

WATER CONSERVATION

CHAPTER 253

H. B. No. 311—(Irrigation and Drainage.)

IRRIGATION ACT OF 1939

An act relating to the organization of irrigation districts, the powers and functions of such districts, the establishment and construction of irrigation works therein and methods and procedure for financing the cost of purchasing or constructing such irrigation works; amending Section 8247a1 of the Supplement to the Compiled Laws of 1913, as amended and re-enacted by Section 1 of Chapter 142 of the Session Laws of 1933; Section 8247a2 of the Supplement to the Compiled Laws of 1913; Section 8247a3 of the Supplement to the Compiled Laws of 1913, as amended and re-enacted by Section 2 of Chapter 142 of the Session Laws of 1933; Sections 8247a4, 8247a5, 8247a6, 8247a7, 8247a8, and 8247a9 of the Supplement to the Compiled Laws of 1913; Section 8247a10 of the Supplement to the Compiled Laws of 1913, as amended and re-enacted by Section 3 of Chapter 142 of the Session Laws of 1933 and amending Sections 8247a11, 8247a12, 8247a13, 8247a14, 8247a15, 8247a16, 8247a17, 8247a18, 8247a19, 8247a20, 8247a21, 8247a23, 8247a24, 8247a26, 8247a47, 8247a51, 8247a52, 8247a53, 8247a56, 8247a57, 8247a59, 8247a60, 8247a61, 8247a63, 8247a64, 8247a65, and 8247a66 of the Supplement to the Compiled Laws of 1913; validating organization and acts of certain irrigation districts; repealing all acts and parts of acts in conflict with the provisions of this act, and declaring an emergency.

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

§ 1. AMENDMENT.] That Section 8247a1 of the Supplement of the Compiled Laws of North Dakota for 1913 as amended by Section 1 of Chapter 142 of the Session Laws of 1933 is hereby amended and re-enacted so as to read as follows:

§ 8247a1. Whenever a majority of the electors within an area containing 80 acres or more of land susceptible of irrigation desire to provide for the irrigation of such land, they may propose the organization of an irrigation district under the provisions of this act, and when so organized, the district shall have the powers conferred, or that may be conferred, by law upon irrigation districts; provided that no district, shall, when thus organized, contain less than seven electors as the term elector is herein defined, and provided further that where irrigation works, ditches or canals have been constructed before the passage of this act of sufficient capacity to water the land thereunder, for which land the water taken in such canals or ditches is appropriated, such canals or ditches and the water rights and franchises under which same are maintained and operated, and the land watered by such canals or ditches, shall be exempt from operation of this act unless such irrigation district

is created to purchase such irrigation works, canals, ditches, water rights and franchises. The term "elector" as used in this act shall include any entryman or person owning not less than ten acres of land within the proposed district who resides in North Dakota and shall also include any person residing in North Dakota who holds a leasehold estate within such district of not less than ten years duration from and after the filing with the State Engineer of the petition requesting the organization of such irrigation district; provided, however, that in irrigation districts embracing or containing less than five hundred acres the word "elector" shall include any person owning any land therein.

§ 2. AMENDMENT.] That Section 8247a2 of the Compiled Laws of North Dakota for the year 1913 is hereby amended and re-enacted so as to read as follows:

§ 8247a2. A petition shall be filed with the State Engineer signed by a majority of the electors of the proposed district, who shall be entrymen upon or shall own, or hold leasehold estates, in a majority of the whole number of acres owned or held by the electors of the proposed district, requesting that the territory described in said petition be organized under the provisions of this act. Such petition shall set forth the name and address of each petitioner, the nature of his interest in the land, whether as entryman, owner or lessee, the mortgage indebtedness, if any, against the land, the names and addresses of mortgagees, and a description of the land. The petition shall also set forth and particularly describe the boundaries of said district. The petitioners must accompany the petition with a map of the proposed district. Such map shall show the location of the proposed canals or works by means of which it is intended to irrigate the lands of the proposed district, but canals that merely pass through said lands, and which do not irrigate any of the same, need not be shown. If the water supply be from natural streams, the flow of such stream or streams shall be stated in cubic feet per second.

If the water supply for the district is to be gathered by a storage reservoir, or reservoirs, the map shall show the location thereof and shall state their capacity in acre feet.

Such map shall be drawn to a scale of not less than two inches to the mile. Typical cross sections of the proposed canal or canals, and all canals existing within the boundaries of the proposed district and shown on the map, and of all proposed dams and embankments, shall be given in sufficient detail to show the contemplated method of construction, and the capacity of the typical canals required for the irrigation of the lands within the proposed district shall be stated. Such cross sections shall be drawn to a scale required by the State Engineer, and such map and cross sections shall be certified to by an irrigation engineer. The petition must be accompanied by a good and sufficient bond, to be approved by the State

Engineer, in double the amount of the probable cost of organizing such district, including the cost of the first election therein, conditioned that the sureties will pay all costs in case said organization shall not be approved by the electors.

