L. 1939, p. 527.)

**Sec. 31. Notice of assessment:** After receiving a certified copy of the assessment roll, the commissioners or the treasurer immediately give notice by publication for three weeks in the manner required in section 3. The form of the notice is set out in the Act. Where the assessments are paid in installments, similar notice is given after each installment becomes due. In the case of the "annual amount of benefits," notice must be given immediately after the first day of September in each year. Notice may also be given by mail in the form prescribed in the Act. (L. 1933, p. 498.)

See: *Sufficiency of notice: Stack v. People*, 217 Ill. 220, 75 N.E. 347.

**Sec. 32. Delinquent assessments:** Assessments not paid on or before the date given in the notice become delinquent, and the treasurer will certify same to the collector before the 10th of the next March. A separate return is made for each county in the district. The collector then proceeds to collect same by sale of the property in the same manner as for delinquent county and state taxes.

**Secs. 33 to 33-b-1,2,3. Enforcement of payment:** On failure to pay any assessment or installment thereof, before the annual sale of delinquent lands for taxes, the commissioners may file a petition in the circuit court of the county in which the lands are situated for a foreclosure of the lien thereof in the same manner as mortgages are foreclosed. Any decrees of the court may be enforced and collected as other judgments of the same court. The right of redemption exists for two years. Statutory

notice must be given by the purchaser of such property to interested parties. (L. 1931, p. 527.) **Sec. 33-b:** The drainage district itself may be the purchaser at a foreclosure sale or they may purchase lands on which taxes are delinquent at any general tax sale. Lands so purchased or deeded by the owner may be rented or sold by the commissioners of the district under order of court. (L. 1933, p. 506.) **Sec. 33-b-1,2,3:** When assessments have remained delinquent for six months, the commissioners may apply for appointment of a receiver to collect the returns from the delinquent lands for the purpose of paying the delinquent assessment with penalties and costs. The form of the procedure is set out in the statute in detail. (L. 1935, p. 759.) [*Hunt D.D. v. Schwerer*, 369 Ill. 330, 16 N.E. (2d) 737.]

**Sec. 39. Damages:** Damages over and above benefits are payable out of the amount assessed against other lands and must be paid or tendered before entry upon the damaged land for the purpose of construction of the works.

**Sec. 43. Petition to be relieved of assessments:** Upon petition by a landowner to be relieved of any assessment for the reason that his land has never been subject to overflow and has never been overflowed by the highest known water, or that the assessment is too high and that no bonds have been issued which are a lien on such assessment, and praying to be released from the assessment, the court, after 10 days notice, hears such application and amends the assessment roll in conformity with the facts found. A copy of the order is referred to the commissioners for correction of their copy of the assessment roll to conform. The petition must be filed within one year after confirmation of the assessment. This section does not apply to districts organized to establish a combined system of drainage independent of levees. (L. 1933, p. 507.)

See: *Wissler v. Mud Creek D.D.*, 300 Ill. 350, 133 N.E. 331.  
*Akker v. Cat Tail D.D.*, 349 Ill. 433, 182 N.E. 630.

**Sec. 53. Roads, street, etc.—Assessment:** Affected roads, streets, railroads, bridges, and culverts may have assessments of benefits or damages as provided in this chapter. (L. 1909, p. 182.) [*Lincoln-Lansing D.D. v. Stone*, 364 Ill. 41, 2 N.E. (2d) 885.]

**Sec. 56. Assessing benefited lands outside of district:** When the owner of lands lying outside an organized district makes connection with the drains within said district, he is deemed to have made voluntary application to be included within the district. The commissioners may file a complaint with the county court or Justice of the Peace, describing the connection of said land with the system. Thereupon, after notice, the court or Justice of the Peace hears the complaint and if judgment be rendered in favor of the district, such lands shall be considered a part of the district and thereafter be assessed.

See: *People v. North Fork Outlet D.D.*, 331 Ill. 68, 162 N.E. 184.  
*Minnie Creek D.D. v. Streeter*, 327 Ill. 236, 158 N.E. 383.

**Sec. 59. Void assessments:** Where assessments are voided by error, omission, or lack of proper notice, the commissioners may file a petition with the court against the owner of the land irregularly assessed and have the defects cured in the resulting action and the assessment made valid. (L. 1885, p. 108.) [*Hayes Branch D.D. v. Ill. Cen. Ry. Co.*, 290 Ill. 124, 124 N.E. 819.]

#### FINANCING—Bonds

**Sec. 38. Power to borrow money:** The commissioners may borrow money not exceeding 90 percent of the assessments unpaid at the time of borrowing, for the purpose of construction or of payment of lawful indebtedness, and may secure the same by notes or bonds bearing interest at not exceeding 6 percent and running not more than one year after the last installment of the assessments on account of which the money is borrowed shall become

due. Such notes or bonds constitute a lien on the assessments. The court may, upon petition of the commissioners and after notice and hearing, authorize the borrowing of money in excess of 90 percent of the unpaid assessments. (L. 1927, p. 425.) (*Broadway Bank v. McGee Creek Levee & D.D.*, 292 Ill. 560, 127 N.E. 165.)

**Sec. 38-a. Power to borrow money:** The court having jurisdiction is authorized to extend the time of payment of assessments or any installment, and to refund the bonds of the district. Bonds not due may be refunded only when the owners thereof agree to surrender same for refunding bonds or to accept payment in cash at not more than par and interest to date of payment. When less than all of the bonds are to be refunded, only the proportionate part of the assessment out of which the refunded bonds are to be paid may be extended. The court may change the number of installments into a greater or less number than was originally provided in the order of confirmation, but may not extend the time of payment of any assessment or installment thereof beyond forty years from the date of the order providing for the refunding. The commissioner's on their own motion may, or upon petition of owners assessed at least 25 percent of all the then unpaid assessments shall, file a petition with the court asking extension of payment of assessments. Elaborate details of the petition are set out in the statute. The court holds a hearing on the petition after notice, and makes such order of extension of payment as the circumstances require. The delivery of any refunding bond must be simultaneous with the surrender of a like amount of old bonds. Provision is made in detail for withdrawal of assessments theretofore certified as delinquent when the time of payment has been extended by the order of the court. The commissioners are authorized to obtain loans from the United States subject to court approval. (L. 1934, 3rd Special Session, p. 185.)

**Sec. 38-b. Mortgaging district property:** The commissioners are authorized to mortgage real estate and pumping equipment to the Federal government or to any individual or corporation for securing a loan to be used for reconstructing, enlarging, or improving such pumping or other works. (L. 1934, p. 198.)

#### DRAINAGE FOR AGRICULTURAL PURPOSES

(Act of June 27, 1885)

I—Township Drains  
II—Special Drainage Districts

##### I—TOWNSHIP DRAINS

###### ORGANIZATION—Petition

**Secs. 82 and 83. Highway commissioners as drainage commissioners:** The commissioners of highways in each town in the several counties under township organization are the drainage commissioners for all drainage districts in their respective towns. They are known as the Drainage Commissioners of District No. \_\_\_ in the Town of \_\_\_\_, County of \_\_\_\_, State of Illinois, and by that name are a body politic. (L. 1885, p. 77.) **Sec. 83:** The town clerk is the clerk of the commissioners of all districts lying wholly within the town, and of all union drainage districts of which the major portions lie within the town. He keeps the "drainage record." All elections, notice of which is required to be given to the landowners, must be held within the district. (*People v. Carr*, 231 Ill. 502, 83 N.E. 269.)

**Sec. 84:** The supervisor of the town is treasurer of the district. When the district is in two towns, the supervisor of the one designated by the commissioners is the treasurer. In all special drainage districts the county treasurer is the treasurer of the district. The treasurer of the district, except when he

is the county treasurer, gives bond for double the amount of money likely to come into his hands. (L. 1885, p. 77.)

**Secs. 85 to 90. Owners may drain:** This section declares the right of landowners to drain their lands in the general course of natural drainage, and when such drainage is wholly upon the owner's land he is not liable for damage therefrom. (*Inlet Swamp D.D. v. Mehlhausen*, 291 Ill. 459, 126 N.E. 113.) **Sec. 86:** When necessary to continue drainage through the lands of others by properly constructed works, and an agreement cannot be had with the other owners, a summons will issue from any Justice of the Peace and proceedings will be had thereon as in other civil suits before Justices of the Peace. **Sec. 87:** The Justice of the Peace or a jury, if one is impaneled, hears the evidence, and if the water would be carried into a natural water course, they find for the plaintiff, assessing only the damage which would be occasioned by entering the premises to construct the drain. **Sec. 88:** If after judgment the plaintiff wishes to abandon the proceedings, he enters that fact on the docket and pays all costs. **Sec. 89:** Bond must be given when the action is commenced to pay all costs and damages awarded. **Sec. 90:** At the time of entering the suit the plaintiff must file a map or sketch of lands to be drained and through which the drain has to pass. If judgment is in favor of the plaintiff, the plat and all papers are recorded by the town clerk in the "drainage record."

**Secs. 92 and 93. Combined drainage:** When a system of combined drainage in a single town is involved, a petition is presented to the town clerk, signed by a majority in number of the adult owners of lands affected who must be the owners in the aggregate of more than one-third of the land, or by the owners of a major part of the land who constitute one-third or more of the owners, setting forth the boundaries. The petition states that combined drainage is necessary to protection from overflow as well as to drain. The names of the owners and the amount of the land owned by each must be stated. **Sec. 93:** The petition is filed with the town clerk, who, within five days, gives notice in writing to the commissioner of highways of the town. If there are only two parties, they both are notified. If more, notice is by posting in three public places in or near the district. The notice states that a meeting will be held not less than 8 nor more than 15 days after said notice, for the purpose of organizing the district. (L. 1888, p. 77.)

**Sec. 94. Hearing:** At the hearing the commissioners determine whether the proceeding is in proper form as to signatures to the petition. The affidavits of two or more credible signers of the petition are *prima facie* evidence that the petition is in proper form. All persons signing the petition have thereby acknowledged the necessity for organizing the district. Any landowner not signing the petition may appeal and contest any statement therein. Any landowner may sign the petition at any time.

**Sec. 95. Commissioners view premises—Survey:** If the commissioners find in favor of the petition, they adjourn the meeting for not less than 8 nor more than 15 days and make public announcement thereof. In the meantime they go upon the lands and personally examine them, and they have power to employ a civil engineer to prepare for them a report with plat and estimates of cost. (L. 1885, p. 77.)

**Sec. 96. Organization:** At the adjourned meeting the commissioners examine the report of the civil engineer. They have power to change the boundaries so as to include or exclude land as may be proper. They may permit additional signatures to the petition to the end that a majority of the owners who own one-third or more of the land, or the owners of the major part of the land who constitute one-third or more of the owners, shall

have signed the petition. The commissioners make findings of facts in writing, which findings are recorded by the clerk and are conclusive. If it appears that the lands of the district will be benefited for agricultural and sanitary purposes by the construction of a drain or a combined system of drainage, they so find unless the cost will exceed the benefits. If two-thirds of the landowners owning more than one-half of the land still desire to form the district and so indicate by not withdrawing their names from the petition, the commissioners enter on their record an order in writing organizing the district. Each district is designated by a number and the name of the township and county and the State of Illinois. The commissioners then cause a map of said district to be made showing the boundaries, which map is filed with the drainage papers.

**Sec. 97. Effect of organization—Election:** Upon organization, the duties of the commissioners of highways cease as soon as a drainage commissioner has been elected and qualified. The town clerk calls an election in each district in his township by giving 10 days notice by posting. Elections are held on the second Saturday of March in each year. Should the town clerk fail in this duty, election shall be held upon demand of the drainage commissioners (commissioners of highways) or any interested party. In the first election three commissioners are elected for one, two, and three-year terms respectively. Every adult owner of land within the district is a qualified voter, and is eligible for commissioner if he is a resident of a county in which any part of the district lies. Drainage district elections are conducted like school elections. Commissioners of highways act as judges and clerk of the first election, and thereafter the drainage commissioner acts in those capacities. In the absence of the commissioners the electors present may select judges and clerks. The vote is canvassed immediately after closing the polls and specific directions therefor are set out in the statute. The return is made to the town clerk, who records the same. Commissioners take oath of office and must be known by the name of the district; that is, Commissioner of District No. \_\_\_\_\_ in Township \_\_\_\_\_, in the County of \_\_\_\_\_, and State of Illinois, and by that name are a body politic and corporate with the usual powers of corporations. Vacancies in the office of commissioner are filled at an election called by the remaining commissioners. (L. 1935, p. 755.)

**Sec. 99. Outlets:** Upon organization, the drainage commissioners go on the land and determine the system of drainage. Preference is given to tile drains where feasible. If open drains are necessary, they follow the boundary lines of separate tracts at right angles or parallel as the case may be unless drainage would be impaired thereby. An engineer is employed to report in writing with maps and profiles and estimates of cost, unless the district is very small. These papers are recorded in the "drainage record" in the clerk's office. (L. 1885, p. 77.)

**Secs. 100 to 102. Right-of-way:** The commissioners procure rights-of-way by agreement if possible, with releases in writing which are a perpetual bar to the grantor for damages on account of the construction of the works. However, if the commissioners must pay damages by virtue of a verdict of a jury, other owners must receive equitable damages notwithstanding any release they may have signed. Releases are recorded in the "drainage record." **Sec. 101:** Failing to acquire rights-of-way by agreement, the commissioners apply to a Justice of the Peace for a venire for a jury to assess the damages. The Justice of the Peace issues a venire for six disinterested landowners to appear at his office at a stated time not less than 5 nor more than 15 days from the filing of the application. The case is con-

ducted like civil cases. Service is made by the constable, but where owners are unknown or nonresident the notice is by publication. The commissioners have the right to commence the proceedings in the county court at any term. **Sec. 102:** The jury hear the evidence and return their verdict for the amount of damages found. If in favor of the owners, the Justice of the Peace or county judge enters judgment therefor, which judgment is conclusive. A certified transcript of the proceedings is recorded in the "drainage record."

**Sec. 103. Classification of lands:** As soon as the plans for the works have been determined, the commissioners make special assessment of benefits by classifying the lands in 40-acre tracts according to the legally recognized subdivisions, on a graduated scale and to be numbered according to the benefits that will be received. The tract of land that will receive the most benefit is marked 100 and that receiving less benefit is marked with a less number, denoting its percentage of benefits. This classification remains the basis for the levying of taxes in the district. The districts theretofore formed, already having made assessments, are classified on the graduated scale, conforming as nearly as possible to the former proportionate assessment; provided, when the commissioners believe the former classification unjust, they make a new classification. The classification is tabulated and filed in the clerk's office for inspection. (L. 1891, p. 102.)

See: *People v. Gibson*, 293 Ill. 80, 127 N.E. 360.  
*People v. Candy*, 296 Ill. 263, 129 N.E. 728.  
*Swartz v. Comrs. Big Lake Spl. D.D.*, 307 Ill. 209, 138 N.E. 665.  
*People v. Allen*, 330 Ill. 433, 161 N.E. 867  
*People v. Bradshaw*, 303 Ill. 558, 136 N.E. 466.

**Sec. 105. Objections to classification—Meeting:** The commissioners fix a time for the hearing of objections to the classification, and the clerk gives two weeks notice of such hearing by publication and posting in the district and by mail to each landowner. Failure to give proper notice does not affect the assessment except as to the land of the owner not properly notified. (L. 1919, p. 443.) (*Olmsted v. Prather*, 322 Ill. 280, 153 N.E. 382.)

**Sec. 106. Hearing:** At the time fixed the commissioners hear all objections from interested persons and correct the classification in accordance with justice and right, and thereupon confirm it. All orders of correction or confirmation are filed in the office of the clerk of the district within 5 days, and any interested person dissatisfied with the classification may appeal to the county court within 10 days after filing an approved bond conditioned for the payment of the taxes levied and all costs in case the order of the commissioners is affirmed. (L. 1919, p. 443.)

See: *People v. Prather*, 322 Ill. 280, 153 N.E. 382.  
*People v. Bradshaw*, 303 Ill. 558, 136 N.E. 466.  
*People v. Allen*, 317 Ill. 92, 147 N.E. 479.

**Sec. 107. Appeal—Jury—Hearing:** Appeal may be heard by the court at any time after the expiration of 10 days. At the discretion of the court, the costs may be divided between the district and the landowner appealing. The court summons 12 disinterested landowners to meet at the courthouse at a time set, to hear the appeals. These 12 men must have practical knowledge of the costs and benefits of farm drainage, and they are sworn as a special jury to try the appeals. The court lays before the jury the classifications made by the commissioners, and hears testimony in support and in opposition thereto. If requested by either party, the jury view the land. If they find no injustice done they confirm the classification in writing and file

it with the court records. Their verdict is recorded in the "drainage record." (L. 1933, p. 495.)

See: *Thoemmg v. Hawkins*, 294 Ill. 30, 128 N.E. 314.  
*Kikapoo D.D. v. City of Mattoon*, 284 Ill. 393, 120 N.E. 256.

**Sec. 108. Assessment—Tax list:** The commissioners by resolution order such amount as may be necessary to be raised by special assessment apportioned among the several tracts of land according to the acreage of each and its figure of classification on the graduated scale. They make out a special assessment roll known as the tax list, setting out in tabulated form the amount of taxes against each tract and the damages and credits if any. The balance due is set forth in the final column. If any landowners or road commissioners have not been properly notified of the hearing on classification, that fact does not affect the validity of the special assessment except as to the particular land or road not receiving such proper notice. (L. 1919, p. 443.)

See: *People v. Please*, 344 Ill. 43, 175 N.E. 769.  
*Lake Forest Dist. v. Highway Comrs.*, 292 Ill. 340, 127 N.E. 109.  
*Comrs. of Boones Pond Mut. D.D. v. O'Daniel*, 291 Ill. 528, 126 N.E. 198.  
*Inlet Swamp D.D. v. Anderson*, 257 Ill. 214; 100 N.E. 909.  
*D.D. #1, St. Clair Co. v. Soucy*, 292 Ill. 584, 127 N.E. 140.

**Secs. 110 and 111. Appeal to the country court—Trial:** Any person against whose land a tax has been levied may, within 10 days after the tax list has been filed with the clerk, appeal to the county court by filing a bond in double the amount of the taxes appealed from, but the appeal must be on the sole ground that the tax is greater than the benefit to accrue to the land. Appeals may be heard within 10 days and the trial is conducted as in other appeal cases. Parties are entitled to jury trial, and if it is found that the tax exceeds the benefits to accrue the court will modify the tax to equal the benefits, and the costs may be apportioned. **Sec. 111:** Appeal does not delay the collection of taxes not appealed from. (*People v. Bradshaw*, 303 Ill. 558, 136 N.E. 466.)

**Sec. 109. Abandonment:** Before entering into a construction contract for which an assessment has been made, upon petition therefor by not less than three-fourths of the adult landowners representing one-half of the area, filed with the clerk of the district; the commissioners may abandon the works or any part thereof and set aside any assessment made; provided, the commissioners must pay all debts and expenses incurred in levying the assessment. If the assessment has been paid, proper refunding is made. If it is necessary to levy an assessment to pay such debts and expenses, the commissioners will do so. (L. 1921, p. 406.)

**Sec. 112. Payment of tax—Lien:** The commissioners may permit the tax to be paid in convenient installments. Otherwise the whole tax is payable 30 days after confirmation and, upon a certified copy of the tax list being filed with the recorder of deeds of the county, becomes a lien upon the land assessed. Taxes draw interest until paid. The payment of an installment or judgment therefor estops any objection to succeeding installments against the same land. No writ of error to review any judgment under this act may be brought after six months. Neither the organization of the district nor its jurisdiction over the land therein may be attacked by *quo warranto* or otherwise after the confirmation of any assessment thereon. (L. 1919, p. 443.)

See: *D. #1, St. Clair Co. v. Soucy*, 292 Ill. 584; 127 N.E. 140.  
*People v. Allen*, 317 Ill. 122; 86 N.E. 666.

**Secs. 113 and 114. Treasurer:** The tax list is certified to the treasurer of the county and he gives bond in twice the amount thereof for the faithful performance of his duties as

treasurer of the district. **Sec. 114:** The treasurer must keep proper books and disburse only on order of a majority of the commissioners.

**Sec. 115. Delinquent tax list:** It is the duty of the district treasurer to certify to the collector of the county on or before the 10th of March of each year a list of all delinquent lands upon which any drainage tax or installment thereof is due. The collector proceeds as in ordinary collection of state and county taxes, and if necessary sells the land to satisfy such taxes. The commissioners of the district may become the purchaser at the sale of any land in the district for delinquent drainage taxes. (L. 1885, p. 77.)

See: *People v. Allen*, 317, Ill. 92; 147 N.E. 479.  
*People v. Fisher*, 341 Ill. 621; 174 N.E. 33.  
*People v. Welch*, 252 Ill. 167; 96 N.E. 991.  
*Lake Fork Spl. D.D. v. Comrs. of Highways*, 292 Ill. 340; 127 N.E. 109.

**Sec. 116. Bond of collector:** The collector gives bond in double the amount of the delinquency, which bond is filed with the clerk and recorded in the "drainage record." The treasurer of the district may receive payment of assessments, interest, and costs, and must keep account thereof and present the same to the clerk before the lands are sold.

**Sec. 117. Construction:** When the commissioners have secured rights-of-way they may divide the ditches into sections one-quarter mile in length, or they may let the entire work in one or more contracts. In case of work on the land of two parties only, the owners have preference where the bids are equal to construct that part on the land of each. This rule may be applied to a large number when the commissioners unanimously agree thereto. (See section 118 following.)

**Secs. 118 and 122. Contract—Bid:** The commissioners give notice by publication of the time and place of letting contracts for construction. Bids are submitted under seal, and the commissioners may reject any or all of them. If the cost will not exceed \$500, contract may be let or construction obtained in such manner as the commissioners deem best. A commissioner may not have interest in any contract for construction, repair, or maintenance of the district works. Payment for work is made by the treasurer upon order of the commissioners. (L. 1931, p. 469.) **Sec. 122:** The commissioners have the right of entry for themselves and their agents for making surveys, and after tender of payment of damages they may authorize contractors and their equipment to enter upon the land for the purpose of construction. (L. 1885, p. 77.)

**Sec. 123. Assessment of highways, etc.:** The commissioners have the right to use public rights-of-way for purposes of the district works, and if a public highway or railroad is benefited by said works the commissioners may assess it a just and equitable share of the cost in proportion to the benefits conferred. Assessments of public highways are paid out of the road and bridge tax of the towns or districts in which the benefited highways are situated.

See: *People ex rel Urch v. Ryan*, 353 Ill. 437; 187 N.E. 431.  
*Maulding v. Williams*, 330 Ill. 599, 162 N.E. 131.

**Sec. 125. Repair:** The commissioners must maintain the works and use the funds of the district to achieve the contemplated benefits to all of the lands so far as practicable. Commissioners have the power to enlarge and improve the outlets beyond and below the boundaries of the district, and to collect a fair compensation for the benefit bestowed upon the land affected by reason of such works, whether private land or land in an organized drainage district. (L. 1901, p. 147.)

See: *People v. Barnes*, 324 Ill. 93, 154 N.E. 437.  
*Maulding v. Williams*, *ante*.

**Sec. 126. Inclusion:** Landowners in the district may connect lateral drains to the common drain of the district, and landowners outside of the district may connect with the ditches of the district upon payment of such amount as they would have been assessed if originally included in the district. When such connection is made by individual landowners outside of the district it is presumed to be a voluntary application to be included in the district. Commissioners may enlarge the district at any time by attaching new area involved in the same system of drainage, upon petition of as great a portion of landowners in the area to be added as is required for the original district. Lands outside of the district which will be benefited by the works of the district and which are not in any other district, may be presumed to have voluntarily applied for inclusion, and the commissioners may prepare a petition for such inclusion and present same to the county court where the district was organized. The procedure is the same as for original organization, and the owners of land annexed may appeal to the circuit court within 10 days. Land so annexed is classified and assessed in proportion to the established classification of the district. (L. 1919, p. 443.)

**Sec. 127. Subdistricts:** Subdistricts may be formed for more complete drainage in the same manner as main districts. They have the right to use the ditches of the main district for outlets. The commissioners may divide a drainage district into subdistricts for the purpose of making assessments of benefits for work to be done in such subdistricts. Formation of a subdistrict does not operate to release the land therein from assessment by the main district, nor does it give the subdistrict any claim on the funds of the main district for local use. Subdistricts are managed by the commissioners of the drainage district in which situated, except that any such containing not less than five sections of land may, upon petition by a majority of the landowners, elect commissioners in the same manner as provided for the election of commissioners of the main district. (McGee Creek etc. Dist. v. Wabash Ry. Co., 319 Ill. 379, 150 N.E. 259.)

II—SPECIAL DRAINAGE DISTRICTS

ORGANIZATION—Petition

**Sec. 134. Organization:** When the proposed district lies in three or more towns in the same or different counties, or in any county not under township organization, the petition under section 92 *ante* is presented to the county court of the county in which the greater portion of the lands lie and accompanied by a bond of three or more responsible parties, conditioned to pay all the costs in the event the district is not established. When formed, such districts are known as "\_\_\_\_\_ Special District of \_\_\_\_\_ County." (L. 1885, p. 77.)

See: People v. Please, 344 Ill. 43; 175 N.E. 769.  
Comrs. Lake Fork Special Dr. D. v. Comrs. of Highways, 292 Ill. 340; 127 N.E. 109.

**Sec. 135. Notice of hearing on petition:** The court clerk gives at least twenty days notice of the hearing on the petition by posting in each township and by publication. Specific provision is made for the form of the notice. (L. 1933, p. 495.) (People v. Allen, 317 Ill. 92; 147 N.E. 479.)

**Secs. 136 and 137. Hearing:** At the hearing the court determines the formality and validity of the petition, and if regular it so finds. The affidavits of three creditable signers to the effect that the petition is valid is *prima facie* evidence against all landowners and conclusive evidence against all signers of the petition. Any landowner not signing may appeal and controvert any material statement of the petition. (L. 1885,

p. 77.) **Sec. 137:** If the court finds against the petitioners, the petition is dismissed at their cost. Otherwise the court enters an order appointing three commissioners for the district. They go upon the land and view same, and may appoint a competent surveyor to assist them. They report to the court on or before the day set for the completion of the organization of the district. At a hearing on the commissioners' report any interested party may file objections in writing, or an alternative plan of improvement, and be heard upon same. The court hears witnesses, and if of the opinion that the lands would be benefited for agricultural and sanitary purposes will so find and enter an order declaring the district organized, unless it finds that the cost will exceed the benefits, in which case the petition is dismissed. However, if the landowners owning more than one-half of the aggregate lands still desire to form the district, evidenced by a failure to withdraw their names from the petition, the court will order the district organized. The commissioners are the corporate authority of the district and are a body politic and corporate under their corporate name. (L. 1919, p. 443.)

ORGANIZATION—Officers

**Secs. 138 to 140. Election:** As soon as a special drainage district has been organized containing 15 or more landowners, the county clerk of the county where the proceedings were instituted, who is *ex officio* clerk of the commissioners of said district, gives notice by posting of an election for the purpose of selecting three drainage commissioners for the district. The commissioners select a regular voting place within the county. Upon petition of a majority of landowners, approved by the court after notice and hearing, the commissioners may establish a voting place outside of the district. (L. 1919, p. 467.) **Sec. 139:** The method of holding the election is set out in detail in the statute. Every adult owner of land in the district may vote, and if a resident of any county in the district is eligible to be elected commissioner. When a commissioner during his term ceases to be a landowner or ceases to be a resident of an interested county, his office becomes vacant. The first annual meeting is held on the third Tuesday in November and commissioners are elected for one, two, and three years, respectively, and thereafter one is elected each year for a term of three years. **Sec. 140:** In special districts with less than 15 landowners, the court appoints three drainage commissioners not interested nor kin to any landowner, and it is arranged that one vacancy will occur each year.

**Secs. 141 and 142:** The drainage commissioners view the land and determine on a system of drainage. They may employ an engineer to report in writing with maps, profiles, and estimates of cost. Their report is filed in the clerk's office and recorded in the "drainage record." **Sec. 142:** The commissioners then proceed to procure the rights-of-way, and if they cannot acquire same by agreement they petition the court for a jury to assess damages. After notice and hearing as fully provided in the statute, a jury trial is conducted as in other civil cases. The jury may view the premises at the request of either party. If their verdict is in favor of the owners it is a judgment against the district, in the absence of new trial for cause. Upon disagreement, a new jury is impaneled. (L. 1933, p. 495.) [Crosby v. DeLand Special D.D., 367 Ill. 462; 11 N.E. (2d) 937.]

FINANCING—Assessments

**Sec. 144. Benefits assessed:** At the earliest practicable date the commissioners make special assessments of benefits as provided in sections 103 and 104 of the Act so that each tract shall bear its proportionate share of the cost.

**Sec. 145. Classification of lands:** The commissioners without delay file in the office of the clerk of the district a classification of the lands in the district, and give notice thereof in the same manner as provided for districts in a single town. (L. 1919, p. 443.) (People v. Allen, 317 Ill. 92; 147 N.E. 479.)

**Sec. 146. Appeals:** Appeal is to the county and circuit court of the county in which the land is situated, as provided in sections 106 and 107 of this Act. The decision of the special jury in the last court of appeal is conclusive. The classification so arrived at is entered on the "drainage record" and is the basis for the levying of assessments for the purpose of drainage in the class of districts to which such lands belong. (L. 1901, p. 147.)

**Sec. 147. Special assessments:** As soon as the classification has been confirmed by the commissioners or the court on appeal, it is competent for the commissioners to order a special assessment upon the land in the amount necessary according to their best judgment, and certify the same to the clerk of the court for recording in the "drainage record." The form of the certificate is set out in the statute. The clerk apportions the amount levied among the tracts of land according to acreage and each tract's figure of classification under the graduated scale. The commissioners make out a tax list to conform to the provisions of section 108 of the statute, sign it, and file it with the clerk. Any interested party may appeal to the county court in the same manner as provided in section 110. Where the lands are in two or more counties, the clerk of the county in which the proceedings are had sends a copy of the assessment to the circuit court clerk or the recorder, as the case may be, of the other county, which list is for record in his office. (L. 1925, p. 365.)

See: People v. Please, 344 Ill. 43; 175 N.E. 769.  
People v. Fisher, 341 Ill. 621; 174 N.E. 33.  
People v. Dixon, 346 Ill. 454; 178 N.E. 914.

**Sec. 148. Additional levy—Payment of assessments—Bonds:** If the commissioners find that the assessment is inadequate to complete the work, they make necessary additional levies on the original classification and in the same manner. The commissioners may order all levies paid in convenient installments, otherwise the whole amount becomes payable 30 days after confirmation and is a lien upon the land until paid, drawing 6 percent interest. Where immediate payment of the whole cost will work a hardship on the landowners, the commissioners may borrow money for construction of the work, not to exceed 90 percent of any levy unpaid at the time of borrowing, and secure payment by notes or bonds of the district bearing interest not to exceed 6 percent. Bonds may not run for more than 15 years. Such bonds constitute a lien upon the assessments on account of which they were issued. (L. 1901, p. 147.)

**Sec. 155. Tax levy—Assessments:** It is the duty of the commissioners of every special drainage district to file with the county clerk of the county where the district was organized, on December 1 of each year, a statement of the unpaid bonds and interest and the amount necessary to be levied to meet payments due, and of the amount necessary for maintenance and repair of the drainage works for the ensuing year. The clerk computes the *pro rata* share of each tract of land in the same proportion as for construction. No tract may be assessed for more than the benefits received. This amount is extended on the collector's books and collected like state and county taxes. Money collected for the payment of bonds and interest may not be used for any other purpose. Where the state auditor has filed a levy for the payment of registered bonds, the commissioners make

their levy so as to meet the bonds not registered. (L. 1925, p. 365.)

See: Beardsworth v. Whiteside & Rock I. Spl. D.D., 356 Ill. 158; 190 N.E. 310.  
People v. Fisher, 341 Ill. 621; 174 N.E. 33.

**Sec. 157. Assessments—Lien:** All assessments levied hereunder are a lien on the respective tracts of land to the proportionate share of such tract in the benefits. The commissioners may file a petition for foreclosure of such liens when same are unpaid and judgment may be collected as any other judgment of the same court. (Dr. Comms. Dist. #2 of Havana v. Mansfield, 348 Ill. 59; 180 N.E. 630.)

#### FINANCING—Bonds

**Sec. 149. Bonds:** Where commissioners of special drainage districts have issued bonds under this Act, and the payment thereof at maturity would in their judgment work an unreasonable burden on the landowners assessed, the commissioners have the right and power to fund such notes or bonds to the amount of the unpaid assessment upon which such bonds were issued. Such new notes or bonds may bear interest at not to exceed 6 percent. The commissioners may, by order duly signed and filed with the clerk and recorded, extend the time for the payment of assessments or installments thereof to a fixed later date. Such notes or bonds may not run more than one year beyond the time fixed for the payment of the assessments or installments against which issued. (L. 1901, p. 147.)

**Secs. 150 to 153. To extend payment:** When a petition is presented, signed by adult owners of lands assessed who are a majority in number and own in the aggregate at least one-third of the lands assessed, asking an extension of the time for the payment of assessments and that bonds be issued in an amount not exceeding the unpaid assessments, the commissioners will issue an order extending the payment for not to exceed 10 years, and may issue bonds of the district to the amount thus extended. No bonds may be sold for less than par. (L. 1901, p. 147.)

**Sec. 151:** It is provided that a detailed record of all bonds be kept in the "drainage record." **Sec. 152:** Such bonds may be registered by the auditor of public accounts. **Sec. 153:** When bonds are so registered, the auditor together with the state treasurer makes annually an estimate of the money required to pay interest on the bonds and the cost of handling, and transmits it to the county clerk where the district was organized to be recorded in the "drainage record" and extended *pro rata* against each tract of land and collected in the same manner as state taxes. (L. 1885, p. 77.)

#### UNION DISTRICTS

**Sec. 133. Formation:** When lands proposed to be organized into a drainage district lie in two towns, when same are in different counties both under township organization, such districts are designated as "Union District No. — of the Town of —, County of —, State of Illinois." A petition is filed with the clerk of the town where the greater portion of the district lands are situated, and the clerk selects three commissioners for said district from the commissioners of highways of the two towns, taking a part from each town. The clerk notifies the highway commissioners of their appointment as drainage commissioners, and to meet at his office as provided in section 93 or 98 of this Act. The clerk and commissioners have the same powers as the commissioners in one town. A separate delinquent tax list is made for the part that lies in each county. (L. 1885, p. 77.)

See: *Special assessments:* People v. Please, 344 Ill. 43; 175 N.E. 769.  
People v. Fulton, 280 Ill. 415; 117 N.E. 605.  
People v. McDonald, 264 Ill. 514; 106 N.E. 501.

## DISTRICTS BY USER

**Sec. 161. Petition for formation:** Where two or more parties owning adjoining lands which require a system of combined drainage have by voluntary action constructed ditches which form a continuous line and branch, the several parties are liable for their just proportion of such repairs and improvements as may be needed therefor, the amount thereof to be determined as nearly as may be on the same principles as if the ditch were in an organized district. Whenever improvements are not made by voluntary agreement, it is competent for any one or more owners to petition for the formation of a drainage district to include the lands affected. The petitioner must show that his land is damaged through lack of proper repair or improvement of the drainage systems. The form of procedure is as nearly as practicable the same as prescribed by this act. Open ditches shall be made tile drains where practicable. (L. 1905, p. 195.)

See: *Molohan v. Cashin*, 258 Ill. 86; 101 N.E. 264.  
*People v. Baldrige*, 267 Ill. 190; 108 N.E. 49.  
*People v. Prather*, 343 Ill. 443; 175 N.E. 658.  
*People v. Miller*, 331 Ill. 395; 163 N.E. 139.

## DISTRICTS BY MUTUAL AGREEMENT

**Sec. 162. Formation:** Owners of lands requiring combined drainage may form a district by mutual agreement in writing that embraces all the elements of a drainage district including the appointment of commissioners. A majority of the landowners may discontinue the district by vote at any regular meeting. The powers and duties of the commissioners in such a district are the same as exercised by the commissioners of other districts organized under this Act. (L. 1885, p. 77.)

## ABANDONMENT AND DISSOLUTION

**Sec. 44. Abandonment:** At any time before a contract has been let for the construction of any works provided for in the report of the commissioners, or before the order of the court is made in pursuance thereof, the county court may, upon petition of a majority of the adult landowners representing one-third of the area and after inquiry, direct the commissioners to abandon such work or any part thereof. Upon filing of the petition, notice is given of a hearing thereon and interested parties may file objections. The court after full hearing makes such order as may be just. It determines what portion of the work shall be abandoned and to what extent the cost will be diminished thereby. Reduction of assessments is made in uniform proportion to the extent of such diminished costs. Proportionate refund will be made of assessments already collected.

At any time before the contract for construction is made, upon presentation to the county court of a petition signed by a majority in number of all the landowners, who shall own more than half of the lands assessed for benefits and whose aggregate assessments amount to not less than half of the cost of the proposed work, praying that the whole system of works be abandoned, the court will enter an order granting the petition conditioned upon the payment of all costs by the petitioners within 30 days. Assessments already collected are refunded. Petitioners have the right to withdraw from the petition in the same manner as under section 4 of this Act. This section is not retroactive. (L. 1927, p. 408.)

See: *Marshall v. Comrs. Upper Cache D.D.*, 313 Ill. 11; 144 N.E. 321.  
*Bossert v. Granery Creek Union D.D. #1*, 307 Ill. 425; 138 N.E. 726.  
*Birds D.D. of Lawrence & Crawford Co. v. Pinkstaff*, 323 Ill. 120; 153 N.E. 873.  
*Warren v. Lower Salt Creek D.D.*, 316 Ill. 345; 147 N.E. 248.

**Sec. 132. Dissolution:** When two-thirds of the landowners owning not less than two-thirds of all of the land in a drainage district lying wholly within the limits of a single township present a petition to the commissioners asking that the district be dissolved, the commissioners will endorse on the petition an order dissolving the district if they are satisfied on the due form of the petition and that there are no debts owing by the district and no litigation in which it is involved. When such petition so indorsed is filed with the town clerk and recorded in the "drainage record," the dissolution is complete. Such dissolution, however, does not prevent the commissioners from collecting unpaid assessments nor impair any obligation of the district. At any time within one year after dissolution the district may be restored by a similar petition to the commissioners and a similar procedure. (L. 1885, p. 12.)

**Sec. 198. Dissolution:** Any drainage district may be dissolved by order of the county court that organized it, upon hearing on a verified petition signed by not less than four-fifths of the adult landowners who own in the aggregate not less than three-fourths in area of the assessed lands. Not less than six weeks' notice of the hearing must be given by posting and publication. It must be shown that no indebtedness exists and that the costs of dissolution have been advanced. The waterways and other improvements of a dissolved district remain for the common use of the landowners. (L. 1889, p. 117.)

