

DRAINS AND DRAINAGE

CHAPTER 124.

[S. B. No. 256—Stevens]

ADDITIONAL ASSESSMENT.

AN ACT To Amend Section 1833 of the Revised Codes of North Dakota for the Year 1905, and Section 1820 of the Revised Codes of 1905, as Amended in Chapter 93 of the Session Laws of 1907, Relating to Drainage.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 1833 of the Revised Codes of North Dakota for 1905 is hereby amended to read as follows:

§ 1833. ADDITIONAL ASSESSMENT. WHEN NECESSARY.] In case the amount realized from the assessment made for right-of-way or for the construction of any drain shall not be sufficient to pay for such right-of-way or to complete such drain, and to pay fees and all incidental expenses, or to pay and retire any bonds issued in connection with the construction of such drain, or in case an enlargement or deepening of such drain or an extension of the line thereof becomes necessary, a further assessment shall be made to meet the deficit or additional expense and the amount thereof shall be levied and collected in the manner hereinbefore provided.

§ 2. That Section 1820 be amended to read as follows:

§ 1820. OATH. BOND. ORGANIZATION. LEGAL ADVICE.] Any person appointed as a member of the Board of Drain Commissioners shall within ten days after his appointment take, subscribe and file in the office of the County Auditor an oath faithfully to perform the duties of a drain commissioner under the law, and within the same time make, execute and file in the Auditor's office a bond to the county with sureties to be approved by the Auditor in such sum as shall be ordered by the board of County Commissioners, conditioned for the faithful discharge of his duties as drain commissioner. The members of the drainage board shall organize by electing from their number a chairman and a secretary; they shall keep an office at the county seat and shall keep a record of its acts and proceedings and a separate record of the proceedings relating to each separate drain, all of which shall be open for public inspection and such records shall have the same force and effect as other public records. Two members of said board shall at all times constitute a quorum for the transaction of business. Said board may, when it is neces-

sary, employ a clerk and fix his compensation; it may also employ and call to its assistance a competent surveyor. The state's attorney of each county shall, so far as his other duties will permit, act as the legal advisor of the board. The board may, however, by and with the consent of the county commissioners, employ other counsel to advise and represent it in its proceedings.

§ 3. EMERGENCY.] Whereas, an emergency exists in the fact that the operations of this act will be required before July 1st, 1911; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 3, 1911.

CHAPTER 125.

[S. B. No. 142—Cashel]

RELATING TO DRAINAGE, PROTEST, RIGHT-OF-WAY, COMPENSATION.

AN ACT To Amend Sections 1821 and 1828 of the Revised Codes of 1905 as Amended in Chapter 93 of the Session Laws of 1907, and also to Amend Section 1825 of the Revised Codes of 1905, Relating to Drainage, Protest, Right-of-Way, Compensation.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Sections 1821 and 1828 are hereby amended to read as follows:

§ 1821. HOW ESTABLISHED.] A petition for the construction of a drain may be made in writing to the board of drain commissioners, which petition shall designate the starting point and terminus and general course of the proposed drain. If among the leading purposes of the proposed drain are benefits to the health, convenience or welfare of the people of any city or other municipality, the petition shall be signed by a sufficient number of the citizens of such municipality or municipalities to satisfy the board of drain commissioners that there is a public demand for such drain. If the chief purpose of such drain is the drainage of agricultural, meadow, grazing or other lands, the petition shall be signed by at least six or more freeholders whose property shall be affected by the proposed drain. Upon the presentation of a petition as hereinbefore provided and filing of the same, the board of drain commissioners shall personally as soon as practicable proceed to examine the line of the proposed drain, and if in its opinion it is necessary for the public good, it shall enter a resolution to that effect, and shall also enter a resolution designating a competent surveyor who shall survey

the line thereof and establish the commencement and terminus and determine the route, width, length and depth thereof.