Within ten days after the filing of such petition, and the approval of such bond, the State Engineer shall file a certified copy of such petition with the board of county commissioner[s] of each county wherein the proposed irrigation district is situated.

The State Engineer shall examine the petition, maps, papers and data pertaining to the proposed irrigation district and shall fix a time and place for hearing such petition. A notice stating that such petition will be heard, and stating the time and place of hearing, must be filed with the county auditor of each county wherein such district is located. Such notice shall be published once each week for two weeks prior to the date of such hearing in the official newspaper of the county wherein the proposed irrigation district is located, and if such district is located in more than one county, then such notices shall be published in the official newspaper of each such county. Prior to such hearing the State Engineer shall prepare, or shall cause to be prepared, a report showing the probable cost of the proposed irrigation works and the practicability and feasibility of the plan of irrigation suggested or proposed by petitioners for the irrigation of the lands within such district. A copy of such report shall be filed with the county auditor of each county wherein the proposed irrigation district is situated and such report shall be open to public inspection. The State Engineer shall also submit such report to the electors of the proposed district at the meeting set for hearing the petition for the organization thereof.

At the time set for the hearing, the State Engineer may, with the consent of petitioners, amend the plan of irrigation proposed in said petition and may, with the written consent of the entrymen, owners or lessees of the additional land affected, enlarge the boundaries of the proposed irrigation district. The State Engineer may adjourn such hearing from time to time and on the final hearing may make such changes in the proposed boundaries as he shall find to be proper and shall establish and define the boundaries; provided however, that the boundaries of the irrigation district proposed in the petition shall not be changed until each entryman, lessee, and owner of land affected thereby has in writing consented to the inclusion of his land in such district.

§ 3. AMENDMENT.] That Section 8247a3 of the Compiled Laws of North Dakota for 1913 as amended by Section 3 of Chapter 142 of the Session Laws of 1933 is hereby amended and reenacted so as to read as follows:

§ 8247a3. (1) When the State Engineer shall have found and determined that the establishment of such irrigation district is advisable, and that the plan proposed for irrigating the lands there-

in is practicable and economically sound, he shall make an order establishing such irrigation district, subject to the approval of the electors of the district at an election called by the State Engineer for that purpose as hereinafter provided. The State Engineer shall divide the district, if it embraces five hundred acres of land, or more, into three sub-divisions which shall be as nearly equal in size as may be practicable, and which shall be numbered, and one director shall be elected by and from each division. Such order shall set forth: (a) the time and place of holding such election, (b) the boundaries of the district, (c) the name and address of each elector who has petitioned for, or consented in writing to the organization of such irrigation district and a description of the lands owned or leased by each such elector, and (d) the plan or method proposed for the irrigation of such lands. A copy of such order shall be filed with the county auditor of each county in which the irrigation district is situated. Such order shall be prima facie evidence of the matter and facts therein stated.

(2) If, however, the State Engineer shall determine that the plan of irrigation proposed is not practicable or that such plan is not economically sound, he shall make an order denying the petition for the organization of such irrigation district and shall state his reasons for his action. A copy of such order shall also be filed with the county auditor of each county in which the proposed irrigation district is situated.

(3) Upon making his order establishing such irrigation district the State Engineer shall give notice of an election to be held in such district for the purpose of determining whether or not the electors of the district approve the establishment and organization thereof as an irrigation district. Such notice shall describe the boundaries as established by the State Engineer and shall designate a name for such district, and said notice shall be published once each week for two weeks prior to such election in a newspaper in the county in which the district is situated, and if situated in more than in one county such notice shall be published in a newspaper published within each of such counties. Such notice shall be substantially in the following form:

NOTICE OF ELECTION

Notice is hereby given that on the-----day of-----, 19---, a special election will be held within the territory hereinafter described for the purpose of submitting to the electors of said territory the question as to whether or not the order of the State Engineer establishing an irrigation district known as----- Irrigation District shall be approved, such district comprising and including the following described lands, to-wit:

(Here describe lands embraced in the district.) The ballot will be in the following form:

For Irrigation District.

YES-----☐

NO-----☐

Notice is further given that a board consisting of three directors will be elected who will serve as hereinafter provided if the creation of the district is approved. Polls will be open from 9:00 A.M. to 7:00 P.M.

Dated this-----day of-----, 19---

Signed-----

State Engineer.

(4) The board of directors of an irrigation district shall consist of three directors. One director elected at the first election shall serve for one year, one shall serve for two years and one director shall serve for three years. Each director shall serve until his successor has been duly elected and qualified. The term of office of the directors elected at such first election shall be determined by lot as hereinafter provided. Directors elected at subsequent elections shall serve for a term of three years. The State Engineer shall also establish and designate the polling place or the place where such first election shall be conducted. Such polling or voting place may thereafter be changed by the board of directors of the district. Directors elected in any irrigation district created prior to the passage, approval and taking effect of this act shall serve as directors of the district until the general election of the district held in 1940. At such general election, five directors shall be elected and the term of office of each director shall be determined by lot.