## INDIANA

(*Baldwin's Indiana Statutes Annotated, 1934, Chapter 32, secs. 5737-5854*)

## DRAINAGE DISTRICTS

## ORGANIZATION—Petition

**Sec. 5740. Petition:** The owners of 10 percent in acreage of a body of land lying outside of the corporate limits of any city or town, where drainage cannot be effected in the best and cheapest manner without affecting the land of another person, may apply for new drainage by a petition addressed to the board of county commissioners or to the circuit or the superior court of the county and filed with the auditor or the clerk of the circuit court of the county in which the lands are situated. The petition describes the land of such owners by the legal description in the tax duplicate. The petition must state that the public health will be improved or a public highway will be improved or the drainage will be a public utility. It must also state generally the method by which such drainage can be accomplished and the belief of the petitioners that the cost will be less than the benefits accruing. (L. 1933, ch. 264, sec. 4. Effective Mar. 11, 1933.)

See: *Princeton v. Williams*, 190 Ind. 281; 128 N.E. 601; 130 N.E. 122.  
*Land Co. v. Carlin*, 189 Ind. 324; 127 N.E. 197.

**Sec. 5741. Petition—Bond—Jurisdiction:** The petitioners must give bond conditioned to pay the costs in the event that the drain is not established. Each petition for a drain must describe an area of land to be benefited equal to four-fifths or more in area of all of the lands that will be affected, and must describe the route of the proposed drain so that the length as described shall be equal to four-fifths or more of the aggregate length of the work to be constructed, not, however, including branches that may be recommended in the surveyor's report. Whenever the ditch is intercounty, the circuit or superior court of the county having the greatest length of ditch as set forth in the petition shall have jurisdiction. When the ditch

runs into two or more counties, the county surveyor of the adjoining county must be appointed one of the viewers.

See: McCleery v. Zintsmaster, 187 Ind. 37; 114 N.E. 625.  
Agricultural Co. v. Brown, 186 Ind. 30; 114 N.E. 755.

**Sec. 5742. Notice:** When the petition is filed, there is noted thereon the date for docketing and the clerk gives notice, either written or printed, to all interested parties who will be affected by the proposed work, which notice may be served by leaving a copy at the last usual place of residence or business. Proof of service is by affidavit of the person serving notice. Notice must also be given by posting, at three public places near the line of the proposed work in each township where any of the land described in the petition is situated, and on the door of the court house in each county affected. Non-residents are notified by registered mail. Notice must be given at least ten days prior to the date set for docketing, and the court being satisfied that such notice has been given will docket the petition as a cause pending. When the action is docketed the court appoints two viewers, to act with the county surveyor, who must be reputable, disinterested freeholders not related to any land owner affected, and must be residents of some townships into which the proposed ditch will extend, if such qualified freeholders can be found; otherwise the court may appoint any disinterested qualified resident of the county.

See: Reed v. Kalfsbeck, 147 Ind. 148.  
Smith v. Smith, 97 Ind. 273.  
McCullum v. Uhl, 128 Ind. 304.  
Bonbow v. Gray, 193 Ind. 269; 128 N.E. 607; 139 N.E. 658.

**Sec. 5737. County surveyor:** The county surveyor has charge of all ditch construction, and superintends the maintenance of ditches already constructed. When petitions are filed, they must be referred to him and he makes the necessary surveys and reports back to the court.

**Secs. 5743 and 5744. Objections to petition:** Any person named in the petition has ten days, exclusive of Sundays and the docketing date, to file any objection or remonstrance thereto as to the form thereof or the qualifications of the viewers appointed. The court hears the remonstrance, and if the petition is found defective it will be dismissed at the cost of the petitioners unless amended within a time set. **Sec. 5744:** If within 20 days, exclusive of Sundays, from the date set for the docketing of said petition, the owners of two-thirds in area of the acreage named in the petition, or who may be affected by an assessment of benefits or damages, shall remonstrate in writing against the construction of such ditch, the petition shall be dismissed at the cost of the petitioners.

See: Cleck v. Arnold, 197 Ind. 350; 149 N.E. 178.  
Howeisen v. Chapman, 195 Ind. 381; 145 N.E. 487.  
Paperbrook v. White, 194 Ind. 17; 141 N.E. 804.

**Sec. 5745. Surveyor Viewers:** If no remonstrance is filed and the court deems the petition sufficient, it orders the latter referred to the surveyor and viewers, or if objections are not made within ten days the petition is deemed to be sufficient. The court fixes the time when the surveyor and viewers shall report. They make a personal inspection of all land that would be affected and report as to: (1) whether the drainage proposed is practicable; (2) whether when accomplished it will improve the public health or any public highway or be a public utility; (3) whether the cost and damages will be less than the benefits to the owners of the lands expected to be benefited. If they find any of these inquiries in the negative, they so report to the court and the petition is dismissed at the petitioners' cost. If they find favorably, the surveyor alone determines the cheapest and best method of drainage, estimates the cost,

divides the ditch into sections of 100-foot length, assesses the benefits and damages to each tract, and makes a report to the court under oath. The surveyor has discretionary power to fix the termini and route of the ditch as well as its outlet. He may determine the method of drainage. The term "ditch" or "drain" is defined to mean any natural or artificial channel for carrying off surplus water from the land regardless of its width or length.

See: Byers v. Hoskinson, 196 Ind. 225; 147 N.E. 810.  
Snyder v. Hursey, 190 Ind. 473; 130 N.E. 854.  
Thompson v. Ryan, 183 Ind. 232; 108 N.E. 226.  
Rig v. Clough, 182 Ind. 178; 104 N.E. 975; 105 N.E. 905.

**Sec. 5746. Lakes—Timber—Tile:** All timber within 25 feet of any public tile drain must be cut or removed or deadened. In open ditches, in the discretion of the surveyor, timber must be removed 25 feet from the top of each bank. A drain may not be located nearer than 60 rods from the high-water mark of any lake except where it drains into such lake.

**Sec. 5747. Dimensions:** The surveyor locates and fixes the size and dimensions of all ditches and provides ample drainage or protection from overflow, having in view future contingencies. He includes in his report an itemized account of the cost and expenses incurred in making the survey and assessment.

**Sec. 5765. Supplemental proceedings:** Any person may file a supplemental petition showing that land not mentioned in the original petition will be affected. He may file such petition for an arm or branch ditch. The procedure thereafter is the same as for the original ditch unless the court shall order the two petitions consolidated and heard together. This act is to be construed liberally, and the collection of assessments shall not be defeated by any defect in the procedure prior to the final judgment of the court; but such judgment is conclusive and final insofar as all prior proceedings are held to be legal and according to law. Only a person directly affected may take advantage of any error, defect, or informality in the proceedings.

See: Williams v. Osborne, 181 Ind. 670; 104 N.E. 27.  
Stockton v. Ham, 180 Ind. 628; 102 N.E. 378; 103 N.E. 482.

#### FINANCING—Assessments

**Sec. 5748. Assessments and damages—Surveyor's report—Hearing:** Upon the filing of the surveyor's report the court sets a date for hearing thereon, not less than 30 nor more than 40 days thereafter. Upon the date being fixed the surveyor within 5 days notifies all persons affected by mail. If the schedule of assessments contains the names of others not named in the petition, they are notified by registered mail with return card. The notice gives the location of the drain, the amount of the assessments, and the date of the hearing. On failure to reach affected parties by mail, notice is given by publication at least 15 days before the hearing. The surveyor furnishes a certificate showing the giving of such notice. (L. 1933, ch. 264, sec. 12.)

See: Seybold v. Rehwald, 177 Ind. 301, 95 N.E. 235.  
Snyder v. Hursey, 190 Ind. 473, 130 N.E. 854.

**Sec. 5749. Hearing Surveyor:** At the date of the hearing the surveyor, (or the surveyors in the case of intercounty drains) must be present at the clerk's office of the court of the county in which the proceedings are pending, and hear and determine all objections made to such apportionments and assessments. The hearing may be adjourned from time to time until all objections are heard. Objections must be verified and in writing. The surveyor confirms or changes the assessments and apportionments as may be just, and reports his (or their) action to the court.

See: Ginn v. Hinton, 174 Ind. 296, 91 N.W. 1093.  
Shields v. Pyles, 180 Ind. 71, 99 N.E. 742.

**Sec. 5750. Assessments—Damages:** Any party may remonstrate against the surveyor's report to the court within 10 days, on the ground (1) that the report is not in accordance with the law; (2) that the damages awarded are excessive; (3) that the assessment is insufficient in comparison with other lands specifically named; (4) that other tracts are assessed too low; (5) that the lands will not be benefited to the extent of the assessment; (6) that the damages are inadequate; (7) that land assessed benefits will actually be damaged; (8) that the expense will exceed the benefits; (9) that the improvement will not benefit the public health or any highway or be a public utility; or (10) that the work as proposed will not be sufficient to drain the land.

See: *Thorn v. Silver*, 174 Ind. 504, 89 N.E. 943, 92 N.E. 161.  
*Stroup v. Ferguson*, 200 Ind. 139, 161 N.E. 628.  
*Click v. Arnold*, 197 Ind. 350, 149 N.E. 178.

**Sec. 5751. Laterals:** If within 10 days the owners of two-thirds in area of the acreage of land affected by the construction of any lateral, arm, or branch to the main ditch, which lateral is described in the report of the surveyor but was not described in the original petition, remonstrate against the construction of such lateral, the court must strike the lateral from the report and set aside the assessment for the same. (*Land Co. v. Carlin*, 189 Ind. 324, 127 N.E. 197.)

**Sec. 5752. Court—Hearing:** At the hearing of the remonstrances the court may refer the report back to the surveyor for further report; may adjust the assessment and damages as may be right and proper, and confirm the assessments; or may dismiss the petition if the remonstrances are upheld, with entire cost to the petitioners. If after 10 days there is no appeal and the finding is against the remonstrance, the court makes an order declaring the proposed work established and approving the assessments as made by the surveyor or as modified by the court. The court then assigns the work to the county surveyor for construction. If the assessments or benefits remonstrated against are not changed 10 percent in favor of the remonstrant, he must pay the costs occasioned by the remonstrance. In other cases the costs are paid by the surveyor out of the ditch fund. There may be no change of venue.

See: *Papenbrook v. White*, 194 Ind. 17, 141 N.E. 804.  
*Comr's. v. Summy*, 193 Ind. 456, 140 N.E. 911.  
*Anson v. Thorn*, 180 Ind. 695, 103 N.E. 800.

**Sec. 5753. Appeals—Bond:** The order of the court establishing the work is conclusive unless appeal is taken to the superior or circuit court within 30 days. Appellant must file bond to pay all costs in the event of a decision against him. Further appeal may be taken from the superior or circuit court to the supreme court or the appellate court of the state within 30 days. After the appeal is determined, the matter is remanded to the court of original jurisdiction for proceedings in accordance with the judgment on appeal.

See: *William v. Dexter*, 175 Ind. 659, 95 N.E. 113.  
*Kosta v. Zickmund*, 200 Ind. 605, 165 N.E. 433.  
*In re Gilbert*, 195 Ind. 278, 144 N.E. 551.  
*Ry. v. Mosher*, 193 Ind. 577, 141 N.E. 322.

**Sec. 5758. Surveyor—Increased assessments:** In the event the surveyor is unable to construct or repair the ditch for the estimated cost of construction, he may increase the assessments under such estimate but not in excess of the estimated benefits. If unable to complete within the assessed benefits, he reports that fact to the court, which immediately orders a new assessment of benefits and damages. The proceedings then become the same as for the original assessment of benefits with the same right of remonstrance and appeal.

**Sec. 5759. intercounty ditch:** The surveyor charged with the execution of an improvement which affects land in more than one county shall govern himself as if the ditch were all in his county. After he has apportioned the costs between the counties, he certifies the same to the surveyor of each other county concerned, who thereupon issues a voucher upon his ditch improvement fund payable to the auditor of the county in which the ditch was established for credit of the ditch improvement fund of that county. Assessments in each county are paid to the county treasurer of that county, and placed in the ditch improvement fund of that county. The Board of Commissioners of each county has the right to issue bonds for such ditch assessment in the same manner as for ditches wholly within one county.

See: *Watkins v. State*, 151 Ind. 123.  
*Crook v. State*, 126 Ind. 572.  
*Watkins v. Van Auken*, 151 Ind. 123.

**Secs. 5767 and 5768. General ditch fund:** The Board of County Commissioners of each county within 90 days after the passage of this act (March 1933) may provide and establish a General Ditch Improvement Fund of not to exceed \$10,000, which is to be used as a sinking fund for all bonds issued for construction and maintenance.

If the board shall deem it inadvisable to establish such fund, all payments from and reversions to such fund shall be paid from and shall revert to the county general fund. The General Ditch Improvement Fund shall consist of all money in any ditch fund not otherwise appropriated at the time this act goes into effect, taxes then or thereafter collected for ditch purposes, the proceeds of bonds issued and sold for the construction of the specifically named ditch; and from the collection of all special payments and benefits to property as provided in this Act. **Sec. 5768:** The Board of County Commissioners provides a budget sufficient to take care of allotments and cleanout work upon which no regular assessment is made. They need not provide a General Ditch Improvement Fund if they decide to use the general fund in lieu of such separate ditch fund.

**Sec. 5769. Costs—Expenses:** The costs and expenses of any improvement petitioned for under this act are paid out of the general ditch improvement fund. (See sec. 4768 also.) No payment may be made except upon verified bill approved by the surveyor, filed with the auditor, and allowed by the commissioners. Attorney's fees paid may not exceed 3 percent of the cost up to \$10,000 and 1 percent of the amount in excess thereof. No payment in excess of 80 percent of the work actually completed may be made to any contractor before final settlement.

**Sec. 5770. Costs—Assessments—Lien:** Within 10 days after letting the contract for construction of the improvement, the surveyor in charge computes the entire cost including attorney's fees allowed by the court and interest at 6 percent on the funds paid out of the ditch improvement fund, and apportions such cost and expenses to the several tracts of land in proportion to the benefits assessed. The apportionment to any parcel shall not exceed the benefits assessed against it. The assessment, apportionment, and time to make payment are certified by the surveyor to the county auditor. If the ditch is inter-county, the surveyor's certificate is made to the auditor of each county affected. The auditor gives 30 days' notice by publication of the day named for the payment of such assessment, stating that the same has been placed in the hands of the county treasurer for collection. The auditor then extends such assessment on the ditch duplicate. The extension on the duplicate is for the full period of the payment of all assessments as fixed by the surveyor except that assessments of less than \$25 shall be

limited to payment within one year. The auditor calculates and adds to each successive installment interest at 6 percent until the time fixed for payment thereof.

**Liens:** Drainage assessments constitute a lien upon the lands and are collected in the same manner and at the same time as general taxes. The money collected is deposited in the ditch improvement fund. Assessments not paid when due become delinquent the same as general taxes, and are subject to the same penalties. Delinquent lands may be placed on the list of lands to be sold at tax sale and are sold in the same manner and at the same time as provided for tax sales under the general law. The same penalties and rights attach as provided for property sold at tax sales. Personal property and real estate other than that assessed shall not be sold therefor. Unpaid assessments against municipal corporations may be enforced by suit in the name of the state in the relationship of the county treasurer on behalf of the county.

See: *Loan & Invest. Co. v. Hauchins*, 195 Ind. 256, 144 N.E. 879.

*State v. Allen*, 71 App. 160; 124 N.E. 684.

**Sec. 5771. Liens—Priority—Lands affected:** The amount of the assessment as made or as approved and confirmed by the court is a lien upon the land assessed from the time it is confirmed, and in order of priority follows all other improvement liens upon the affected real estate in the order as to date of attachment. The surveyor must have in his office a complete copy of the assessment which may be examined by any interested party. Owners desiring to transfer land clear of the incumbrance of the assessment may deposit the full amount of benefits assessed, which will be credited to the ditch improvement fund. The surplus, if any, over the actual assessment is returned when the surveyor has made a final computation. The lien automatically terminates when such deposit is made.

See: *Twp. v. Cook*, 160 Ind. 533; 67 N.E. 262.

*Ry. Co. v. Jackson*, 176 Ind. 487; 96 N.E. 466.

**Sec. 5793. Benefits to highways, streets, etc.:** Benefits to highways, streets, and alleys are assessed against the state if supervised by the state, or against the county if supervised by the county. Benefits to streets and alleys are assessed against the town in which the same are located. Assessments are paid out of the highway fund or street fund of the State, county, city or town as the case may be.

#### FINANCING—Bonds

**Sec. 5772. Commissioners—Bonds—Sale:** The Board of County Commissioners in its discretion may issue bonds to reimburse the ditch improvement fund for money advanced from such fund, including all sums owing on all ditches, in one bond issue. The commissioners may declare by resolution its determination to issue such bonds and the amount, rate, maturity, and denominations thereof. Bonds may be for 2, 5, 10, or 20 years, arranged to mature as assessments become available for their retirement, and must show on their face the ditch or ditches for which they are issued. The regulations as to sale of other county bonds apply. When sold, the proceeds become a part of the ditch improvement fund and must be used exclusively to reimburse such fund. The commissioners in their discretion may issue bonds at any time for the unpaid balance due for any ditch or ditches. Whether bonds are issued or not, the landowners must pay their assessments at the time and in the installments fixed by the surveyor in his report to the auditor. (L. 1933, ch. 264, sec. 36.)

**Sec. 5773. Security for bonds:** Bonds so issued by the commissioners are not an obligation of the county but are liens

against each parcel of real estate described as assessed for benefits in each of such ditches so bonded, to the full extent of the unpaid assessment thereon. As interest or principal becomes delinquent, the county must make payment out of the ditch fund and be subrogated to the rights of the bondholder in the delinquent property.

#### CONSTRUCTION

**Secs. 5754 and 5755. Contracts—Plans:** The surveyor gives 10 days' notice by publication calling for sealed bids for furnishing labor and material to construct the work. The work is let to the lowest bidder, and may be divided into separate contracts in the best judgment of the surveyor. **Sec. 5755:** The contractor must give bond to the state for the faithful performance of his work and is liable on his bond to the persons damaged by his failure to complete within the time limit. The surveyor may bring suit on a contractor's bond to recover any additional expense or cost due to failure of the contractor to complete, and any sum recovered is paid into the drainage fund. All contracts must have the approval of the court.

See: *Ritenour v. Shoemaker*, 195 Ind. 52, 144 N.E. 550.

*State v. Jacobs*, 194 Ind. 327; 142 N.E. 715.

*Prather v. Latshaw*, 188 Ind. 204, 122 N.E. 721.

**Sec. 5756. Repair of drains:** The owner or owners of 5 percent in acreage of the land affected by and assessed for any public drain have the right to file a petition alleging that the drain is out of repair and not sufficient to properly drain the land. They may suggest how the drain should be repaired as to tile or open ditch but may not contemplate a change greater than 10 percent of the original plans and specifications. The proceedings thereafter are the same as for the original establishment of the drain. No such petition shall be denied by reason of the filing of a remonstrance signed by the owners of two-thirds of the acreage of land named as such in the petition, unless the signers of such remonstrance shall likewise be the owners of the lands abutting on more than one-half of the total length of the ditch. Where the petition is for cleaning and the ditch has not been cleaned within 10 years, then the right to remonstrate is denied. Where within 1 year the ditch has been permanently improved by a landowner, such improvement shall be taken into consideration by the surveyor in estimating the cost; and such improvement will be allowed the landowner as a reduction on the benefits assessed against him. The cost and repairs are apportioned according to the benefits derived and the proceeding is the same as for a new ditch.

See: *Rockey v. Hershman*, 193 Ind. 168; 138 N.E. 339.

*Kitty v. Michael*, 190 Ind. 374; 130 N.E. 531.

*Huffman v. Newlee*, 189 Ind. 14; 121 N.E. 731.

**Sec. 5757. Branch drains:** Whenever a landowner, who has been assessed for the construction of a drain under any law of this state, finds that his lands are not adequately drained and such adequate drainage cannot be obtained without the construction of a branch or tributary drain to the main ditch, and his lands are so situated that it is necessary for such branch drain to cross the lands of not more than two other persons whose lands intervene, such landowner has the right to enter into an agreement with the intervening landowners to construct such drain. The landowners may call on the county surveyor to construct such drain, designate the size of the tile, and fix the amount that each interested landowner shall pay toward the construction, or the appropriate share that each shall construct and maintain. Any aggrieved landowner may appeal to the Board of County Commissioners, whose decision is final in the absence of appeal to the circuit or superior court within 10 days. After a ditch is constructed in accordance with the adjustment made, the surveyor

enters the same in his record as if it had been a regularly petitioned county ditch, and it is maintained as such. On failure or refusal of a landowner to construct the drain allotted to him, then on written notice by any interested landowner the surveyor will proceed to have such ditch constructed. The delinquent landowner is notified of the cost, which may be certified to the county auditor for collection as other delinquent taxes.

**Secs. 5760 to 5764. Constructing a drain into a lake:** When 10 or more persons, owning land within 440 yards of the high-water mark of a lake of glacial origin that has no flowing surface outlet, petition the superior or circuit court of the county in which the lake in whole or in part, is situated, for construction of a surface drain or drainage system into the lake, the court proceeds in all respects as provided for establishing other drains. *Sec. 5761:* Provision is made for drainage into lakes wholly or partly within the corporate limits of a town or city. *Sec. 5762:* The court, when necessary to establish a drain, may order it constructed across swamp land owned by the state. *Sec. 5763:* In the case of a joint state ditch, when the surveyor or surveyors find swamp land owned by the state will be beneficially or injuriously affected, they include in their report the amount of benefit or damage. Upon filing such report, the state has the same right to remonstrate as any landowner. Upon final hearing, the court determines the benefits or damages accruing to such land. *Sec. 5764:* The auditor of the state is authorized to pay out of the swamp land fund such benefits as may be so allowed, and if necessary he may sell so much of the swamp land as is necessary to pay the assessment. Upon appropriation by legislature, the benefits may be paid out of the state treasury.

**Sec. 5774: Subcontractors—Lien:** Subcontractors have a lien for labor and materials upon the fund raised for the payment for a ditch upon notice in writing to the surveyor within 60 days of furnishing such labor or material, stating the amount due and describing the work or material furnished. The surveyor withholds payment to the contractor in an amount sufficient to satisfy such lien until same is adjusted and paid. In case of disagreement the matter may be determined by the court, and payment by the surveyor of the amount so determined releases him from any liability thereon. Otherwise the surveyor is liable on his bond for the amount paid over to the contractor. (*Construction Co. v. Com'r*, 77 App. 305; 131 N.E. 536.)

**Art. 7, Sec. 5843. Tributary tile drains:** When a landowner has been assessed for the construction of any tile drains pursuant to any law, and it appears that such owner's land will not be adequately drained and such drainage cannot be obtained without constructing tributary drains to the existing drain, and when other lands intervene, such landowner is entitled to a right-of-way for such tributary tile drain having the most advantageous and economical route through such contiguous or intervening lands. It is lawful for him to enter the said lands for that purpose. Such proposed lateral must in all cases be a tile drain, and must be constructed with as little damage as possible to the intervening land; and any person constructing such drain is liable for damage to growing crops and other necessary damage caused to the owner of the land through which the tributary drain is built. The damages are assessed by three disinterested parties. (L. 1913, p. 948.)

**Secs. 5775 to 5777. Maintenance:** The supervision and maintenance of all public ditches or parts thereof is under the exclusive charge of the surveyor of the county in which located, whether established and constructed under the same or another county. It is the surveyor's duty to see that the said ditches

in his county are kept in proper repair and free from obstruction in conformity with the original specifications, and in such manner that they completely discharge the functions for which they were designed. *Sec. 5776:* It is the duty of the surveyor to see that the ditches are cleaned biennially, except that tile ditches are cleaned and repaired in accordance with section 5784. The ditches are divided into two classes, and each class is cleaned in alternate years. *Sec. 5777:* The surveyor determines the portion of the ditch which the party benefited shall repair and clean biennially. Where drainage ditches have a bottom greater than six feet in width the surveyor fixes the number of feet from which each affected property owner shall annually remove weeds, willows, and obstructions, unless the owners of 20 percent of the land shall petition that the surveyor allot such ditch for biennial cleaning as for the ditches of less width of bottom.

See: *Quick v. Parrott*, 167 Ind. 31; 78 N.E. 232.  
*Ballard v. Bagwell*, 83 App. 331; 147 N.E. 311.

**Secs. 5778 and 5779:** The surveyor reduces the allotment to writing and records it in the cleanout record. Allotments are posted for 10 days, with notice of time and place where the surveyor will hear objections. Service of notice is by mail. *Sec. 5779:* After the hearing, the surveyor confirms or changes the allotment as justice may require and enters his order, which is final in the absence of appeal within 10 days to the circuit or superior court.

See: *Stockton v. Osborne*, 181 Ind. 440; 104 N.E. 756.  
*O'Toole v. Tudor*, 175 Ind. 227; 93 N.E. 276.

**Sec. 5780:** The surveyor fixes the time for completing each allotment of cleaning, beginning with the allotment nearest the mouth of the ditch, records the same in a book kept for that purpose, and notifies the parties affected. Thereafter the owners must clean the ditch biennially at the same time of year, and further notice is not necessary unless ownership of the land is changed.

See: *Beery v. Driner*, 167 Ind. 127; 76 N.E. 967.  
*Zimmerman v. Savage*, 145 Ind. 124.

**Sec. 5780. Streams—Abutting landowners:** The owners of 20 percent of the land abutting on any stream that is not navigable and does not exceed an average width of 90 feet between banks, whose lands are subject to overflow caused by obstructions in such stream, may petition the surveyor to allot a portion of said stream to each abutting landowner; and on order of the surveyor each such owner shall keep the allotted portion clean and free from obstruction. The procedure is the same as that under section 5775 *et seq.*

**Sec. 5782 and 5783. Tiling—Exemption:** When an owner has converted a portion of an open ditch allotted to him into a blind ditch by putting in tile of sufficient dimensions to serve the purpose of drainage, such tile being continuous from the head or beginning of such ditch, thus obviating the necessity of cleaning that part of the ditch so tiled, such owner becomes exempt from allotment in that particular ditch. Such exemption applies only to that particular drain, and that owner continues responsible for his allotted share of cleaning the ditch into which such tile drain has outlet. Persons converting their allotment into blind tile ditch are responsible for the adequacy thereof and for obstructions caused by defects therein, but the cost of removing ordinary accumulations in such tile drain are paid out of the general ditch improvement fund. *Sec. 5783:* A landowner allowing an allotment of ditch to become obstructed through negligence must repair and clean the same at his own expense. Upon failure so to do, after 15 days' notice from the surveyor by registered mail, the surveyor will have the repairs

made, and collect from said owner the cost thereof including his own per diem and expenses. If the owner fails to pay within 30 days, the cost is paid from the ditch improvement fund and then is placed upon the books of the auditor with a 10 percent penalty added, and becomes collectible as other taxes are collected. In townships where live-stock is permitted to run at large upon the highway, it is the duty of the highway superintendent to repair damages to drains caused by such stock.

**Secs. 5784, 5785, and 5792. Public tile drains:** Public tile drains are repaired under direction of the surveyor and are classified for biennial repair. The surveyor may make repairs not exceeding \$50 in cost without advertising, and pay for same out of the general ditch improvement fund. When such drain is intercounty, the surveyor of the county having the larger portion of the drain performs this duty and each county bears its proportionate share of the expense. Where the cost will exceed \$50, the surveyor advertises for bids and lets contract for the work in the same manner as provided for other contracts. The surveyor pays the cost out of the ditch improvement fund and assesses the same proportionately on the lands that are benefited and in proportion to the original assessment for construction. Such assessments are collected in the same manner as other assessments, and must be paid at the first taxpaying time thereafter. **Sec. 5785:** This section provides the manner in which repairs and cleaning shall be done. **Sec. 5792:** This section provides for repairs to continuous tile drains of adjoining landowners where one landowner refuses or neglects to repair, the work to be done by the surveyor.

**Secs. 5787 and 5788. Inspection:** Surveyors may not accept allotments as complete until after inspection, and the surveyor is not required to make any inspection until the amount of work completed will require at least one-half day to complete such inspection. **Sec. 5788:** Provides penalties for failure of the surveyor to perform his duties.

**Sec. 5789. Unfair allotments:** If, after 2 years from the time any allotment is made, a petition is filed by one or more affected parties asking a new allotment, the county surveyor examines the ditch and, if he finds the allotment unfair, proceeds to reapportion the ditch as if no allotment had theretofore been made. If he finds no cause for complaint, costs are taxed against the petitioners and collected as other taxes are collected.

**Secs. 5790 and 5791. County drainage map:** The surveyor is required to make a drainage map of his county, except that for a county having less than 100 miles of ditch such map need not be made unless required by the county council. The surveyor must, however, provide the data for all new or all reconstructed works. **Sec. 5791:** All cleanout work must be let by contract and not by yardage.

**Sec. 5795. Boundary line drains:** Where drains mark boundaries between lands of adjoining owners, the right-of-way for cleanouts must alternate on the right and left of such ditch in the biennial cleanout.

**Art. 5, Sec. 5825. Subdivisions:** This article provides for allocating benefits to lands that have been subdivided subsequent to the first assessment for ditch purposes.

## IOWA

(Iowa Code of 1935, Chapters 353 to 361)

### ORGANIZATION—Petition

**Ch. 353, secs. 7421, 7422, and 7425. Jurisdiction to establish:** The board of supervisors of any county at any regular, special, or adjourned meeting may establish drainage districts and locate levees and cause them to be constructed as herein

provided. They may straighten, widen, or deepen any natural water course whenever the same shall be of public utility or conducive to the public health, convenience, or welfare. **Sec. 7422:** The drainage of surface water from agricultural lands or the protection of the same from overflow shall be presumed to be a public benefit and conducive to the public welfare, health, and convenience. **Sec. 7425:** So far as practicable the works must be located along the general course of natural drainage, but where it is more economical or practicable the works need not follow the natural course of drainage but may shorten or change the courses of natural streams.

See: *Mitchell Co. v. Odden*, 219-793; 259 N. W. 774.  
*Marsden v. Kirpatrick*, 214-1388; 243 N. W. 145.

**Ch. 353, secs. 7427 to 7431. Petitioners:** The owners of at least 25 percent of the land described in the petition may file a petition for the establishment of a levee or drainage district with the county auditor. In the case of a sub-district, one or more owners may petition for same. **Sec. 7428:** Where the proposed drainage district involves only the straightening of a water course, the board will not consider the petition unless signed by at least 35 percent of the owners of the acreage affected or assessed. This does not affect the draining of swamps not in the congressional 40-acre tracts abutting upon such water course. **Sec. 7429:** The petition must set forth: (1) a description of the land by congressional divisions or otherwise; (2) that the lands are subject to overflow or are too wet for cultivation; (3) that public utility, health, convenience, or welfare will be promoted by the proposed works; and (4) the termini, route, and lateral branches of the proposed improvement. **Sec. 7430:** Bond approved by the auditor must accompany the petition, conditioned to pay the costs if the district is not established. **Sec. 7431:** The board may not incur expense in excess of the amount of the bond in preliminary work until an additional bond approved by the auditor has been filed.

**Ch. 353, secs. 7432 and 7438. Procedure of the board:** The board at its first session appoints a competent and disinterested engineer, who gives bond for the faithful performance of his duties. He examines the land described and any other that would be benefited by the proposed work, locates the works and makes a survey, and reports on the improvement necessary to carry out the petition and which will be of benefit to the public convenience, health, and welfare. **Sec. 7438:** The engineer makes full written report to the auditor showing: (1) the route and termini of all ditches and levees and the location and character of all other improvements; (2) detailed profile and map showing how the works will affect each 40-acre tract, and the name of the owner thereof; (3) the boundaries of the district, the land that will be benefited or affected, and the location and size of ponds and depressions; (4) a plan for the most practical method of securing equipment and materials on the ground; and (5) the probable cost of the improvements, and such other recommendations as he deems material.

**Ch. 353, secs. 7439 and 7440. Hearing:** The board examines the report at its next meeting after the filing thereof, and if not satisfied with the plan presented may employ the same or another engineer to make an additional or new plan. The board may amend the plan at any time before final adoption, but such final adoption is conclusive in the absence of appeal. **Sec. 7440:** When the plan has been approved by the board, it is recorded as a tentative plan for the improvement. The board then enters an order for a hearing on the petition and engineer's report so approved, to be held in not less than 40 days, and directs the auditor to give notice thereof to each owner of land affected and to each lien holder or encumbrancer as well as to the actual

occupants of the lands affected. Objections must be in writing, and be filed with the auditor before the date of the hearing. (*Whisenand v. Van Clark*, 227-800; 288 N.W. 915.)

**Ch. 353, sec. 7447. Hearing on petition:** At the hearing the board determines the sufficiency of the petition as to form and substance, as well as all objections filed, and the board may view the lands included within the proposed district. Finding that there is no material benefit to the land or no public benefit, the board must dismiss the petition. Finding that the petition complies with the law in form and substance, that the improvement would be conducive to the public welfare, that the cost is not excessive, and that no claim has been filed for damages, the board will locate and establish the district in accordance with the engineer's report and the tentative plan. The board may refuse to establish the district and have a further survey and new plan made, and fix the date of a further hearing of which all parties must take notice. (*Christensen v. Agan*, 209-1315; 230 N.W. 800.)

**Ch. 353, secs. 7449 to 7453. Appraisers—Damages:** When the board has determined that the district should be established and there are claims for damages filed, it will adjourn to await the report of 3 appraisers whom the auditor shall appoint to assess damages. One appraiser shall be an engineer and 2 shall be freeholders of the county, who are not interested nor related to any interested party to the proceedings. **Sec. 7450:** The appraisers view the land and fix the damages to which each claimant is entitled, and place separate valuations upon rights-of-way or land to be used for settling basins, as shown by the plat. They file their report with the county auditor. **Sec. 7451:** The board examines the appraisers' report and may hold a hearing thereon and they may increase or diminish the amount of damages awarded. **Sec. 7452:** At such hearing the board considers the cost as reported by the engineer and the damages awarded all claimants, and if the cost of construction and damages awarded creates a greater burden than should justly be borne by the land benefited, they will dismiss the petition at the cost of the petitioner. Finding otherwise, they finally and permanently locate and establish the district. **Sec. 7453:** If at or before the final hearing there is a remonstrance filed with the county auditor, signed by a majority of the landowners in the district who own in the aggregate 70 percent or more of the land assessed, the board will dismiss the proceedings after the costs have been paid by one or both parties as the board may determine.

**Ch. 354, secs. 7599 to 7611. Intercounty districts:** When a proposed drainage district embraces land in more than one county, a duplicate of the petition is filed in each county with the auditor. Duplicate bond is filed in an amount approved by the auditor of the county having the largest acreage, which bond runs in favor of the several counties in which it is filed. **Sec. 7600:** The county board of each county appoints one commissioner, and they meet and appoint a competent engineer who also acts as a commissioner. **Sec. 7601:** The board of commissioners, including the engineer, file a detailed report of the required drainage works and a duplicate in the office of the auditor of each county interested. **Sec. 7602:** The engineer also files his plat, profiles, and papers in each county. **Sec. 7603:** If the report is favorable, notice is given by the auditor of each county to the landowners in his county and also to the actual occupants of the land and leaseholders and encumbrancers. **Secs. 7604 to 7611:** Notice is similar in all respects to that for a district wholly in one county. Claimants for damages file their claims with the auditor of the county in which their lands are situated. At the hearing the county boards of the several counties meet in joint session and organize and elect a chairman and

secretary. They sit jointly in considering the petition in the same manner as if the district were in one county. The joint board may reject the petition or tentatively adopt the plan of the engineer. If they approve the plan, the board of each county selects an appraiser and the several boards by joint action employ an engineer; and the appraisers and engineer constitute the appraisers of damages and value of rights-of-way. The procedure is then the same as if the district were in a single county. The joint board may meet in any of the counties. When county boards are of unequal membership, the vote is equalized and the smallest board casts one vote for each member and the larger boards a fractional part of a vote resulting from dividing the number of members in the smaller county by the number in the larger.

**Ch. 354, secs. 7612 to 7622. Joint meetings:** If the boards acting jointly establish a district, they appoint one commissioner from each county and a competent engineer, who within 20 days inspect and classify the lands, fixing the percentage of benefits and the apportionment of costs. This procedure is in all respects similar to that for a single county district. **Sec. 7613 to 7621:** After the amount to be assessed and levied has been determined, the several boards, acting separately and within their own counties, levy and collect the taxes in that county. They issue warrants, improvement certificates, or bonds within their own county, with the same rights of landowners to pay in cash without interest as if the district were in one county only. The joint board elects a supervising engineer to construct the work, make monthly estimates of payments for work done, and make final settlement substantially as if the district were in one county. **Sec. 7622:** Upon failure of any board to act or if the boards disagree, the petitioners may transfer the proceedings to the district court of any of the counties involved by serving notice on the auditor within 10 days after the expiration of the 20 days allowed for inspection and classification under section 7612, or within 10 days after failure to agree.

#### ORGANIZATION—Powers

**Ch. 353, secs. 7514, 7522, 7523, and 7527. Appeals in intercounty districts:** When districts extend into two counties, appeal from the final order of the joint board of supervisors or the order of the trustees, may be taken to the District Court of any county into which the district extends. **Sec. 7522:** Appeals from orders fixing compensation for lands taken for rights-of-way or the amount of damages awarded shall be tried as ordinary proceedings. All other appeals are triable in equity, and the court may order the consolidation of two or more equity cases. **Sec. 7523:** On appeal it is not competent to show that any lands in the district are not benefited to some degree. **Sec. 7527:** The right of appeal is exclusive of all other remedies.

**Ch. 353, secs. 7549 to 7551. Annexation of additional lands:** When, after the establishment of a district, the board becomes convinced that additional lands are benefited and should have been included, it will adopt a resolution of necessity for annexation and appoint an engineer to make survey and report as in the original proceedings. **Sec. 7550:** If the engineer's report is favorable, the board proceeds as in the original undertaking as to notice, hearing, assessment of benefits and damages, etc. **Sec. 7551:** Lands may be annexed upon petition of their owners.

**Ch. 354-a-1, secs. 7626-a-1 to a-5. Converting intracounty districts into intercounty districts:** Whenever one or more districts in one county outlet into a common carrying outlet for one or more districts in another county, the boards of supervisors of such counties, acting jointly by resolution and on

petition of the trustees of any one of such districts or of one or more landowners therein, accompanied by bond, must initiate proceedings for the establishment of an intercounty district by appointing commissioners as provided in section 7600 and proceeding as provided in chapter 354, and all provisions of that chapter are applicable. *Sec. 7626-a-2:* Neither any land nor any previously organized district may be included or assessed unless the land or the district shall receive special benefit from the improvements in the proposed intercounty district. *Sec. 7626-a-3:* Any landowner affected may appeal to the district court of the county where his land is situated. *Sec. 7626-a-4:* The proceeding on appeal is the same as provided in chapter 353. *Sec. 7626-a-5:* The trustees or boards of supervisors having charge of any previously organized district which is to be included in whole or in part in the proposed intercounty district have the same right of appeal under the same procedure.