Provided, that the board of drain commissioners shall require a bond from the petitioners in a sum sufficient to pay all expenses of the surveys and of the drainage commissioners if it should appear after the surveyor's report is filed, that the proposed drain would cost more than the amount of the benefit to be derived therefrom. For the purpose of making examinations or surveys the board of drain commissioners, surveyors, and their employees may enter upon any land traversed by any such proposed drain or upon other lands when necessary. Such surveyor shall prepare profiles, plans, and specifications of the proposed drain, an estimate of the cost thereof, and a map or plat of the lands to be drained in duplicate, showing the regular sub-divisions thereof, one copy of which shall be filed in the office of the county auditor in the county in which the drain is proposed to be constructed and the other with the board of drain commissioners, subject to inspection. In locating a drain a board of drain commissioners may, under the advice of the surveyor, vary from the lines described in the petition as it seems best. When the line proposed is along highways already established the drain shall be located at a sufficient distance from the center of such highway to permit a good road along the central line thereof. When the length of the line described in the petition does not give sufficient fall to drain the land sought to be drained, the board of drain commissioners may extend the drain below the outlet named in the petition far enough to obtain a sufficient fall and outlet. Drains shall as far as practicable be located on dividing lines between sections or regular sub-divisions thereof, but the general utility of the drain must not be sacrificed to avoid crossing any tract of land in such direction as the board of drain commissioners find advisable. Upon the filing of the surveyor's report the board of drain commissioners shall fix a date and public place for hearing objections to the petitions and such place for hearing shall be located at some point in the vicinity of the land which will be affected by such drain and that will be the most convenient point for the majority of the land owners affected by the proposed drain to attend. At least ten days' notice of such hearing shall be given by causing five notices to be posted along the line of the proposed drain at such points as will be likely in the opinion of the board to secure the greatest publicity, and in addition a notice shall be sent by registered mail to the last known address of each and every owner of land which may be affected by the proposed drain. Notices of this hearing shall contain a copy of the petition and a statement of the date of filing of the surveyor's report and the date when the board will act upon the petition, and must be signed by the members of the board or a majority thereof. All persons

whose land may be affected by any such drain may appear before the board of drain commissioners and fully express their opinion and offer evidence upon the matters pertaining thereto. Should two-thirds of the land owners whose land is subject to assessment for the construction of the proposed drain believe that the benefits to be derived are not equal to the expense of the construction, they may petition the board of drain commissioners to have further proceedings discontinued, whereupon the said board shall by resolution order further proceedings discontinued.

§ 1828. NOTICE OF CONSTRUCTION.] After completing the percentage assessment as hereinbefore provided, the board of drain commissioners shall without delay divide the line thereof into convenient divisions for construction, make diagrams of the same with specifications of the width of excavation at the bottom, the slope of the sides, and such other matters as may be necessary for the proper construction of the drain, and set suitable stakes in such places as may be necessary. Such board shall give at least ten days' notice of the time when and the place where they will meet parties for the purpose of letting contracts for such construction. Such notice shall be published in some newspaper of general circulation in the county and printed notices not less than five in all and at least one in each township or municipality interested in such drain shall be posted in such township or municipalities at such points as will be likely, in the opinion of the board to secure the greatest publicity for such notice. At least ten days' time shall intervene between the hearing upon the review of the assessments before the contracts shall be let.

§ 2. AMENDMENT.] Section 1825 of the Revised Codes of 1905 is hereby amended to read as follows:

§ 1825. ASSESSMENT OF BENEFITS SUBJECT TO REVIEW.] The assessments of benefits provided for in this chapter shall be subject to review, and ten days' notice of the time and place, when and where such assessment will be reviewed by the board of drain commissioners, shall be given by publishing in some newspaper of general circulation in the county, and printed notices, not less than five in all and at least one in each township or municipality interested in such drain shall be posted in such township and municipality at such points as may be likely in the opinion of the board, to secure the greatest publicity for each notice. Printed notices shall also be sent by registered mail to the last known address of each and every land owner whose land shall be affected by construction of the proposed drain. The place appointed for such hearing shall be located at some point in the vicinity of the land which shall be affected by such drain and that will be the most convenient point for the majority of the land owners affected by the proposed drain to attend. At the time and place appointed such board shall proceed to hear all

complaints relative to such assessment and correct or confirm the same. Should two-thirds of the land owners subject to assessment for the construction of the proposed ditch believe that the assessment had not been fairly or equitably made, or that the drain is not properly located or designed, they may appeal to the state engineer by petition to make a review of such benefits and assessments and to examine the location and design of the proposed drain. Upon the receipt of such petition the state engineer shall proceed to examine the lands assessed and the location and design of the proposed drain, and should it appear to him that such assessments have not been equitably made he may proceed to correct the same and his correction and adjustment of said assessments shall be final. Should it appear that, in the judgment of the state engineer, the drain has been improperly located or designed, he may order a re-location and design, which location and design shall be followed in the construction of the proposed drain. For his services in making such review of assessments and examination of location and design, the state engineer shall be allowed ten dollars per day and actual and necessary expenses during the time he is engaged upon this work. All moneys received by the state engineer for this work shall be paid into the state treasurer and credited to the general fund.

§ 3. AMENDMENT. CONDEMNING RIGHT OF WAY UNDER CERTAIN CONDITIONS.] Any person, firm or corporation, either alone or in company with others, may petition the drainage board for a drain, and deposit with the chairman of the drainage board a good and sufficient bond to be approved by the drainage board, conditioned that the petitioner will pay all costs of the proposed drain. Then the drainage board shall, within ten days, commence proceedings for the construction of said drain according to the provisions of chapter 23 of the Code of North Dakota of 1905. No person, firm or corporation, except the petitioners above mentioned, shall dig or construct any lateral ditch or drain that will conduct the flow of water from any land or lands into any drain constructed under the provisions of this section, provided, that any person or persons, firm or corporation, may petition the drainage board for the privilege of digging ditches or lateral drains into the original ditch; and thereupon the drainage board shall estimate and determine the proportionate share of the cost of the main or original drain and the exact amount which should be paid by such petitioners. The said petitioners may pay into the county treasury the amount so determined, and they shall then be allowed to connect their lateral ditches or drains with the main drain under the direction and superintendence of the drainage board, but at their own cost and expense. The money paid into the county treasury, as aforesaid, shall be divided among those persons, their heirs or assigns, who

paid for the original or main drain, in proportion to the amount paid by each.

§ 4. COMPENSATION.] The drain commissioners shall receive for their services such amount not less than three nor exceeding four dollars per day for the time actually spent by them in the performance of the duties of their office, such per diem to be fixed by the board of county commissioners; provided, the said drain commissioners shall render an itemized and verified statement showing the date or dates when their services were rendered, and not more than the compensation for one day shall be allowed to them for services rendered in any one calendar day of twenty-four hours.

§ 5. REPEAL.] All acts or parts of acts in conflict herewith are hereby repealed.

§ 6. EMERGENCY.] Whereas, an emergency exists, this act shall take effect and be in force after its passage and approval.

Approved March 6, 1911.

CHAPTER 126.

[H. B. No. 274—Hyland]

RUNNING A SURVEY FROM THE MOUSE RIVER TO DEVILS LAKE.
AN ACT to Run a Survey or Surveys from the Mouse River to Devils Lake for the Purpose of Determining the Feasibility of Draining the Surplus Flood Waters of the Mouse River Into Devils Lake and Making an Appropriation Therefor.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. As soon as practicable after the taking effect of this act it shall be the duty of the state engineer to run a survey or surveys between the Mouse River and Devils Lake for the purpose of determining the feasibility of draining the flood waters of the Mouse River into Devils Lake.

§ 2. There is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of six hundred fifty dollars, or so much thereof as may be necessary to carry out the provisions of this act.

Approved March 6, 1911.