(5) Prior to the holding of such election, the State Engineer shall appoint from the electors of the district one clerk and two judges who shall constitute a board of election for such district. If the members appointed do not attend at the opening of the polls on the day of election, the electors present at that hour may elect the election board or fill the place of an absent member thereof.

(6) Such election shall be conducted in accordance with the general election laws of the State. After the polls are closed, the election board shall proceed to canvass the votes cast thereat, and the clerk of the election board shall certify to the State Engineer the result of such election. The clerk of the board shall then securely wrap the ballots cast at such election and shall express or mail same by registered mail to the State Engineer who shall also canvass the ballots and verify the result. The State Engineer shall file and retain in his office the ballots cast at such election.

(7) If upon a canvass of the votes cast and after such canvass has been verified by the State Engineer it appears that a majority of all votes cast are "Irrigation District-----YES", the State Engineer shall by an order declare such territory duly organized as an irrigation district under the name and style therefor designated and shall declare the persons receiving the highest number of votes duly elected as directors. The State Engineer shall cause

a copy of such order, duly certified, to be immediately filed for record in the office of the register of deeds of each county in which any portion of the irrigation district is situated and shall also file a copy of such order with the county auditor of each county in which any portion of the district is situated, and from and after the date of such filing, the organization of such district shall be complete. The State Engineer shall immediately make out and mail, by registered mail, to each person elected to the office of director a certificate of election signed by him. The directors shall thereupon enter upon the duties of their office.

(8) The State Engineer shall also file in the office of the Secretary of State a copy, duly certified by him, of such order, declaring such territory to be duly organized as an irrigation district, and the Secretary of State shall make and issue to the State Engineer a certificate under the Seal of the State, of the due organization of such district and shall record such certificate and the said order of the State Engineer. Such certificate of the Secretary of State or a copy thereof, authenticated by him, shall be prima facie evidence of the organization and existence of such irrigation district.

§ 4. An appeal may be taken to the district court from all orders and decisions of the State Engineer by any person claiming to be aggrieved thereby at any time within 15 days after the order or decision appealed from has been filed with the county auditor of the county in which the appeal is taken. Such appeal is taken by serving the notice of appeal on the State Engineer and by filing the notice of appeal, proof of service thereof, and the undertaking herein required, with the clerk of the district court of the county in which the appeal is taken. To effect an appeal, an undertaking must be executed by the appellant and sufficient surety conditioned that the appellant will prosecute such appeal without delay and pay all costs adjudged against him in district court. Such undertaking shall be made to the State Engineer and may be enforced by him as obligee. The appeal shall be taken to the district court of the county in which the land claimed to be adversely affected by the order or decision appealed from is situated and if such land is situated in more than one county such appeal may be taken to the district court of any county in which such land, or any part thereof, is situated.

All appeals thus taken shall be docketed as other causes pending in the district court are docketed and the same shall be heard and determined *denovo*. The district court may enter a final judgment or may enter such order as the court shall deem just and proper.

§ 5. AMENDMENT.] That Section 8247a4 of the Supplement to the Compiled Laws of 1913 be and the same is hereby amended and re-enacted so as to read as follows:

§ 8247a4. The directors elected as hereinbefore provided shall hold their office until their successors have been elected and quali-

fied. One director shall serve for one year, one director shall serve two years and the other director for three years. At their first meeting after the first election the term of office of the directors shall be determined by lot. At subsequent elections directors shall be elected to serve for three years. In case the office of any director shall for any reason become vacant, the remaining members of the board shall fill the vacancy by appointment. A director appointed to fill a vacancy shall serve the unexpired term of the director whose place he has been appointed to fill.

The regular election of irrigation districts shall be held on the first Tuesday in February of each year.

After receiving their certificates of election the directors shall take and subscribe to an oath of office of substantially the same tenor as the oath of office prescribed for county officials and each member of said board of directors shall execute an official bond in the sum of \$1,000.00. Such oath of office and bond shall be filed in the office of the State Engineer.

The directors shall meet at the time and place designated by the State Engineer and shall organize by selecting one of their members as chairman of the board. A temporary secretary shall be designated until a permanent secretary of the board has been appointed. After organization of the board a majority of the directors shall constitute a quorum for the transaction of such business as may come before the board. The board shall appoint a secretary, a treasurer and an assessor of the district and such other officers or employees as the board shall deem necessary for the efficient conduct of the district's business and shall fix their compensation. Officers and employees appointed by the board shall hold office during the pleasure of the board. The office of secretary and treasurer may be held by the same person.