**Ch. 358, sec. 7674 et seq. Management by trustees:** Any district in which the original construction has been completed and paid for by bond issue or otherwise may be placed under the control of a board of three trustees to be elected by the landowners assessed for benefits. The petition is filed with the auditor and is signed by a majority of persons, including corporations, owning lands assessed for benefits. The board canvasses the petition, and if it is in proper form orders an election thereon in not less than 40 nor more than 60 days to elect three trustees for the district. If it be an inter-county district, a duplicate petition is filed with the auditor of each county. The boards of supervisors of the several counties meet in joint session and canvass the petition. If in due form, the boards by joint action call an election and appoint judges and clerks for the same. When the petition is for trustees to manage a district of 3,000 acres or more, the board or boards divide the district into three election districts having substantially equal voting power. One trustee is then elected from each election district, but all of the qualified voters for the entire district are entitled to vote for each trustee. Each trustee must be an adult citizen of the United States, a resident of the county, and the owner of land in the election district for which he is elected. Notice is by publication in all of the counties. The right to vote is determined by a certificate from the auditor of the classification and assessment of each tract of land in the district in the name of the present owner. The latest owner is entitled to vote upon proof of title. Each adult owner, without regard to sex, and each railroad is entitled to one vote only. When the petition filed with the county board is signed by a majority of the landowners owning lands assessed for benefits and asks for the right to vote in proportion to the assessment of benefits; and filed with the board, then each landowner assessed is entitled to one vote for each \$10 or fraction thereof of his original assessment. The voter must write his name on the ballot. The vote must be cast in person. *Secs. 7686 to 7698* provide machinery for conducting the election in detail.

**Ch. 385, sec. 7700: Trustees' duties:** The trustees have control and management of the district, and for that district have all of the power conferred on the board of supervisors, including the issuance of improvement certificates and bonds. Any reclassification or important change in the district is submitted to an election and the details of the manner of conducting the same are set out in the statute. Upon petition of a majority of the landowners assessed, including corporations, owning more than one-half of the acreage, the district may change back from the trustee form of management to the control of the board of supervisors after due notice and hearing.

## FINANCING—Assessments

**Ch. 353, sec. 7464. Classification—Assessment:** When the district is established and the contracts for construction are let, the board appoints three commissioners to assess benefits and to classify the lands affected. One must be a competent civil engineer and two must be freeholders of the county not interested in the district nor related to any interested party.

**Ch. 353, sec. 7465. Scale of benefits:** The commissioners fix the time within which the classification and assessment must be made. The commissioners within 20 days begin to classify all the land within the district, including any changes, extensions, or enlargements, in tracts of 40 acres or less according to legal subdivision, in a graduated scale according to the benefits to be received. When this is completed the commissioners make a full and detailed report thereof and file it with the auditor. Each tract is numbered, the lands receiving greatest benefit being marked 100 and those benefited in less degree marked in proportion. The commissioners also make an equitable apportionment of the costs and damages computed on the basis of the percentages fixed.

**Ch. 353, sec. 7467. Rules of classification:** In their report the appraisers specify each tract by its proper description and the ownership thereof as appears on the auditor's transfer books. They will not take into consideration any benefit to be derived from other works than those of the districts.

**Ch. 353, secs. 7468 to 7470:** The commissioners must fix the benefits derived from lateral drains in the same manner as for subdistricts, and report separately (1) the percentage of benefit to each 40 acres derived from the main ditch and works and (2) the percentage of benefit on account of the laterals. *Sec. 7469:* Railroad property may be assessed by the commissioners, the proceedings being the same as for individual property. *Sec. 7470:* Assessment may be made against public roads in the district.

**Ch. 353, sec. 7471. Report of commissioners:** The commissioners file in the auditor's office a verified report in tabulated form as to each 40-acre tract, setting forth: (1) name of the owner as shown by the transfer books; (2) the amount of benefit to each railroad and highway, the percentage of benefit to each other tract, and the apportionment and amount of assessments of costs and expenses against each tract (a) for main ditch and settling-basin, (b) for laterals, (c) for levees and pumps; and (3) the aggregate amount of all assessments.

**Ch. 353, secs. 7472 to 7475. Hearing—Notice:** The county board fixes the time for hearing on the report of the commissioners and the auditor serves notice to each landowner and each actual occupant of the lands, stating the amount of cost and construction expense apportioned to each 40 acres or less. Any objections must be filed in writing before the date set for the hearing. *Sec. 7473:* At the hearing the board determines all objections filed to the said report and may affirm, increase, or diminish the percentage of benefits or apportionment of costs and benefits as may be just and equitable. *Sec. 7474:* The board may hear evidence both for and against said report, but it is not competent to show that any of the land will not be benefited in some degree. *Sec. 7475:* The board gives notice to the owners of any tract on which it is proposed to increase the assessment, and requires him to appear between 10 and 20 days after service and show cause why the assessment should not be increased.

**Ch. 353, secs. 7476 and 7477. Classification as basis of future assessments:** The classification when finally adopted remains the basis of all future assessments unless revised by the board in the manner provided for reclassification, except that lands lost by erosion or taken for rights-or-way will not

thereafter be assessed. Any resulting deficiency is spread over the remainder of the land in the same ratio as the original classification. *Sec. 7477*: When the board has finally determined the matter of assessment of benefits and the apportionment, it levies such assessment as a tax which bears interest from that date.

**Ch. 353, secs. 7478 to 7480. Lien:** Such taxes are a lien on all premises against which they are assessed, as fully as state and county taxes. *Sec. 7479*: If the first assessment for the original cost of any improvement is insufficient, the board makes an additional assessment and levies it in the same ratio as the first assessment. *Sec. 7480*: All drainage or levee assessments are set out in the drainage record of each district and also on the tax records of each county.

**Ch. 353, secs. 7481 to 7483. Funds:** The taxes when collected are kept in a separate fund known as the drainage and levee fund, and are paid out only on order of the board for the purposes of the district. *Sec. 7482*: Drainage and levee taxes become due at the same time as other taxes and are collected in the same manner. *Sec. 7483*: All assessments are levied at one time and each interested party has the right within 20 days to pay such assessments in full without interest and before any improvement certificates or bonds have been issued against such assessments.

**Ch. 353, secs. 7484, 7486 and 7488. Installments:** Any owner who has been assessed more than \$20 may within 30 days file an agreement or endorse same on any improvement certificate to the effect that in consideration of paying the assessment in installments, he will not make any objection to the legality of his assessment for benefits or the levy of taxes. He may then pay one-third of his assessment at the time of filing the agreement, one-third in 20 days after the improvement is certified by the engineer to be one-half completed, and the remaining one-third within 20 days after the work is completed and accepted. Installments paid as thus agreed do not bear interest. Otherwise interest is collected in the same manner as taxes and with the same penalty. Landowners may pay such assessments in not less than 10 nor more than 20 installments with interest as fixed by the board, one installment to be paid at the March tax-paying period each year. The county treasurer may require payment of only a sufficient amount of the first assessment to meet bonds and interest maturing prior to the regular time for payment of the second installment; but the remainder must be paid with such second installment, without penalty. *Sec. 7486*: In case of appeal from assessments, the option to pay in installments continues provided the party appealing within 20 days after final determination files with the auditor in writing his election to pay in installments and pays all installments matured prior to that time with interest. *Sec. 7488*: When the cost of construction is less than the estimated cost, leaving a surplus fund, and when one-half or more of all assessments have been paid in, the board is authorized to apply not over 50 percent of the surplus upon the assessments due the following year. Proper refund may be made to property owners who have paid their assessments in full. There is the same general provision as to the construction of laterals. (*Sec. 7489*.)

**Ch. 353, secs. 7490 and 7491. Subdistricts:** Any party desiring further drainage across intervening lands to the main ditch, and being unable to agree with the intervening owners on terms and conditions, may file a petition for a subdistrict and the proceeding is the same as for the establishment of the original district. *Sec. 7491*: Such subdistricts are to be presumed to be conducive to the public welfare, and when established become a part of the drainage district as if a part of the original district.

**Ch. 353, secs. 7492 and 7495 to 7495-e-1. Reclassification:** After a district is established and the improvements constructed, if the commissioners find that the original classification is not equitable as a basis for enlargement or extension they make a reclassification in the same manner as the original classification. *Sec. 7495 to 7495-e-1*: Generally, bonds and warrants of the district issued against the construction and maintenance funds may be accepted at par upon assessments levied to create the fund against which such bonds or warrants were drawn or issued.

**Ch. 353, secs. 7499 to 7502. Improvement certificates:** The board may, by resolution, provide for improvement certificates to be issued in full or partial payment for construction of any part of the improvement, which certificates may be made payable to the bearer or to named contractors. *Sec. 7500*: Each certificate states the amount of one or more drainage assessments made against certain property, and designates the owner thereof, who is liable for the payment of such assessment. Improvement certificates are negotiable, and transfer to the bearer all right to the taxes on every such assessment or part thereof described in the certificate; and the bearer may collect in any manner provided by law as the same may mature. *Sec. 7501*: Such certificates bear interest at 6 percent and must be paid to the county treasurer, who credits same on the certificate. *Sec. 7502*: Any person has the right to pay at any time the amount of his assessment represented by any outstanding improvement certificate, with interest. No certificate may be issued nor negotiated for the use of the drainage district for less than par with accrued interest to date of transfer.

#### FINANCING—Bonds

**Ch. 353, secs. 7503 to 7508. Drainage bonds:** When a drainage district has been established, or the making of any improvement determined upon, if the board finds that the cost will create assessments greater than should be levied in a single year, they may, instead of issuing improvement certificates (*sec. 7499-7502*), fix the amount that should be levied and collected each year and issue drainage bonds of the county, covering all assessments exclusive of assessments of \$20 and less. *Sec. 7504*: The bonds are numbered, have the words "drainage bonds" printed on the face, and that the bond is in pursuance of a resolution of the board of supervisors and is to be paid only from taxes levied and collected on the lands assessed for benefits within the district for which the bond is issued. *Sec. 7505*: The aggregate amount of bonds may not exceed the benefits assessed; they may not bear maturity greater than 20 years nor interest more than 5 percent. *Sec. 7506*: The board fixes maturities and interest, and determines the amount of assessments on highways covered by such bond issue. Taxes against highways are payable at the same time and in the same manner as those against individuals. *Secs. 7507 and 7508*: Bonds may be applied at par and accrued interest to payment for work as it progresses, or may be sold through the county treasurer at not less than par with accrued interest. Any premium realized is credited to the drainage fund of the district.

**Ch. 353, secs. 7509, 7509-a-1, and 7512. Deficiency levy:** If any levy is not sufficient to meet the principal and interest of the outstanding bonds, additional assessments may be made on the same classification as the previous assessment. Additional bond issues may be made to complete full payment for improvements, by the same proceedings as the previous issue. *Sec. 7509-a-1*: Districts may fund or refund any issue of bonds in the same manner prescribed in section 7663. All assessments of \$20 or less must be paid in cash. *Sec. 7512*: The board fixes the time within which assessments of more than \$20 may be paid in

cash. Thereafter payment may be made only in the manner fixed and prescribed by the board. Appeal is to the district court of the county in which the proceeding was had.

**Ch. 358-b-1, sec. 7714-b-1. Refunding bonds:** The board of supervisors may extend the time of the payment of any outstanding drainage bonds issued in anticipation of the collection of drainage assessments levied upon property within a drainage district, and may extend the time of payment of any unpaid assessment or installment thereof, and may issue drainage refunding bonds in the manner hereinafter provided.

**Ch. 358-b-1, sec. 7714-b-2. Petition:** Before the payment of any installment may be extended and before the board proceeds to issue refunding bonds, the owners of not less than 15 percent of the land within the district as shown by the transfer books of the auditor, upon which drainage assessments are unpaid, must file a petition with the board requesting the extension of time for payment, setting forth the date the assessments were levied, the amount paid, and requesting the issuance of refunding bonds.

**Ch. 358-b-1, sec. 7714-b-4. Hearing:** The board determines the sufficiency of the petition and gives 10 days notice of a hearing thereon, in the same manner as required in relation to the issuance of bonds under chapter 23.

**Ch. 358-b-1, sec. 7714-b-5. Notice:** The notice is directed to each landowner whose assessments are unpaid, naming him, and to the actual occupant of the land, stating the amount of the assessment due on each 40 acres or less. It states that all of the unpaid assessments proposed to be extended may be paid on or before the hearing date, and thereafter they may be paid only in the manner fixed by the board in the resolution authorizing the issuance of refunding bonds.

**Ch. 358-b-1, sec. 7714-b-6. Extending payment of assessments:** If no appeal is taken (as provided in chapter 23), the board may extend the time of payment of the assessments as requested in the petition and may issue drainage refunding bonds. In case of appeal the board may issue such bonds in accordance with the decision of the state comptroller provided such assessments have not been entered on the delinquent tax lists and have not been previously extended.

**Ch. 358-b-1, secs. 7714-b-7 to b-9. Appeal:** Any aggrieved person may appeal to the District Court of the county in which such action was taken. **Sec. 7714-b-8:** Appeals must be taken within 10 days in the manner provided in section 7515. **Sec. 7714-b-9:** The extension of the payments may not be for more than 40 years from the time the assessments become due. The board fixes the amount to be levied each year and may issue refunding bonds covering all such assessments.

**Ch. 358-b-1, sec. 7714-b-10. Bonds—Form:** The bonds must be in substantially the form of drainage bonds and may not run for more than 40 years.

**Ch. 358-b-1, secs. 7714-b-12 to b-16, 7714-f-1, and 7714-b-17. Resolution of Board:** Refunding bonds must be issued in conformity with the resolution of the board of supervisors. The resolution must state the amount of the bonds and the purpose, as well as the amount of the assessments and due dates and rates of interest, etc. **Sec. 7714-b-13:** The resolution must be spread on the minutes of the board and constitutes a contract between the district and the holders of the bonds, and is full authority for the revision of the tax roll to conform thereto. **Sec. 7714-b-14:** The bonds must be delivered to the county treasurer to be registered by him. **Sec. 7714-b-15:** The treasurer makes monthly report under oath of the sale or exchange of such bonds. **Sec. 7714-b-16:** He sells the bonds for cash on the best available terms, or exchanges them on the best available terms for the legal indebtedness of the district evidenced

by outstanding bonds authorized to be refunded by the resolution. The proceeds of the bonds must be used exclusively for the purposes for which the bonds were issued. They may not be sold or exchanged for less than face value plus accrued interest. **Sec. 7714-f-1:** When lands have been sold at a tax sale for failing to pay drainage assessments and before the tax deed has been issued, on application of the owner the board may redeem the lands out of the proceeds of the refunding bonds and add the cost to the unpaid assessments against such land, payment to be extended in the manner and as a part of the remaining unpaid assessments thereon. **Sec. 7714-b-17:** Extension of the time of payment of any assessment in no way effects the lien thereof as originally levied nor the priority thereof.

**Ch. 358-b-1, secs. 7714-b-18 to b-22:** If the assessment for any reason is insufficient to meet payment of the principal and interest on refunding bonds, additional assessments must be made to meet such payments. **Sec. 7714-b-19:** All special assessments applicable to payment of the indebtedness refunded must be applied to the payment of the refunding bonds and interest. **Sec. 7714-b-20:** The special assessments must be held separate and apart in trust for the repayment of refunding bonds. **Sec. 7714-b-21:** The issuance of refunding bonds does not in any way impair the lien of unpaid drainage assessments in the district, the time of payment of which is not extended, nor the priority of such lien, nor the power of the officers to levy, collect, and apply the proceeds to the payment of the outstanding drainage bonds. **Sec. 7714-b-22:** No action may be brought questioning the validity of any refunding bond after three months from the date when they were ordered to be issued.

**Ch. 358-b-1, sec. 7714-g-1-2-3:** These sections authorize refinancing and loans from R.F.C. or other agencies.

**Ch. 358-f-1, sec. 7714-f-2. Defaulted drainage bonds:** When bonds issued in anticipation of assessments on real estate are in default as to principal or interest, and funds are not available for payment within 30 days, 10 land owners of the district or the owners of not less than 10 percent in amount of the outstanding bonds may make application to the district court of the county asking an extension of time for payment and a reamortization of assessments on real estate within the district which was in default, and for a new schedule of payment of bonds and other indebtedness and the issuance of new bonds as provided in this chapter.

**Ch. 358-f-1, secs. 7714-f-3 to f-5. Petition:** Ten owners of real estate in the district or the owners of 10 percent in amount of the outstanding bonds may file a petition setting forth names and addresses of the petitioners and that said bonds are in default and that said default cannot be removed by payments under the existing schedule, and asking a determination by the court. **Sec. 7714-f-4:** The court orders a hearing to be had at least four weeks subsequently. **Sec. 7714-f-5:** The supervisors must be served with notice in the same manner as in civil actions; and the owners of each tract of land, each lien-holder or encumbrancer, all persons holding claims against the district as shown by the county records, bondholders, and actual occupants of the land (without naming them) must be served by publication for two weeks in the county, such publication to be completed not less than two weeks prior to the hearing on the petition.

**Ch. 358-f-1, sec. 7714-f-6. Jurisdiction:** The District Court has power and jurisdiction to adjudicate all the rights of the interested parties, taking into consideration the schedule of classification of the land, the assessment on the real estate, the gross amount required to retire the bonds, and the current financial condition of the taxpayers.

**Ch. 358-f-1, sec. 7714-f-7. Conservator:** If the court finds the petition to be in proper form and that the parties to the proceedings have had proper notice and that the district is in default in the payment of installment assessments or interest, the court enters an order appointing the county auditor of the county in which the greater portion of the lands of the district are situated as receiver for the district, he being thereafter termed "conservator" and being under the court's direction.

**Ch. 358-f-1, sec. 7714-f-8. Report:** Within 30 days the conservator files with the clerk of the District Court a full report of the bonded indebtedness of the district, the interest thereon, and all other indebtedness of the district. He also files a schedule of all lands sold at tax sales and the amount of the drainage assessment against them, and a list of all real estate showing the unpaid assessments thereon. He furnishes a schedule under which the bonded indebtedness of the district may be reamortized and a similar schedule as to all other indebtedness. The court sets the date for hearing on this report between 10 and 15 days following.

**Ch. 358-f-1, sec. 7714-f-9. Adjudication:** Under this section it is the duty of the court to strike a balance sheet for the district, and if it is shown that the assessments as levied are insufficient to pay the indebtedness of the district the court may order the board to levy a new assessment to pay the same. It is provided, however, that no assessment may be levied against a landowner not delinquent; that the reassessment shall be in direct proportion to the amount of unpaid assessments on the particular piece of land; that no levy shall be made where the owner has previously paid all of his assessments. The assessment must be levied in the same proportion as the original assessment. The order is filed with the county auditor, recorded in the drainage record, and spread upon the tax records of the county. The reassessment becomes due at the same time and is collected in the same manner as ordinary taxes and with the same penalties. The court may apportion the cost between the district and the creditors.

**Ch. 358-f-1, sec. 7714-f-10. Refunding bonds:** The court will direct the board of supervisors to issue bonds in lieu of the outstanding bonds, and additional bonds for accrued interest and other indebtedness of the district. The bonds are payable as directed in the order of the court and known as "conservator's drainage district bonds." The rate of interest may not be less than  $\frac{3}{8}$  percent and the bonds are to be paid only from taxes collected on land within the district. The conservator may sell the bonds at not less than par and accrued interest, or he may exchange the bonds with the creditors of the district in amounts as fixed and determined by the court, cancelling all evidences of indebtedness received by him in lieu of conservator's bonds.

**Ch. 358-f-1, secs. 7714-f-11 to f-13. Lien:** When conservator's drainage bonds are issued, nothing in the statute is to be construed as impairing the lien of all unpaid assessments upon the real estate in the district, nor the priority of such lien, nor the right and power of any officer authorized by law to collect assessments and apply the proceeds to the payment of outstanding drainage bonds issued in anticipation of the collection thereof. *Sec. 7714-f-12:* Where a district in default is managed by trustees, they must be made parties defendant. *Sec. 7714-f-13:* No action questioning the validity of any conservator's bond may be brought after three months from the date of the order.

#### CONSTRUCTION

**Ch. 353, sec. 7455. Permanent survey:** When the improvement is finally established, the board has a permanent survey made showing the levels and elevations of each 40-acre tract and

files a report and plat of the same with the county auditor. The damages awarded to claimants are paid in the first instance by the party benefited, or are secured by bond approved by the auditor. After the payment or securing of such damages, the board divides the improvement into suitable sections, numbering them consecutively from the outlet to the beginning and prescribing a time within which the improvement shall be completed. The board appoints a competent engineer to have charge of construction and advertises for bids, stating the amount of work to be done in each section and the date for completion. All bids must be accompanied by certified check for 10 percent of the bid, but not to exceed \$10,000. The successful bidder gives bond for not less than 75 percent of the contract price.

**Ch. 353, sec. 7531. Monthly estimate:** The engineer furnishes monthly estimates of the work done on each section to the contractor and to the auditor. The auditor draws warrants in favor of the contractor, or an order on the county treasurer for improvement certificates or drainage bonds as the case may be, for 80 percent of the estimate of work done. Upon completion of the work, the engineer certifies same to the board, which proceeds after notice by publication to hold a hearing thereon where interested parties may file objections to the report. If the board finds the work to be completed and accepts the same, it directs the auditor to draw warrants for the full amount or deliver to the contractor improvement certificates or bonds, as the case may be.

**Ch. 353, secs. 7537 and 7538** provide for construction on highway rights-of-way when necessary, building bridges, construction across railroads, and passage of equipment across highways and railroads and other public utilities.

**Ch. 353, sec. 7556. Repairs:** It is the duty of the board or of the trustees to keep the works in repair. They may enlarge, reopen, deepen, or widen ditches, or convert them into closed drains when to the best interests of the public. If the cost exceeds 10 percent of the original cost of the improvement, the board orders a new apportionment and assessment against the land in the same manner as for original construction. Separate assessments are made for the main ditch and for laterals, open or tile. The main ditch cost is assessed to the whole district and the laterals or tile to the land benefited specifically.

#### DISSOLUTION

**Ch. 353, sec. 7454. Dissolution:** When, after two years from the establishment of a district or the final determination of an appeal, no contract shall have been let nor work done nor bonds issued, a petition signed by a majority of the landowners who in the aggregate own 70 percent of the land affected may be filed, stating these facts and that provision has been made for all costs and expenses. If the board finds the facts as stated, it will dissolve and vacate the district by resolution entered on its records and recorded by the auditor in the drainage record.

**Ch. 353-g-1, sec. 7598-g-1. Jurisdiction to dissolve:** When a district is free from indebtedness and it appears that the necessity therefor no longer exists, or that the expense of maintenance is more than the benefit derived, the board upon the petition of a majority of the landowners who in the aggregate own 60 percent of the land may dissolve and discontinue such district. The board gives notice of a hearing on the petition in the same manner as for the formation of a district, and if at such hearing it finds that such district is free from debt and that the necessity no longer exists or that the expense of upkeep is not commensurate with the benefits received, it enters an order abandoning and dissolving the district, which order is filed with the auditor of each interested county and recorded

in the drainage record. Appeal may be had to the district court in any county into which the district extends. The cost is paid by the district where tax funds are sufficient or unpaid assessments sufficient; otherwise the board will assess the cost against the lands of the district in the same proportion as the original assessment. Any excess remaining after the payment of all debts is prorated back to the landowners in the proportion of their assessment. When a district is dissolved, all rights-of-way are deemed to be abandoned.

## KANSAS

(General Statutes of Kansas, Annotated, 1935, Supplement to General Statutes, 1939, Chapter 24)

### DRAINAGE AND LEVEES

Article 4—Drainage Districts within Counties or Cities, Sec. 24-401 to 24-493.

Article 6—Drainage in one or more Counties, Sec. 24-601 to 24-653.

(NOTE: Kansas statutes relating directly and indirectly to drainage are so voluminous that space will not permit this brief synopsis to refer to more than articles 4 and 6 above. Sec. 24-104 specifically provides that nothing in this article shall be construed as affecting or repealing any of the provisions of chapter 215, Laws of 1905.)

#### ARTICLE 4—DRAINAGE DISTRICTS WITHIN COUNTIES OR CITIES (Drainage Act of 1905)

##### ORGANIZATION—Petition

**Secs. 24-401 and 24-402. County Commissioners to organize:**

The Boards of County Commissioners have the power, and it is their duty, upon proper petition, to incorporate and organize drainage districts as herein provided. (R.S. 1903, sec. 24-401.)  
**Sec. 24-402:** Lands within cities may be included in drainage districts if subject to overflow from the same natural watercourse. (L. 1905, ch. 215.)

**Sec. 24-403. Petition:** A petition must be addressed to the Board of County Commissioners of the county in which the land to be embraced in the district is situated. It must describe the territory by sections and subsections as shown on the Government survey, or by metes and bounds. It must state that the lands are subject to damage from overflow of some natural watercourse, naming it; that the proposed improvements are necessary to prevent such overflow; and that such works would be conducive to the public health, welfare, or convenience. The petition prays that all of the land within the boundaries defined shall be incorporated as a drainage district under a corporate name therein designated. If any of the lands are within a city or town, they are described by their lot and block numbers.

See: *Description of lands: Jensen v. Buffalo Dr. D.*, 148 K. 712; 84 Pac. (2d) 58.

**Sec. 24-404. Notice—Hearing:** When such a petition is signed by not less than two-fifths of the taxpayers residing within the boundaries of the proposed district, and presented to the Board of County Commissioners, the Board forthwith fixes a time for hearing thereon and the county clerk gives notice of such hearing by publication.

**Secs. 24-405 and 24-406. Hearing:** At the hearing the Board ascertains whether proper notice has been given, and so finding declares that fact and enters the same on the journal. They hear all persons for and against such petition, and such other evidence as they may desire, to ascertain whether the petition contains the proper number of qualified signers and whether the statements of the petition are true. Finding these facts in the affirmative, the commissioners declare the territory described to constitute a public corporation and the territory within

those bounds to be incorporated as a drainage district, giving it a name. Thereafter such territory and its inhabitants constitute a body politic and corporate under the name given, and have perpetual succession. **Sec. 24-406:** It is the duty of the Board of County Commissioners to enter on their records all findings and decisions and to define the limits of the district to be incorporated, and to fix the time and place of the first election of officers of the district, providing for judges and clerks of election. The declaration and determination of the Board of County Commissioners so entered on the record are conclusive against all persons, so that no matter of fact so determined shall ever be disputed. The record is conclusive evidence in all courts of the matters recited therein and of the corporate existence of the district; provided, the fact that lands described in drainage districts heretofore incorporated under chapter 215 of the Laws of 1905 have not been described by subdivisions according to Government survey, or by appropriate numbers as lots and blocks, shall not invalidate any petition or the order of court incorporating such districts. [State ex rel v. Niotaze Dr. D., 140 K. 1; 34 Pac. (2d) 124.]

**Sec. 24-458. Where nonresidents own three-fifths of land:** When contiguous lands of different owners are subject to injury from overflow of a natural watercourse and may as a body be protected by levees or other works, but the owners of three-fifths of the acreage of such lands are nonresidents and there shall not be five taxpayers residing within the territory including such land, then such territory may be incorporated as a drainage district by the Board of County Commissioners upon presentation of a petition as described in section 24-403. The petition must be signed by not less than three-fifths of the persons who own and pay taxes on land in such territory and must state these facts in addition to the facts required by section 24-403. (L. 1911, ch. 173.)

**Sec. 24-459. Directors of such districts:** The directors of such districts must be three landowners, but not necessarily residents, named in the petition for the first term after organization, and shall be declared to be such directors by the County Commissioners. Directors thereafter are elected.

##### ORGANIZATION—Powers

**Sec. 24-407. Powers:** Each district incorporated hereunder is a body corporate and politic and, subject to the superior rights of the United States over navigable waters, such districts are granted exclusive control over the beds and channels, and state lands therein, of all natural watercourses within the district. In addition to the usual formal powers of corporation, the district may (1) completely control the natural watercourses within its limits, alter or change the channel of same, construct necessary works, and acquire necessary rights-of-way by gift, purchase, or condemnation; (2) fix the location of bridges as well as their height and span, within the district; (3) exercise the right of eminent domain to construct works across railroads and other corporations for the purpose of maintaining a continuous levee of uniform height; (4) change the grades of highways, railroads, and street railways; (5) require railroads to elevate their tracts where necessary for continuation of levees; (6) maintain suits to enforce its orders, and to enjoin placing or maintenance of any structure obstructing the flow of water; (7) recover and hold possession of all state lands between the highwater banks of natural watercourses and change the channels of streams, and sell the abandoned channels giving good title thereto, and apply the proceeds for the cost of the new channels; (8) annually levy \* \* \* a general tax not exceeding five mills on the dollar on all taxable property within the district to create a general fund; [The word "property" as

used includes personal property. The assessment of railroads on a mileage basis is upheld *Lowden v. Nusbaum*, 143 K. 700; 56 Pac. (2d) 58]; (9) levy assessments and special taxes upon all of the real estate benefited to pay for the cost of construction and maintenance of works to prevent overflow or to drain overflowed land or to be conducive to the public health, convenience, and welfare; (10) issue negotiable bonds to pay the costs of improving channels and constructing levees and drains and other works, and for the necessary rights-of-way, such bonds to be payable by general taxation of all property within the district when it shall be determined that all property within the district will be benefited thereby or that the works will be conducive to the public health, convenience, and welfare; provided, no bonds may be issued until ordered by the vote of the taxpayers.

See: *Putnam v. City of Salina*, 136 K. 646; 17 Pac. (2d) 827; 22 Pac. (2d) 957.

*Cities Service Gas Co. v. Riverside Dr. D.*, 137 K. 410; 20 Pac. (2d) 520.

*Hawkins v. Gregory*, 138 K. 477; 26 Pac. (2d) 247.

**Sec. 24-408. Powers of districts incorporated under Laws of 1905:** All drainage districts incorporated under chapter 215, Laws 1905, have the power (1) to take sand, rock, gravel, or other minerals from any navigable river within their corporate limits without payment of any compensation to the state therefor, and sell the same and use the proceeds in the construction and maintenance of their works or for dredging or other authorized improvements; (2) to construct streets along, upon, or adjoining or over any river, wall, dike, or levee or approaches thereto from adjacent intersecting streets and may issue bonds to pay the costs of said improvement; (3) to contract or cooperate with any municipal corporations or other persons for the construction and maintenance of sewers, etc., for the draining of any portion of the drainage district, and to issue bonds to pay therefor. (L. 1917, p. 173.)

**Sec. 24-438. Eminent domain:** Drainage districts have the power to condemn property necessary in carrying out the purposes of the district, including railroad rights-of-way, after hearing before the county court or the Court of Common Pleas and the appointment of commissioners to report on the facts.

**Sec. 24-453. Boundary watercourses:** Every water course which runs through or constitutes a boundary of a drainage district is deemed to be within the district for such distance as it so runs through or constitutes the boundary, and the district has control over the whole width of such water course between the banks at highwater mark for the distance of such boundary, except where districts are organized on opposite sides of the same water course. In this latter event each district controls to the center of the main channel.

**Secs. 24-463 to 24-469. Enlargement of district:** Provision is made in these sections for the enlargement of drainage districts upon petition of the directors after notice and hearing similar to the original organization of the district.

**Sec. 24-481. Counties having population between 85,000 and 130,000:** Special provision is made for the organization of districts in counties having a population of between 85,000 and 130,000. (These districts are obviously not in aid of agriculture.)

#### ORGANIZATION—Officers

**Sec. 24-409. Board of directors:** All powers of a drainage district are exercised by the Board of Directors, consisting of three persons who must be freeholders and actual residents of the district; provided, in districts in counties having less than 85,000 population, the directors must be freeholders

residing in the county in which the district is located, and in intercounty districts the directors may reside in either county. (Up to the second Tuesday in March, 1914, the directors were five in number.) Directors hold office for three years, and until their successors have qualified after they have originally been chosen in the manner prescribed by this Act. (L. 1927, ch. 197.)

**Sec. 24-410. Elections—Voters:** Within five days after incorporation the county clerk ascertains from the tax rolls the names of all taxpayers who are qualified electors residing within the district, and delivers a certified list of them to one of the persons appointed by the County Commissioners as election judges of the first election. An elector must be an adult taxpayer, resident of the district, and a qualified elector under the Statutes of Kansas. The list so furnished is conclusive at all elections. Anyone claiming to be erroneously omitted from the list must present to the county clerk evidence of his right to vote, and upon certificate of the clerk he must be permitted to vote. (L. 1935, ch. 169.)

**Secs. 24-411 and 24-414. Election—Directors:** The first election is to be held at the time appointed in the order of the Board of County Commissioners incorporating the district. The election is held in the same manner as general county elections. The three persons receiving the highest number of votes are declared to be elected directors. The County Board of Commissioners canvasses the return and issues certificates of election to those chosen. **Sec. 24-414:** The statute recites in detail the method of conducting the election.

**Secs. 24-415 to 24-418. Directors:** There is special direction in the statute as to the organization of the Board of Directors and the election of a president. The county treasurer is made the treasurer of the drainage district and is liable on his official bond for money received, which money must be deposited in the county treasury to the credit of the district. **Sec. 24-416:** The directors hold regular meetings on the first Monday of each month, and special meetings may be called by the president or by two directors at any time after notice in writing to all directors at least six hours before the meeting is called. All meetings of the Board of Directors are open to the public and the Board may not go into executive session. **Sec. 24-417:** The directors may employ an engineer to make plots, estimates, and specifications. **Sec. 24-418:** The board may cause any water course in the district to be deepened, widened, or straightened; may construct levees and other works, but only after plans, specifications, and estimates of cost have been prepared by a competent engineer and reported in writing to the secretary of the directors. If the directors are of the opinion that the improvements recommended by the engineer are beneficial to the district and to the public health, convenience, and welfare, the board has power to cause the work to be constructed and to issue bonds not exceeding 20 percent of the taxable property of the district as shown by the tax records of the next preceding year to pay for the work; provided, the improvement must first be authorized by a vote of the taxpayers of the district at a special election. The directors have no power to remove any storage dam constructed across a navigable stream by any city, without permission of the State Highway Commission.

#### FINANCING—Assessments

**Sec. 24-422. Assessment of cost:** When from the engineer's report the directors determine that work should be done to protect the lands in any part of the district from overflow, and that the cost should be paid by levying special taxes or assessments upon all the real estate that will be benefited by the improvement to the extent of such benefit, then it so declares

by resolution entered on its journal and appoints three freeholders resident of the district as assessors. The assessors actually view the lands and assess all within the district which are in their opinion to be to any extent protected from overflow or benefited, having reference to the value of the land without the works and the value as benefited by said works. The assessors determine the portion of the estimated cost that ought to be charged to each parcel of land benefited, and make a detailed report to the directors. If it appears that the amount to be charged against any parcel will not exceed 10 percent of its value, then the directors may proceed to have such work done and levy a special assessment upon each tract benefited as shown by the assessor's report for the purpose of constructing the works. Railroads are specifically made subject to this provision. (L. 1917, ch. 174.)

**Sec. 24-423. Meeting of taxpayers—When—Notice—Vote:** If it appears by the assessors' report that the amount to be charged against any tract of land for benefits will exceed 10 percent of its actual value as fixed by such report, then the directors must forthwith call a meeting of the taxpayers whose property will be benefited and submit the question of whether the improvement shall be made. If a majority of the taxpayers vote against the improvements, they may not be made. On a favorable vote, the directors may cause the improvement to be made and levy special taxes in accordance with the appraisers' report. Notice of the meeting is by publication and only taxpayers shown by the assessors' report are permitted to vote.

**Sec. 24-424. Hearing on assessments—Notice:** Notice of special assessment is given by the directors by publication and the notice states that the report is on file in their office. A time is fixed when all aggrieved persons may be heard on the report. At the hearing the directors hear all complaints and have the power to correct or amend the report of the appraisers in order to equalize such assessments and make them equitable. The directors confirm or amend the report of the assessors, and after confirmation the amount charged against each tract becomes a special assessment and constitutes a lien on such tract. The directors must enter their findings of record, which thereupon become final and conclusive. Such special assessments are then certified to the county clerk and entered upon the tax rolls, to be collected in the same manner as other taxes. No suit may be entered to set aside such assessment after the expiration of 30 days from the confirmation of the report by the directors.

**Secs. 24-430 to 24-432. Installment assessments on bonds:** Whenever the directors cause any work to be done which is to be paid for by special assessment, they may provide for the payment of same in installments, and issue improvement bonds therefor, payable in installments in equal amounts each year for such a number of years as may be deemed advisable. No bonds may be issued until after the expiration of 30 days from the confirmation of the report of the assessors. During said 30 days any party may pay his assessment in full and discharge his property from the lien thereof. **Sec. 24-431:** Bonds so issued recite that they are payable from special assessments that have been levied and constitute a lien upon real estate in the district benefited by the improvement. Such recital may be relied on by the purchaser as conclusive evidence of the validity of the bonds. **Sec. 24-432:** No part of the proceeds of the sale of such bonds may be used for any other purpose than the payment of the cost of the improvements for which they were issued.

**Secs. 24-433 to 24-435. Collection of assessments to pay bonds:** When improvement bonds have been issued against special assessments, the directors must levy enough assessments each

year to be equal to, and not exceeding by more than 10 percent, the amount required to redeem installments of such bonds next thereafter maturing, and interest thereon. Such special assessments are levied and collected in the same manner as special assessments for improvements where no bonds were issued. The assessed valuation established in the first years' assessment must be retained for the assessments for succeeding installments of bonds. **Sec. 24-435:** Supplemental assessments may be made to correct errors by the omission of lands benefited or otherwise, by order of the directors entered on their journal. Owners affected by supplemental assessments are entitled to the same notice and hearing as in the case of the original assessment. Supplemental assessments are collected in the same manner as original assessments and become liens to the same extent.

**Sec. 24-462. Additional assessments:** When the directors have levied assessments payable in installments and issued bonds against the same, payable in installments of equal amounts each year, and the money received from bonds is insufficient to pay the entire cost of the work done, the directors may levy other special assessments as necessary to complete payment for the works, but the total amount of such special assessment may not exceed 10 percent of the amount of bonds issued.

#### FINANCING—Bonds

**Sec. 24-420. Engineer's report—Election—Bond:** If the directors, after examining the engineer's report, find that the work should be done and the cost paid by general taxes, and the estimated cost does not exceed the amount for which bonds may be issued (20 percent of the taxable value), then they proceed to call a special election to vote on the issue of bonds. If the bonds are authorized, the directors issue them and proceed with the improvement work. The election is held in the same manner as the election of directors.

**Sec. 24-421. Changing channel—Bonds:** When the directors determine that it is necessary to change the channel of a natural water course in the district or to provide a cut-off or a new channel, they may cause the work to be done and issue bonds to be paid from general taxation [of all property within the district, sec. 24-407 (10)] to pay the costs of the improvement. Otherwise they may levy assessments upon the property benefited.

**Sec. 24-425. Election on bond issue:** Whenever the directors deem it necessary to issue bonds to be paid by general taxation (see sec. 24-421 above and sec. 24-407), which issue requires the sanction of the taxpayers, it must make and enter on its journal an order calling for an election for that purpose. The proclamation calling the election must be published for 10 days, and give full details of the time when same will be heard and state the manner of conducting the election. Such election is conducted in the same manner as general county elections, except that the returns are canvassed by the directors. If a majority authorizes the issuance of bonds, the directors will proceed to issue them.

#### CONSTRUCTION

**Sec. 24-426. Manner of letting contracts:** All contracts for construction must be let to the lowest bidder after advertisement, but the directors may reject all bids if deemed too high. All contractors must give bond for the faithful performance of the work and for damages caused by negligence in performance. All contracts are under the supervision of the directors or their engineer. However, in cleaning channels of solid obstructions, if it is impracticable to let a contract the directors may do the work through their engineer and purchase or rent tools and machinery for that purpose. (L. 1911, ch. 174.)

## ORGANIZATION—petition

**Sec. 2380-b-3. Ex parte—Allegations of petition:** The proceedings are declared to be *ex parte*. They must be commenced by not less than 25 percent of the landowners or the owners of not less than 25 percent of the land, by filing a petition with either the county or the circuit court clerk of the county in which the lands are situated. When intercounty, the petition may be filed in either county. The court in the county where the petition is filed has jurisdiction regardless of county lines and to the exclusion of courts of any other county where any other part of the district lands are located, and has the same power and authority as if all of the lands and other property were exclusively in that county.

The petition must give a general description of the land and allege (1) the benefit or utility to the public; (2) the benefit to the public health; (3) the promotion of the general convenience and welfare of the public; and (4) the benefits to the land to be drained or protected from overflow, or the benefits to the sanitation of any city or town. In addition the petition sets out such other facts as tend to show the sanitary, agricultural, or commercial expediency or necessity for making the improvement. The petition must state the names of the owners of the lands or other property, including highways, sewers, and railroad rights-of-way, that will be benefited by the improvement so far as known to the petitioners, as well as the character of the estate of the owners thereof. It is sufficient if the territory to be improved is described by metes and bounds. The petition must be signed by one or more persons owning lands or other property in the proposed district that will be affected. Three copies of the petition must be filed with the clerk, and the petitioners must execute bond in the sum of \$2,000 conditioned to pay costs if the petition is denied.

(Any person desiring to prosecute an action under the provisions of this Act of 1918 must so state in the petition; otherwise the court must deem the proceedings are brought under the Act of 1912, sec. 2380-1, *et seq.*)

**Sec. 2380-b-4. Board of viewers:** On the first day of the succeeding term after the petition is filed, the court enters an order appointing a board of three viewers, two of whom must be resident freeholders of the county or counties wherein some of the lands or other property described in the petition are situated. They must be adults, not owning any land or other property sought to be incorporated in the district, nor kin in the second degree of consanguinity to any petitioner or interested party. The other member is to be a competent civil and drainage engineer, who may or may not be a resident of Kentucky, provided he does not own land or other property in the proposed district and is not related in like degree to any petitioner or any interested party.

**Sec. 2380-b-5. Report of viewers:** After taking the prescribed oath, which is filed in the record, the viewers examine the land and other property in the proposed district and any other property not embraced in the petition that may be affected by being benefited or being necessary for location of the works. They cause surveys to be made to determine the boundary and elevation of the several parts of the district, and cause the courses of all ditches and other works and water courses to be platted. Within 30 days, unless the time is extended by the court, they file a written report showing (a) whether the proposed improvements will result in public benefit or utility or promote the public health, convenience, and welfare; (b) whether the district will benefit the lands, towns, and other property sought to be benefited, specifically describing any land or other property that will not be benefited and giving the name

of the owners thereof; (c) whether all of the lands or other property that will be benefited are included in the district, and reporting specifically as to such land and property not so included; (d) a description by metes and bounds and by a plat of the territory to be embraced in the district, giving the names and addresses of owners within such boundaries and of corporations, towns, and municipalities interested together with the amount of land or other property owned by each; and (e) the names of all interested infants and persons under disability owning property in the district. They also report whether in their opinion the district should be established, and file three copies of the report signed by at least two of the viewers under oath.

**Secs. 2380-b-6 and 2380-b-7. Notice—Report of viewers:** If the report of the viewers when filed recommends the establishment of the district, the court clerk gives notice to each person named in the report as being affected, stating the time within which objections to the report may be filed and the time when the proceedings will be heard by the court. The form of the notice is set out in the statute at length. Notice is by mailing, posting, and publication. **Sec. 2380-b-7:** If the report of the viewers shall recommend against the establishment of the district, the clerk does not issue any notice until the court shall thereafter order the same. At the next term of court the petitioner or any owner of property that would be affected may file objections or exceptions to the report. The court will hear them and, finding that there is reasonable doubt of the correctness of the viewers' report, will enter an order directing the clerk to give notice requiring interested parties to show cause why the objections should not be sustained. In each instance the clerk makes a certificate of the service of notice in the form prescribed by the statute, and files it in the record. [Drg. Comrs. v. Bank, 259 Ky. 823; 83 S.W. (2d) 511.]

**Sec. 2380-b-8. Clerk's certificate of notice:** The certificate of the clerk as to the serving of notice is equivalent to the sheriff's endorsement on a summons or other process. All interested persons are deemed to be before the court, which acquires and retains complete jurisdiction over all lands, easements, and other property described in the report of the viewers as being affected. By virtue of such jurisdiction the court is authorized to establish the district and cause it to be organized, and to cause necessary assessments to be levied and collected to pay for organization, construction, operation, and maintenance, and to have bonds issued and sold to obtain money with which to pay the costs as prescribed by law.

**Secs. 2380-b-9 to 2380-b-11. Hearing on viewers' report:** After notice has been given the court sets a hearing on the report of the viewers, and may continue the hearing from term to term and cause proper notice to be given, if the clerk has failed so to do, to the end that all persons affected shall be properly before the court. Any person affected may file an objection and exception within 30 days showing why the district should not be organized. Objections are limited to a denial of the facts stated in the petition or in the report of the viewers. The report of the viewers is taken as *prima facie* correct. If the court finds that the lands and other property described in the report of the viewers should not be formed into a district, the petition is dismissed at the cost of the petitioners. No petitioner shall be allowed to withdraw from the petition after the viewers are appointed, without the written consent of the owners of land owning a majority of the acreage described in the petition. Finding that the report does not correctly describe the body of land involved in the proposed district,

commissioner must take oath of office and furnish bond from \$2,000 to \$10,000 according to the amount of the contract.

**Secs. 24-631 and 24-632. Treasurer:** The treasurer of the county in which the district or the larger portion thereof is situated is *ex officio* treasurer of the district, and the treasurers of the counties containing smaller portions of the district pay over to him all funds collected for the benefit of the district. The treasurer must make disbursements on warrants signed by the chairman of the supervisors and attested by the secretary. **Sec. 24-632:** The general law of the state as to warrants applies to all warrants of the drainage district.

**Sec. 24-635. Overseers:** In order to preserve the works of the district the supervisors have the power to appoint not more than three overseers, who hold office for one year. It is their duty to keep the works in good repair and remove obstructions from same. They cause the arrest and trial of any person obstructing or injuring said works.

#### ORGANIZATION—Powers

**Sec. 24-611. Inclusion of lands:** If upon the filing of the report and estimates of the engineer it appears that lands other than those incorporated by the court will be benefited by the improvements of the district, it is the duty of the supervisors to file a petition in the district court of the county where the district was organized, containing a description of said lands and the names of the owners as they appear on the tax rolls, alleging that the lands will be benefited and ought in justice to bear their proportion of the expense of the improvements. If the names of the owners of such lands are unknown, that fact is stated and a prayer is included that such tracts be incorporated in the district. The court clerk issues a summons to the interested party as provided in section 2 and the same proceedings are had as on the original petition; provided, that upon the return day of said notice or at any time to which the court may adjourn, the court has jurisdiction to determine the matter in chambers and make necessary orders thereon; provided further, such owners may waive the service of the summons and the court may, upon the filing of such waivers, enter the necessary decree. Upon the filing of the petition, it is docketed as a part of the original cause for establishing the district. After the decree of the court, the lands so brought in are subject to the same provisions as other lands, as though they had been included in the original petition. No lands may be included except wet, submerged, and swamp lands or lands within a district subject to overflow.

**Sec. 24-612. Eminent domain:** When the supervisors, by order entered of record, have agreed on the location or route of the ditch or ditches and formulated a plan for other improvements, they have the right to acquire, and if need be may condemn, any real estate, easement, or franchise within or without the boundaries of the district that may be necessary for a right-of-way upon which to construct and maintain the works of the district. When they are unable to acquire such rights-of-way by agreement, or the owners are unknown, they may petition the district court to appoint three appraisers, disinterested freeholders of the county, to ascertain the compensation to be made to such owners. The proceeding is the same as for condemnation of rights-of-way of railroads and the damages awarded are paid to the county treasurer for the use of the parties interested. If not paid within two years, all proceedings abate at the cost of the district. The supervisors may also acquire, and if need be may condemn in the same manner, any natural or artificial obstruction in any existing water course and remove same for the benefit of the district.

**Sec. 24-625. Powers and duties of supervisors:** The board of supervisors is authorized to clean and remove obstructions from any waterway in the district and to straighten, deepen, or construct a new channel for same. They may construct the works of the district across any street, highway, railroad, ditch, or flume which the works may intersect, in such manner as to afford security for life and property, but must restore the same to the former state as nearly as may be and not unnecessarily impair its usefulness. Where agreement cannot be had between the district and the property owner, the amount to be paid shall be ascertained as provided in respect to the taking of land. Rights-of-way over state lands are dedicated.

**Sec. 24-628. Scope of Act:** This Act is not to be construed as repealing or in anywise modifying the provisions of any other Act relating to drainage. Nothing herein authorizes any person or persons to divert the waters of any watercourse from its channel to the detriment of persons having an interest in such waters, without compensation as provided for by the laws of the state authorizing the taking of private property for public uses.

**Secs. 24-628 and 24-629. Outlets:** When two or more districts have outlets in the same watercourse and it becomes necessary to deepen or enlarge such watercourse, each district is assessed the cost thereof in the same ratio to the total cost as the discharge of water from said district bears to the total combined discharge of waters of the several districts. But no district is chargeable for the expense of the improvement of such watercourse above the point of discharge of the water of such district. **Sec. 24-629:** Landowners assessed for cost of construction have the right to use the works of the district as outlet for lateral drains from their own lands.

**Sec. 24-630. Subdistricts:** Landowners assessed for benefits and being separated from the main ditch by the lands of others, and desiring to drain their lands across such intervening lands, and being unable to agree with the intervening owners on the terms and conditions of such drainage, may proceed as provided in this Act and the ditches or drains which they shall construct shall be considered as conducive to the public health and welfare. They may file a petition with the district court asking that a subdistrict be established within the limits of the original district. All proceedings are the same as for the establishment of the original district, including the assessment of damages and benefits. When constructed, the subdistrict becomes a part of the drainage system under the control of the board of supervisors.

**Sec. 24-639. Body politic and corporate:** Every district organized under this Act shall be a body politic and corporate, known as "Drainage District No. \_\_\_ of \_\_\_ County" and shall have the usual powers of corporations.

**Sec. 24-641. Legalizing existing districts:** This Act legalizes existing drainage districts created by the district courts or boards of county commissioners, except where resolutions of dissolution have been passed.

#### FINANCING—Assessments

**Sec. 24-609. Classification of lands—Benefits:** The supervisors cause a topographical survey to be made of the district by some competent engineer with a full and complete plan for draining, reclaiming, and protecting the lands of the district. The survey shows the location of the district and of the rights-of-way, roadbeds, bridges, railroad property, and public highways within the district. The engineer estimates the cost of the entire improvement. He examines all improvements within the district, municipal or otherwise, that may be affected by

the works of the district, and also examines all natural water-courses, lakes, and ponds that may be wholly or partly within the district. He assesses the amount of benefits that will accrue to each tract or parcel of land and corporate property by virtue of the improvements of the district: Each tract of land, right-of-way, and corporate property within the district must bear its share of the entire cost and expense incurred in constructing the improvement, in proportion to the benefit assessed, whether such improvement be made on such land or property or not. The engineer may not consider what benefit will be derived by lands or property after other improvements shall be constructed, but only the benefits that will be derived by the construction of the improvements of the district as they afford drainage or outlet for drainage or protection from overflow or damage by water. Benefits to public streets, highways, railroad rights-of-way, and roadbeds must be assessed according to the increased efficiency and value had by reason of the protection derived from the improvements of the district. The engineer classifies lands and other property according to the benefits that will be received, the lands receiving the highest benefit being classified as 100 and those receiving less percentage of benefit at such less number as the benefits may determine. The property of public and private corporations may be classified in a separate list, each according to the relation which its total benefits bear to the total benefits in the district. The map prepared by the engineer shows the boundary line of each tract and the name of the owner as it appears in the deed records.

**Secs. 24-613 to 24-617. Objections to engineer's report:** After the filing of the report of the engineer with the chairman of the supervisors, he calls a meeting to fix the time and place for a hearing of all objections to the report and to the classification of the lands and other property. Notice is by publication. The form of the notice is set out in the statute. A copy of said notice and resolution accompanying same are spread upon the minutes of the board. **Sec. 24-614:** A drainage district or any owner of land or other property affected may file objections to said report or to any item of classification or assessment of benefits within 10 days. Objections are heard by the supervisors as speedily as may be and so as to carry out liberally the purposes and needs of the district. The allegations of the objections are deemed to be denied and the district may interpose any matters in defense that it may have. The proceedings may be adjourned from time to time, not to exceed two weeks in all. **Sec. 24-615:** At the hearing the supervisors, after they find that due notice has been given to all parties, consider the objections and may subpoena and examine witnesses. After due consideration of all of the evidence, the supervisors may adopt, amend, modify, or reject the plan for reclamation and protection of lands and property and determine the location, character, and extent of the improvements necessary to be undertaken, and estimate the cost thereof. Upon the decision of the board on these matters, no appeal will lie; but upon a proper showing thereafter, the supervisors may modify their order should such modification be necessary to promote the welfare of the district. The board also has the power to establish the classification of lands and property and to determine and adjudicate the total benefits that will accrue to each tract of land or other property. They adjust and equalize the classification and benefits so as to be just and equitable to all parties. The board enters its order confirming the equalization as made by them. All proceedings are filed with the secretary of the board of supervisors. **Sec. 24-616:** The costs of the proceedings are adjusted by the supervisors; that is, if the

objections fail, the cost is paid by the objectors; if the objections are partly successful, the supervisors apportion the costs; if the objections prevail, the costs must be paid by the district. **Sec. 24-617:** Any person who has filed objections and is aggrieved by the decision of the board may appeal to the district court upon giving bond to pay damages to the district caused by the appeal. (Chase Co. v. Drg. D., 106 K. 315; 187 Pac. 694.)

**Sec. 24-618. Tax levies—Installments:** When the supervisors have established the classification and benefits as provided in section 24-615, they at once levy a tax on the lands and other property in the district to which benefits have been assessed, equal in amount to the cost of such works as estimated by the engineer and confirmed by the board, plus the actual expense of organization and probable administrative expense and damages (as estimated by the board). If bonds are issued, then the amount of interest which will accrue thereon is included and added to said tax. The tax is levied on each tract in proportion to the benefits assessed, and not in excess thereof. The board determines whether the tax shall be paid as a single assessment or be divided in not to exceed 20 installments. Such tax is certified by the board to the county clerk of each county in which the lands are situated; provided, if the cost of the improvement for any reason exceeds the amount of the taxes levied against the lands and other property in the district, the supervisors may levy such other and further installments as may be necessary to complete the works, but the total amount of all levies may not exceed the total amount of benefits assessed, and such additional cost is apportioned to the lands and other property in the same proportion as the first apportionment. Annually thereafter the supervisors determine and levy the installment of the taxes which is to become due and be collected during that year at the same time that state and county taxes are due and collected. If bonds are issued under section 24-620, the interest on said bonds is included and added to the said tax. The levy is certified by the board to the county clerk of each county interested not later than September 1 of each year. The levy is extended on the county books as "drainage taxes" and collected by the treasurer at the same time and in the same manner as state and county taxes.

**Sec. 24-619. Supplemental assessments:** Whenever it appears to the supervisors that the levies theretofore made will be insufficient to pay the costs of the improvement or pay the principal and interest on bonds which the district desires to issue, and that a supplemental assessment is necessary, the board, by resolution duly passed and entered on its minutes, declares the amount of such deficit and the purposes to which the supplemental assessment should be applied, and thereupon causes to be made a supplemental assessment roll which apportions the amount necessary to be raised upon the lands in proportion to the former assessment. Thereupon the board proceeds to enter judgment by confirmation upon such supplemental assessment roll. The supplemental assessment is levied in all respects as provided for the levy and assessment of drainage taxes. From time to time and as often as the occasion may arise, supplemental assessments may be levied. In the event that a supplemental assessment is levied before any bonds are issued, it is divided into installments, payable when the installments of the first or original assessment are payable and is collected therewith, and together they constitute one fund against which drainage bonds may be issued as provided in the act of which this is an amendment.

**Sec. 24-620. Expense apportioned to streets, highways, and railroads:** When the works cross, drain, or protect in whole or

in part, any street, highway, public or corporate road or railroad, or benefits the same, the supervisors apportion and set off to the controlling authority of such works benefited a portion of the expense of the whole drainage improvement the same as to private individuals and in proportion to the benefit conferred. Any such special assessments are collected in the same manner that state and county taxes are enforced under the general revenue laws. Any apportionment to a county, township, or municipality is filed as a claim with the clerk thereof and collected as other judgments against such corporations are collected.

**Sec. 24-623. Lien—Sinking fund:** All assessments against real property and easements are a lien against the property assessed from and after November 1 in the year in which it is assessed, and draw interest at the rate of 10 percent *per annum* from the 20th day of June in the year following. Such lien is not removed until the assessment is collected, and the tax laws of the state for the sale of lands for taxes are made applicable to the collection of assessments under this act. When bonds have been issued, the collections to pay the same constitute a sinking fund to be used only for the payment of said bonds and interest.

**Sec. 24-634. Assessments for repairs:** When the works of a district become defective, inefficient, or in need of repair, the supervisors may order an assessment upon the lands for the purpose of placing the works in proper condition, using the original assessment as a basis for ascertaining the ratio that each tract of land or other property bears to the whole amount to be levied. The assessment is collected in the same manner as assessments for original construction; provided, if the repairs are made necessary by the act or negligence of any landowner, the costs of the repairs are assessed and levied against the lands of that owner alone.

**Sec. 24-638. Contest of assessments:** The collection of drainage assessments shall not be enjoined nor declared void nor be set aside in consequence of error, omission, or irregularity in any proceeding, and no injunction shall be allowed restraining collection of any assessment until the complaining party has first paid to the county treasurer the amount of his assessment. Such payment may be recovered if an injunction be made perpetual.

**Sec. 24-621. Preliminary expenses:** Before funds can be obtained by taxation or the sale of bonds, the supervisors may borrow up to \$5,000 and pledge the credit of the district for repayment, such fund to be used for the necessary costs of organization and incorporation and other legitimate charges and expenses, and to be repaid with interest when funds come into the hands of the supervisors.

#### FINANCING—Bonds

**Sec. 24-621. Issuance of bonds—Levy:** The supervisors may issue negotiable bonds not to exceed the amount of the total tax levy certified to the county clerks, in denominations of not less than \$100 and bearing not to exceed 7 percent interest. Bonds mature at annual intervals commencing after a period of five years, and are payable at the office of the county treasurer of the county where the district was organized or at some convenient banking house to be named. Bonds must mature in not more than 20 years; if they mature at definite times within the period, assessments must be divided into as many installments as there are dates of maturity of said bonds; provided, maturity is fixed as of the first day of July of the year in which the bonds mature. The method of issuing bonds is set out in detail in the statute. Bonds may not be sold for less than par with accrued interest, and are payable out of the money derived from drainage assessments or taxes.

All bonds must be presented to the auditor of the state, with a transcript of all of the proceedings, and he must examine the bonds and the proceedings relative to issuance of them, and if satisfied that they have been legally issued he certifies that fact on their face and registers said bonds in his office. A copy of the certification must be furnished any bondholder on demand. Any person or corporation may pay the total amount assessed against him or it for benefits, and the amount of bonds issued is reduced by the amount of such payments. The property of the party paying in cash is released from the lien of such drainage taxes, and bonds and the interest on same is chargeable solely against the lands and other property not paying in cash.

**Sec. 24-622. Resolution for bond issue:** Before issuing any bonds, the board passes a formal resolution giving the amount of the total tax as confirmed, the deductions thereon, the estimated cost of collection, and the total amount of tax available for the payment of principal and interest on the bonds which it intends to issue. Then, in said resolution, the board divides the total levy theretofore made into convenient installments, stating after each the year in which it becomes payable. Thereupon the board authorizes the bonds, fixing dates of maturity such that the installments of taxes will be sufficient to pay the corresponding installments of bonds when they become due. Then the funds so far as necessary shall be pledged and hypothecated to the payment of said bonds, which charge against the fund is superior to any other.

**Sec. 24-624. Sale of bonds:** The board may sell bonds as may be necessary and advantageous to raise money for the construction of works and the acquisition of rights-of-way and property to carry out the objects of the district. Proceeds are used to pay for the costs of the improvement and expenses as provided by law. The money may be deposited, with security required and provisions for withdrawal upon warrants of the board when needed.

#### CONSTRUCTION

**Sec. 24-625. Letting contracts:** After the supervisors have certified to the county clerk the total levy of costs and expenses of the improvement, they may let contracts for construction. They give notice by publication for 20 days, calling for sealed bids for the construction of all or any part of the improvement, notifying the public of the time and place where bids will be opened. Bids are let to the lowest responsible bidder, or the supervisors may reject all bids and re-advertise or proceed to construct the works under their own superintendence. Contracts for materials are awarded to the lowest responsible bidder. Contractors must give bond for the amount of the contract price, conditioned to faithfully perform the work. The work is done under the direction of the drainage engineer and subject to the approval of the supervisors.

#### DISSOLUTION

**Secs. 24-647 to 24-652. Disorganization of district:** Whenever the owners of a majority in interest of the acres of real estate within the boundary of any drainage district organized under sections 24-601 to 24-640, which district has not constructed a drainage system, shall file their written petition with the secretary of the board of supervisors of such district, asking that the district be disorganized and dissolved, the board of supervisors upon finding the petition sufficient will designate a time and place for a public meeting of the board within 60 days thereafter to consider the petition. They give notice to landowners in the same manner required for an election meeting under section 24-606. All interested parties may attend and be heard. After the hearing, the board of supervisors

has power to adopt a resolution providing that said district shall or shall not be disorganized and dissolved. The form of the resolution is set out in the statute. A certified copy of such resolution must be filed with the Secretary of State. If the resolution be to disorganize and dissolve, the district ceases to exist upon such filing and the board of supervisors becomes a board of trustees to conclude and finally determine all of the affairs of the district. A copy of such resolutions and all proceedings is filed with the clerk of the court in which the decree incorporating the district was rendered. *Sec. 24-648:* The board of trustees organize and function as a unit and a majority vote controls all matters. *Sec. 24-649:* To provide expense funds the board of trustees may borrow money, not in excess of 25 cents for each acre in the district, and bind the district to repay the same. To repay borrowed money and all indebtedness incurred in concluding the affairs of the district, the lands in the district, without regard to their value or the improvements thereon, are taxed in the following manner: The trustees certify to the board of county commissioners before August 1 of each year the amount it is necessary to raise, and the county commissioners levy equally upon each acre of land in the district a tax sufficient to raise the amount required. This tax is levied and collected as other drainage taxes, and delinquent lands may be sold to pay the levy. *Sec. 24-650:* The trustees by publication notify all creditors of the district to file verified and itemized statements of their claims with the secretary of the trustees within 30 to 90 days thereafter. A copy of the notice is mailed to the last known address of each claimant appearing on the records of the district.

"The validity of each claim and the right of each claimant to be paid shall be determined in accordance with the law under which the drainage district was organized and exclusive of and unaided by this Act, so that the rights of all claimants and all property owners shall remain unchanged and the limitation, if any, upon the power of the drainage district to incur indebtedness shall be observed."

*Sec. 24-651:* When the rights of creditors have been established, the trustees certify the amount necessary to pay all claims to the board of county commissioners, and the commissioners may raise such money in accordance with the provisions of chapter 168 of the Laws of 1911. (Secs. 24-601 to 24-640.) *Sec. 24-652:* The resolution to disorganize does not change the rights of any creditors nor the liability of the district to any party. All property of the district vests immediately in the board of trustees for the benefit of the landowners in the district. The trustees close the affairs of the district, file their report with the clerk of the district court in which the district was incorporated, and apply to the court for their discharge. The court, finding the report substantially correct, orders the discharge of the trustees.

### KENTUCKY

(Baldwin's 1936 Revision, Carroll's Kentucky Statutes, Annotated; Baldwin's Supplements, 1939 and 1940)

Article VIII—Ditches, drains, construction of levees and reclamation of lands.

The Act of 1912, chapter 132, sections 2380-1 to 2380-50 is not repealed by the Act of 1918, chapter 64, sections 2380-b-1 to 2380-b-61, but they are two separate alternative systems for the reclamation of wet lands, the option to choose either being the right of the petitioners and the board of drainage commissioners but not of the county court.

See: *Dr. Comrs. v. Long*, 187 Ky. 123; 218 S.W. 736.  
*Dr. Comrs. v. McGill*, 251 Ky. 400; 65 S.W. (2d) 91.

### ACT OF 1912

**Sec. 2380-1. County Judge—Jurisdiction:** The county judge of any county has jurisdiction to locate, establish, and have constructed all levees, ditches, drains, or canals, and to have such works and non-navigable watercourses straightened, widened, and deepened, or to reconstruct works already built under any law, for the purpose of draining or reclaiming low, swampy, or overflowed land. (As amended March 25, 1926, ch. 6, p. 9.)

The Act of March 19, 1912, which is subdivision I of the chapter on lands, sections 2380 to 2381, and the Act of March 26, 1918, which is subdivision II of the same chapter, have been held by the Supreme Court of Kentucky (187 Ky. 123) not to be a single code of laws but separate and alternative codes for the reclamation of wet lands. Under subdivision I the county judge of any county has authority to establish drainage districts upon petition of 25 percent of the landowners or of the owners of 25 percent of the land. When the petition is for the reconstruction of drainage works, it must be signed by 50 percent of the owners or the owners of 50 percent of the land. Under subdivision II the county court and the circuit court have concurrent original jurisdiction to establish, operate, and maintain drainage districts upon petition, with the same requirements as to signers. Under either act when the proposed district is intercounty, the petition may be filed in either court of any county in which lands are situated. Section 2380-b-3 of subdivision II provides that the petition must state the proceeding is to be under this later act, and unless so stated it is deemed to be brought under the Act of 1912. Since the general provisions of the two acts are very similar and some of the sections of the latter act are amendatory of the prior statutes, the following synopsis is taken from the Act of 1918, subdivision II.

### ACT OF 1918

**Sec. 2380-b-1. Organization—Jurisdiction:** Jurisdiction is conferred upon county courts and circuit courts to organize drainage districts and provide means for their operation and maintenance. Such jurisdiction is concurrent. *Subsec. A:* The circuit courts also have appellate jurisdiction to review all orders of the county courts which are final in their nature. *Subsec. B:* Appeals also lie to the court of appeals of Kentucky from all orders of the circuit court which are final in their nature. *Subsec. C:* In matters relating to procedure, the provisions of this act are exclusive of all other remedies. Where no rule of procedure is specifically set out in this act, the procedure is governed by the rules of the civil code of practice and the common law rules. *Subsec. D:* Trials on appeals to the circuit court are *de novo* and judgment must be rendered as though the proceeding has originated in the circuit court. *Subsec. E:* Judgments from which no appeal is prosecuted are executed by the orders of the court wherein the judgment was rendered. *Subsec. F:* Proceedings under this act have preference on the dockets of the county and circuit courts over all civil cases except election cases and those heretofore given preference by law. *Subsec. G:* Any aggrieved person may appeal within 30 days, but not thereafter. Appellants must give bond for costs, and while the appeal must be tried *de novo* no issue not raised in the court below may be considered. In like manner appeals will lie to the court of appeals of Kentucky within 30 days unless the court extends the time until the next term of court. In the absence of appeal the circuit court judgment is final. The method of appeal is set forth in the statute. (As amended by the Law of 1924, ch. 145.)

## ORGANIZATION—petition

**Sec. 2380-b-3. Ex parte—Allegations of petition:** The proceedings are declared to be *ex parte*. They must be commenced by not less than 25 percent of the landowners or the owners of not less than 25 percent of the land, by filing a petition with either the county or the circuit court clerk of the county in which the lands are situated. When intercounty, the petition may be filed in either county. The court in the county where the petition is filed has jurisdiction regardless of county lines and to the exclusion of courts of any other county where any other part of the district lands are located, and has the same power and authority as if all of the lands and other property were exclusively in that county.

The petition must give a general description of the land and allege (1) the benefit or utility to the public; (2) the benefit to the public health; (3) the promotion of the general convenience and welfare of the public; and (4) the benefits to the land to be drained or protected from overflow, or the benefits to the sanitation of any city or town. In addition the petition sets out such other facts as tend to show the sanitary, agricultural, or commercial expediency or necessity for making the improvement. The petition must state the names of the owners of the lands or other property, including highways, sewers, and railroad rights-of-way, that will be benefited by the improvement so far as known to the petitioners, as well as the character of the estate of the owners thereof. It is sufficient if the territory to be improved is described by metes and bounds. The petition must be signed by one or more persons owning lands or other property in the proposed district that will be affected. Three copies of the petition must be filed with the clerk, and the petitioners must execute bond in the sum of \$2,000 conditioned to pay costs if the petition is denied.

(Any person desiring to prosecute an action under the provisions of this Act of 1918 must so state in the petition; otherwise the court must deem the proceedings are brought under the Act of 1912, sec. 2380-1, *et seq.*)

**Sec. 2380-b-4. Board of viewers:** On the first day of the succeeding term after the petition is filed, the court enters an order appointing a board of three viewers, two of whom must be resident freeholders of the county or counties wherein some of the lands or other property described in the petition are situated. They must be adults, not owning any land or other property sought to be incorporated in the district, nor kin in the second degree of consanguinity to any petitioner or interested party. The other member is to be a competent civil and drainage engineer, who may or may not be a resident of Kentucky, provided he does not own land or other property in the proposed district and is not related in like degree to any petitioner or any interested party.

**Sec. 2380-b-5. Report of viewers:** After taking the prescribed oath, which is filed in the record, the viewers examine the land and other property in the proposed district and any other property not embraced in the petition that may be affected by being benefited or being necessary for location of the works. They cause surveys to be made to determine the boundary and elevation of the several parts of the district, and cause the courses of all ditches and other works and water courses to be platted. Within 30 days, unless the time is extended by the court, they file a written report showing (a) whether the proposed improvements will result in public benefit or utility or promote the public health, convenience, and welfare; (b) whether the district will benefit the lands, towns, and other property sought to be benefited, specifically describing any land or other property that will not be benefited and giving the name

of the owners thereof; (c) whether all of the lands or other property that will be benefited are included in the district, and reporting specifically as to such land and property not so included; (d) a description by metes and bounds and by a plat of the territory to be embraced in the district, giving the names and addresses of owners within such boundaries and of corporations, towns, and municipalities interested together with the amount of land or other property owned by each; and (e) the names of all interested infants and persons under disability owning property in the district. They also report whether in their opinion the district should be established, and file three copies of the report signed by at least two of the viewers under oath.

**Secs. 2380-b-6 and 2380-b-7. Notice—Report of viewers:** If the report of the viewers when filed recommends the establishment of the district, the court clerk gives notice to each person named in the report as being affected, stating the time within which objections to the report may be filed and the time when the proceedings will be heard by the court. The form of the notice is set out in the statute at length. Notice is by mailing, posting, and publication. **Sec. 2380-b-7:** If the report of the viewers shall recommend against the establishment of the district, the clerk does not issue any notice until the court shall thereafter order the same. At the next term of court the petitioner or any owner of property that would be affected may file objections or exceptions to the report. The court will hear them and, finding that there is reasonable doubt of the correctness of the viewers' report, will enter an order directing the clerk to give notice requiring interested parties to show cause why the objections should not be sustained. In each instance the clerk makes a certificate of the service of notice in the form prescribed by the statute, and files it in the record. [Drg. Comrs. v. Bank, 259 Ky. 823; 83 S.W. (2d) 511.]

**Sec. 2380-b-8. Clerk's certificate of notice:** The certificate of the clerk as to the serving of notice is equivalent to the sheriff's endorsement on a summons or other process. All interested persons are deemed to be before the court, which acquires and retains complete jurisdiction over all lands, easements, and other property described in the report of the viewers as being affected. By virtue of such jurisdiction the court is authorized to establish the district and cause it to be organized, and to cause necessary assessments to be levied and collected to pay for organization, construction, operation, and maintenance, and to have bonds issued and sold to obtain money with which to pay the costs as prescribed by law.

**Secs. 2380-b-9 to 2380-b-11. Hearing on viewers' report:** After notice has been given the court sets a hearing on the report of the viewers, and may continue the hearing from term to term and cause proper notice to be given, if the clerk has failed so to do, to the end that all persons affected shall be properly before the court. Any person affected may file an objection and exception within 30 days showing why the district should not be organized. Objections are limited to a denial of the facts stated in the petition or in the report of the viewers. The report of the viewers is taken as *prima facie* correct. If the court finds that the lands and other property described in the report of the viewers should not be formed into a district, the petition is dismissed at the cost of the petitioners. No petitioner shall be allowed to withdraw from the petition after the viewers are appointed, without the written consent of the owners of land owning a majority of the acreage described in the petition. Finding that the report does not correctly describe the body of land involved in the proposed district,

the court will refer the report back to the viewers for a supplemental report, and no notice of the time fixed for hearing the report is necessary. If additional owners of land or other property are brought in by the supplemental report, additional notice of hearing thereon is given to the new parties only, and in the same manner as for original hearing.

If the court finds that the territory or any portion thereof should be organized into a district, the court establishes the district by entering an order for judgment. (The form of the order establishing the district is set out in full in the statute.) The court adjudges and declares the district to be established and directs that it be organized as a district and a body corporate under the name given. The proceeding is then ordered into the hands of the board of drainage commissioners of \_\_\_\_\_ District (naming it) to be organized. The judgment of the court is entered on the order book like other judgments. (As amended by the Act of March 12, 1938, ch. 35.) *Sec. 2380-b-10:* Upon entering of such order, the district is fully established with all of the powers granted by the statute. The costs follow the judgment of the court as in civil actions. All owners of land or other property embraced in the viewers' report and appearing in the notice posted by the clerk are bound by the judgment, whether they file objections or not, and may not be heard thereafter on any question raised or that could have been raised by any party up to that time, subject, however, to the right of appeal. *Sec. 2380-b-11:* As soon as the judgment has been rendered, the court enters an order referring the cause to the board of drainage commissioners elected by the landowners of the district and continues the case, usually to the next term, of which continuance all parties must take notice. If no such order is entered, the continuance is by operation of this statute with like effect as if the order had been entered. (As amended by Act of March 12, 1938, ch. 5.)

#### ORGANIZATION—Powers

*Sec. 2380-b-2. Jurisdiction—Power to construct:* The power conferred on the court includes the establishment, organization, and maintenance of districts; and the districts when organized have power to construct works or to improve existing works and watercourses or to reclaim lands and prevent overflow, provided navigation is not impaired and that such improvements will result in public benefit or promote public health and welfare.

#### ORGANIZATION—Officers

*Sec. 2380-c-1. Drainage commissioners in certain counties:* In all counties having 75 or more separate drainage districts, the county judge must appoint a drainage commissioner who exercises all of the powers and duties vested in directors and boards of drainage commissioners elected under section 2380-7. (L. 1936, ch. 40.)

*Sec. 2380-b-12. Election of drainage commissioner, secretary, and board of drainage commissioners:* In all counties and towns where a drainage district shall have been established under existing law and been brought under this act, or where districts are hereafter established under this act, it is the duty of the county judge to divide the district into three precincts as nearly equal in area as practicable, and to appoint a temporary secretary to act for the district board. The secretary records the divisions in the drainage record, gives 20 days notice by publication and posting in all counties affected, informing the landowners that they may vote for a drainage commissioner for each precinct, and for a secretary, within a time stated. The vote is taken by the landowners filing a written declaration of choice together with the number of acres owned or the amount of

benefits confirmed against his land. Each acre owned and assessed counts one vote, or if the benefits have been confirmed, each \$100 or fraction thereof in benefits assessed shall count one vote for drainage commissioner and secretary. The votes are recorded by the secretary and the landowners must file their vote before the first Monday in April. Election is for one year from the following May 1.

The three persons receiving the largest number of votes become the drainage commissioners of the district. One commissioner is elected from each precinct and the secretary from the district at large. One month after the completion of the election, the elected officers take charge of the affairs of the district, except cash in the hands of the treasurer. Only a landowner in the precinct for which he acts may be a drainage commissioner. Each commissioner must be an adult freeholder and must give bond for \$2500 for the faithful performance of his duties. Immediately upon their qualification the board of drainage commissioners become a body corporate under the name of "Drainage Commissioners of \_\_\_\_\_ District" with the usual powers of corporations. The board elects a treasurer, resident of the district but not member of the board and not the secretary; and the treasurer gives bond as the board may direct. The duties and compensation of the officers are defined in the statute, and all expenses are paid out of the drainage fund and not from the funds of the county. (As amended by the Act of March 12, 1938, ch. 35.) [Comrs. v. McGill, 251 Ky. 400; 65 S.W. (2d) 91.]

#### FINANCING—Assessments

*Sec. 2380-b-13. Tax for preliminary expenses:* The drainage board immediately after taking charge, levies a uniform tax of not more than 50 cents per acre upon the lands in the district as shown by the viewers' report, to be used for the expense of establishing the district before the board is empowered to provide funds to pay the costs of constructing the works. Such tax becomes delinquent December 1 of the year in which levied, and is collected by the sheriff in the same manner as general state and county taxes. This tax is a lien against the land and other property from the time it is levied, and is subject to the same penalty for nonpayment as state and county taxes. Any surplus is placed in the general fund of the district to be used for construction.

*Sec. 2380-b-14. Engineer:* The drainage commissioners appoint a competent engineer, who may be an individual or corporation, to be the chief engineer of the district and to engage such assistants as the commissioners may approve. The chief engineer has control of the engineering work and makes surveys of all lands affected and reports in writing, in triplicate, to the drainage board with maps and profiles and a plan for the works. This report must show each separate tract of land, its area, name of the owner, and the location of the proposed improvements. The original report may not be withdrawn from the custody of the secretary.

*Secs. 2380-b-15 and 2380-b-16. Plan—Appraisers:* The report of the engineer is known as the "plan of reclamation," and when it is filed the commissioners adopt it with such modifications as may be agreed on, and file a copy with the clerk of the court in which the district was organized. The court refers the report to a board of appraisers to be appointed by the judge, consisting of three resident freeholders of the county who are in no way interested in the proceedings nor kin within the second degree of consanguinity to any person owning land in the district. The appraisers have to appraise the land and other property and assess benefits and damages, basing their return on the report of the engineer. *Sec. 2380-b-16:* The

appraisers begin their duties within 10 days after taking the oath of office. They may call on the attorney for the district and the chief engineer for assistance. They view the premises and determine the value of all land and other property, within or without the district, subject to assessment or to be acquired for rights-of-way and works of the district. They appraise each parcel separately and assess the benefits and damages that will accrue to each separate tract or subdivision or other property, highway, railroad, right-of-way, or easement from carrying out the "plan of reclamation." Highways, railroads, and rights-of-way are assessed according to the increased physical efficiency and decreased annual average maintenance cost by reason of the proposed work of the district, capitalized on a 6 percent basis. Appraisers may not change the "plan of reclamation." They report their findings in writing and the report must be signed by at least two of them. They estimate the cost of the work as set out in the "plan of reclamation." They report separately for each tract of land the number of acres, present value, quantity of land to be taken for rights-of-way, value of the land to be taken, consequential damages to adjacent land, and enhancement per acre of the value of the land that will accrue from the improvement. They classify the land and other property into five or more classes designated A to E.