The assessor shall execute an official bond in the sum of \$500.00, the district treasurer, an official bond in the sum of not less than double the amount of money that may come into his hands, the amount to be determined by the board of directors, but such bond shall not be less than \$1,000.00. Other employees and appointive officers shall execute bonds in such sums as the board may prescribe. The official bonds of the assessor, treasurer and other officers and employees shall be approved by the board. Such bonds shall be filed in the office of the State Engineer. In case any district organized hereunder is appointed fiscal or other agent of the United States or is authorized by the United States to make collections of money for and on behalf of the United States in connection with any Federal reclamation or irrigation project, such treasurer and each director shall execute an additional official bond in such sum as the Secretary of the Interior may require, conditioned for the faithful discharge of the duties of his office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization; and such additional

bonds may be sued upon by the United States or by any person damaged by failure of such officer or district to fully, promptly faithfully perform their duties. All official bonds herein provided shall be in the form prescribed by law for official bonds of county officers except the obligee named in such bond shall be the irrigation district. The directors elected subsequent to the organization of the district shall assume the duties of their office the first Tuesday in April after their election and shall hold office until their successors are elected and qualified.

Every elective or appointive officer or employee of whom a bond is required under this act shall be deemed to be bonded in the State Bonding Fund upon notice of such election or appointment being given by the Secretary of the district to the State Commissioner of Insurance. Upon notification by the Commissioner of Insurance of the amount of premium of such bond or bonds, the secretary of the district shall forthwith remit the same.

§ 6. AMENDMENT.] That Section 8247a5 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted so as to read as follows:

§ 8247a5. SUBSEQUENT ELECTIONS—DATE OF REGULAR ELECTION.] Fifteen days before any election is held, under the provisions of this act, subsequent to the election for the organization of the district, the secretary of the board of directors shall cause to be posted in at least three public places in the district a notice of the election specifying when the polls will be open and when the polls will close and the polling place. Such notice shall be substantially in the following form:

"Notice is hereby given that on the-----day of-----, 19---, and election will be held at----- (Here designate the polling place) for the purpose of electing-----members of the board of directors and for the purpose of voting upon such questions as shall be submitted by the directors of the district. Polls will be open at ten o'clock A.M. and will close at five o'clock P.M. of that day. Prior to the time of such election, the board shall appoint from the electors of the district, one clerk and two judges, who shall constitute a board of election. If the board shall fail or neglect to appoint a board of election, or if the members appointed do not attend at the opening of the polls on the day of election, the electors of the district present at that hour may appoint the election board or fill the place of an absent member thereof. The board of directors shall, in its order or resolution appointing the board of election, designate the hour and place where the election must be held.

Any person desiring to be a candidate at such election shall file his or her name with the secretary of the board not less than ten days before such election. At least five days before such election the secretary shall prepare and have typewritten, mimeographed or

printed an official ballot containing all names thus filed. Such ballot shall be headed "Official Ballot" and shall contain all names thus filed. Such ballot shall also show the name of the district and shall state the number of persons to be voted for. Such ballot shall also have blank spaces below for writing in other names; provided nothing herein shall prevent any person desiring to be a candidate at such election, and who has failed to file as herein provided, from furnishing stickers to be attached to the ballot by the elector. Such stickers shall not be over one-half inch in width and have printed thereon one name only.

§ 7. AMENDMENT.] That Section 8247a6 of the Supplement to the Compiled Laws of 1913 be and the same is hereby amended and re-enacted so as to read as follows:

§ 8247a6. Before opening the polls each member of the election board shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will perform my duties as judge or clerk (as the case may be) according to law and to the best of my ability." Such oath or affirmation may be administered by any director of the district or any officer authorized to administer oaths. The board of directors shall designate one of the judges as chairman of the election board and he shall have the authority to administer and certify all oaths or affirmations taken by other members of the election board and shall administer and certify all oaths or affirmations required during the progress of the election. If, however, the board of directors fail to appoint a board of election or if the members appointed fail to attend at the opening of the polls on the morning of the election, any elector of the precinct may administer and certify such oath. The polls must be opened at ten o'clock in the morning of the election and shall be kept open until five o'clock P. M. of the same day.

Immediately after the polls are closed the board shall publicly open and proceed to canvass the ballots cast and shall declare the result of their canvass. The chairman shall then securely wrap all lists, tally sheets, oaths and affirmations and other documents relating to the progress of the election and shall deliver the same to the secretary of the board of directors of the district.

Members of the election board shall each be allowed and paid the sum of three dollars for their services as such.