**Sec. 2380-b-17. Hearing on appraisers' report:** If the report of the appraisers shows that any property is going to be affected and the owner thereof has not been brought into court, the clerk will give notice equivalent to that given to owners already in court. He also gives notice by posting and publication of the filing of the appraisers' report and when and where exceptions thereto will be heard. The trial of such exceptions is by the court, except that where lands are to be condemned the trial is by jury as provided in the general laws.

**Secs. 2380-b-18 to 2380-b-20. Appraisers' report—Confirmation—Abandonment:** The board may compromise with objectors to the appraisers' report, but such compromise must be approved by the court. Otherwise a trial is had first on exceptions to the assessment of damages, and this trial may be by jury and follows in all respects the trials for condemnation of railroad rights-of-way. All damages awarded are paid by the drainage board out of the first money available for that purpose, and cash payment, or arrangement for payment, must be made before the land is taken, unless advance payment is waived by the owner. The trial for damages must be completed before any trial of the exceptions to assessments of benefits or to classification is had. These exceptions are heard in a summary manner so as to carry out the purposes and needs of the district and the equities of all persons interested. When exceptions have been filed, the court determines the correctness of the classification of, and assessment of benefits to each tract of land or other property. The report of the appraisers is *prima facie* evidence of the correctness of the facts stated therein. If after hearing it appears to the court that the estimated cost of the improvement is less than the benefits assessed against the land and other property, the court will confirm the report of the appraisers as to classification and assessment of benefits, as it may be amended or modified by the court.

If a majority of the landowners shall at this time desire to abandon the improvement, they have the right so to do by showing that the costs exceed the benefits accruing to the land and property in the district; and when it is so shown, the court will dismiss the proceedings.

(An amendment inserted by the Act of February 3, 1922, provides that after the report of the appraisers has been filed,

if the owners of 75 percent of the land embraced in the district, or any part thereof which is practically separated from other portions of the district, file a petition stating that they desire to abandon the improvement, the court will dismiss the proceedings at the cost of the landowners.)

Any interested person or corporation may appeal from the judgment of the court as to classification, assessment of benefits, or damages. On appeal no question may be raised that was not raised in the exceptions to the appraisers' report. The appeal does not in any way stay the proceedings nor affect the classification, assessment of benefits, or assessment of damages to any land or property not directly involved in the appeal. The judgment is construed as a several judgment as to each tract of land or other property. The form of judgment is set out in the statute at length. (L: 1918, ch. 84 as amended by Act of February 3, 1922, ch. 2.) **Sec. 2380-b-19:** The clerk of court certifies the judgment and the report of the appraisers to the drainage board and it is spread on their records. **Sec. 2380-b-20:** When lands or other property inside or outside of the district are acquired under this law and have been paid for by the drainage commissioners, the title, use, and possession pass to the district. In default of payment by the drainage commissioners for five years, all proceedings abate at the cost of the district.

**Sec. 2380-b-21. Board may borrow money:** The board of drainage commissioners has the power to construct the improvements themselves or to let contracts therefor. The provision for making contracts is set out in detail in the statute. After the court clerk has certified the judgment of the court and a copy of the confirmed appraisers' report to the drainage commissioners, they may borrow such money as is necessary to carry out the work of the district to an extent not exceeding 75 percent of the assessed benefits shown in the appraisers' report, and may pledge the faith and credit of the district for repayment thereof. No money may be borrowed for a longer period of time than the actual needs of the district require, and in no case for more than five years. They may not pay more than 6 percent interest. Borrowed money shall be repaid as soon as there are sufficient funds realized from assessments or the sale of bonds.

**Sec. 2380-b-22. Minimum assessment:** Within 30 days after all work is provided for, the drainage board must ascertain the cost of doing such work and add thereto all expenses of organization and damages. To that sum 10 percent is added and the result is the "minimum district assessment." If bonds are to be issued, the board determines the time they will run and calculates the interest that will accumulate on the entire issue. (The par value of the bonds may not be in excess of 90 percent of the "minimum district assessment.") The total of the interest that will accrue is the "district interest assessment." The sum of these two assessments constitutes the "maximum district assessment." The board ascertains what percent the minimum is of the total assessed benefit. They do the same for the "interest assessment." The board then apportions the minimum to each separate tract of land, railway, highway, and other property, so that each shall bear its ratable and just part of said "minimum." They likewise apportion the "interest." They then levy a drainage assessment for the amount of both the "minimum" and the "interest," and prepare a drainage assessment record for the district (one for each county in intercounty districts). They make copies for the drainage commissioners and for the clerk of the court. The form of the drainage assessment record is set out in full in the statute.

**Sec. 2380-b-23. Drainage assessment record:** When the drainage assessment record is filed, the drainage commissioners deliver same to the court clerk, who gives two weeks notice by publication that it may be inspected by interested persons at any time and that they have until the first day of the next term of court to file any exceptions thereto. Exceptions are heard and tried by the court in a summary manner upon the filing and recording of the proceedings. Any error found will be corrected by the court and its final order of approval is conclusive upon all lands, railroads, highways, and other property within the district. Such assessment is a lien upon all property and the several parcels and tracts of land and other property in the district, superior to all other liens except state, county, school, and municipal taxes.

**Sec. 2380-b-24. Interest not included in estimate of cost:** Where money is borrowed or bonds issued, interest charges thereon shall not be considered a part of the cost of improvements in determining whether such cost is equal to or greater than the benefits assessed.

**Sec. 2380-b-28. Collection of assessments:** The drainage commissioners, in December of each year, certify to the sheriff of each county the annual installment of assessments levied which will be due in the succeeding year, and the installment is collected at the same time as state and county taxes. The certificate to the sheriff is set out in the statute. *Sec. 2380-b-28-a:* When directed by the court, the treasurer may receive payments direct, certifying receipt of the payment to the sheriff.

**Sec. 2380-b-29. Liens—Penalties:** All assessments, penalties, and costs from the date of filing the district assessment register in the court clerk's office constitute a lien to which only state, county, school, and road taxes are paramount.

**Sec. 2380-b-30:** It is the duty of the sheriff or tax collector of each county in which district lands or other property are situated to receive the "collector's drainage assessment book" each year and collect the assessments at the same time that he collects county taxes on the same land and other property. The sheriff makes return to the secretary of the board of drainage commissioners and pays over all collections to the treasurer of the district. Assessments not paid by December 1 of each year are delinquent and a penalty of 6 percent is automatically added. If not paid by the January term of the county court the sheriff will sell the land or other property or so much thereof as may be necessary to pay the assessment, penalties, and costs. Such sale is for cash. Before making a sale, the sheriff gives notice to the owner in the form prescribed in the statute by publication and posting. The sale has the same force and effect as the sale of lands for county taxes. If there are no bidders of an amount sufficient to pay the assessment and costs, the sheriff purchases the property for the board of drainage commissioners and makes report to the county clerk of the county where the land or other property is situated. The purchaser of such property takes it subject to future assessments of the drainage district. The purchaser at such a sale takes the same title as the purchaser at a tax sale, and the time for redemption is the same. (L. 1918, ch. 64.) [Drew v. Board of Drg. Comrs. of McCracken County, 264 Ky. 270; 94 S. W. (2d) 664.]

**Sec. 2380-b-43. Maintenance assessment:** Upon completion of the improvement the board of drainage commissioners, in order to maintain, operate, and repair the same, levies a maintenance assessment on the first Monday of December in each year, apportioned on the basis of the assessment for original construction, and not to exceed 10 percent thereof in any one year.

This assessment is certified to the sheriff or tax collector in the same way as the original assessment. It may not exceed 2 percent of the original cost of construction unless consent is first obtained in writing from two-thirds of the owners of the land affected. The maintenance tax is collected at the same time and in the same manner and with the same penalties as other taxes. (L. 1932, ch. 4.) *Sec. 2380-b-43-a:* Landowners may, with the approval of the board, do maintenance work and receive credit slips therefor, to be used in payment of the maintenance assessment only. Regulations under which this may be done are set out at length in the statute.

#### FINANCING—Bonds

**Secs. 2380-b-25 and 2380-b-26. Resolution for bond issue:** The secretary gives notice that the "assessment record" (sec. 2380-b-22, *ante*) is in his hands and that, at a time fixed between 30 and 60 days thereafter, all persons may pay the minimum assessment and release the lien thereof. Any party so paying is given a receipt and the clerk will endorse on each copy of the assessment record the fact that the minimum assessment against such tract is paid in full. At expiration of the period stated, the drainage commissioners meet and adopt a resolution, which must be recorded, stating the total amount of bonds to be issued, the denominations thereof, the number of series, and the time of payment of each series. *Sec. 2380-b-26:* Immediately thereafter the secretary prepares a district assessment register for each county involved, containing the names of each owner found in the confirmed report of the appraisers and a description of the property. The assessment register shows the "minimum" and "interest" assessments and the installment to be paid each year during the time the bonds are to run, except where the "minimum" has been paid. The form of the assessment register is set out in the statute. This assessment register is the authority of the tax collector of each county to collect the assessments therein.

**Sec. 2380-b-27. Installments—Interest:** The board of drainage commissioners may, if in their opinion the best interests of the district will be subserved, defer the payment of the "minimum" assessment for not to exceed five years and may fix the time when the first annual assessment shall become payable. In such case a sufficient annual assessment is made to cover interest on bonds plus cost of collection. This levy is in the exact ratio of the assessments confirmed by the court.

**Sec. 2380-b-38. Warrants:** Warrants presented to the treasurer and not paid for lack of funds are endorsed by him to that effect; thereafter they bear 6 percent interest until such time as there are sufficient funds on hand to pay them, and at which time interest ceases whether they are presented for payment or not.

**Sec. 2380-b-42. Bonds—Maximum amount—How proceeds applied:** The board of commissioners of any district may in their discretion issue bonds in amount not to exceed 90 percent of the total of the minimum district assessment levied upon the lands and other property. The bonds bear 6 percent interest and mature at annual intervals within 30 years, commencing after a period of years not greater than five. Bonds must be signed by the president and secretary of the board and countersigned by the clerk of the county court in which the district was organized. The secretary of the board of drainage commissioners certifies to the county court clerk the resolution of the board authorizing the issuance of bonds, and the county clerk records said resolution in the *lis pendens* record in his office and countersigns all bonds before they are delivered to the treasurer. Bonds may not be sold for less than par or face value at the date of issuance, and must show on their face that they are

payable out of the money derived from assessments. When assessments are collected, a sufficient amount to pay maturing bonds and interest must be preserved in a separate fund for that purpose and no other. Delinquent bonds and coupons bear 6 percent interest. It is the duty of the drainage board to make ample provision by annual assessments for maturing bonds and interest. If the original levy of assessments be not sufficient to pay all bonds issued and interest, then the commissioners must make additional levies for this purpose upon the benefits assessed. But no levy may be made in excess of the benefits shown in the confirmed appraisers' report or that will impair the security of the bonds. [First National Bank of Ava, 111 v. Bd. Drg. Comrs. of Hickman County, 229 Ky. 508; 17 S.W. (2d) 431.]

**Sec. 2380-d-1. Refunding bonds:** Whenever the drainage commissioners or other governing authority of a drainage district find and declare of record that it is for the best interest of the landowners of the district to refund all or any part of its bonded indebtedness, such board or governing authority may issue refunding bonds payable at such longer time, not to exceed 40 years from their date, as they may determine. Such refunding bonds may not exceed in the aggregate the amount of bonds refunded thereby and interest accrued thereon to the date of the refunding bonds. Such refunding bonds bear 6 percent interest, payable semiannually, and may be exchanged for the outstanding bonds if the holders thereof agree. Or they may be sold for not less than par and accrued interest, and the proceeds must be used in the payment of the outstanding bonds and the expense incident to issuing the refunding bonds; provided, no refunding bonds so sold shall become valid obligations of the district unless and until an equivalent amount of bonds refunded thereby shall have been surrendered by the holders thereof and duly cancelled. Any landowner has the right, within two weeks after the order for refunding bonds, to pay the full amount of the uncollected taxes or assessments against his property for the payment of the bonds to be refunded, and thereby release his land from the tax or assessment for the payment of refunding bonds. His property, however, remains subject to additional taxes that may be levied pursuant to law. Unless and until refunding bonds have been issued, the rate of tax or assessment or the amount of assessment applicable to bonds to be refunded, shall not be reduced. (L. 1936, ch. 38, sec. 1.)

**Sec. 2380-d-2. Procedure for refunding bonds:** Before issuing refunding bonds the governing authority of the district must give notice to the owners of the land or other property in the district of the intention to refund the bonds. Notice is by publication in each county interested and states the time and place of the hearing thereon. The form of notice is set out in full in the statute. Notice is to show cause why the refunding should not be done "and taxes in addition to the assessed benefits levied if necessary to pay interest on said refunding bonds." The notice states further that if a majority of the owners owning a majority of the acreage object to such refunding, it will be abandoned. (L. 1936, ch. 38.)

#### DISSOLUTION

**Sec. 2380-49-a. Discontinuance of ditches:** If a majority in number and amount of those assessed for the maintenance of any public ditch petition of county court for its discontinuance as a public ditch, the judge will docket the petition and issue to all parties interested notice of a hearing at the next term of court; and if no valid reason then is shown to the contrary, the judge will issue an order discontinuing the ditch. Appeal may be had to the circuit court in the same manner as

provided for the construction of the ditch. (L. 1918, ch. 114, p. 502.)

**Sec. 2380-b-61. Treasurer's funds at dissolution:** If upon dissolution there is any money in the hands of the treasurer after the payment of all obligations of the district, it is prorated to the several tracts of land, railroads, highways, and other property according to the assessed benefits confirmed by the court on organization, and shall be paid to the then owner of such property. (L. 1918, ch. 64, sec. 61.)

## LOUISIANA

[Louisiana General Statutes (Dart) 1939;  
Cumulative Pocket Supplement 1940;  
Chapter 19, secs. 6989 to 7032]

### GRAVITY DRAINAGE DISTRICTS

#### ORGANIZATION—Petition

**Sec. 6989. Creation of district—Police jury:** The police juries of the various parishes, except the parish of Orleans, are empowered to create "gravity drainage districts" in their respective parishes from lands which drain by gravity. No district may contain the entire territory of the parish and none may have less than five landowners therein. The police jury may also create subdistricts within the gravity drainage districts. They must create a gravity drainage district when petitioned by a majority in number of acres or a majority of the resident landowners in the area to be embraced, where such area contains 40 or less landowners. Where there are more than 40 landowners, the district must be created upon petition of 25 landowners. The resolution of the jury must fix the boundaries and give the district a numerical designation.

Gravity drainage districts and subdistricts so created are subdivisions of the State of Louisiana within the meaning of the constitution and statutes relating to incurring debt and issuing bonds therefor.

See: *Brown v. Chataignier Grav. D.D. #2*, 161 La. 309; 108 So. 548.

*Gravity D.D. v. Caldwell*, 171 La. 58; 129 So. 668.  
*Shantin v. Bd. Drg. Comrs.*, 160 La. 1036; 107 So. 897.  
*Thompson v. Police Jury*, 168 La. 517; 122 So. 713.

#### ORGANIZATION—Officers

**Sec. 6990. Publication:** Whenever districts are created or reorganized, or lands have been added, a copy of the ordinance of the police jury duly certified by the secretary must be published for 30 days in the parish in which the land is situated and must also be posted. Within 30 days any landowner within the district has the right of appeal to the courts to contest the action of the police jury or object to the inclusion of his land. After 30 days the action of the jury is absolute and incontestible for any cause whatever and the regularity and legality of the proceedings is presumed. But nothing in this section requires the board of drainage commissioners of any gravity drainage district to await the expiration of 30 days before proceeding to organize. (L. 1924.)

**Secs. 6991 and 6992. Board of commissioners:** All districts are governed and controlled by five commissioners. These commissioners or their wives must own assessed real estate within the district with a value of at least \$500. Representatives of corporations owning land in the district of a like value may be commissioners. Such representatives may be officers of, or persons designated to represent, the corporation. Persons possessing such qualifications, or so designated, may be drainage commissioners, whether residents or nonresidents. Commissioners may hold office in two or more districts and may hold such position in addition to any other office held, without that

fact being considered in contemplation of law as dual office holding. (L. 1924.) *Sec. 6992:* The police juries organizing the district appoint three commissioners in each district, two for two years and one for four years. The remaining two members are appointed by the governor for four years. The appointment in either case must be upon the petition or recommendation of a majority in number of acres, or a majority of the resident landowners where the district contains 40 or less landowners. Where there are more than 40 landowners, the appointment is made upon the recommendation of 25 landowners; if there is a contest, the jury or the governor must appoint those commissioners recommended by the landowners owning the greatest number of acres in the district. In the absence of recommendation, the jury and governor appoint at their discretion. (L. 1924.)

*Secs. 6993 and 6994. Inter-parish districts:* When it is necessary to organize districts containing land in two or more parishes, they are created by joint resolution of the police juries of the respective parishes or by resolution passed by one police jury and approved by the other or others. They create such districts on a like petition as for districts in one parish. (*Sec. 6989.*) In inter-parish districts two commissioners are selected by the police jury of the parish having the largest area in the district, and one by the jury of the other parish. When portions of three parishes are involved, each selects one commissioner and they draw lots for the long and short term appointments. When portions of more than three parishes are included, the juries of the three parishes having the greatest acreage name the three commissioners, and they draw lots for terms of office. Commissioners may be removed for cause by the power appointing them. *Sec. 6994:* On failure or refusal of the juries to organize gravity drainage districts, when needed in territories partly in the parishes of each, they are required to do so when petitioned by the property owners as is provided in section 6989 (*ante*). A petition objecting to the creation of such gravity drainage district is not good reason for the jury to refuse to create or to approve such district when properly petitioned under section 6989.

*Sec. 6995. Gravity subdrainage districts:* Subdrainage districts are composed of territory wholly within a district and less than the entire territory of such district. Such subdrainage districts may be created from the land of one landowner. The governing body in a subdistrict is the same as that of the parent district. The resolution creating subdistricts defines their limits and such boundaries may be changed by the police jury creating them prior to the issuance of bonds or the levy of taxes. Subdrainage districts may also be formed on the petition of the board of commissioners of the parent district, and they must be formed when petition is presented as provided in section 6989. The corporate seal of the parent district may be used for the subdistrict. (L. 1924.)

#### ORGANIZATION—Powers

*Secs. 6996 to 6998. Powers of districts:* Any gravity drainage district or gravity drainage subdistrict created and numbered by the police jury of any parish or by the joint action of two or more juries, constitutes a body corporate with all of the powers of a corporation, and has perpetual succession. They also have the power of expropriating property for the purpose of acquiring land for the necessary purposes of the district. The drainage commissioners of either a district or a subdistrict, for the purpose of securing proper outlet for the waters of the district, have the authority to extend canals or ditches or both beyond the limits of their respective districts, with the same power of expropriation for rights-of-way. *Sec. 6997:* The police juries creating gravity drainage districts may designate

the domicile of the corporation so created, and the drainage commissioners, by resolution and publication of notice for 30 days, may change the domicile.

When a police jury creates a gravity district, it designates the time and place of the first meeting of the drainage commissioners. These commissioners immediately organize and elect a president, a vice-president, and a treasurer who shall serve also as secretary and receive a salary of not less than \$15 per month nor more than \$50, to be fixed by the commissioners. *Sec. 6998:* The board of drainage commissioners has the power to open all natural drains to make them effective, and to cut and open new drains, ditches, and canals wherever necessary. They may enter into contracts for the performance of such work, and may perform all other acts necessary to fully drain all of the land in their districts.

*Sec. 7024. Commissioners—Powers:* The commissioners have absolute control over the drainage of the districts and subdistricts and are authorized to construct the works necessary for the purpose of gravity drainage thereof. They may adopt all needful regulations. A police jury may include within a district lands situated in incorporated towns and municipalities, although their charters may except such lands from the authority of the police juries; but this provision does not limit the authority of the towns or municipalities to carry on drainage work within their limits.

#### FINANCING—Assessments

*Sec. 6999. Tax levies:* The drainage commissioners have the power to provide necessary funds by levying a tax or forced contribution. If it is an acreage tax levied by the vote of electors of gravity drainage districts, then such tax shall be by resolution of the governing authority of the district and be levied for the full term for which it was voted. If the tax is *ad valorem*, assessed to pay principal and interest on bonds issued upon vote of the taxpayers, then such *ad valorem* tax shall be levied annually. (L. 1924, sec. 11.)

*Sec. 7001. Acreage tax:* Districts and subdistricts, through their governing authority, are authorized to collect annually [in addition to the tax authorized by article XIV, section 14 (a) of the constitution of Louisiana] an acreage tax or forced contribution not exceeding 50 cents per acre per year for a period not exceeding 40 years. Such acreage tax must be imposed by the governing authority upon petition by the owners of more than two-thirds of the acreage. The governing authority may in its discretion, and shall upon petition of a majority in number of the landowners and a majority in number of the acres, order an election to determine whether the tax shall be imposed, the amount thereof, and the length of time the tax shall run. Such district may issue bonds and refunding bonds, the payment of which is secured by acreage taxes or forced contributions, running not longer than 40 years and not exceeding 50 cents per acre, when authorized at an election held for that purpose, by landowners qualified to vote under Louisiana laws, who constitute a majority in number and own a majority in acreage in the district. But the total amount of the debt incurred or bonds issued shall not exceed in principal and interest the aggregate amount to be raised by said acreage taxes during the period for which they were levied.

*Sec. 7023. Sale of delinquent property:* When it is necessary to sell lands for delinquency in the payment of drainage taxes, and the entire property does not sell for enough to pay the forced contribution or acreage tax together with the state and other taxes assessed thereon, the sheriff of the parish must adjudicate the same to the State of Louisiana. The state registrar takes possession of the land and as soon as the redemption

period has expired, offers the property for sale. The property may not be sold for less than all taxes or forced contributions due thereon together with interest and penalties. Any conveyance by the registrar is good and valid. All sales statutes apply with equal force to any tax adjudication under this statute.

#### FINANCING—Bonds

**Secs. 7000, 7002, and 7003. Bond issues:** Gravity drainage districts and subdistricts may, as political subdivisions, incur debt and issue negotiable bonds payable from an *ad valorem* tax on the property within the district under the laws of the State relating to the issuance of bonds. **Sec. 7002:** The governing authority of any gravity drainage district or subdistrict may call a special election on the question of levying an acreage tax or forced contribution and issuing bonds secured thereby. They must call the election when requested by petition of one-fourth of the property tax payers eligible to vote. The special election is ordered by resolution stating the purpose thereof, the amount of the debt, the maximum time for which the bonds are to run, and the maximum rate of interest. **Sec. 7003:** Notice of the election is by publication for 30 days.

**Sec. 7004. Use of funds:** *Ad valorem* taxes, or acreage taxes, or forced contributions may only be levied, and debts may only be incurred or bonds issued, to construct gravity drainage works or to refund bonded indebtedness of a district or subdistrict, and for no other purpose.

**Secs. 7005 to 7013. Voting:** These sections give in detail the manner of holding elections and canvassing the returns.

**Sec. 7014. Result of election:** If a majority in number of qualified taxpayers and a majority in number of acres voting at the election vote in favor of levying a forced contribution or acreage tax, the governing authority by resolution may proceed to levy such tax for the term for which voted. (L. 1934.)

**Sec. 7015. Issuance of bonds:** If a majority in number of the qualified taxpayers and a majority in number of acres voting at the election vote in favor of incurring debt and issuing bonds secured by and payable from an acreage tax, the governing authority may by resolution authorize the issuance of such bonds in an amount not exceeding that stated in the proposition voted on, and for no other purpose than that stated, and not exceeding in principal and interest the aggregate amount to be raised by such forced contribution or acreage tax during the period for which the taxes are levied; provided that the avails of at least two and one-half cents per acre of any acreage tax or forced contribution thus levied shall not be funded into bonds but shall be set aside each year and used solely for the maintenance of the gravity drainage works; and the total amount of the bonds issued shall not exceed in principal and interest the amount to be raised after deducting two and one-half cents per acre set aside for maintenance. (L. 1934.)

**Sec. 7016. Bonds—Terms:** No bonds may run for more than 40 years, bear more than 6 percent interest, or be sold at less than par. The governing authority fixes the time when the bonds shall be payable, which must be in annual installments beginning not more than three years after the date of the bonds. The total amount payable in each year shall not exceed the amount of the forced contribution or acreage tax, after deducting from such tax 15 percent for cost of collection, delinquency, and contingencies. (L. 1924.)

**Sec. 7017. Bonds registered:** Bonds may be either registered or coupon bonds. Coupon bonds may be registered as to principal in the holder's name on the books of the treasurer of the district. Thereafter no transfer is valid unless made on the treasurer's books. Registration as to principal does not

restrain the negotiability of the coupons by mere delivery. Bonds may be discharged from registration by transfer to bearer after which they are transferable by delivery only. (L. 1924.)

**Secs. 7018 to 7021. Resolution authorizing issuance:** Before the bonds are issued, the governing authority investigates and determines the regularity of the proceedings. A form of recital of regularity is set out in the statute. **Sec. 7019:** When the time in which the validity of the bonds may be contested has elapsed, which is 60 days from the date of the promulgation of the result of the election, bond issues by any district will be registered by the secretary of state without charge. **Sec. 7020:** Whenever bonds have been issued and a tax levied as herein provided, any landowner in the district has 60 days next following the election proclamation to contest the validity of the proceeding by action in court. Thereafter the levy is incontestable and no court has jurisdiction to hear objections to the same. **Sec. 7021:** All tax laws of the state are applicable to the collection of drainage taxes.

#### DISSOLUTION

**Sec. 7028. Dissolution:** At any time before bonds are issued, the governing authority may submit to the taxpayers the question whether the forced contribution or acreage tax previously voted therein shall be repealed and may also submit at such election the question of dissolution of the gravity drainage district. If the proposition receives a majority in number and amount of the votes of qualified taxpayers voting at such election, the governing authority of the district or subdistrict may give notice by publication requiring creditors to present their claims within 60 days. After termination thereof, the district is deemed to be dissolved except so far as necessary to continue it for the purpose of levying a tax to pay such claims and demands as are established against it.

No proceeding shall be taken to dissolve a gravity drainage district or subdistrict so long as the same shall have outstanding bonds secured by a forced contribution or acreage tax or by an *ad valorem* tax. (L. 1924.)

### LEVEED AND PUMPED DRAINAGE DISTRICTS

(Chapter 20, secs. 7033 to 7092)

#### ORGANIZATION—Petition

**Secs. 7033 and 7034. Creation of districts authorized:** The police juries of the several parishes are authorized to establish drainage districts in their respective parishes under Article XV of the constitution (L. 1921, E.S., sec. 1). **Sec. 7034:** For the purpose of drainage or reclamation of partially drained swamp and overflowed lands that must be leveed and pumped in order to be reclaimed, police juries are empowered to create on their own initiative districts embracing all or part of the lands in their respective parishes; provided that all of the land in any district must be contiguous. When the lands are in more than one parish, action is taken either by joint resolution of the respective juries or by an ordinance of the jury of one parish approved by the jury of the other parishes interested. But no district may contain within its limits less than five landowners, resident or nonresident, and no land may be included in more than one drainage district.

**Sec. 7035. Upon petition of landowners:** Upon failure or refusal of the police juries to create districts, they are required so to do when petitioned by the owners of a majority of the acres in a proposed district. Such petition must describe the area, designate the name of the proposed district, be signed by the owners of a majority of the acres, and have with it a certificate of the court clerk certifying to the ownership of

the lands and the acreage of each owner. When a district is inter-parish, the petition need be presented only to the police jury of the parish having the largest acreage, and it must be created by that jury.

**Secs. 7036 and 7037. Approval of state engineer:** No district may be created by petition or otherwise until the board of state engineers has approved its formation and furnished the police jury with a map showing the land which, in the opinion of the board, it is proper to include. If the board thinks it necessary to include any highlands, that does not invalidate the district but the highlands shall be taxed only in the proportion that they will be benefited by the works of the district. **Sec. 7037:** Districts shall be known as "drainage district" with such other name or number as the police jury may determine. When created by petition, the name stated in the petition must be used unless it conflicts with the name of an existing district.

#### ORGANIZATION—Officers

**Sec. 7038. Drainage commissioners:** All drainage districts must be governed and controlled by five commissioners known as the board of drainage commissioners. They or their spouses must be each a record owner of real estate in the district assessed at \$500 or more, or the representative of a corporation owning lands assessed at a value of \$500 or more. Corporation officers when designated by their corporate board of directors may be drainage commissioners, whether resident or nonresident. Drainage commissioners may hold office in more than one district.

**Secs. 7039 to 7041. Appointment of commissioners:** In the ordinance creating the district the jury appoints five commissioners of the qualifications designated. Appointments must be made upon the recommendation of a majority in acreage of the landowners where there are 40 or less landowners. Where there are more than 40 landowners, the appointment must be made upon the recommendation of 25 of them. In case of contest the police jury appoints those commissioners recommended by the landowners owning the greatest number of acres. The commissioners determine by lot their terms of office of from one to five years. Thereafter the police jury creating the district annually appoints one commissioner to hold office for five years. Recommendations for appointment must be in writing and signed by the landowners. (L. 1928, Act No. 200, sec. 1.) **Sec. 7040:** Commissioners may be removed upon petition by the landowners owning a majority of the acreage, and a new commissioner appointed by the police jury. But the commissioner always has the right to have the court pass on the legality of his removal. **Sec. 7041:** The domicile of a district must be stated in the ordinance creating it, and change of domicile requires 30 days notice by publication. A district may be sued only in the courts of its domicile. All meetings of the board must be held in the domicile, except that, by unanimous consent of the board at a meeting held at such domicile, the board may designate a different place at which meetings may be held.

**Sec. 7052. Attorney:** The board appoints an attorney to have charge of the legal affairs of the district. For his work done in organization, assessing benefits, and issuing bonds, the attorney may not receive more than one and one-half percent of the total benefits assessed.

**Secs. 7053 and 7054. Engineer—Appointment:** The board of commissioners as soon as possible after organization appoints a chief engineer, with such assistants as the board may provide. He makes all necessary surveys of boundaries and land within the district and reports in writing with maps, profiles, and recommendations as to any subdistrict which should be

created. His report must contain a complete plan for leveeing, draining, and reclaiming land from damage by water, and an estimate of the total cost. He also makes a similar report as to any subdistricts. He reports to the commissioners every 12 months, and oftener if required by them. The board of commissioners may adopt the final report of the engineer or any modification thereof, and the report so adopted is the plan for the improvement of the district, known as the "plan of reclamation," and is filed with the secretary and recorded in the drainage record. (L. 1924, Act No. 235.) **Sec. 7054:** When, upon the adoption of the plan of reclamation, the owners of a majority in acreage of a district or a subdistrict present a signed petition to the board requesting that the work proceed according to the plan, it then becomes the duty of the commissioners to proceed with the reclamation, incur debts, issue bonds, and levy taxes to pay the obligations.

**Sec. 7055. Appraisers:** Within 20 days after the petition to carry out the work, the board appoints three appraisers, adult residents of Louisiana, without ownership or interest in the district or relationship to persons or corporations owning land in the district. They become the board of appraisers to appraise the lands within or without the district required for rights-of-way and to assess benefits and damages accruing by reason of the improvement.

**Sec. 7087. Chief engineer for reorganized district:** When a district is reorganized and the board of commissioners appointed, they employ a chief engineer as provided in section 7053 and thereafter the proceedings are the same as in the case of a new district. The engineer has charge of the plan of reclamation as well as the restoration, enlargement, or improvement of all works. The board of commissioners has full power to adopt the plan, to assess benefits and damages, and to levy or collect taxes to construct the works provided by the plan. They may, in their discretion, issue bonds; provided, and bonds of a reorganized district or a subdistrict thereof must begin to mature not later than 10 years after their date. All debts of pre-existing districts or subdistricts become the obligations of the reorganized district, or such subdistricts thereof as were originally liable therefor, and are payable out of the respective funds, from whatever source derived, of the reorganized district or the subdistrict thereof originally liable for such debt, and not otherwise. Pre-existing indebtedness, bonded or otherwise, may be funded or refunded by the issuance of bonds. (See Financing—Assessments, for balance of sec. 7087.)

#### ORGANIZATION—Powers

**Sec. 7043. Bodies corporate—Powers:** Drainage districts created by the respective police juries constitute bodies corporate in law with all the powers of corporations, and have perpetual existence. They also have the specific power to expropriate property necessary to carry out their purposes. They may acquire pumping machinery and rights-of-way for levees in full ownership. They may contract with other drainage districts (gravity or pumping) for joint enterprises. The proportion of each in the cost and ownership in the joint undertaking must be determined in advance. They have the power to open new drains and to improve natural drains to make them effective, within or without the district. The commissioners are specially authorized to perform such work without necessity of calling for bids. To secure proper outlets they may extend canals and ditches beyond the limits of the district with the same power of expropriation for rights-of-way as if the outlets were wholly within the district. When a district created under this act has no outstanding debts of principal or interest of bonds, the jury creating it, with concurrence of the board of commissioners and

the chief engineer of the district, may enlarge or diminish its boundaries or may entirely repeal the ordinance creating the district. (L. 1926, Act No. 272.)

**Sec. 7046. Contesting legality:** Certified copies of all ordinances creating districts must be recorded in the "drainage district record book" provided for each district. The ordinance is then published for two weeks. Any interested person may contest the legality of the drainage district by suit in the district court of the domicile of the district within 60 days. No court has jurisdiction to entertain suit after the expiration of the 60-day period. In the absence of contest after 60 days it must be conclusively presumed that the district was legally created. The trial of contests is a summary proceeding without jury and with preference over all other cases. Appeals may be had as in other cases.

**Sec. 7050. Subdrainage districts:** The board of commissioners of any district has the right to form two or more subdrainage districts out of the territory comprising the main district by a simple resolution to that effect, approved by the engineer of the district. Such subdistricts may be composed entirely of land of one individual or corporation, but no subdistrict may be created after adoption of the plan of reclamation. Subdistricts may be enlarged or diminished by the board by simple resolution, approved by the engineer, prior to the adoption of the plan. Such subdistricts have the same powers as drainage districts except that they are governed in all respects by the commissioners of the parent district. Upon forming a subdistrict the commissioners appoint not to exceed three property owners as representatives of the subdistrict, who may or may not be drainage commissioners of the parent district, to superintend the work of the subdistrict. Any contract of a subdistrict in excess of \$100 must be approved by the board of commissioners of the parent district.

**Sec. 7061. Powers of commissioners:** When a certified copy of the court decree confirming the appraisers' report is received by the commissioners, they have full power to carry out the "plan of reclamation" and to construct the works in accordance therewith. They may do the work themselves, acquiring the necessary equipment, or they may let a contract therefor to the lowest bidder. The chief engineer is superintendent of all works and he reports at least once a year to the commissioners.

**Secs. 7067 and 7068. Expropriation:** The district is given full power to construct works, alter water courses, and acquire rights-of-way. It may expropriate for the use of the district any land or property within or without the district not acquired or condemned by the court after confirmation of the appraisers' report assessing benefits and damages. The procedure follows the expropriation of land for telephone and telegraph rights-of-way. **Sec. 7068:** The district may not enter on land to be expropriated until the price awarded to the owner has been paid or deposited with the court. If not paid within five years, the judgment of expropriation is void.

**Sec. 7076. Changing "plan for reclamation":** The board of commissioners, upon petition by the landowners owning more than two-thirds of the acreage within the district, have the right, with the consent of the chief engineer, to change the "plan of reclamation" theretofore adopted.

**Secs. 7077 and 7078. Changing boundaries:** The police juries creating a district must enlarge the boundaries so as to include additional land upon petition by the landowners owning a majority of the acreage of land to be added; provided that the petition is approved by the board of commissioners and the board of state engineers. **Sec. 7078:** In the event of enlarging a district, or a change in the plan of reclamation, the board of

commissioners appoints three appraisers having the same qualifications as the original appraisers (sec. 7055) to assess benefits and damages and estimate the cost of the improvements. They report in the same manner as the original appraisers.

**Sec. 7079. Subdistricts:** Where a subdistrict has been formed and a plan of reclamation for same prepared, the proceeding for assessing benefits and damages and levying taxes and issuing bonds is the same as for the parent district.

**Sec. 7086. Reorganization:** Any drainage district organized for the purpose of reclaiming swamp and overflowed land that must be leveed and pumped in order to be drained and reclaimed may reorganize; or any two or more of such districts may consolidate and reorganize. Such reorganized district is entitled to the benefit of all of the provisions of this act. The owners of a majority in acreage present a petition to the police jury of the parish in which such districts are situated, or if more than one parish, to the police jury of the parish where the greater portion of the lands are situated, containing a certificate by the court clerk, as to landowners and acreage, and bearing approval of the board of commissioners of each district and of the board of state engineers. The police jury adopts an ordinance creating the reorganized district and appoints commissioners therefor as in original organization. Such commissioners may adopt a plan of reclamation for the reorganized district, make assessments, and issue bonds and refunding bonds generally in the same way as in original organization; provided, no such reorganization shall affect the obligations of the former organization or any subdistrict thereof, but all such obligations attach to and become a part of the reorganized district until fully paid. (L. 1923, Act No. 235.)

#### FINANCING—Assessments

**Sec. 7051. Acreage tax:** The board of drainage commissioners, immediately after organizing the district, levy a uniform acreage tax of not more than 25 cents per acre, to be used for organization, surveys, assessing benefits and damages, and other expenses before the commissioners are empowered to provide funds to pay the total cost of the improvements. If the boundaries are extended later, the same uniform tax is immediately levied on the additional land. The secretary assesses the tax against each acre on a triplicate assessment roll, one copy of which is placed in the drainage record, one copy filed with the tax collector, and one with the recorder of mortgages. Where the district is in more than one parish, an assessment roll is made for the land in each parish. This tax is due immediately and becomes delinquent after December 31 of the year in which levied. The tax is a lien upon the lands, enforceable in the same manner as other tax liens. If the money so collected exceeds the total expense of organization, the surplus is prorated and refunded. Where the report of the board of appraisers shows any land which will not be benefited by the plan of reclamation, and the uniform acreage tax has been assessed against such land, the tax is refunded.

**Secs. 7056 and 7057. Appraisers—Duties:** At the first meeting of the appraisers, the clerk of the court furnishes them a complete list of the lands in the district or subdistrict, and the names of the owners, together with a copy of the plan of reclamation. After they have taken the oath of office they elect one of their number chairman. A majority constitutes a quorum. **Sec. 7057:** The appraisers view the land, determine the value of the lands or other property within or without the district to be acquired for its works, and assess the benefits and damages that will accrue to each 40-acre tract or less from carrying out the plan of reclamation. They consider and assess only such benefits as will be derived from the work proposed in

the plan of reclamation regardless of other proposed works, improvements, or plans. They give consideration to works already constructed by taxation and to works constructed by landowners, and appraise their value. (Such needed works will be expropriated and the landowners reimbursed for their value.) Railroad and other rights-of-way are assessed according to their increased physical efficiency and decreased maintenance cost. Appraisers may not change the plan of reclamation. All lands enjoying a servitude of natural drainage shall be entitled to continue to receive equivalent artificial drainage without charge therefor and without having the same considered as an element in assessing benefits. The appraisers file their report in the tabular form prescribed in the statute. They also, with the advice of the engineer, estimate the cost of the work set out in the plan, including rights-of-way, settling basins, and other damages and the probable expense of organization and administration. The report must be signed by a majority of the appraisers. (L. 1924, Act No. 235.)

**Secs. 7058 and 7059. Petition to district court:** Upon the filing of the appraisers' report, the commissioners file a petition with the district court of the parish which is the domicile of the district, together with a copy of the report and plan of reclamation, and ask for the confirmation of the report. In the same petition they sue for the expropriation of any property necessary for the works of the district. The clerk of the court gives notice of the petition by publication for four weeks and by posting. He cites each property owner whose property is to be expropriated to appear in court within 15 days and show cause why the petition should not be granted. **Sec. 7059:** The court clerk sets the hearing not earlier than 16 days after the date of the last service of citation and not earlier than 10 days from the last publication of the notice. The court hears the matter in a summary manner without jury and determines all issues. It is not necessary to enter defaults against defendants or property owners who have not contested the suit. The court hears the matter of expropriation of property without a jury, and the report of the appraisers is *prima facie* proof of the necessity for expropriation as well as of all other matters in the report. If after hearing all of the evidence and contests the court is satisfied that the estimated cost of the improvement is less than the benefit assessed against the district or subdistrict, then the court must approve and confirm the said report or modify and confirm it and order the expropriation of the necessary property within or without the district. The court clerk transmits the decree to the drainage commissioners, by whom it is recorded in the drainage record. Appeal may be taken by interested parties who have filed contests as in other cases. The decree is conclusive on all persons and on the right of the drainage commissioners to proceed according to the plan for reclamation.

**Sec. 7060. Rejection of plans:** If the court finds on the hearing of the appraisers' report that the estimated cost of the improvement as reported or amended will exceed the estimated benefits, it will decree that the commissioners are not authorized to proceed with the work and the order will be recorded in the drainage record. When a plan has been so rejected and the commissioners are petitioned by the owners of a majority of the land in the district or subdistrict, they may cause other and amended plans to be prepared by the engineer and the procedure thereafter is the same as in the first instance.

**Sec. 7062. Tax levy for cost of work:** After the decree of the court confirming the assessor's report is received, the board without unnecessary delay levies a tax against the lands, railroads, and other property in such amount as may be found

necessary to pay the cost of completing the plan of reclamation, plus 10 percent for emergencies. The tax is apportioned to each tract of land or other property in proportion to the benefits assessed and not in excess thereof. If bonds are issued, then the amount of interest which will accrue shall not be considered as a part of the cost of construction in determining whether the costs are equal to or in excess of the benefits. As soon as the tax is levied the secretary prepares the drainage tax record, which becomes a permanent record in the office of the district.

**Sec. 7063. Lien of tax:** Drainage taxes as well as penalties, interest, and costs constitute a tax lien against lands and other property against which assessed, from the date of the filing with the commissioners of the certificate of the clerk of court confirming the appraisers' report.

**Sec. 7064. Maintenance tax:** For the purpose of maintaining the works of a district or subdistrict the commissioners may, before September 1 of each year, levy a maintenance tax. It is proportioned on the basis of the net assessment of benefits accruing from original construction, may not exceed 5 percent thereof in any one year, and is certified to the sheriff or tax collector in each parish interested at the same time as the annual installment tax is certified. It is collected in the same way.

**Secs. 7065 and 7066. Collection of tax:** After the levy and apportionment of the total tax provided in section 7062, the board of commissioners each year levy the amount of the annual installment of the total taxes together with a maintenance tax which taxes become due and payable at the same time as state and parish taxes. The annual installment of taxes is certified by the board to the sheriff or tax collector of each parish before September 1 of each year, for collection; provided, the annual installment of taxes shall not exceed in any one year 10 percent of the total taxes levied under section 7062. **Sec. 7066:** It is the duty of the sheriff to receive the drainage tax book of all districts and collect the taxes at the same time that he collects state and parish taxes on the same land and other property. The sheriff accounts for all taxes to the secretary-treasurer of each district, furnishing an itemized statement of collections and the names of persons paying. All of the laws of Louisiana relating to delinquent taxes are made applicable to drainage taxes. Neither the state nor any of its subdivisions shall ever be liable for any taxes assessed or imposed under the provisions of this act. No sale of any land or other property subject to the lien of drainage taxes has the effect of destroying such lien; provided, any land adjudicated to the state for delinquent drainage taxes shall not be liable for drainage taxes while owned by the state or any subdivision thereof. After such property is disposed of by the state or its subdivision, it becomes subject to all assessments and maintenance assessments thereafter accumulating; provided, if such property is redeemed from tax sale, the person redeeming must pay all assessments due thereon. At tax sales the board of commissioners may purchase the property like any other bidder. When sold for drainage taxes only, and in default of bidders, the property may be adjudicated to the drainage district and held by it in the same manner that the state holds like property. Property held by the district is liable for state and parish taxes while so held.

**Sec. 7081. Readjustment of assessments:** Whenever the owners of 25 percent or more of the land in a district or subdistrict file a petition with the clerk of the district court which confirmed the appraisers' report, stating that there has been a material change in the value of the properties in the district

since the last assessment of benefits and praying for a readjustment of the assessment of benefits on a more equitable basis as to the levy of maintenance taxes, the clerk gives notice of a hearing on the petition at a time not less than 30 days after the last posting of notice. The form of notice is set out in the statute. If the court finds that the statements of the petition are true, it will order a readjustment of the assessment of benefits to provide an equitable basis upon which to levy the maintenance taxes of the district. The court appoints three appraisers, with duties and powers similar to those of the original appraisers, to make such readjustment. The appraisers are not limited to the aggregate assessment of the original or any previous assessment of benefits. After the readjustment is made, the limit of 5 percent for the annual maintenance tax which may be levied applies to the amount of benefits as readjusted. There may not be a readjustment more than once in five years.

**Sec. 7083. Amendment of plans—Additional tax:** Where the works set out in the plan of reclamation are found insufficient to reclaim in whole or in part any or all of the lands and other property in the district, the commissioners have the right to formulate new or amended plans with new ditches and works or to provide for the enlargement of existing ditches, levees, and other works. Additional assessments may be made in conformity with section 7055 and subsequent sections, such additional assessments to be in proportion to the increased benefits accruing to the land and other property because of the additional works. If it is found that the total tax levied under section 7062 is insufficient for the cost of the plan of reclamation, or of the additional work done under this section, the commissioners may make an additional levy to provide funds to complete the work, provided that the total of all levies does not exceed the total amount of benefits assessed.

**Sec. 7085. Right to pay tax in full:** Any landowner assessed has the right to pay the total tax to the secretary of the board at any time before the date set by the board, and the amount to be paid is the full amount of tax levied less any amount added thereto to meet interest. The commissioners must fix a time after which the privilege of paying the total assessment shall not exist, which time shall not be subsequent to the date of any bonds issued. Notice of such date is by publication. Payment is recorded by the secretary and the drainage tax marked satisfied.

**Sec. 7087. Reorganized districts—Taxes:** (See "Organization—Officers," for first part of section.) In a reorganized district, if benefits assessed be sufficient to pay the cost of carrying out the plan of reclamation adopted as in the case of a new drainage district, and in addition thereto the pre-existing bonded or other indebtedness, not including interest thereon, then the commissioners of such reorganized district, in making the tax levy under section 7062, shall make in addition thereto such levy as will provide sufficient funds to retire principal and interest of the pre-existing debt. In such cases the proceeding for the annual levy of installments shall be the same as before provided for the case of a new district.

If the assessed benefits shall not be sufficient to pay the pre-existing indebtedness in addition to the cost of reclamation, then the commissioners of the reorganized district shall levy and collect in addition to all other taxes, annually until the pre-existing indebtedness is fully paid, an acreage tax or forced contribution against each acre of land liable for the pre-existing indebtedness sufficient to pay that indebtedness with interest, plus 10 percent for emergencies; provided such forced contribution may not exceed \$3.50 per acre *per annum*. This acreage tax is a lien on the property assessed.

#### FINANCING—Bonds

**Sec. 7071. Exemption from taxation:** All bonds issued by any drainage or subdrainage district are exempt from taxation. (L. 1921, E.S., Act No. 85.)

**Sec. 7080. Bonds—Issuance:** The commissioners may in their judgment issue coupon bonds not exceeding 90 percent of the total amount of taxes levied (sec. 7062) on which the interest is not to exceed 6 percent *per annum*. Bonds mature at annual intervals within a period not to exceed 40 years from their date, commencing after a period not longer than 5 years, as determined by the board of commissioners. The secretary of the district sells the bonds at such time as the commissioners direct, to meet payments for the works and improvements in the district. Bonds may not be sold for less than 90 percent of par and accrued interest, and are payable out of money derived from taxes levied. A sufficient portion of the taxes collected must be apportioned by the commissioners for the purpose of paying principal and interest of bonds, and must be held in a separate fund for that purpose and no other. Bonds and coupons not paid at maturity bear 6 percent interest until paid or until sufficient funds to pay them have been deposited at the place of payment. In the event that the original tax levy is not sufficient to pay principal and interest on bonds issued, commissioners must make such additional levy on benefits assessed as may be necessary to make such payment. Under no circumstances may tax levies be made which will impair the security of the bonds. The total taxes levied, exclusive of taxes levied for interest on bonds, maintenance, or reorganization, shall not exceed the total assessed benefits as decreed by the court; provided, the annual installment of taxes, exclusive of maintenance taxes and taxes levied under section 7087 for reorganization, shall not exceed 10 percent of the total taxes levied.

**Sec. 7088. Funding and refunding bonds:** Any drainage district or subdistrict may, for the purpose of readjusting, funding, refunding, extending, or unifying any or all of the authorized indebtedness, bonded or otherwise, or both, issue and sell funding or refunding bonds and pay such indebtedness or exchange refunding bonds with the holders of outstanding indebtedness in payment thereof as hereinafter provided. (See next paragraph.)

**Sec. 7089. Refunding bonds—Sale—Terms:** Refunding bonds bear 6 percent interest, run for not to exceed 40 years, and mature annually beginning not more than 10 years after their date. They may be sold or exchanged at not less than par and accrued interest. The proceeds are dedicated exclusively to the retirement of indebtedness of the district or subdistrict. They are payable out of any funds of the district not otherwise dedicated. It is the commissioners' duty to levy up to the full amount of the benefits assessed, if necessary, to pay and retire said bonds. The proceeding for the total levy, the annual levy, and for collection, is the same as for new districts. (L. 1935, 4th E.S., Act No. 33.)

#### CONSOLIDATION

**Sec. 7082. Consolidation of districts:** Any two or more adjacent districts, whether in the same or different parishes, may be consolidated into one, and the board of commissioners thereof have all of the rights and powers of those of any other district. In order to consolidate, the landowners owning a majority of acres in each district present a joint petition, approved by the board of commissioners and chief engineer of each district, to the police jury of the parish where the majority of the land in the consolidated district is situated. The petition

must be accompanied by a certificate as to ownership and acreage and must have the approval of the board of state engineers. It is thereupon the duty of the police jury to create the district in the same manner as original districts are created. The ordinance must be recorded with the clerk of the court and the recorder of each parish affected. Such consolidated district is thereupon subject to all of the rights and liabilities of the original districts.

### DRAINAGE DISTRICTS FROM LAND IN EXISTING DISTRICTS

(Acts of 1928, No. 233)

**Sec. 7094. Petition:** The owners of a majority of contiguous undrained or partially drained land in any organized drainage district; or the owners of a majority of land in contiguous portions of two or more districts; or the owners of a majority of lands partly in a drainage district and contiguous land not in any district, all of which lands must be levied and pumped for drainage, may petition the police jury of the parish in which a majority of the lands are situated to create a drainage district. Such petition must be signed by the owners of a majority of the acreage to be included in such district and have with it the court clerk's certificate as to ownership and acreage. (L. 1928, Act No. 233.)

**Sec. 7095. Board of state engineers:** The board of state engineers must have first approved the petition with respect to the body of land to be included, and have furnished an approved map of land which it is proper to include. (L. 1928, Act No. 233.)

**Sec. 7096. Organization:** The same form and procedure applies as to the districts organized under the Laws of 1921, Act No. 85; and such districts are subject to the provisions of that Act except that the board of commissioners will not follow requirements that are inconsistent or rendered unnecessary by the work that has already been done. Such districts may not affect in any way the obligations or indebtedness of any former organization.

(NOTE. Chapter 22, secs. 7100 to 7104.3, relates to bonds of drainage districts created prior to 1921. Chapter 23 contains miscellaneous provisions.)

## MARYLAND

[Annotated Code of Maryland (Bagby), Subtitle—"Drainage Lands," Article 25, p. 38]

### TAX DITCHES

#### ORGANIZATION—Petition

**Secs. 38 to 41, 43, and 45 to 52. Petition:** Whenever the owners of any swamp or low grounds shall deem it fit to have them drained, and if the owners cannot agree, or if they be legally incompetent or nonresident, any of them may petition the county commissioners of the county where any of the land is located for the appointment of commissioners to lay out ditches for drainage. The commissioners of the county where the application is first made have jurisdiction. They appoint three or more impartial freeholders from the vicinity of the land, at least one being taken from each county in which any of the land is situated, as ditch commissioners. **Sec. 39:** The drainage commissioners so appointed call to their assistance a skilled surveyor to view the lands and lay out by courses, distances, breadths, and depths, ditches sufficient to drain such land. **Sec. 40:** They estimate the cost of cutting such ditches, including damages, if any, and fix the proportion of said cost which each owner or person benefited shall be bound to pay. **Sec. 41:** The ditch commissioners report to the county commissioners in writing with plats or maps describing the general boundary lines

of the lands in question and a delineation of each owner's lot or parcel thereof, with estimated acreage, and the names of any persons to whom damages are awarded and the amount thereof. They also report the amount which each owner shall be bound to pay as a proportion of the costs and damages. A majority vote of the ditch commissioners prevails. The ditch commissioners award damages to any person injured, which damages must be paid by the persons chargeable with the cost before the cutting of any ditch. **Sec. 43:** All persons through whose lands the ditches are laid out, or whose lands will drain into same, and who will derive benefit therefrom, must contribute to the cost of the works, and the commissioners assess by way of a tax upon such persons a sum proportionate to the advantage they will receive. The sum so levied is apportioned to the cutting of the ditches, the payment of the damages awarded, and the expenses of the drainage commissioners. **Sec. 45:** The commissioners may adopt any already constructed ditches and provide by assessment for their extension, enlargement, or repair, and allow the owner of such already constructed ditch fair compensation for the work done, to be paid by those benefited; provided, the owner of such already constructed ditch shall be taxed his just proportion of the cost of the new and additional work. **Sec. 46:** Any person damaged or who will be assessed may apply to the county commissioners, at any time before confirmation of the return of the ditch commissioners, for an order of review, and the county commissioners may in their discretion grant such order or appoint other commissioners to perform the same duties as the original commissioners. **Sec. 47:** The commissioners appointed under any order, original or review, within one month after confirmation of their report, call together the taxables rated for such ditches for the purpose of choosing a board of two or more managers and one treasurer. When the land is situated in two or more counties, the board of managers must be composed of one member from each county. **Sec. 48:** Any person may be elected treasurer whether he be a taxable or not. **Sec. 49:** Notice of the meeting is by advertisement and posting in four public places in the neighborhood. **Sec. 50:** At the meeting each taxable is entitled to vote in proportion to his taxes, to-wit: Tax of \$5.00 and over, one vote; \$15.00, two votes; not less than \$35.00, three votes; not less than \$60.00, four votes; not less than \$100.00, five votes; \$150.00 and upward, six votes. (This provision does not apply to Dorchester County which has a special law.) **Sec. 51:** A majority of the taxables is a quorum at the meeting to vote for managers. If they fail to meet for any regular election, the county commissioners, upon proof that notice has been given, will appoint such managers and treasurer. **Sec. 52:** The managers thereafter call an annual meeting on the first Saturday in March, but if they fail so to do the county commissioners may make appointments on proof that the meeting has not been called.

#### FINANCING—Assessments

**Secs. 53 and 54. Taxation:** The ditch commissioners deliver to the treasurer a statement of the taxes levied with the sums which each taxable is bound to pay. The assessment when returned to and confirmed by the county commissioners remains in full force for 20 years (by amendment, L. 1920) from such confirmation and is the proportion or basis on which other and further taxes may be levied by the managers for necessary repair and maintenance. Somerset County is exempted from the application of this act and has a special law. **Sec. 54:** After the lapse of five years a new assessment may be had by application of a majority of the taxables to the county commissioners of one of the counties in which the lands are situated for enlargement, extension, cleaning, or repair of the ditches. The

county commissioners of the county in which the application was first filed have jurisdiction. They appoint commissioners to make assessments and return in the same manner as the original return and subject to the same review.

**Secs. 79 and 80. Liens:** Assessments and taxes for ditches made in pursuance hereof are liens on the real estate of the person indebted from the time the same are levied and are in arrears 30 days after levy. *Sec. 80:* In addition to the specific methods of collection provided, the treasurer of any ditch may enter suit in his own name as treasurer before a justice of the peace, provided the amount does not exceed \$100, and before the circuit court where the amount is more than \$100, and may obtain judgment in assumpsit.

#### ORGANIZATION—Officers

**Sec. 61. Treasurer:** The treasurer gives bond in double the amount of the assessments which will come into his hands and must turn over all moneys and accounts at the end of his term. The treasurer collects all taxes levied and, in case of delinquency, proceeds to collect and recover in the same manner as county taxes are recoverable by law. The treasurer settles his accounts with the taxables at the annual meeting in March and retains 5 percent of the gross collection as his compensation.

In case of a vacancy in the office of manager or treasurer, any three taxables may immediately call together, in the same manner as the first meeting is called, the remainder of the taxables for the purpose of filling such vacancy. A majority vote elects.

#### ORGANIZATION—Powers

**Secs. 62 and 63. Intervening lands:** Any person taxed for a ditch which does not pass through his land may open ditches through intervening lands and keep them open at his own expense; provided, he must have the consent of the owner of the intervening land unless the ditch be laid out and approved and damages assessed by the commissioners who laid out the main ditch, or by three other freeholders appointed by the county commissioners to assess such damage. *Sec. 63:* Persons applying for ditches through intervening lands must pay the cost thereof and pay all awarded damages before cutting the ditch. When in the opinion of the ditch commissioners the owner of intervening land is benefited by a cross ditch, he must contribute such sum as the ditch commissioners determine to be a proportionate share of the cost. Every ditch so made must remain open for the benefit of the persons named by the commissioners as being benefited, but if any ditch laid out is not begun within two years from the confirmation of the return, or being begun is not completed within seven years, the order and return become void.

**Sec. 75. Appeals:** The county commissioners or the circuit court of the county in which proceedings are pending may, before final decision, grant an application to examine the petition or any part of the proceedings so as to bring the merits of the case before the commissioners or the court or a jury for trial. Any aggrieved party may appeal to the circuit court of the county in which the proceedings are had and be entitled to a trial by jury at the election of either party. Appeal must be taken within 30 days and judgment therein is final.

#### CONSTRUCTION

**Sec. 58. Method:** The managers, after being chosen at the meeting of the taxables, proceed to construct the ditches laid out or repair and extend same as the case may be, and may employ necessary labor and acquire necessary machinery and supplies. They keep strict account of their expenditures and report thereon at the annual meeting of the taxables. Payment is made

by order drawn by the managers on the treasurer. Any person assessed may discharge his assessment by work to the amount of his proportion of the assessment, excluding any proportion necessary to pay damages and other expenses. The managers' certificate of work done must be received by the treasurer in payment of the tax.

**Sec. 116. Maintenance:** The managers are required to clean and repair the ditches at least once every two years, making a levy upon the taxables to pay for the work. (L. 1920.)

### DRAINAGE DISTRICTS

#### ORGANIZATION—Petition

**Sec. 85. Authority to establish:** The county commissioners of any county have jurisdiction to establish levee or drainage districts in their counties and to locate works and improve watercourses for the purpose of draining wet or overflowed land. It is declared in the statute that the removal of surplus water from agricultural lands and the reclamation of tidal marshes shall be considered a public benefit and conducive to the public welfare.

**Sec. 86. Petition—Engineer—Viewers:** A petition signed by a majority of the resident landowners in a proposed district, or by the owners of three-fifths of all lands that will be affected or assessed, is filed with the clerk of the board of county commissioners of any county in which a part of the lands are located. The petition describes the lands, states that they are subject to overflow or too wet for cultivation, and that the public welfare will be promoted by draining them or by improving a natural watercourse. The petition shows the route and termini of the proposed works and the branches thereof. A bond of \$50 per mile must accompany the petition, conditioned to pay costs in the event that it is not granted. The clerk issues a summons to all landowners affected who have not signed the petition. Service of notice on the landowners may be by publication where personal service cannot be had. Notice is given to mortgage holders, who may appear in person or by counsel. Upon the return day the commissioners appoint a disinterested engineer, recommended by the state drainage engineer or the state road engineer, and two resident freeholders of the county or counties in which the lands are located, as a board of viewers to examine the land and make preliminary report thereon. In intercounty districts the jurisdiction is with the commissioners of the county where the petition was filed.

**Secs. 87 and 88. Viewers:** The viewers examine the lands described in the petition and other lands if necessary to properly locate the improvement along the lines mentioned in the petition or other lines if found more practicable, and they may make necessary surveys to determine the boundaries and elevations of the several parts of the district and to make a tentative plan of development. They make public return to the clerk of the county board within 30 days unless the time is extended by the commissioners. They report: (1) whether the proposed district is practicable; (2) whether it will benefit the public health or any public highway or be conducive to the general welfare of the community; (3) whether the district will benefit the lands in question sufficiently to warrant the probable cost; (4) whether all lands to be benefited are included in the district. They also file a map of the district showing the location of the works to be constructed, with an estimate of the cost thereof, and the names of the owners who will be affected thereby. *Sec. 88:* The commissioners consider the report at their first meeting, with the engineer and two viewers present. If the viewers' report is adverse and is approved by the commissioners, the petition is dismissed at the cost of petitioners. If the

report is favorable and the commissioners so find after hearing all of the evidence, they direct the viewers to make a complete survey, plans, specifications, and estimate of the cost of the improvement, and to report within 60 days unless the time is extended by the commissioners.

#### ORGANIZATION—Officers

**Secs. 97 and 98. Board of drainage commissioners:** After the district has been declared established and the survey and plan approved, the county commissioners appoint three freeholders, who are designated as the board of drainage commissioners for that district. The appointment is subject to the written approval of a majority of the landowners in the district, and vacancies are filled in like manner. The drainage commissioners organize as a corporate body under the name and style of "The Board of Drainage Commissioners of \_\_\_\_\_ District" and have the usual corporate powers. They elect from their number a chairman and a vice-chairman and elect a secretary who may or may not be a board member. The treasurer of the county where the proceeding was instituted is *ex officio* treasurer of the drainage commissioners. **Sec. 98:** The drainage commissioners appoint a competent superintendent of construction, who gives bond approved by them and in their favor. They may terminate such appointment whenever they consider the services of the superintendent no longer necessary.

#### ORGANIZATION—Powers

**Secs. 103 and 104. Eminent domain:** If necessary to acquire rights-of-way for outlets over lands not affected by drainage, and they cannot be acquired by purchase, then the power of eminent domain is conferred, and such rights-of-way may be condemned substantially in the manner provided for condemnation of rights-of-way by railroads. The amount awarded in condemnation proceedings must be paid by the drainage commissioners from the first money coming into their hands from bonds or otherwise. **Sec. 104:** The owner of any land assessed for construction has the right to use the drain as an outlet for lateral drains from his land, and if there be intervening owners and agreement with them cannot be reached, the assessed landowner may file an ancillary petition in the pending proceeding and the procedure shall be as provided by law. When such laterals are constructed, they become a part of the system under the control of the drainage commissioners.

**Sec. 108. Completed improvements:** When improvements constructed under sections 85 to 111 are completed, they are under the control and supervision of the board of drainage commissioners. It is their duty to keep the ditches in repair, and for that purpose they may levy assessments on the lands benefited in the same manner as assessments for construction, but not to exceed 25 percent of the original assessment; provided, repairs made necessary by the act or negligence of any landowner through whose land the improvement is constructed will be assessed and levied against the land of such landowner alone, and will be collected by proper suit brought by the drainage board.

**Sec. 111. "Drainage district fund":** The statute provides that sections 85 to 111 shall be liberally construed. To encourage formation of districts, this section establishes a "drainage district fund" of \$10,000 from which loans can be made, not to exceed a total of \$2,000 to any one drainage project, for the payment of preliminary expenses up to the time of the establishment of the district. The amount loaned is returned to the treasurer through the county commissioners, who shall collect the same from petitioners or their bondsmen if the petition

is not allowed. Otherwise, the drainage commissioners return the loan out of the first proceeds of bonds.

#### FINANCING—Assessments

**Sec. 90. Damages:** The engineer and viewers assess damages claimed for land taken or inconvenience imposed because of the construction of the improvement. Damages are considered separate and apart from any benefit because of the proposed work, and such damages are paid by the commissioners when funds come into their hands.

The engineer and viewers personally examine the land and classify it with reference to the benefit it will receive from the construction of the works. The degree of wetness of the land, its proximity to the ditch or a natural outlet, and the fertility of the soil are considered in determining the benefits to be received. The lands are divided into five classes: that receiving the highest benefit being Class A; the next highest, Class B, etc. The holdings of one landowner need not necessarily be all in one class. The number of acres in each class must be ascertained, but the boundaries of the different classes need not be described or shown on the map. The number of acres in each class owned by each person and the total number of acres benefited must be presented in tabular form. The scale of assessment upon the several classes shall be in ratio of 5-4-3-2-1; that is to say, as often as 5 mills per acre is assessed against the lands in Class A, 4 mills is assessed against Class B land, etc. This forms the basis for all future assessments, taxes, levies, and costs connected with the district, except as it may be changed by the commissioners at the final hearing or in order to conform to any decree of court.

**Sec. 93. Hearing:** When the final report is filed and found in due form, it is accepted by the commissioners. Otherwise it may be referred back with instructions to secure further information and report at a later date. When accepted, the commissioners fix a date not less than 30 days thereafter for final hearing on the report and notice is given by publication and posting. A copy of the report is open to inspection of interested parties at the office of the commissioners.

**Secs. 94 and 96. Notice:** The clerk of the commissioners causes all landowners who have not signed the petition to be summoned, when they are known. If it appear to the clerk by affidavit or otherwise that the names of the owners are not known, he gives notice to such unknown landowners by publication for four consecutive weeks before the date of the hearing. Any interested party may file objections in writing to the report of the viewers, and the board of commissioners will carefully review the report and the objections and make such changes as will render substantial and equal justice. If in the opinion of the commissioners the aggregate of the cost and damages is not greater than the benefit which will accrue to the lands affected, the board will confirm the report and declare the district established. Finding the contrary, the petition will be dismissed at the cost of petitioners. **Sec. 96:** The clerk of the commissioners provides a suitable book, to be known as the drainage record, in which he transcribes all petitions, orders, reports, and findings of the board. He must keep on file the maps and profiles furnished by the engineer, open to inspection of interested parties.

**Sec. 99. Estimate of cost:** After the classification of the lands and the ratio of assessment thereon have been confirmed by the county commissioners at the final hearing, and any appeal has been adjudicated, the drainage commissioners ascertain the total cost of the improvement which includes damages awarded, expenses of the engineer and viewers, the amount necessary to pay the superintendent of construction, expenses of the

commissioners, the necessary expenses of maintaining the improvement for a period of three years, and the payment of interest on bonds for three years. The drainage board certifies such total estimated cost to the clerk of the board of county commissioners. Such certificate is recorded in the drainage record and open to inspection by any landowner.

**Sec. 100. Assessment—Lien:** The drainage commissioners prepare in duplicate 10 assessment rolls or drainage tax lists to cover the period of the bond issue, giving the name of the owners of lands in the district so far as can be ascertained, a brief description of the tracts assessed, and the amount of the assessment against each tract. The first assessment roll provides assessments sufficient for the payment of interest on the bond issue to accrue the third year after issue and the installment of principal due at the end of the third year, together with annual charges. The second assessment roll makes like provision for the fourth year; and so on. Each assessment roll must specify the time when collectible and be numbered in consecutive order, and the amount assessed against the several tracts of land must be in accordance with the benefit received as shown by the classification and ratio of assessments made by the viewers. One copy of the assessment roll is filed with the drainage record, and one copy delivered to the sheriff or the county collector after an order has been appended thereto by the county commissioners directing the collection of said assessment, and such assessments thereupon have the force and effect of a judgment as in case of state and county taxes. Such assessments constitute a first and paramount lien, second only to state and county taxes, and are collected in the same manner and by the same officer as state and county taxes. Assessments are due the first Monday in January of each year, and if not paid by the 30th day of April following, the sheriff or tax collector must sell the land so delinquent. The laws as to the collection of state and county taxes have application in the collection of drainage assessments. The sheriff or tax collector must promptly pay over to the county treasurer money collected by him upon such drainage tax assessment. It is the duty of the county treasurer to provide and pay the installments of interest at the time and place as evidenced by the coupons on the bonds issued and also to pay the annual installments of principal on said bonds. Should the total estimated cost of the improvement be less than an average of 25¢ per acre for the total area, bonds may not be issued but the assessments will be collected in cash.

**Secs. 101 and 102. Public highways:** Should the viewers find that the drainage plan will benefit any public highway or railroad or other public property, then in their return they assess the state, county, or corporation an amount which they consider just for the benefits to be derived. **Sec. 102:** Lands within the outer boundaries of the district as finally established and not affected nor benefited by the works shall not be assessed for any drainage tax, but they may not prevent the formation of the district and the district may acquire rights-of-way across such lands for necessary purposes.

#### FINANCING—Bonds

**Sec. 105. Notice—Bonds:** The drainage commissioners must give three weeks notice by publication and posting that they propose to issue bonds to pay for the total costs of the improvement, giving the amount of the bonds, rate of interest, and the dates of maturity. Any landowner may, within 15 days, pay the county treasurer the full amount for which his land is liable and have it released from liability to be assessed for the improvement. Such land continues liable for future assessments for maintenance or for any increased assessment authorized by law.

**Sec. 106. Issuance of bonds:** At the expiration of three weeks after publication of notice of bond issue, the drainage commissioners may issue and sell bonds of the district for an amount equal to the total cost of the improvement less such amounts as shall have been paid in cash, plus an amount sufficient to pay interest on the bonds for the three years next following the date of issue. The bonds shall be payable in 10 equal installments, the first of which shall fall due three years from the date of issue. Bonds may be sold at not less than par. The proceeds must be devoted to payment for the work as it progresses, and of interest on the bonds for three years next following. The proceeds of bonds are for the exclusive use of the district, and all bonds are recorded in the drainage record, which sets out specifically the lands in the district on which taxes have not been paid in full. If any installment of principal or interest on bonds be not paid when due, and such default continue for six months, the bondholders have right of action against the district or the drainage commissioners of said district, wherein the court may issue a writ of mandamus directing the levying of a special tax or assessment in such sum as may be necessary to meet the unpaid installments of principal or interest and costs. Bondholders have the right to institute action against any officer of the district on his bond for failure to perform any duty imposed hereunder. The official bond of the county treasurer and the tax collector may be held liable for the faithful performance of their duties.

#### CONSTRUCTION

**Sec. 107. Bids:** The drainage commissioners advertise for bids for the construction of the works, either as a whole or in parts. Contracts must be let to the lowest responsible bidder. The commissioners have the right to reject all bids and readvertise the work. They make such terms of payment as they deem proper and fix the amount of the contractor's bond.

### MICHIGAN

(Act No. 316—Public Acts of 1923)

#### DRAINS

(An act to codify and add to the laws relating to the laying out of drainage districts, the construction and maintenance of drains \* \* \* and pumping equipment \* \* \* and the assessment and collection of taxes therefor \* \* \*.)

#### ORGANIZATION

**Ch. 1, secs. 1, 2, and 4. Drains:** Drains may be established and maintained and water courses improved whenever conducive to the public health, convenience, or welfare. **Sec. 2:** The word "drain" includes any watercourse or ditch, open or covered, \* \* \* and any structure or pumping equipment or levee or a combination thereof constructed for drainage or for the purification of the flow of streams. (Act 318, L. 1929.) **Sec. 4:** The word "commissioner" used in the act means the county drain commissioner.

#### ORGANIZATION—Officers—Election

**Ch. 11, secs. 1 to 4, 8, 10, and 11. County drain commissioner—Election:** At the regular biennial election on the Tuesday after the first Monday in November and every second year thereafter, one county drain commissioner is elected in every organized county by the qualified electors thereof. He is elected for two years from the succeeding January. The commissioner takes the oath of office and files with the county clerk a bond in the sum of \$5,000 conditioned on the faithful discharge of his duties. The board of supervisors in their discretion may fix said bond at a different amount. The supervisors

of any county having a population of less than 12,000 may, by resolution, abolish the office of county drain commissioner and transfer the powers and duties to the board of county road commissioners. (Act 258, L. 1933.) *Sec. 2:* Commissioners holding office when the act takes effect continue until their successors are elected and qualify. Proceedings pending are to be completed in accordance with this act. *Sec. 3:* Commissioners have jurisdiction over all drains in their counties. Inter-county drains are established and constructed under the provisions of this act relating to such drains. *Sec. 4:* Commissioners may appoint deputies under the approval of the county board of supervisors. (Act 318, L. 1929.) *Sec. 8:* The drainage commissioner's salary is fixed by the board of supervisors of the county. *Sec. 10:* Each drainage commissioner must keep a full financial statement of each drainage district in his county and a complete record of the establishment of each drain and the assessments of benefits therefor. *Sec. 11:* Every drainage commissioner must make a full report annually in October to the county board of supervisors of all drainage districts under his supervision. He must also make such report as the commissioner of agriculture may request. (Act 331, L. 1927.)

### COUNTY DRAINS

#### ORGANIZATION—Petition

*Ch. III, sec. 1. County drainage districts:* Before action is taken there must first be filed with the drain commissioner an application to lay out a district with reference to the proposed drain, describing its location and route and the area proposed to be drained. The application must be signed by not less than 10 freeholders of the township in which the lands to be drained are situated. Five or more of such signers must be owners of land liable to assessment. If it appears to the drainage commissioner that the proposed drain might not include 20 freeholders whose lands would be liable to assessment, the application may be received if any one of the signers is a freeholder liable to assessment for construction. The eligibility of the signers is determined by the drain commissioner according to their interests of record in the office of the Register of Deeds in the probate court or in the circuit court of the county in which the lands are situated at the time of filing the application. (Act 318, L. 1929.)

*Ch. III, secs. 2 to 4. County drains:* Upon the receipt of an application for a new drainage district, the commissioner causes a survey to be made to determine the area that would be drained by such district and the route and type of construction most suitable. He is not limited to the route stated in the application. When the county has a board of auditors, the approval of such board is necessary. If it appears or is later determined that the proposed district will affect land in more than one county, the commissioner must proceed under the law relating to intercounty drains. Should the drainage commissioner determine the proposed drain to be impracticable, he takes no action except to notify the applicants of that fact and his reasons for such determination. If after survey the drainage commissioner determines the district to be practicable, he lays it out, including therein all lands, highways, townships, and cities that would be benefited and liable to assessment therefor. He obtains from the county treasurer a statement showing the taxes and special assessments levied during the preceding three years against the lands affected and the amount thereof remaining unpaid. If it appears from such statement that one third or more of the lands in the proposed district are delinquent, no further action may be taken. (Act 167, L. 1939.) *Sec. 3:* The surveyor prepares plans and profiles and computes

the excavation, tiling, bridges, and culverts to be constructed and makes estimate of the cost and lays out the district, including all lands, highways, townships, villages, and county and state lands which would be benefited, and delivers such estimate to the drainage commissioner. (Act 318, L. 1931.) *Sec. 4:* The drainage commissioner files in his office an order designating the drainage district and giving it a name or number, and describing its boundaries and the boundaries of each tract of land included therein and the political subdivisions or highways which would be benefited and would be liable to assessment therefor. The order also shows the route, termini, and type of construction proposed and the estimated cost. The commissioner gives notice of such determination by publication in the county. (Act 258, L. 1933.)

### INTERCOUNTY DRAINS

#### ORGANIZATION—Petition

*Ch. III, secs. 5 to 9. Intercounty drains:* Before any action is taken to construct a drain that will traverse lands in more than one county or affect more than one county, there must be filed with a commissioner having jurisdiction an application to lay out a district with reference to the proposed drain. The application must describe the location and route of the proposed drain sufficiently to determine the area to be drained thereby. The application must be signed by freeholders of lands liable to assessment who equal in number one-half the number of freeholders whose lands would be traversed by the drain applied for. The eligibility of the signers is determined by their interests of record in the office of the Register of Deeds in the probate court or the circuit court of the county in which such lands are situated. (Act 121, L. 1931.) *Sec. 6:* Upon receipt of the application the drainage commissioner within 20 days sends a copy to the Commissioner of Agriculture and to the drainage commissioner in each county in which lands liable to assessment are situated. He also notifies the board of supervisors and the county clerk of each county traversed or affected by the proposed drain. Each board so notified appoints three supervisors from each of the respective counties whose townships are not liable for township assessments on account of such proposed drain, and they constitute a drainage board. The drainage commissioners of each county and the Commissioner of Agriculture or his designated deputy are *ex officio* members of such board. The Commissioner of Agriculture calls a meeting of the board, after notice by posting in each county and service on the county clerk of each county and the supervisor of each township traversed by said drain, and also by publication. *Sec. 7:* The board considers the application, determines the sufficiency of the signers, goes over the route of the proposed drain, and hears testimony to determine its practicability. All interested persons or municipal corporations may appear for or against the proceedings. If it is determined that the drain is not practicable, no further action may be taken within one year. If the drain is determined to be practicable, then a survey is made to ascertain the area that will be drained and the route and type of construction most serviceable. (Act 318, L. 1929; Act 121, L. 1931.) *Sec. 8:* The surveyor prepares plans and profiles and a computation of the excavation necessary, and the amount of tile and number of bridges and culverts, with an estimate of cost. He lays out the proposed district, including all tracts of land, highways, and municipal corporations that will be benefited, and reports to the board. *Sec. 9:* The chairman of the board prepares an order designating a drainage district, giving it a name or number, and describing the boundaries of the several tracts of land and municipalities therein as well as trunk-line

railroads that will be benefited and liable to assessment. He also gives a description of the works. Notice of the order is given by the State Commissioner of Agriculture by publication. A copy is filed by the Commissioner of Agriculture with the county drain commissioner of each county affected within 10 days. If the commissioners of the counties affected cannot agree on the apportionment of cost, the Commissioner of Agriculture apportions the same as provided in section 2, chapter XI. (Act 318, L. 1929.)