§ 8. AMENDMENT.] That Section 8247a7 of the Supplement to the Compiled Laws of 1913 be and the same is hereby amended and re-enacted so as to read as follows:

§ 8247a7. RETURN AND CANVASS OF VOTES.] The board of directors of the district shall meet at its usual place of meeting on the first Tuesday in March after each election and canvass returns. If at the time of meeting the returns have been received, the board shall then and there proceed to canvass the returns, but if all the

returns have not been received the canvass shall be postponed from day to day until all the returns have been received. The canvass shall be made in public and by opening the returns and ascertaining the vote for each person voted for and declaring the result thereof and also ascertaining the vote for and against each and every question or proposition voted upon, and declaring the result thereof.

§ 9. AMENDMENT.] That Section 8247a8 of the Supplement to the Compiled Laws of North Dakota for the year 1913 is hereby amended and re-enacted so as to read as follows:

§ 8247a8. DECLARATION OF RESULTS; CERTIFICATE OF ELECTION.] The secretary of the board of directors shall, as soon as the result of the election is declared, enter upon the records of the board a statement of such results, which statement must show:

First: The whole number of votes cast in the district.

Second: The names of the persons voted for.

Third: Each question voted upon.

Fourth: The number of votes cast for each person and the number of votes cast for and against each question voted upon at the election.

A copy of such statement shall be recorded in a permanent record of the board to be kept for that purpose and such statement shall be signed by the secretary of the board and authenticated by the seal of the district; and a copy of such statement thus signed and authenticated shall be filed with the county auditor of each county wherein the irrigation district is situated and a like copy shall be mailed to the State Engineer.

The board of directors shall declare elected the person having the highest number of votes cast for such office and shall declare the result of the election as to each question voted upon at the election. The secretary shall immediately make out and deliver to such person elected a certificate of election, signed by him and authenticated with the seal of the district.

§ 10. AMENDMENT.] That Section 8247a9 of the Supplement to the Compiled Laws of North Dakota for the year 1913 is hereby amended and re-enacted so as to read as follows:

§ 8247a9. POWERS AND DUTIES OF BOARD OF DIRECTORS.] The board of directors shall have the power and it shall be its duty:

1. To manage and conduct the business affairs of the district.
2. To make and execute all necessary contracts.
3. To employ such officers, agents and employees as may be necessary to efficiently conduct the business of the district and to fix their compensation.
4. To adopt a seal for the district. Such seal shall be kept in the custody of the secretary.

5. To establish by-laws, rules and regulations for the distribution to, and information of, electors of the district and water users, and to fix charges or rentals to be paid by water users. Such by-laws, and rules and regulations shall be printed, typewritten or mimeographed in convenient form.

6. The board, its agents and employees shall have the right to enter upon any land within the district to make surveys and locate the lines of any canal or canals and the necessary branches for such canal or canals and to maintain and keep in good repair the irrigation works within the district.

7. To acquire by purchase, condemnation or otherwise, right-of-way for ditches and canals and sites for dams and reservoirs and for pumping plants and all lands, water rights, easements and any and all property necessary for the construction, use, maintenance, repair and improvement of dams, reservoirs and canals, and electric power lines for the conveyance of electric power to operate pumping plants, and all necessary appurtenances thereto.

8. The board shall also have the right, subject to the limitations contained in this act, to acquire by purchase, condemnation or otherwise, any existing irrigation works, ditches, canals, reservoirs and dams for the use of the district.

9. To submit, whenever the board shall deem it advisable, to the electors of the district at any regular or special election of any question, proposition or proposal relative to the affairs of the district.

10. To accept, on behalf of the district, appointment of the district as fiscal agent of the United States or of any department or agency thereof, or authorization by the United States or of any department or agency thereof to make collections of money for and on behalf of the United States in connection with any Federal reclamation or irrigation project and the said board shall have full power to do any and all things required by the rules and regulations established by any such department or agency of the Federal Government in regards thereto.

11. Subject to the limitations hereinafter provided, to determine a plan or method for raising funds to finance the cost of constructing irrigation works within the district or to provide funds for the purchase of such irrigation works. Such plan may provide for the issuance of bonds, or the issuance of district improvement warrants or may provide for the payment of such construction costs, or purchase price, by creating a fund obtained from water rentals or charges to water users, or for a combination of such methods for raising funds. The term "works" as used in this act shall include canals, ditches, pumping plants, right-of-ways, easements, reservoirs, dams and the necessary sites for pumping plants, reservoirs and dams and all means and property required for a complete operating system of irrigation works.

12. To exercise all rights, powers and authority, express or implied, that may be necessary to do and perform and carry out all of the express purposes of this act and of all purposes reasonably implied as incidental thereto.

13. To enter into contracts and/or leases with the State Water Conservation Commission of North Dakota or with the United States of America, its instrumentalities, departments or agencies, for the purpose of financing the construction of any irrigation works authorized by law, and may in such contracts and/or leases authorize the said commission or the United States, its instrumentalities, departments or agencies, as the case may be, to supervise and approve the construction, maintenance, and operation of such irrigation works, or any part or portion thereof, until such times as any money expended, advanced or loaned by the commission or by the United States, its instrumentalities, departments or agencies, and agreed to be repaid thereto by said board, shall have been fully repaid. And the board is hereby authorized and empowered to accept cooperation from the said commission or from the United States, its instrumentalities, departments and agencies, in the construction, maintenance and operation, and in financing the construction of any work authorized by the board; and the board shall have full power to do any and all things necessary in order to avail itself of such aid; assistance and cooperation under existing or future State laws or Federal legislation now or hereafter enacted by Congress.