**Ch. IV, sec. 1. Petition to construct:** After a district has been established and the order filed with the county drain commissioner, a petition to locate and construct a drain may be filed with the commissioner having jurisdiction of the lands which constitute the district. The petition must be signed by a number of freeholders in the district whose lands would be liable to an assessment for benefits equal to two-thirds of the number of freeholders whose lands would be traversed by the drain or abut on any highway or street traversed thereby. With the petition there must be a description of the lands of each signer and a certificate of the county treasurer as to payment of taxes on such land. The name of any signer delinquent in the payment of taxes shall not be counted. Eligibility is determined by the commissioner according to the records of the Register of Deeds in the probate court or the circuit court of the county. (Act 318, L. 1931.)

**Ch. IV, secs. 2 and 3. Board of determination:** The commissioner authorized to act serves a copy of the petition on the Judge of Probate of the county. Within 15 days the Judge of Probate appoints a Board of Determination, composed of three disinterested freeholders, residents of the county but not of any township affected, and calls a meeting within the district. The drain commissioner gives notice of this meeting by publication, posting, and service on the clerk of each township, city, and village. At the meeting, the Board of Determination decides the question of necessity for such a drain and whether the same would be conducive to the public health, welfare, and convenience. All persons owning lands which will be assessed or which will be crossed by the drain may appear for or against the proceeding. If it appears on a report of the county treasurer as to the taxes assessed during the past three years that one-third or more of such taxes remain unpaid, no further action may be taken. If the board finds the drain not necessary or not of public benefit, it dismisses the petition by order to the commissioner. The petition may not be renewed within one year. Finding the drain necessary and of public benefit, the Board of Determination makes its order to that effect and files the same with the commissioner. (Act 258, L. 1933.) **Sec. 3:** Within 60 days the commissioner endeavors to secure releases of damages and rights-of-way from the owners of the lands.

**Ch. IV, secs. 5, 6, and 8 to 13. Special commissioners:** If, within 60 days after the first order of determination, all persons whose lands would be traversed by the drain have not released rights-of-way or damages, the drainage commissioner makes application to the Probate Court of the county in which the lands are situated for appointment of three disinterested special commissioners, who must be resident freeholders of the county but not of any township affected by the drain. They determine the necessity for taking private property for public use and the just compensation to be made therefor. The form for this petition is set out in the statute. **Sec. 6:** If the court finds the proceeding in accordance with the statute, it appoints a time and place for hearing on the application and cites all interested parties to appear and be heard with respect to such application and show cause why it should not be

granted. Objections not presented before the court at that time are deemed to have been waived. The interests of minors and incompetents are administered by the court. **Sec. 8:** The citation of the court must be personally served upon every person who has not released rights-of-way and damages. The method of service on municipalities and other corporations is fully set out in the statute. Service on nonresidents is by mail, and by publication if their addresses are unknown. **Secs. 9 to 11:** At the time fixed, the court, finding the record in proper shape, hears all objections; and if no sufficient cause is shown against granting the petition, the court makes an order appointing three resident freeholders not interested and not resident of a township interested, as special commissioners to ascertain and determine the necessity for the drain and to appraise the damages and compensation to be allowed the owners of real estate proposed to be taken. **Sec. 12:** The special commissioners make written report within 30 days and file it with the drainage commissioner. If the drainage commissioner finds the return to be without substantial error, he files it with the drainage records, and such return by such special commissioners is deemed a sufficient conveyance to vest in the county an easement in said land for the uses and purposes of drainage, with right of entry; provided the compensation awarded therefor shall have been paid or secured to the person entitled to it. **Sec. 13:** If the special commissioners find drainage unnecessary and so report to the drainage commissioner, he dismisses the petition.

**Ch. V, sec. 1. Intercounty drains—Petition:** After an intercounty drainage district has been established and the order filed, a petition to locate and construct may be filed with any drain commissioner having jurisdiction of any of the lands constituting the district. It must be signed by a number of freeholders in the district, whose lands would be liable to assessment for benefits equal to two-thirds of the number of freeholders whose lands would be traversed by the drain or abut on any highway or street traversed thereby. Petition must be accompanied by a description of land owned by each signer and by a certificate of the county treasurer as to the payment of taxes and special assessments against such lands in a form set out in the statute. No signer is counted who is delinquent for taxes or assessments on his lands for three years past. The record of the Register of Deeds determines the eligibility of the signers. (Act 318, L. 1931.)

**Ch. V, sec. 2. Drainage board:** The commissioner receiving the petition notifies the drain commissioners of the other counties interested and the Commissioner of Agriculture, who calls a meeting provided in chapter III, section 6. The drain commissioners and the Commissioner of Agriculture thereafter constitute a drainage board to control the district. At such meeting all interested persons liable for assessment may appear for or against the drain proceeding. If the commissioners determine that the drain is necessary for the public health, convenience, or welfare, they proceed to determine the just percentage of the whole cost of construction which each county shall bear and the number of installments in which taxes shall be collected. In case of disagreement the chairman (Commissioner of Agriculture) determines the issue. Thereupon the first order of determination is prepared, showing necessity, percentage of cost for each county, and number of installments in which the taxes shall be collected, and a copy is filed in the office of the county drain commissioner of each county. (Act 318, L. 1929.)

#### FINANCING—Assessments

**Ch. V, secs. 3 to 6. Intercounty drains:** After obtaining releases of rights-of-way, the drain commissioner of each county

affected apportionments the benefit to each parcel of land and each municipality and railroad within the district in the manner provided in chapter VI. *Sec. 4:* After such apportionment by the county drain commissioners, the drainage board calls a meeting for the purpose of receiving bids for construction and also a meeting for a review of the benefits apportioned. (Act 318, L. 1931.) *Sec. 5:* Bids are received and computation of the entire cost is made before the time set for the review of the apportionment. *Sec. 6:* If no contract for construction is let within three years, the petition is presumed to be abandoned and no action shall be taken unless a new petition is filed, provided that the time consumed by any litigation contesting the validity of the proceeding shall not be included in the three-year period.

**Ch. VI, secs. 1, 4, and 6. Apportionment and review:** Upon release of rights-of-way and damages, or upon determination of the return of the special commissioners, the drain commissioner having jurisdiction makes and files an order of determination establishing the drain. A copy is filed with the county drain commissioner within five days. The county drain commissioner apportions the percentage of cost of construction which all municipalities and other corporations must pay, as well as the percentage of benefits accruing to each parcel of land. The apportionment so made is subject to review and appeal. *Sec. 4:* The commissioner gives notice by publication and posting of the result of the bids for construction and of a public meeting for a review of the apportionment of benefits. Where there are less than 100 descriptions of land upon which benefits have been apportioned, personal service is had on all resident landowners. The method of procedure is set out at length in the statute. (Act 318, L. 1931.) *Sec. 6:* On appeal the Probate Court appoints three disinterested and competent freeholders as a board to review all apportionments of benefits and to equalize them. Their decision is final except that there may be a further review on a writ of *certiorari*, and the procedure is set out in the statute. (Act 318, L. 1931.)

**Ch. X, secs. 1 and 2. Levy and collection of taxes:** Within ten days after letting contract, or forthwith after all appeals have been decided, the county drain commissioner makes the computation of the entire cost of the drain, including interest on bonds for the first year if bonds are to be issued, and adds 10 percent of the gross for contingent expenses. This is deemed to be the cost of construction. *Sec. 2:* The commissioner makes a special assessment roll for each county, township, village, and state highway, calling it the "Drainage Special Assessment Roll," entering therein the amount of the percent apportioned to each tract of land or other property benefited. Where there are installments, he issues a certificate of determination as to whether the taxes are payable in one or more years. The roll is filed in the office of the county clerk.

Each year the commissioner prepares tax assessment roll and certifies the same to the county clerk before the annual meeting of the board of supervisors. If the roll is made payable in more than one installment, a permanent roll may be maintained in the office of the county treasurer, showing the total cost, the number of installments, and the amount of each annual assessment together with interest charges. (Act 167, L. 1939.)

**Ch. X, secs. 5 to 9. Collection of taxes:** All drainage taxes are subject to the same interest and charges and are collected in the same manner as state and other general taxes. *Sec. 6:* All provisions of the state laws relating to delinquent taxes are applicable to drainage taxes. *Sec. 7:* After taxes have been assessed for the construction of a drain, no injunction will lie to restrain the spreading of same on the tax rolls

unless the amount of the assessment shall be first paid into the county treasury to await the decision of the court. *Sec. 8:* The collection of taxes levied for construction of a drain shall not be perpetually enjoined or declared void in consequence of error or informality of any officer in the establishment thereof, nor in consequence of any error or informality appearing in the record; but the court, if there is manifest error, will allow the plaintiff to show that he has been injured thereby. *Sec. 9:* The court will allow proof that the drain was necessary and conducive to the public health, convenience and welfare, and that the steps required by the statute have been substantially complied with. It then will correct any gross injustice in the award of damages or assessment of benefits and make such order as may be just and equitable. In cases where assessments have been set aside after the contract for construction has been let or bonds sold, the court makes provision in the decree for the payment of said bonds by reassessment according to benefits or otherwise as equity may require. If error or injustice be shown, the costs are apportioned among the parties. If no error or injustice be shown, the costs must be paid by the party bringing the action.

**Ch. X, secs. 10, 11, and 17. Lien of assessment:** Whenever a drain has been established and constructed and the commissioner has made an apportionment of benefits and a special assessment roll and filed same with the county drain commissioner, such taxes remain a perpetual lien upon the land assessed. When no person or municipality has taken any action by virtue of chapter VI, section 11 to contest the validity of the proceedings, it is the duty of the county drain commissioner, upon application of any landowner assessed, to present a certified copy of the assessment roll to the board of county supervisors at their first October session thereafter; and it is the duty of the board of supervisors to order the taxes spread upon the tax roll. This provision also applies to drains established under drainage laws prior to this act where such laws have made the drainage taxes a perpetual lien upon the land assessed. *Sec. 11:* Taxes remaining unpaid may be sued for by the commissioner in an action in assumpsit, or may be charged back by the board of supervisors and reassessed in the same manner as under the general law. *Sec. 17:* Any person liable to special assessment for benefits received may pay the same in full with interest at any time, subject to the right of reassessment in case of deficiency.

**Ch. X, sec. 18. Additional assessments:** If there is not sufficient money in the fund of a particular drain to pay bonds at the time of the last maturity it is the duty of the commissioner to immediately levy an additional assessment to make up the deficiency. In the case of refunding bonds, the governing authority of the drain must provide, subject to the directions of the public debts commission, for such additional levy and assessments prior to maturity of such refunding bonds. (Act 178, L. 1931; Act 128, L. 1939.)

**Ch. XI, secs. 1 and 2. Revolving fund:** The board of supervisors annually appropriates, and collects by general taxation from the taxable property within their respective counties, such sum as the board may deem necessary for the purpose of creating a revolving fund; provided, such sum first appropriated shall not exceed the amount held by the county treasurer as a total of all drainage funds on hand when such appropriation is made. *Sec. 2:* The revolving fund may be used for paying preliminary expenses of drains and for repairs to old drains. In inter-county drains the preliminary expense paid from the revolving fund must be prorated between the different counties according to the amount apportioned to be paid by them. After the final order of determination, all expenses are paid in the manner

prescribed in chapter IX. The treasurer repays the revolving fund out of the first taxes collected.

#### FINANCING—Bonds

**Ch. V, sec. 14. Bonds—Intercounty:** If it is determined that the assessment shall be collected in more than two installments, the drainage board, acting on behalf of the district, may issue bonds as in the case of drains wholly within one county. Bonds are payable at the office of the county treasurer of the county to which the larger percentage of the cost of construction is apportioned. All installments of special assessments are transmitted to that county treasurer as they are collected in other counties, and he places the money in a fund which may be disbursed only for the retirement of bonds at maturity with interest.

**Ch. X, sec. 15. Bonds issued:** Where the issuance of bonds has been determined upon, and subject to the provisions of chapter VIII (see under "Construction"), a commissioner may borrow money in anticipation of the collection of the installments of taxes, and issue bonds of the district as evidence thereof. The amount of bonds may not exceed the aggregate of the installments levied. Bonds are payable in annual installments, equal in number to the installments of taxes, and may not mature later than June 1 of the year following the due date of installments of taxes. The number of installments may not exceed twenty; except for districts containing a closed drain, any cross section of which exceeds 60 square feet, the number of installments may be 30 but not more; and in no case may the bonds mature more than two and one-half years after the corresponding installment of taxes. (Act 228, L. 1935; Act 14, L. 1937.)

**Ch. X, sec. 19:** The county drain commissioner must file with the county treasurer annually, in the month of June, a statement of all drainage district bonds theretofore issued by any drainage district lying wholly or in part in his county. He files the same information with the treasurer of any municipal corporation interested. (Act 316, L. 1923.)

**Ch. X, sec. 21. Refunding bonds:** Refunding bonds are subject to the following limitations: (a) Except refunding bonds issued to refund bonds outstanding September 1, 1925, no refunding bonds may be issued unless there be at the time of issuance a default in the payment of a part of the bonded debt sought to be refunded, or unless the same will occur within six months, or unless the financial condition of the municipality warrants refunding as a matter of sound municipal financing. (b) Bonds issued to refund notes issued in anticipation of taxes or special assessments may be issued with the commissioner's approval without requiring the renewal of such notes for the maximum period permitted by law. The commission takes measures to assure the application to the payment of such refunding bonds of all receipts and taxes or special assessments against which such notes were originally issued. (c) Unpaid interest accrued to January 1, 1937, upon any funded indebtedness may be refunded in full. (d) Refunding bond issues under the provisions hereof—except those issued to refund drainage bonds issued under Act 316 of 1923 as amended—shall, except as otherwise provided in such refunding bonds, be the general obligation of the issuing municipality. (e) Upon issuing, the refunding drainage bonds under Act 316, 1923, shall be obligations of the same character as the obligation refunded and a continuation of the former obligation. (f) Subject to the approval of the commission, refunding bonds may be of serial nature as to principal, or term bonds with such sinking fund provision as may be prescribed by the resolution authorizing the issue, and shall mature in not to exceed 30 years. If serial bonds are issued, no installment

of principal shall be less than one-fourth of the amount of the largest installment, and one installment shall fall due each year beginning not later than two years from the date of issue unless otherwise approved by the commissioner. (g) Bonds may be sold as provided by law or may be exchanged for the bonds or notes refunded, on order of the county drain commissioner. (h) No refunding bond running more than three years shall be sold for a price which would make the net interest rate exceed 6 percent. For services in procuring the exchange or surrender of bonds or other obligations, municipalities may pay not to exceed 1 percent of the indebtedness so refunded in addition to actual expenses of issue. (k) Bonds may be registered under terms and conditions prescribed by the governing body of the district. (Act 129, L. 1939.)

#### CONSTRUCTION

**Ch. VIII, secs. 1 and 2. Contracts:** The commissioner may in any case, and must for drains estimated to cost \$3,000, advertise for sealed proposals to be opened on the day set in the notice. Bids are opened publicly at the meeting and may be inspected by any interested person. The commissioner awards contracts to the lowest responsible bidder or may reject all bids. Where the commissioner determines that the benefits shall be collected in more than one installment, he determines the amount, maturity, and interest of bonds to be issued. In counties having a board of county auditors, no contract may be let nor bonds sold without their approval. This does not apply to intercounty drains. If no contract be let within three years, either in original establishment or maintaining and extending drains, the petition is deemed to be abandoned and no further action may be taken without a new petition. Pending litigation on the validity of the proceedings suspends the running of the three-year period. (Act 31, L. 1931.) **Sec. 2:** The commissioner first lets the section at the outlet of the drain and each remaining section in order upstream. He may reject all bids but may not adjourn the proceedings for more than 40 days. Bidders must deposit certified check in an amount deemed reasonable by the commissioner and give bond for the faithful performance of the work. (Act 318, L. 1929; Act 216, L. 1935.)

#### MAINTENANCE

**Ch. VII, sec. 1. Petition for maintenance:** Whenever a drain wholly in one county needs improving or extending and five freeholders of the township in which the drain is situated, two or more of whom shall be owners of land liable to assessment for benefits, may petition the county drain commissioner setting forth the necessity for such work, the commissioner proceeds in the same manner as for the original establishment of the drain. As soon as the board of determination has determined the necessity for the work, the commissioner, after the order is filed, fixes the percentage of cost of such work which shall be paid by the landowners, state, or municipality.

**Ch. VII, sec. 2. Intercounty drains:** Whenever a drain in more than one county needs maintenance or extension work, any 10 freeholders within the district may petition the commissioner of any county having jurisdiction over any land in the district, setting forth the necessity for such work. The commissioner notifies the state Commissioner of Agriculture and the commissioner of each county having land within the district. The Commissioner of Agriculture calls a meeting as prescribed in section 6, chapter III. The persons so named shall constitute a drainage board and after work is determined to be practicable, they appoint a surveyor to lay out a drainage district under section 8, chapter III. After the surveyor files his report,

the drainage board proceeds in the same manner as for the original establishment of a district. (Act 318, L. 1931.)

**Ch. VII, secs. 3 to 5. Maintenance—Apportionment:** All apportionments for maintenance must be made in accordance with the benefits received and are subject to appeal as in the first apportionment. If the apportionment is the same as the last apportionment, no day of review is necessary; but if the apportionment is changed, personal service of a notice of the day of review must be given to those persons whose percentages have been raised. **Sec. 4:** No petition to extend an established drain shall authorize the laying out or construction of branches or lateral drains. **Sec. 5:** If it is necessary to secure further rights-of-way and allow damages, the commissioner takes such necessary steps as prescribed in chapter IV.

**Ch. VII, secs. 6 and 7. Maintenance:** The county drain commissioner of any county or the drainage board in an intercounty district causes an annual inspection of all drains. They may expend an amount not exceeding in any one year 40 percent of the original cost where inspection shows the work necessary or where an emergency endangering the public health, crops, or property exists. But county drain commissioners and drainage boards, if the initial cost of the drainage exceeds \$1500, shall not spend to exceed \$600 for cleaning the drain unless approved by the township boards affected. The commissioners or the board may reassess such drain where necessary for the cost of cleaning, the assessment being according to the benefits received. (Act 303, L. 1937.) **Sec. 7:** Where the survey shows that land will be added to the district or a new district will be necessary, the board of determination is reconvened by the drainage commissioner or the drainage board, and the proceedings as to the added lands or new district are the same as for establishing drains under chapter IV.

**Ch. VII, secs. 8 and 9. Assessment and tax:** The assessment and collection of taxes for maintenance and enlargements is the same as provided for drainage taxes in original districts. **Sec. 9:** Where the necessity for cleaning a drain arises from the act or negligence of any landowner, that fact is taken into consideration by the commissioners in making the apportionment. Where the cost of cleaning is lessened by the tiling of the source of a drain the commissioner takes that into consideration in apportioning the benefits against the land so tiled, but in no case may the benefit be considered to be less than 50 percent of the benefit if the land were not tiled.

#### ABANDONMENT

**Ch. XVI, secs. 1 and 2. Abandoned drains—Funds:** Any drain which has ceased to be a public utility and is no longer necessary may be declared to be abandoned and vacated upon proper petition therefor if, in the opinion of the drain commissioner or the drainage board having jurisdiction, it is no longer necessary or a public utility. The petition is subject to the provisions relating to petitions for establishing a county or intercounty drain and upon five days' notice by posting. Private rights acquired by persons from the establishment of such drains shall not be interfered with nor impaired. (Act 318, L. 1929.) **Sec. 2:** When a drain is abandoned and vacated, the commissioner serves notice thereof on the county treasurer. If there be any money belonging to the fund of said vacated drain, the county treasurer pays over the same to the treasurer of the township in which benefits for such drain have been assessed and collected. The money is prorated among the townships affected in the same proportion that those townships contributed to the total amount paid into the fund.

## MINNESOTA

(*Mason's Minnesota Statutes—1927, Supplement—1940, Chapter 44*)

### DRAINAGE

- I—State Drainage Commission (Department of Drainage and Waters) 6634—6840-140.
- II—County Drains and Ditches (County Drains and Judicial Ditches) Sections 6674—6840-140.

#### I. DEPARTMENT OF DRAINAGE AND WATERS

**Sec. 6634. Department of Conservation:** The laws of 1931, chapter 186, create the Department of Conservation and transfer to it the powers of the Department of Waters.

**Sec. 6635. Commissioner of Drainage and Waters—Powers:** The Commissioner of Drainage and Waters has the power to construct any ditch, drain, or watercourse within the state, and such watercourse may consist of a bed of a creek or river, whether meandered or not. The Commissioner may widen, deepen, straighten, and change the channel or bed of any natural watercourse or lake, whether navigable or whether meandered or not. He may construct new outlets and other works for the purpose of drainage. There are provisos that any diversion of a watercourse from its natural channel shall be in the same general direction; that no meandered lake may be drained unless it is no longer of sufficient depth and volume to be of beneficial public use; that no meandered lake shall be drained or lowered unless petitioned for by at least 60 percent of the legal voters residing within four miles thereof, who are freeholders and whose lands are affected as shown by the viewers' report. The Commissioner is given broad powers to assemble information as to the topographical features of watersheds of the state, drainage, flood control, stream flow, and water power. For the full scope of his powers, it is necessary to read sections 6635a, 6635b, 6636, 6659, and 6667. (Law of April 25, 1931, ch. 350.)

#### ORGANIZATION—Petition

**Sec. 6637. Petition to the District Court:** Before the drainage commission may construct any works or alter any watercourse, it must file with the judge of the District Court of the county or counties wherein the work is to be done a petition setting forth the necessity therefor and that it will be of public benefit and promote public health. The commission must also file a map of the route, estimates of cost, and a description of the lands likely to be affected. Such map and estimate must be prepared by the engineer of the commission or under his direction.

**Secs. 6638 to 6640. Viewers:** Within 10 days after petition is filed, the district judge makes an order appointing two resident freeholders of the county or counties affected, not interested nor kin to any interested party, and the state drainage commission appoints a person not a resident of any affected county, and these constitute the viewers. After qualifying, the viewers meet at the time fixed in the court order, with or without the drainage engineer, and prepare a tabular statement showing the names of the owners of each tract benefited or damaged, such names being the same as appear on the county tax duplicate. The statement also gives a description of each tract; the total number of acres in each; the estimated number of acres that will be benefited or damaged; the number of acres added by the total or partial draining of any meandered lake or change in any watercourse, and its value; the damages to riparian rights pertaining to any tract; and the amount that each tract will be benefited or damaged. The viewers also estimate and report benefits to public roads and municipalities, as well

as the damage to same. They report the total estimated benefits of the entire works, and whether or not the cost of construction, including damages, will be greater than the benefits; or they may report that the work is impracticable, giving the reasons therefor. *Sec. 6639:* If the viewers are unable to agree, each reports separately on the matter of disagreement. *Sec. 6640:* Where the location of a public ditch covers all or a part of a private ditch already wholly or partly constructed, the engineer makes an estimate of the cubic yards of material already excavated and the viewers deduct the saving by reason of such excavation from the estimate of the benefits.

**Secs. 6643 to 6645. Report of viewers:** Within 30 days the viewers file their report with the clerk of the District Court. Any delay not excused by the court carries a penalty of one-half of the viewers' compensation. *Sec. 6644:* Within three days the clerk gives written notice of the filing of the report to the district judge and to the auditor of each county affected. The judge fixes a time and place for a hearing on the report, with notice by publication and posting, said notice to contain a brief summary of the report and show the route and termini of the works. Nonresidents are served by mail. The proceedings will be adjourned until all parties are served with notice. *Sec. 6645:* At the hearing all interested parties may appear and be heard. Unless excused by the court, the engineer and at least two viewers must be present at the hearing. If the judge finds that the proceedings have been according to law, that the estimated benefits of the work are greater than the total costs including damages awarded, and that the work will be of public utility and benefit, he will by order establish such a ditch as specified in the report of the state drainage engineer, and will establish and confirm the viewers' report. The court is given power to make amendments and corrections by referring the report back to the viewers for further report. The court by order determines the cost to be equitably assessed against each tract benefited in proportion to the benefits and the damages to be allowed, in order to arrive at the total cost. Such order is filed in the office of the court clerk and he forthwith files a certified copy of same with the auditor of each county affected. Whenever any order of the District Court is declared void for any reason, the state drainage commission has one year in which to secure a rehearing. (*State ex rel v. Nelson*, 137 Minn. 265; 161 N.W. 714; 163 N.W. 510.)

#### FINANCING—Assessments

**Sec. 6641. What lands assessed:** All lands benefited by a public ditch and all public or corporate roads benefited in whole or in part shall be assessed in proportion to the benefits from the construction, whether the ditch passes through such lands or along or near the line of such roads or not. The viewers in estimating the benefits shall not consider what benefits the lands or roads will receive after some other works have been constructed, but the only benefits by reason of the construction of the public ditch. In determining the cost of drainage, the viewers must include damages to private owners and costs of rights-of-way, together with the cost of construction, organization, and office, field, and salary expenses.

**Sec. 6642. Damages:** When the works pass through private lands not necessary to drainage, the viewers report the damage to be allowed for rights-of-way and construction of the works. Any interested party aggrieved by the damages allowed may petition the District Court within 10 days for the appointment of appraisers in the same manner as provided by law for the appropriation of private property for public purposes. Construction may not be delayed by such action.

**Secs. 6647 and 6648. Auditor's statement:** As soon as practicable after the court order on the viewers' report is filed with the county auditors by the court clerk, the said auditors make in tabular form a list or statement showing: (1) The names of all landowners and of public or corporate roads within their respective counties to be benefited by the improvement; (2) a description of the land and the total number of acres in each tract, according to the assessment rolls and tax lists; (3) the estimated number of acres benefited in each tract; (4) the estimated amount of benefits and damages to each tract and to each public or corporate road; (5) the amount each tract and each public or corporate road so benefited will be liable for and must pay for establishing and constructing the drainage works. *Sec. 6648:* The auditors' statement is then signed by them in the presence of two attesting witnesses and filed with and recorded by the register of deeds of each county affected. The amount that each tract of land and each public or corporate road will be liable for, with the interest thereon, becomes thereupon and remains a first and permanent lien on such property until fully paid, taking precedence over all mortgages and encumbrances whatever.

**Secs. 6649 and 6650. Jury trial:** Any landowner aggrieved because of the amount finally assessed against his land, or because of the disallowance of damages claimed, may demand a jury trial. In case of failure, costs are taxed against the appellant. *Sec. 6650:* Appeal from any final order of the district court, except the order establishing the ditch, may be taken to the Supreme Court within 30 days. If the appellant prevails in the Supreme Court and the cost of construction is thereby increased, the judge of the district court makes a further order assessing such additional amount against the lands originally assessed for construction in proportion to the original assessment.

**Sec. 6658. Liens—When payable:** Payment of such liens (the lien of the auditor's statement recorded with the register of deeds—*sec. 6648*) shall be made to the county treasurer as follows: One-fifteenth of the principal and interest, on or before five years from said filing in the office of the register of deeds, and the balance in like annual payments. But if the annual assessment amounts to less than one mill per acre per year, the auditor shall levy one mill for as many years as necessary at that rate to pay the whole lien. On or before the 15th of November of the fourth year following the filing of the auditor's statement with the register of deeds, the auditor enters on the tax list the amount of the lien against each piece of property then remaining unpaid, as a tax on said property, with a proper entry to secure the successive entries each year thereafter of the unpaid balance of such lien, one-fifteenth being due and collectible each year.

#### FINANCING—Bonds

**Secs. 6656 and 6657. County bonds:** The county board of each county wherein any state or judicial ditch is proposed to be wholly or partly located shall issue bonds of their respective counties in an amount not greater than the assessment against the lands in such county as evidenced by the statement provided for in sections 6647 and 6648 of this Act, to defray the expenses incurred in locating, constructing, and establishing as much of any ditch as may be located within said county or in such relation to said county as to affect lands therein. "Expense" is construed to mean and cover every item of the cost of said ditch from its inception to its completion and all fees and expenses incurred in pursuance thereof. The bonds pledge the full faith, credit, and resources of the county for the prompt payment of principal and interest, and are payable at

such times not to exceed 20 years, and bear such interest not to exceed 6 percent, as the board shall determine by resolution. The board may negotiate the bonds as they deem best, but not for less than par. The proceeds of the bonds are paid to the state treasurer and by him credited to the state drainage fund hereby created. The county board shall provide money for the payment of the principal and interest of said bonds as they severally mature. The money is placed in the general county ditch fund, and the county board may transfer any surplus in the general revenue fund or other fund of the county to the ditch fund. They must also pay into the ditch fund all money received from any lien created by this Act. When the general ditch fund of the county is insufficient, the board is authorized to use any available funds in the county treasury to meet the payment of bonds issued in ditch proceedings as they mature. Such funds so used are replenished, with 6 percent interest, from collections of unpaid assessments for ditches, drains, or watercourses constructed under any proceedings hereunder. Sec. 6657: The amount that each piece of property is liable for on account of the location, construction, and establishment of any ditch, bears interest from the date of the filing of the auditors' statement in the office of the Register of Deeds, at 6 percent per year; provided, when the bonds are issued the same rate of interest is charged that the bonds bear, and the interest is an additional lien on the lands and property. Where bonds are sold at a premium, such premium is used to make up any deficiency in the assessments levied by the court in the proceedings, and any balance remaining is used for upkeep.

#### CONSTRUCTION

Sec. 6651. **Contract—Payment:** At the time of filing the order and findings of the court, as provided for the general assessment, the clerk of the District Court also furnishes a certified copy to the state drainage commission. The commission advertises for bids for construction or repair. Bids are to be made with reference to plans and specifications furnished by the commission and contract is let to the lowest responsible bidder. Successful bidders must furnish bond. Payment is made according to rules adopted by the drainage commission or as specified in the contract. Contract and rules must be approved by the attorney general of the state. Before final payment, the work must be completed and accepted by the commission. If the commission and the contractor cannot agree on approving the work, the commission has authority to refer settlement to a competent, disinterested civil engineer, whom the commission and contractor may agree upon.

#### II. COUNTY DRAINS AND JUDICIAL DITCHES

(Acts 1925, ch. 415; amend. 1935, ch. 312)

##### ORGANIZATION—Petition

Sec. 6840-2. **Powers of county boards and district courts:** The county boards of the several counties and the district courts of the several districts are authorized to make all necessary orders for the construction and maintenance of public drainage systems; to improve waterways and extend same to secure outlets; and to drain meandered lakes when they become normally shallow and no longer of sufficient volume to be of substantial public use. No meandered lake on which a city or village has riparian rights may be drained or lowered except by majority vote of the legal voters of said city or village at a special election, and with the consent of the Commissioner of Conservation.

Secs. 6840-3 and 6840-4. **Petition and bond:** Before the establishment of any drainage works, a petition must be filed

with the county auditor, if for a county drainage system, or with the clerk of the district court if for a judicial drainage system. The petition must be signed by not less than a majority of the resident landowners, or by the owners of not less than 51 percent of the area. It must set forth the necessity for the drainage, and that the same will be of public utility and promote public health; it must describe the route and termini of the proposed work and the lands over which it will pass; and must state that the petitioners will pay the costs in case the petition is dismissed or no contract for construction is let. The petition may also be signed by the supervisors of any township or the proper officers of any city or village authorized by resolution of the council thereof and liable to be affected or assessed for the proposed construction. One or more petitioners must file a bond for \$2,000 to pay the costs in the event of dismissal. The court or board may require additional bonds at any time. Sec. 6840-4: The expenses of any survey of proposed systems may not exceed the amount of the bond of the petitioners.

See: 172 Minn. 295; 215 N.W. 204.  
172 Minn. 295; 216 N.W. 229.  
181 Minn. 481; 233 N.W. 294.

Sec. 6840-26. **Final hearing:** Within three days after the filing of the report of the viewers, (sec. 6840-16, post, under "Organization—Officers") it is the duty of the auditor, in the county proceedings, to fix a date for hearing on the petition and the engineer's and viewers' reports between 35 and 50 days thereafter. In judicial proceedings it is the duty of the court clerk to give such notice. Notice is by publication and posting for three weeks. In intercounty judicial ditches publication is in each county affected, but it is only necessary to publish a description of the property in that particular county. Within a week the auditor or the clerk, as the case may be, must mail a copy of the notice to the State auditor, the Commissioner of Conservation, and all persons and corporations who are landowners or otherwise affected as shown by the report of the engineer and viewers. Where for any cause notice has not been given any interested party, the hearing is adjourned until such notice can be given.

Secs. 6840-27 to 6840-30: Upon due publication, posting, and mailing of notice, the board or the court, as the case may be, has jurisdiction of each tract of land and of highways, railroads, and other property described in the engineer's and viewers' reports. Sec. 6840-28: At the hearing the board or the court considers all matters pertaining to the engineer's and viewers' reports, and testimony presented on behalf of all parties interested. The engineer or his assistant and at least two viewers must be present. If it appear to the satisfaction of the board or the court that the general plan of drainage may be improved by addition of branches, or any change in cost or dimensions, or that the assessment has not been equitable, then they have authority to correct the engineer's and viewers' reports or may resubmit the same for change, correction, or amendment. Upon the final hearing after such change, the board or the court will again consider all evidence presented. If additional lands are brought in, the board or the court may adjourn until notice of the hearing is given to the parties affected. Sec. 6840-29: When the board or the court finds that all proceedings have been had in accordance with this act; that the estimated benefits to be derived from the drainage system are greater than the total cost, including damages awarded; that the improvement will be of public utility and benefit; and that such reports are complete, just, and correct, then the board or the court, by order containing such

findings, will establish the drainage improvement and adopt and confirm the original or amended report of the viewers. Errors in description of property later discovered by the county auditor may be corrected at a hearing for that purpose after they have been called to the attention of the board or the court. *Sec. 6840-30:* In all proceedings in the district court the clerk, within 20 days following the order directing the construction of the improvement, files a certified copy of the viewers' report in the office of the county auditor of each county affected. It is also the duty of the court, upon five days notice in writing to the auditor of each county affected, to apportion and determine the items of expense and the proportion of the cost of construction to be paid by the respective counties, which must be in proportion to the benefits received.

#### ORGANIZATION—Officers

**Secs. 6840-5 and 6840-6. Preliminary survey—Engineer:** The county board in a county drainage proceeding, or the district judge in a judicial proceeding, appoint a competent engineer to examine and report on the practicability and necessity of the improvement. *Sec. 6840-6:* The engineer examines all matters in the petition and makes a preliminary survey of the territory that will be affected, and reports on the practicability and necessity of the proposed work. If some plan other than that in the petition is found more practicable, the engineer so reports, giving the details thereof. Any change or addition to the plan in the petition or specifications is reported in detail; but the engineer must confine his preliminary survey to the area described in the petition except to secure outlets, unless he be authorized by the board or the court after the consent of the bondsmen and a hearing. (L. 1925, sec. 6.)

**Secs. 6840-7 and 6840-8. Hearing on preliminary report:** Upon the filing of the report the auditor, or the court clerk with the approval of the judge, fixes a time and place for a hearing thereon within 30 days and notifies the petitioners and the owners of the several tracts of land and the corporations affected. All interested parties may appear and be heard. If it appear that the plan is not practicable and no plan is reported by the engineer, or that the improvement would not be of public benefit, or that the outlet is not sufficient, the petition will be dismissed. But if the board or the court are satisfied that the improvement as outlined or modified is necessary, practicable, and of public benefit and would have proper outlet, then the board or the court so finds and issues a preliminary order establishing the improvement subject to further disclosures by a final survey. The preliminary order is accompanied by a map showing any changes in the plan. *Sec. 6840-8:* Upon the filing of this order, the court or the board direct the same or another engineer to make a detailed survey, furnish plans and specifications for the improvement, and report with reasonable dispatch.

**Secs. 6840-10 and 6840-11. Engineer's final report:** The engineer makes a detailed survey of the line of the improvement as approved by the order of the board or the court, showing the outlets, termini, and branches. He sets stakes numbered progressively, 100 feet apart, and fixes permanent bench marks not more than one mile apart so that they will not be destroyed by constructing the system. His report gives details of the yardage to be excavated in open ditches and the estimated price per cubic yard and the estimated total cost of the work in each 100-foot section. The engineer reports in minute detail the estimated cost of all structures and works to be built. When necessary, he may shorten or extend the ditch from the outlet

named in the petition. Where practicable, the engineer will locate the ditch on division lines between lands of different persons. *Sec. 6840-11:* With his final report, the engineer furnishes a detailed map drawn to scale, showing the location of all bench marks, landmarks, rights-of-way, and highways affected. He also furnishes a profile of the elevation, depth of cut, size of tile, and elevation of each branch and lateral. He makes a complete set of plans and specifications covering all work. The report is filed with the auditor or the court clerk, as the case may be. One copy of the report is forwarded within five days to the commissioner of drainage and waters (now Commissioner of Conservation) for examination and approval. If the commissioner disapproves, he files with the auditor or clerk his recommendation and modification. When the report is returned by the commissioner, approved, the auditor or clerk issues an order designating the time and place for the first meeting of the viewers as provided in section 6840-16. The engineer includes in his report a form of contract with complete specifications of the work; and he may, with the consent of the board or the court, modify his report and plan if such change would not impair the usefulness of the system or increase its cost by more than 10 percent of the original contract price. No change may be made that will increase the cost beyond the benefits accruing. (L. 1933, ch. 312.)

**Secs. 6840-16 to 6840-18, and 6840-20. Viewers:** Following the appointment of the engineer, the county board in the case of county drainage proceedings, or the district court in the case of judicial drainage proceedings, makes an order appointing three resident freeholders in the county or counties, not interested in the construction of the proposed work and not kin to any of the parties, as viewers. The auditor or the clerk, as the case may be, within five days after the report of the commissioner of drainage and waters (Commissioner of Conservation) is received, approving or modifying the engineer's report, makes an order designating the time and place for the first meeting of the viewers. *Sec. 6840-17:* The viewers, after taking the oath of office, proceed with or without the engineer to prepare a tabulated statement showing each tract; the name of the owner thereof as appears on the last county tax duplicate; the number of acres of land benefited or damaged; the number of acres added to any tract by the total or partial drainage of any meandered lake, or the change of any watercourse, with the location and value of the added land; the damages to riparian rights pertaining to any tract, and the benefits or damages to each tract by reason of the construction of the works. Also they report the benefit to corporations, highways, villages, and cities by reason of the increased drainage facilities or improvement of public health. They further report the total estimated benefits in respect to the entire system and branches, and whether the estimated expense of construction, including damages awarded, is greater than the utility of the proposed system; or that the system is impracticable for any reason, and giving the reason why it should not be constructed. *Sec. 6840-18:* When a public ditch is located wholly or in part in the bed of a private ditch already constructed, the engineer estimates the yardage already excavated on each tract of land, the amount of reduction in cost of the public ditch by reason thereof, and the viewers deduct such amount from their estimate of the benefits, if any, against such tract. *Sec. 6840-20:* Lands owned by the state or by a railroad or other corporation benefited by the construction are specifically made liable for assessments.

#### FINANCING—Assessments

**Secs. 6840-21 to 6840-23. Property assessable—Basis:** The State, and all counties, municipal corporations, and railroads

receiving any benefit from the improvement are assessable therefor. *Sec. 6840-22:* The amount for which any tract, corporation, or railroad shall be liable on account of the construction of any drainage system or the repair thereof shall not exceed the benefits accruing therefrom as determined in the proceedings to establish and maintain the system. *Sec. 6840-23:* The county auditor or the clerk of the court, as the case may be, notifies each municipality and corporation to construct any bridge or culvert across or upon its roads or right-of-way within a reasonable time stated in the notice. Upon failure so to do, the district court will order the same built as a part of the construction of the system, and the cost will be deducted from the damages or collected as an assessment against such municipality or corporation.

*Sec. 6840-24. All benefits to be assessed:* All lands and public or corporate roads or railroads and all villages and cities in any manner benefited in whole or in part by the construction of a public drainage system are assessable for the cost thereof in proportion to the benefits received. They are assessable whether the benefit result directly from the construction of the system or because the system affords an outlet for drainage and prevents overflow. When property is assessed for an outlet and the lateral connecting such property with the system is not yet constructed, the land will be assessed only for the estimated benefit less the estimated cost of connecting same with the system. When drainage by pumping is established, the board or the court has authority to provide maintenance of the pumping system by annual assessments. State lands are assessable. (L. 1933, ch. 312.)

See: 172 M. 295; 215 N.W. 234.

Op. Atty. Gen., June 20, 1931; Nov. 7, 1933; Nov. 10, 1936.

*Sec. 6840-31. Damages—How paid:* When damages have been awarded and have been duly confirmed, the county board of each county having lands affected must, before entering upon the land for construction purposes, order the damages, less any benefits assessed against the same property, to be paid out of the general ditch fund. If no money is available in that fund, then payment is made out of the county treasury on warrants drawn and attested by the auditor and signed by the chairman of the board. In case of appeal or delay in final determination of the amount of the damages, warrants are not issued until final determination. When there is any doubt as to who is entitled to receive the damages, the board may require an indemnity bond before issuing the warrant.

*Sec. 6840-32. Appeal:* Any aggrieved party may appeal to the district court: (1) On the amount of the benefits assessed; (2) on the amount of the damages allowed; (3) from an order refusing to establish the improvement. Appeal on the last ground may be taken to the Supreme Court in the manner provided in civil actions. The proceedings on appeal are set out in detail and at length in this section.

See: 172 M. 295; 215 N.W. 204.  
180 M. 132; 230 N.W. 481.

*Secs. 6840-44 to 6840-46, and 6840-49. Auditor's statement—Lien:* As soon as practicable after letting the contract for construction, the auditor of each county affected must make, in tabular form, a list and statement showing: (1) The names of the owners of all lands and the names of all corporation roads, railroads, and municipal corporations within their respective counties benefited by the construction, as appears from the viewers' report confirmed by the board or court; (2) a description of said lands, together with the total number of acres in each tract according to the assessment roll or tax list of the county; (3) the estimated number of acres benefited; (4) the

estimated amount of benefits and damages to each tract and to each public or corporate road, railroad, or municipality as the same appears in the confirmed report or as changed by jury or court; (5) the amount that each tract of land, road, railroad, or municipality must pay into the treasury of each county for the construction of the system. This amount is determined as follows: The auditor makes a full statement showing the total cost of each drainage system, which must be designated by a number. The total cost is then divided by the total estimated benefits for the rate of cost on each \$1.00 of benefits. The amount of the estimated benefits to each separate property shall be multiplied by that rate, and the interest set out in a separate column opposite each separate property. The result, less the amount of the damages, if any, shall be the amount that each separate property will be liable for on account of such improvement. *Sec. 6840-45:* The auditor's statement must be signed and acknowledged by him in the presence of two attesting witnesses and be recorded in the office of the Register of Deeds of the county. The amount that each tract of land, railroad, or municipality will be liable for, with interest as hereinafter provided, shall be and remain a first and permanent lien on such property until fully paid, and shall take precedence over all mortgages, encumbrances, charges, or other liens whatever. The filing of the auditor's statement is notice to all parties interested as to the existence of the lien. The statement after being recorded is returned to the auditor's files and must be kept and preserved. *Sec. 6840-46:* Errors and omissions in the recorded statement of the auditor may be corrected upon petition to the board or court, as the case may be, and hearing thereon in the same manner as the original hearing. After correction a new or amended statement is filed. The lien of the erroneous statement is released by the proper auditor and a new lien attaches. Erroneous collections of assessments are adjusted. *Sec. 6840-49:* Additional cost of the system due to unforeseen circumstances or conditions may be included in a supplemental statement of the auditor, likewise recorded, and become a supplemental lien on the property assessed. Such increase, however, may not exceed the margin between the former lien statement and the total benefits reported and approved. The same notice and hearing is had in the case of the supplemental assessment and the same proceeding. The amount for which each property is liable bears not to exceed 6 percent interest from the date of the filing of the auditor's statement for record. When bonds have been issued, the interest rate is the same as that of the bonds. All interest is an additional lien.

See: *Normania Twp. v. Y.*, 286 N.W. 881.

Opp. Atty. Gen., July 2, 1931.

*Sec. 6840-51. Payment of assessment liens:* Liens filed against property benefited are paid to the county treasurer as follows: One-tenth before November 1 subsequent to the filing of the lien in the office of the Register of Deeds, and one-tenth on the first day of November each year thereafter until paid; provided, that in the final order establishing the system, the board or the court may order the payment as follows: One-fifteenth of the principal on or before five years from November 1 subsequent to the date of said filing with the Register of Deeds; and one-fifteenth on the first of November each year thereafter until paid; or, when so ordered by the court or the board, the payment may be one-twentieth on or before 10 years from November 1 subsequent to the date of filing and one-twentieth each year thereafter until paid. The lien bears not exceeding 6 percent interest from the date of the filing; and the interest on the whole of the unpaid principal must be paid annually on November 1. Where bonds are issued, the liens bear

the same rate of interest as the bonds. The county auditor enters on the ditch lien record the amount of the lien and interest to June 1 following, and collects same each year in the same manner as real estate taxes for that year are collected. All of the provisions of law for enforcing the collection of real estate taxes are applicable to ditch liens and interest. No penalty is added to such installments of principal or interest in case of default, but they bear 6 percent interest from the first day of June following until paid. When payment of the lien and interest has been made in full, the auditor will issue a certificate of payment, which, when recorded, releases and discharges the lien. [Opps. Atty. Gen., Dec. 24, 1929; Jan. 24, 1933; Feb. 17, 1933; Dec. 12, 1933; (425 C) July 28, 1937; (921 i) Dec. 1, 1938.]

**Sec. 6840-52. Apportionment:** When a lien has been established against any tract by reason of the benefits assessed and no installment of the assessments or interest is in default, any person or corporation interested in such tract may, by petition to the district court, and after notice and hearing thereon, have such lien apportioned between or among specified portions of such tract. After apportionment, the aggregate of the separate liens may not be different from the amount of the unpaid portion of the original lien.

**Sec. 6840-53. Maintenance and repairs:** Any county containing a state, judicial, or county drainage system in whole or in part within its borders must keep the same in proper repair and free from obstructions. In case there are sufficient funds to the credit of the system, they may be expended for that purpose without assessment; provided that no improvement is contemplated other than the restoring the works to the original condition. In case there are not sufficient funds, the county may pay the costs out of the general revenue fund and reimburse that fund by assessing the lands originally assessed for benefits in the same proportion as the original assessment. To create a fund for maintenance and repair, the county board is authorized to levy an annual assessment against the lands originally assessed for benefits at a rate not to exceed 30 mills on each \$1.00 of assessed benefits. The assessment is made after notice and hearing, and the board's decision is final. This assessment is collected in the same manner as real estate taxes. If the general ditch fund exceeds 3 percent of the total original assessment of benefits, no further assessment for maintenance and repair may be made until that fund shall have fallen below that percentage. To repair state ditches constructed otherwise than by assessment against property benefits; or to deepen, widen, or extend a state, county, or judicial ditch; the board or the court, as the case may be, is authorized to cause the benefits and damages that will result to be ascertained and to assess the cost against the property benefited by the construction of the original system and all property benefited by the construction of a subsequent ditch or lateral, in proportion to benefits. The proceeding to be followed in keeping a system in repair is optional with the board. When repairs do not amount to \$500, the board may proceed without the letting of a contract.

See: State v. Holmes, 162 M. 173; 202 N.W. 440. 177 M. 598; 225 N.W. 909.

Opps. Atty. Gen., (150c) Sept. 29, 1937; (602j) Aug. 9, 1938; (148 b-5) Oct. 5, 1938; (150 a) March 11, 1939; (150 c) April 14, 1939.

(Sections 6840-55 to 6840-74 provide in elaborate detail the method to be pursued in repairing and improving a state, county, or judicial ditch. They cover petition, engineer's and viewers' reports, hearings, contracts, and the use of the system as an outlet for private or sanitary drainage.)

## FINANCING—Bonds

**Sec. 6840-43. Bond issue:** The county board of each county wherein any drainage system is proposed to be located in whole or in part, or wherein lands are situated which are assessed for benefits, are authorized, after the lien statement prepared by the county auditor has been recorded in the office of the Register of Deeds, to issue bonds of their respective counties in such amounts as may be necessary to defray in whole or in part the expenses to be incurred in locating, establishing, and repairing so much of any works as may be situated in said county or in such relation to said county as to affect lands therein. Bonds may be sold only as provided for in section 1943 of Mason's Minnesota Statutes of 1927. Such bonds are payable as the county board may by resolution determine, but not later than 30 years from their date; and they bear not to exceed 6 percent interest; provided, the time of payment of bonds must conform to the time of payment of principal and interest on the ditch liens as provided in section 6840-51. The proceeds of such bonds are placed in the general ditch fund to the credit of the proceedings in which issued. The county boards are authorized to pay drainage bonds out of any available fund in the county treasury when the general ditch fund is inadequate, the treasury to be reimbursed, with interest at 6 percent, from collections of unpaid assessments for drainage improvements. The board may empower the treasurer, by a proper resolution, to accept in payment of liens any outstanding bonds issued on the ditch liens to be paid thereby, which are legal obligations of the county under the provisions of this act, at par plus accrued interest. (L. 1935, ch. 345.)

See: Op. Atty. Gen., Dec. 12, 1933.  
Opp. Atty. Gen., (38 c) Dec. 14, 1934.  
Opp. Atty. Gen., (901 a) Nov. 10, 1936.

## CONSTRUCTION

**Secs. 6840-33, 6840-34, and 6840-36 to 6840-42. Contracts:** Thirty days after the filing of the order establishing the system, in the office of the auditor or the court clerk as the case may be, the auditor and chairman of the county board, or the auditors of the respective counties, meeting in the county where the system was organized, may proceed to sell the job of constructing the entire works as one job or in sections of 100 feet each. With the approval of the engineer, they may let separate contracts for different classes of work or for work and materials. They enter into a contract in the name of the county and exact a bond of 75 percent of the contract price, for the use of the county affected or any injured party in interest and conditioned for faithful performance. The auditor of the county where the proceedings are had gives notice by publication that the contract will be let to the lowest bidder, and invites bids on the work as described in the notice. The auditors may reject all bids, and no bid may be entertained which exceeds by 30 percent the estimated cost of the particular portion of the work to be performed thereunder. Certified check for 10 percent of the bid must accompany the same. When the cost of construction is more than \$3,000, the auditor may also advertise the letting of the contract in a trade paper. When there have been one or more appeals taken on the question of benefits or damages, no contract may be let unless ordered by the board or the court upon application of the auditor or any interested person, and notice thereof is by mail to all parties. **Sec. 6840-34:** The provisions of the contract and bonds are set out in this section. Each bond must provide for liquidated damages for each day's delay in completion beyond the specified time. **Sec. 6840-36:** Where tile is to be used in any part of the work, or where a majority of the petitioners request

the use of tile, separate bids are asked for tile construction. Secs. 6840-37 to 42: These sections relate to default by the contractor, extension of time, inspection of the work by the engineer, and payment for the work. (175 M. 60; 220 N.W. 423.)

## MISSISSIPPI

(Mississippi Code, 1930; Supplement, 1938; Chapter 107, secs. 4371 to 4526)

### DISTRICTS WITH COUNTY COMMISSIONERS

(Article I)

#### ORGANIZATION

**Secs. 4371 to 4373. Authority:** All drainage districts organized before or after the enactment of this article are managed by three county commissioners of the county in which the organization was perfected and by the chancery court of such county, except the districts with local commissioners and swamp land districts. **Sec. 4372:** The board of supervisors of the county select three county drainage commissioners for their county with terms of office of six years, vacancies to be filled by the supervisors. **Sec. 4373:** Every resident citizen landowner over 25 years of age and otherwise qualified, is eligible for appointment.

**Sec. 4374. General authority:** Drainage districts organized under the provisions of this article are given general authority to construct the necessary works over the lands of others or on lands which may be acquired by the district and also to improve natural drains and watercourses so that a complete system of drainage may exist for agricultural and sanitary purposes.

#### ORGANIZATION—Petition

**Secs. 4375 and 4376. Who may petition:** When a majority of the adult landowners within a proposed district who represent one-third in area of the land, or whenever one-third of the adult landowners owning more than one-half of the land, desire to construct drains across the lands of others for agricultural and sanitary purposes, or to maintain a ditch already constructed, or to establish a combined system of drainage and to construct and maintain the same by special assessment on the property benefited, they may file in the chancery court a petition signed by them, setting forth the name of the district, the necessity for the same, a description of the land to be included, the names and addresses of the owners where known, and a prayer for organization of a drainage district. **Sec. 4376:** When the land is wholly within one county, or a judicial district of one county, the petition is filed in the chancery court of that county or judicial district. When the land is situated in more than one county, the petition is filed in the county or judicial district having the greater number of acres. Such chancery court has jurisdiction of the entire drainage district, both in and outside of the county where it is organized.

**Secs. 4377 and 4378. Proceedings after petition:** The chancery court clerk causes three weeks' notice of the filing of the petition and a hearing thereon, to be given by posting and by publication in the county in which the larger portion of the district is situated. The notice contains the substantial allegations of the petition, and a copy is sent by registered mail to each nonresident owner whose address can be ascertained. **Sec. 4378:** The chancery court where the petition is filed may hold a hearing thereon at any term or in vacation, and may determine all matters pertaining thereto. If the petition proves to be defective in any respect, it may be amended upon motion of the petitioners.

**Sec. 4379. Hearing:** At the hearing all interested parties may appear and contest the granting of the petition, and if the

contestants file a petition signed by one-third of the landowners owning more than one-half of the land in the district, the original petition must be dismissed. If such second petition is not properly signed, then at the first hearing on the original petition, the only questions before the court are: (1) whether the original petition is properly signed as required by the statute; (2) whether the required notice has been given; (3) whether the land in the proposed district or any part thereof requires a combined system of drainage; and (4) whether the creation of the district would be of public necessity and be conducive to the public welfare. Finding all of these requirements in the affirmative, the court enters an order to that effect, refers the petition to the drainage commissioners of the county, and fixes a day when the commissioners shall consider the same; provided, all deeds made for the purpose of defeating or aiding the prayers of the petition, not in good faith and for valuable consideration, are deemed fraudulent, and holders of such deeds will not be considered as landowners. If the court, upon the first hearing, fails to find the petition and notice in proper order, it will permit the petitioners to amend same. If the court finds against the petitioners on any one of the above points, then the petition is dismissed at the cost of the petitioners.

**Sec. 4381. Duty of drainage commissioners:** Upon reference of the petition to them by the court, the drainage commissioners go upon the lands in the district and those over which it is proposed to construct any works and determine: (1) the starting point, route, and terminus of the works; (2) the location and size of necessary drains, settling basins, or levees to be constructed; (3) whether the drainage of the lands of such district is possible; (4) the probable cost of such drainage; (5) what lands will be damaged and the aggregate of all damages; (6) what lands will be benefited and whether the aggregate benefit will equal or exceed the cost of construction. The drainage commissioners are empowered to employ an engineer and to make maps and estimates of the necessary works and costs.

**Secs. 4382, 4383, 4385, and 4386. Report by drainage commissioners:** If the commissioners find that any land in the district would not drain into the proposed ditches, such land will be excluded. On filing of the commissioners' report, the chancery court clerk gives three weeks' notice by publication of a hearing thereon. The notice contains the facts stated in the report and all interested persons may appear and contest the report or seek modification thereof, and may offer competent evidence for or against its confirmation. **Sec. 4383:** If on the hearing the court is of the opinion that the district should be organized, it so declares and issues an order confirming the report and organizing the district. If additional ditches are found to be necessary, the chancellor will modify the report to conform to the equities. **Sec. 4385:** The form of the court's order is set out in the statute by amendment in the Laws of 1932, chapter 285. It is further provided by the amendment that if, after hearing, the court finds that the proposed works will not be sufficiently beneficial to the lands to justify the estimated cost, it will dismiss the petition at the cost of petitioners. **Sec. 4386:** Upon entry of the court order confirming the commissioners' report, the district becomes a body politic and corporate by the name given in the petition, with perpetual succession, and with the usual powers of corporations.

**Secs. 4431 to 4434. Subdistricts:** When one-third of the landowners owning a majority of the acreage or a majority of the landowners owning one-third of the acreage in a proposed subdistrict, composed of lands wholly within a drainage district or partly within and partly without a drainage district, petition

the chancery court to form a subdistrict and file bond to pay costs if the subdistrict is not formed, the court will enter an order directing the drainage commissioners of the county to cause a survey to be made and to ascertain the limits of the region that would be benefited and to estimate the cost of the proposed subdistrict. The drainage commissioners file their report with the clerk of the chancery court of the county where the greater portion of the lands are situated. *Sec. 4432:* There is a hearing on the petition similar to that for the original formation of the district. *Sec. 4433:* The procedure is the same and the subdistrict has all of the right and powers of a drainage district. The lands of a subdistrict that are also within a drainage district remain liable to the drainage district assessments, bonds, and liens. *Sec. 4434:* The county drainage commissioners are the commissioners of the subdistrict, with the same powers that they have as commissioners of the parent district.

#### ORGANIZATION—Powers

**Secs. 4388 to 4390. Rights-of-way:** When the petition is referred to the drainage commissioners by the court, they proceed to procure all rights-of-way for the works of the district as well as for all lateral ditches or levees, by agreement with the landowners if possible, and take releases of rights-of-way and record the same. If they are unable to procure releases, the drainage commissioners appraise the lands needed for rights-of-way and proceed under section 4389. If necessary to obtain outlets outside of the district, the drainage commissioners may do so by agreement or may exercise the right of eminent domain with approval of the court. *Sec. 4389:* When the drainage commissioners have made their appraisal of lands needed for rights-of-way, they certify same to the clerk of the chancery court of the county where the proceeding is had, and if the land be in another county they also certify the appraisal to the chancery court of that county. The clerk fixes a time for the hearing of objections to the appraisements so filed. He issues a summons directed to the sheriff of the county where any landowners reside, directing him to summon such landowners or interested persons to appear at the time and place named. If any landowners be nonresident or unknown, service may be had on any agent in charge of the lands or by publication. If any owner is not satisfied with the amount allowed by the drainage commissioners for the lands needed for rights-of-way, he must file written objection before the day of the hearing. *Sec. 4390:* If no objection is filed, a decree confirming the appraisal is entered, and upon payment of the amount of the appraisal to the chancery court clerk, the district may take possession of the property and appropriate it to the uses of the district and title to the easement thereof thereupon vests in the district. If objections are filed, the court hears the same and upon demand will impanel a jury to determine the damages due the objector. The appraisal of the drainage commissioners is declared to be *prima facie* correct. The court may hear objections in entirety or in severalty, and may enter a decree confirming the report as to any lands taken. The court may make such adjustments of the amounts stated in the report as will be just and equitable.

**Sec. 4401. General powers:** All drainage districts are bodies corporate and have authority to sue and be sued in their corporate names. They may make contracts and, generally, may do and perform all things necessary to carry out their purposes.

#### ORGANIZATION—Officers

**Sec. 4400. Secretary-treasurer:** After organization the commissioners elect a secretary-treasurer, who may be a member of

the board or other qualified person. He gives bond and receives compensation approved by the commissioners and the chancellor. With the approval of the court the commissioners may designate a depository for all funds of the district. The treasurer must keep accurate books of account. (L. 1938, ch. 256.)

**Sec. 4409. Compensation of commissioners:** The commissioners receive \$5 per day for each day actually served, but not to exceed 4 days in any calendar month, to be paid on an itemized account approved by the chancery court.

#### FINANCING—Assessments

**Sec. 4387. Benefits assessed:** The drainage commissioners view the lands and assess the benefits to be derived by each separate tract. They estimate the damages, if any, which will accrue to each tract by reason of the construction of the works of the district. They also make an estimate of the cost of draining the district, apportion such cost to each tract of land, and file a schedule thereof. The form is set forth in the statute.

**Sec. 4391. Preliminary expense—Acreage tax:** Money advanced for necessary expenses may be repaid by the drainage commissioners as part of the cost of the district if the district is organized. If organization is denied, the court, by such decrees as may be equitable and just to all parties, may assess an acreage tax against the lands of the persons signing the original petition to pay preliminary costs and expenses of the drainage commissioners. After the petition is referred to the commissioners, they are empowered to issue certificates of the district to raise funds for necessary expenses and for service and preliminary work. Such certificates bear 6 percent interest but may not run for a longer period than two years. Certificates are paid as soon as the district is organized and funds come into the hands of the commissioners. Where the petition is defeated by withdrawal of signers of the original petition to an extent which will leave insufficient signers or insufficient acreage, and the court so states in its decree, the entire cost of the proceedings, must be decreed against the lands of the petitioners so withdrawing on an acreage *pro rata* basis.

**Secs. 4392 to 4394. Hearing:** When the commissioners have completed their assessment of damages and benefits, they file the same with the clerk of the chancery court, who in accordance with the request of the commissioners and the convenience of the court, fixes the time for a hearing of any objections thereto and gives notice thereof by publication. *Sec. 4393:* At the time fixed, the court hears all objections that may be made by the commissioners, landowners, or other interested parties as to benefits assessed or damages allowed to any tracts of land or to the assessment as a whole. After hearing all evidence, the court directs the commissioners to make such alteration as is deemed just and equitable. Such changes by the court are final in the absence of appeal. *Sec. 4394:* Any party in interest may appeal to the Supreme Court of the state within 10 days. The appellant must give bond for costs. No appeal stops the proceeding with reference to organization and construction of the work, but such organization and work proceed as if no appeal had been taken. In cases of reversal, the error is corrected according to the mandate of the Supreme Court and so that no injustice will result.

**Sec. 4395. Installments—Liens:** At the time of confirming the assessment of benefits and damages and the estimate of cost, the court may order the assessments to be paid in installments at such times as may be convenient for the accomplishment of the work or the payment of bonds issued therefor. Otherwise, the whole amount is payable on confirmation. Assessments and installments bear interest from the date of confirmation. Any

owner may elect to pay the whole amount of the assessment and interest against all or any part of his property within 30 days after confirmation and before the issuance of bonds. Such property is then no longer liable for payment of those bonds or assessments. All assessments for benefits and assessments for construction are a lien upon the lands in the district. If not paid when due, the specific lands against which the assessment was made are sold by the sheriff in the same manner as for delinquent state and county taxes. All drainage assessments are collected by the tax collector at the same time as state and county taxes, and under the same penalties.

**Sec. 4396. Estimate of cost—Levy—Bonds:** As soon as the commissioners have procured the rights-of-way, they make an estimate of cost, including all expenses of organization and construction, and file a levy for the amount required by them for construction of the works. They may order that so much of the benefits assessed as necessary be paid in cash, or they may order that the same be paid in not more than 40 installments with interest on each at 6 percent. The commissioners may order that bonds of the district be issued and sold, in amount not exceeding 80 percent of the benefits assessed, payable in from 1 to 40 years and bearing 6 percent interest payable annually or semiannually as the court may direct. It is lawful to attach coupons for any part of a year to the bonds maturing the first year. When bonds are sold to the extent of 80 percent of the benefits, the commissioners may order the remaining 20 percent paid in cash. If the amount levied be not sufficient to complete the works, or if bonds are sold for an amount less than 80 percent of the benefits assessed and additional funds are required to complete the work, an additional levy may be made or additional bonds issued; but the additional levy when added to the original levy may not exceed the benefits assessed, and the additional bonds added to the original bonds may not exceed 80 percent of the assessed benefits. Such additional levy is payable in cash, or in not to exceed 15 installments which bear interest at 6 percent.

**Secs. 4397 and 4398. Apportionment of tax:** Before the first Monday in September in each year, the commissioners assess the tax on the original or supplemental assessment of benefits in the same proportion as the installments authorized by the court to become due that year, and certify their levy to the board of supervisors of the county where the lands are situated. It is the duty of the supervisors to make a levy in accordance with the assessment to meet the bond obligations and interest, with 10 percent added for contingent expenses; except that the 10 percent for contingent expenses may be omitted in any year when the contingent expense fund on hand exceeds 20 percent of the total bond and interest obligation. **Sec. 4398:** It is the duty of the board of supervisors of each county in which district lands are located, on the recommendation of the drainage commissioners, to make a levy each year in accordance with the assessment, sufficient to meet bond obligations. When bonds are issued they may not be sold at less than par except upon approval of the commissioners and the chancery court.

**Sec. 4404. Maintenance assessments:** The commissioners are charged with the duty of laying out, constructing, and maintaining the established drains. Additional assessments for maintenance and repair are made in the following manner: On or before the first Monday in September, the commissioners assess each tract of land or other property in the district, in proportion to the original and supplemental benefits assessed for construction, such amount as is necessary to pay the expense of maintenance. They certify their assessment to the supervisors of the county where the land is situated, and the supervisors

levy a tax in accordance therewith. As soon as the tax levy is made, the secretary of the commissioners, at the expense of the district, prepares an assessment record certified by the drainage commissioners which is filed with the sheriff of each county in which the lands are situated. Aggrieved persons have the same right of appeal as provided in the matter of county taxes. The tax is collected at the same time and in the same manner as state and county taxes.

**Sec. 4419. Reassessment:** If after the first assessment of benefits has been made, it develops that on account of additional work done or to be done, benefits to the whole or any part of the district will be greater than originally assessed, the commissioners may proceed to reassess and apportion the benefits so as to correct the same to conform to the benefits to be received; provided, the aggregate value of benefits so assessed shall not be less than the original assessment. Reassessments are made in the same manner as the original assessment.

#### FINANCING—Bonds

**Secs. 4427 to 4429. Additional bonds:** The commissioners of a district that has sold bonds for 80 percent of the assessment on the lands, and has provided for the collection of the additional 20 percent in cash are authorized to issue and sell bonds, notes, or other indebtedness of the district for the 20 percent or any part thereof which was provided to have been paid in cash and has not yet been paid. **Sec. 4428:** The bonds, notes, or other indebtedness issued under the provisions of this chapter, shall not bear interest exceeding 6 percent and shall be non-taxable. **Sec. 4429:** Before the sale of any bonds or other obligations, the commissioners must publish their intention for 10 days. After 10 days from the action of the chancellor in approving the issuance and sale of bonds, notes, or other evidences of indebtedness, they become liens on the lands assessed and such obligations are non-taxable.

**Sec. 4437. Refunding bonds:** Whenever a drainage district is unable to pay all or part of its bond and interest indebtedness, or where the best interests of the district may require, the drainage commissioners and the court may issue refunding bonds of such district in amount not exceeding the aggregate of the bonds to be refunded and accrued interest thereon. Refunding bonds may not run more than 50 years nor bear more than 6 percent interest. Refunding bonds may be exchanged for outstanding bonds or may be sold at such price and in such manner as the commissioners may determine, subject to the approval of the court. The governing authority of the district must give notice by publication of its intention to issue refunding bonds, and must hold a hearing on any objections of interested parties. The governing authority of the district conducts such hearing in a summary manner and its disposition of the objections is final and conclusive on all parties. (L. 1928, ch. 236.)

**Sec. 4438. Tax for refunding bonds:** The governing authority of a district and the county supervisors must annually levy a tax on all lands and property subject thereto in such district in proportion to the benefits originally assessed, and sufficient to pay the interest on the bonds and the principal of any bonds maturing during the ensuing year. They certify such tax to the tax collector of the county where the lands are situated for collection. The total of such tax, exclusive of taxes levied for interest on such bonds and on the bonds to be refunded, shall not exceed the benefits assessed upon any tract of land in said district. (L. 1928, ch. 49.)

**Sec. 4439. Refunding legal indebtedness:** For the purpose of funding any legal indebtedness of any drainage district to the extent that such indebtedness, when added to the outstanding bonded indebtedness, shall not exceed the balance due to the

district on the assessment of the lands in the district, the drainage commissioners and the court may issue bonds aggregating such amount; provided, that interest on such indebtedness may not be calculated against the district in determining the amount of such indebtedness. There is the usual notice of intention to issue bonds and the summary hearing on any objections.

#### DISSOLUTION

**Sec. 4440, Suppl. 900:** (1) Any drainage district that has constructed a drainage system and has no outstanding indebtedness and for which there is no necessity for maintenance, may be dissolved by the chancery court in which it was organized or by the chancellor in vacation. (2) Whenever a majority of the landowners owning a majority of the lands sign and file with the clerk of the chancery court where the district was organized a petition for dissolution, the clerk gives notice by publication of a hearing on the petition, at which hearing objectors must show cause why the district should not be dissolved. (3) The court hears the petition in the same manner as other causes in chancery, and if it appear that it is to the best interests of the landowners that the district be dissolved and that there is no outstanding indebtedness, the court enters an order dissolving the district. The order requires that no further expenses be incurred by the commissioners and that within 30 days they deposit with the clerk all papers and records of the district. If the contrary appears to the court, the petition will be dismissed at the cost of petitioners and no further petition may be filed within 2 years thereafter. (L. 1934, ch. 230.)

**Suppl. 901. Cumulative method:** Whenever 25 percent of the landowners owning a majority of the acreage of any drainage district desire to have same dissolved, the chancery court in which the district was organized or the chancery court in the county in which the lands are located, or the chancellor of either of said courts in vacation, is authorized to enter an order or decree that the said district be dissolved on such terms as the chancellor may deem meet and proper (a) whenever there is no outstanding indebtedness, or (b) whenever it is made to appear that the district owns easements and other properties that could be sold at a fair cash market value for sufficient to pay all obligations. (L. 1938, ch. 258.)

### DISTRICTS WITH LOCAL COMMISSIONERS

#### (Article II)

##### ORGANIZATION—Petition

**Sec. 4449. Petition—Temporary commissioners:** One-fourth or more of the landowners in a proposed district may file a petition with the chancery court for the formation of a drainage district. Notice of a hearing on the petition is given by publication. Unless at the hearing a majority of the landowners owning one-half or more of the land shall object, then further proceedings on the petition are had in the following manner.

The court appoints three temporary commissioners who must be landowners and whose appointment expires on the organization of the district. The temporary commissioners immediately appoint an engineer to make a survey and ascertain the extent of the territory that will be benefited by the proposed improvements as well as the general character and cost of the drainage works required, all of which is reported to the chancery court. The preliminary expenses are paid by the county, to be refunded out of the proceeds of the first assessment levy. The temporary commissioners may, however, with the permission of the court, borrow money at 6 percent to pay expenses of survey, attorney's fees, and other costs and may issue negotiable notes signed by all of them, payable within or without the state in payment for

work done. They may pledge all assessments as security for payment. Such evidences of indebtedness may not run over two years. Such notes have priority in payment when an assessment of the lands is made, or, if the district is not organized, then the board of supervisors of the county may levy an acreage *ad valorem* tax against the land in the proposed district for the purpose of making payment.

**Sec. 4450. Hearing:** Immediately after the report of the temporary commissioners is filed, the clerk of court gives notice by publication of a hearing on the report. At the time fixed, the court, after hearing all persons interested, and deeming the formation of a district to be to the advantage of the landowners and to be of public benefit, enters an order establishing the drainage district. Upon organization thereafter, the district becomes a body corporate and through its commissioners has the powers of a corporation and may do all things necessary to accomplish the purpose for which it was organized.

If at this hearing a petition for the improvement is presented, signed by a majority of the landowners owning one-third of the land or one-third of the landowners owning a majority of the land, it is mandatory that the court establish the district without further inquiry; provided that if at this hearing a petition is presented, signed by the same number and ownership, praying that the improvement be not made, then the court must dismiss the proceeding.

In the absence of such petition the chancellor, being of opinion that the establishment of the district would be to the benefit of the landowners and the public, will establish the district.

**Sec. 4453. Judgment:** The order of the court establishing the district has the force of a judgment, and appeal therefrom is directly to the supreme court of the state within 20 days. If there be no appeal, judgment is conclusive and binding upon all the real property within the boundaries of the district. Appeal may also be taken from an order refusing to establish a district.

**Sec. 4487. Existence of districts continued for maintenance of system:** The district does not cease to exist upon completion of its drainage system, but continues as a body corporate for the purpose of preserving the system and keeping the ditches free from obstruction. For these purposes the commissioners may borrow money and issue bonds, and may apply to the chancery court for the levying of additional assessments upon the benefits to pay for the work or to retire the bonds issued. The petition is heard by the court after notice by publication. Any interested party may present objections within 10 days. In the absence of objection the levy stands with the force of a final judgment. Appeal is to the supreme court within 20 days.

**Sec. 4511. Subdistricts:** One-third of the landowners owning a majority of the land or a majority of the landowners owning one-third of the land within a proposed subdistrict composed of lands wholly within an organized district or partly within and partly without such district, may petition the chancery court in which the district was organized for establishment of the subdistrict. The petitioners give bond for costs, and the court directs the commissioners of the main district to cause a survey to be made of the subdistrict with an estimate of costs and to file same with the court clerk. With the same notice and procedure as in the original organization, the court either establishes the subdistrict or dismisses the petition. It is specifically provided that nothing in this section shall prohibit the formation of a drainage district wholly or partly within a district already organized, but a district independent of the original organization may be organized where a part or all of the lands are not in the original district; provided that one-third of the landowners owning a majority of the acreage, or

a majority of the landowners owning one-third of the acreage within such proposed district shall so petition the court. Thereafter the proceedings are the same as for original organization. When organized, the lands of the subdistrict included in any previously organized district are still liable for the assessments of the original district.

#### ORGANIZATION—Officers

**Sec. 4455 to 4457. Commissioners:** When the district has been established, the court appoints three owners of real property within the district as commissioners and they become a body politic and corporate by the name and style selected for the district. If a majority in number of owners of land in the district petition for the appointment of a particular person as commissioner, it is the duty of the judge to appoint the person so designated. Vacancies in the board of commissioners are filled by the court, and the court will remove any commissioner upon petition of a majority of the landowners who own a majority of the acreage.

**Sec. 4459. Preliminary costs:** When, for any reason the contemplated improvements are not made, the costs of organization are charged against the real property in the district and collected by assessment, and such assessment is levied by the county board of supervisors as an acreage or *ad valorem* tax. If the district is intercounty, the court apportions the assessment among the several counties.

**Sec. 4451. Intercounty districts:** If the land in the proposed district is situated in two or more counties, the petition may be addressed to the chancery court of any of the counties and all proceedings must be had in that court. Costs are apportioned between the counties by the court. All notices are published in all counties. Such districts must be numbered consecutively or must receive such names as the court may select.

#### FINANCING—Assessments

**Secs. 4466 to 4480. Assessment of benefits—Special assessments:** The commissioners of the district assess the benefits to each tract of land, give a description thereof, and make an estimate of the cost to the landowners during the first year. This assessment is on the land and on all railroad and other property that will be benefited by the drainage. The commissioners also assess damages that will accrue by reason of the construction of the works of the district. If additional lands not mentioned in the petition are found to be benefited, they also will be assessed and the court clerk gives the owners thereof the usual notice to show cause why they should not be included in the district.

When the assessments are completed, the commissioners sign and file the same with the clerk of the court, where they become a public record. Notice of such filing is given by publication, and any aggrieved person may appear before the court at the hearing on such commissioners report and present evidence. The order of the court on the hearing is final, with right of appeal by either side to the Supreme Court.

The assessment roll so prepared, when approved by the court, is a final assessment of benefits upon the land and so stands unless the commissioners find it necessary to raise the assessments to secure funds for additional improvements.

Any landowner may demand assessment of damages by jury by giving notice to the commissioners within 30 days of the filing of the assessment roll, and thereupon the commissioners must institute a proceeding in eminent domain to condemn the land. In such cases the commissioners may pay the amount of the award

into court and then proceed to take possession of the land and construct the works notwithstanding an appeal. Commissioners of any district have the right of eminent domain to secure rights-of-way for outlets outside of the district.

The court, at the time that assessments of benefits are made or at any time when requested so to do by the drainage commissioners, will enter an order for a special assessment to pay the estimated costs of the improvement with not less than 10 percent added for deficiency. This order has the effect of a judgment. This assessment is in the proportion which the assessment of benefits against any tract of land bears to the assessment of benefits against all the property in the district. Special assessments may be paid in 10 annual installments, or in cash prior to the issuance of bonds. They are a lien on all of the real property in the district from the date of the order of the court, in an amount not to exceed the total estimated benefits, and are entitled to preference to all demands, executions, encumbrances, or liens whatever, and so continue until paid. Appeal from such assessments is to the Supreme Court within 20 days.

#### FINANCING—Bonds

Commissioners may borrow money at 6 percent and issue negotiable evidences of indebtedness therefor or serial bonds not exceeding the total amount of the benefits assessed. The bonds are signed by the board of commissioners and are payable within or without the state or may be payable to bearer. They may not run more than 30 years and must mature in such yearly installments as the commissioners may fix. Bonds may not be sold at less than par.

All evidences of indebtedness issued by the commissioners are a lien upon the property in the district in an amount not to exceed the benefits assessed. The board of commissioners is required to see that assessments are levied annually so long as they be necessary for the payment of such obligations, and every interested party is given the right to enforce such levy by mandamus. All revenues of the district and all real estate in the district are specifically pledged by this act to the payment of the obligations of the district in an amount not to exceed the benefits assessed.

#### DISSOLUTION

**Sec. 4508, Suppl. 913. Dissolution:** Whenever after the expiration of three years from date of organization, five or more landowners of any district, or a majority of the landowners of a district excluding the state, or any landowner or landowners owning more than 50 percent of the total acreage of a district excluding the acreage owned by the state, shall sign and file with the clerk of the chancery court where the district was organized a petition for dissolution, the clerk will give notice by publication to all interested persons to appear and show cause, at a time and place named, why the district should not be dissolved. At the first publication of said notice, all proceedings of every kind in the district, and of the commissioners thereof, shall be discontinued until the hearing is concluded. If at the hearing it appears to the court that it is to the best interests of the landowners that the district be dissolved, the court will enter an order dissolving same and requiring that no further expense be incurred and that the records of the district be deposited with the court clerk within 10 days. The cost of the proceedings will be taxed by the court on an acreage basis. If the district is not dissolved, the costs are taxed against the petitioners.