When the board shall deem it necessary to protect the interests of the district, or of the electors thereof, or to protect the interest of bond holders or other creditors of the district, it may, if funds are available for that purpose purchase at tax sale land within the district sold unpaid and delinquent taxes or may purchase an assignment of tax sale certificates from the county and may acquire, own and sell lands thus acquired.

§ 11. AMENDMENT.] That 8247a10 of the 1925 Supplement to the Compiled Laws of 1913, as amended by Section 3 Chapter 142 of the Session Laws of 1933, is hereby amended and re-enacted so as to read as follows:

§ 8247a10. The board of directors shall hold regular meetings at their office or usual place of meeting on the first Tuesday of each month, commencing at two o'clock in the afternoon of said day, and the board may also hold such special meetings as may be required for the transaction of business. All special meetings shall be called by the secretary upon the order of the chairman of the board. Such order of the chairman must be entered of record and such notice shall be delivered or mailed to each member of the board at least five days prior to the holding of such special meeting. A majority of the members shall constitute a quorum for the transaction of business, but upon all questions requiring a vote there shall be a concurrence of at least a majority of the board. All rec-

ords of the board must be open to the inspection of any elector during business hours. The board shall cause to be published in one newspaper of general circulation in the district of a brief statement of the proceedings of each regular or special meeting if same can be done at an expense not exceeding one-third of the legal rate for advertising notices.

§ 12. CONTRACTS.] All contracts entered into for any work provided for in this act shall be entered into in the name of the district, and shall be executed on the part of the district by the chairman of the board of directors and countersigned or attested by the secretary, and the corporate seal of the district affixed, and when signed by the contractor shall be filed in the office of the secretary of the district. Contracts for materials or for construction of any nature shall require the work to be done thereunder or the materials furnished in accordance with, and pursuant to plans and specifications therefor on file with the secretary. There shall be reserved in each such contract for construction the right of the board of directors, in case of the improper construction of such work, to suspend work thereon at any time, and to relet the contract therefor, or order a reconstruction of said work on any part thereof improperly done. Each such contract shall state the time on or before which such work must be completed and shall state how such contract will be paid.

§ 13. AMENDMENT.] That Section 8247a11 of the Supplement to the Compiled Laws of 1913 be and the same is hereby amended and re-enacted so as to read as follows:

§ 8247a11. The legal title to all property acquired by an irrigation district shall vest in such district in its corporate name.

§ . AMENDMENT.] That Section 8247a12 of the Supplement to the Compiled Laws of 1913 be and the same is hereby amended and re-enacted so as to read as follows:

§ 8247a12. Every such irrigation district shall be a body corporate and shall possess all the powers and duties usual to corporations organized for public purposes and as heretofore and as herein conferred upon it by law, or which may hereafter be conferred upon it; and in its corporate name it may sue and be sued and may institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper, in order to fully carry out the provisions of this act and of Chapter 38 (Sections 8247a1-8247a75) of the Supplement to the Compiled Laws of 1913 as amended, modified and re-enacted by this and subsequent acts, or to enforce, maintain, protect, or preserve any and all rights, privileges and immunities created by said chapter and by this act or acquired in pursuance thereof. And such irrigation district may contract and be contracted with and may hold, lease, own and possess such real and personal property as shall come into its pos-

session by contract, conveyance, purchase, gift or otherwise. And such district shall have the power to exercise the right of eminent domain for the purpose of acquiring right-of-way for ditches, flumes, canals, sites for dams and reservoirs and for any other purpose necessary to establish and construct a complete system of irrigation works. In all courts, actions, suits or proceedings, the board may sue, appear and defend, in person or by attorneys, in the name of such irrigation district.

§ 15. AMENDMENT.] That Section 8247a13 of the Supplement to the Compiled Laws of North Dakota for the year 1913 is hereby amended and re-enacted so as to read as follows:

§ 8247a13. As soon as practicable after the organization of an irrigation district, the board of directors shall by resolution entered on its records, formulate a general plan of its proposed operation in which it shall state what constructed works or other property is proposed to be purchased and the purchase price thereof and/or what construction work it is proposed to do, and the estimated cost of such construction, and shall state whether funds to pay such purchase price or cost of construction shall be raised by issuing bonds or district improvement warrants or by creating a fund through the collection of water rentals or charges from water users, or by creating a fund by levying assessments against the lands benefited, or whether it is contemplated to raise funds by the use of all or a combination of such methods of raising funds.

For the purpose of ascertaining the cost of any such construction work, the board shall cause such surveys, examinations, and plans to be made as shall demonstrate the practicability of such plan and furnish the proper basis for an estimate of the cost of carrying out the same. All such surveys, examinations, maps, plans and estimates, shall be made under the direction of a competent irrigation engineer and certified by him. The board shall then submit a copy of the same to the State Engineer who shall prepare a report thereon and shall file the same with the board. Such report shall contain such matters as in the judgment of the State Engineer may be desirable. Upon receiving such report, the board of directors shall proceed to determine the amount of money required to be raised.

§ 16. BONDS.] (A). Proceedings for the issuance of bonds under the authority of this act shall be instituted by the adoption of an initial resolution therefor by the board of directors of the district. Such initial resolution shall state: (1) the maximum amount of bonds proposed to be issued; (2) the maximum interest rate they shall bear; (3) whether they will be of serial or single maturity; (4) and if a single maturity the year thereof; or if serial maturities the years of such maturities, but not the amount for each of such years; (5) the purpose for which they are proposed to be issued; the total amount of bonded indebtedness, if any, of the district; and

any other statement of fact deemed advisable by the board of directors.

(B). Such initial resolution may be adopted by a majority of the board at any regular meeting thereof or at any special meeting of which notice has been given as provided in this act.

(C). Bonds issued by any irrigation district under the provisions of this act shall mature in not less than ten years after date of such bonds and not more than forty years after the date thereof. If the maturities are serial, the first installment of principal shall fall due not more than three years and the last installment not more than forty years from the date of the bonds. No installment of principal shall be less than one-third of the amount of the largest installment, except that the amount of such installments of principal may be such that the increase thereof from year to year shall approximately equal the decrease from year to year in the interest on the bonds remaining unpaid.

§ 17. BOND ELECTION — NOTICE OF ELECTION — BALLOT.] Upon and after the adoption of an initial resolution the board shall, by resolution, provide for submitting to the electors of the district the question whether such initial resolution shall be approved. The date of such election shall not be less than twenty days after the adoption of such initial resolution by the board. The board shall, in such resolution, designate the date of such election, the polling hours and polling place thereof. Such election shall be conducted and the returns thereof made and canvassed in the same manner as for election of members of the board of directors of the district.

The secretary of the district shall give notice of such election by posting notice thereof in at least three conspicuous places within the district and by publishing such notice at least once in a newspaper published in the country where the office of the board of directors is kept. If a newspaper is not published therein, the posting of such notice shall be deemed to be sufficient notice of such election. The date of such posting and publication (if any) shall be at least fifteen days before the date of such election, exclusive of the date of such posting and publication. Such notice shall specify the date, polling hours and polling place of such election and shall contain a complete copy of such initial resolution, and the question to be submitted thereat shall be whether said resolution shall be approved.

The ballot for such election shall be written or printed and shall state the question in substantially the following form:

Shall the _____ Irrigation District issue its bonds in the amount of not to exceed \$ _____ (Here insert the amount) for the purpose of _____ (Here insert the purpose)?

YES _____ ☐
NO _____ ☐

Spoiled or blank ballots cast at such election shall not be counted either for or against the proposed issue.

§ 18. AMENDMENT.] That Section 8247a14 of the Supplement to the Compiled Laws of North Dakota for the year 1913 is hereby amended and re-enacted so as to read as follows:

§ 8247a14. (1). If a majority of the ballots cast at such election are in favor of the proposal to issue bonds as stated in such initial resolution the board of directors shall proceed to sell, issue and deliver such bonds as provided herein.

(2). Every bond shall be a negotiable instrument payable to "bearer" or to the "bearer or registered owner," with interest coupons attached, payable annually or semi-annually at the rate specified in the accepted bid for the purchase of said bonds, which rate shall not exceed the rate specified in the initial resolution; provided however, such rate of interest shall not exceed five per cent (5%) per annum. Each bond shall specify the time and place of payment of the principal and shall be numbered consecutively with the other bonds of the same issue, which shall begin with number one and continue upward, or if so directed by the board, shall begin with any number and continue upward.

(3) The entire issue may be composed of bonds of a single denomination or two or more denominations. Such bonds shall recite that they are payable in lawful money of the United States.

(4) Such bonds shall be executed in the name of and for the district by the chairman and secretary of the board. The interest coupons attached to such bonds may be executed by the lithographed or engraved facsimile signature of such officers. The validity of every bond so executed shall remain unimpaired by the fact that one or more of the subscribing or attesting officers have ceased to be such officer or officers before delivery to the purchaser.

(5). The secretary of the district shall register in a book provided for the purpose an accurate description of every bond issued, specifying its number, date, purpose, amount, rate of interest, when and where payable, and the coupons attached. A verified copy of such record shall be filed in the county auditor's office of each county in which the district is located. When such bonds have been fully registered, the secretary shall sign an endorsement on the back of each bond certifying that such bond is fully registered in his office. No bond shall be valid without such certificate endorsed thereon. All bonds authorized under this act which are not delivered to the purchaser thereof and paid for within three years of their date shall be cancelled. It shall be the duty of the secretary to destroy such bonds by burning them in the presence of at least two electors of the district, and with such witnesses to make and file in the records of his office an affidavit as to the bonds so destroyed and the time and place of such destruction, and to make a record thereof in bond

register. A copy of such affidavit shall be filed with the county auditor of each county in which the district is situated.

(6). No irrigation district shall enter into any contract for the sale of any issue of its bonds without first advertising for bids in the manner herein prescribed. A notice calling for bids shall be published at least once in the official paper of one of the counties in which the district is situated not less than fifteen days nor more than thirty days before the date specified therein for receiving such bids. Such notice may be in any form but shall specify the amount of bonds offered for sale and the date or dates of the maturity thereof. A copy of such notice shall be mailed to the Tax Commissioner at Bismarck not less than ten days before the date specified for the opening of bids. Failure to publish such notice or to send a copy thereof to the Tax Commissioner shall not impair the validity of such bonds but shall render unenforceably any executory contract entered into for the sale thereof.

The notice shall specify that the bids must be sealed and in writing and shall state the time and place when such bids will be received and when such bids will be opened. At the time specified for opening the bids the secretary of the board shall publicly open the bids in the presence of the directors, and after the bids have been opened, shall enter in a permanent record the amount and rate of interest of each bid and the name and address of the bidder. All bids shall be accompanied by a certified check, cashier's check, or bank draft to the amount of not less than two per cent of such bid.

(7). The board of directors shall award the sale of such bonds to the bidder who agrees to purchase them upon the terms most favorable to the district; provided, however, that the board may reject any and all bids. No sale shall be for less than the par value and accrued interest on such bonds. If the board has determined to purchase irrigation works already constructed, the bonds may be issued and delivered at their par value in payment thereof.

(8). Any officer of an irrigation district who accepts from a bidder, or prospective bidder, for bonds a commission or compensation for services of any nature rendered in connection with the issuance, sale or delivery of such bonds shall be guilty of a misdemeanor.

(9). The ownership of all bonds payable to "bearer owner," as authorized in this act, may be registered by the owner or holder thereof. Registration shall be recorded by the secretary of the district in the bond register of the district. After such registration, no transfer thereof shall be valid unless recorded in such register. Such bonds may be discharged from registration by being transferred to "bearer." Registration shall not, however, effect the negotiability of the appurtenant coupons but each coupon shall continue to be transferrable by delivery only and shall remain payable to bearer.

§ 19. DISTRICT IMPROVEMENT WARRANTS.] To finance the

purchase of irrigation works already constructed or to defray the expenses incurred in constructing irrigation works, or any part thereof, the board of directors of the district may, subject to the approval of the electors at a general or special election, by resolution provide for the issuance of district improvement warrants. The word "expenses" as herein used shall be construed to cover every item of cost incurred in connection with such purchase or construction. Such warrants may be used in making payments on such contracts or may be sold for cash at not less than the par value thereof. Assessments levied to raise funds to pay such improvement warrants shall be levied upon the lands of the district benefited by such irrigation works as provided in this act. Such improvement warrants may be issued in anticipation of the levy and collection of taxes over a period of years not exceeding thirty years from date of issuance. After making a contract for the purchase of such irrigation works or for the establishment, construction and completion thereof, or for the construction of any part of such works, the board may by resolution direct the issuance of such warrants in not to exceed the aggregate amount of the contract price of such irrigation works or in not to exceed the aggregate amount of the contract price agreed upon for the construction of such works. Such warrants shall be payable in equal installments over a period of not to exceed thirty years from date of issuance; provided that the maturity of such warrants, or any of them, shall not be less than two years from the date of issuance.

Such warrants shall bear interest at the rate of not to exceed six per cent (6%) per annum but may, in the discretion of the board, bear any rate less than six per cent (6%) per annum, and may have coupons attached representing each year's interest or each half-year's interest. Such warrants shall be signed by the chairman and countersigned by the secretary, shall bear the seal of the district and shall be in denominations of not more than one thousand dollars (\$1,000) each and shall be numbered consecutively with the other warrants issued for the same purpose. Each warrant shall on the face thereof state the purpose for which issued. Such warrants shall be payable in lawful money of the United States.

The secretary of the district shall register in a book provided for that purpose an accurate description of each such warrant issued, specifying its number, date, purpose, amount, rate of interest, to whom issued, when and where payable and the coupons attached. A copy of such record shall be filed in the office of the county auditor in each county in which the irrigation district or any part thereof is situated.

It shall be the duty of the district treasurer to pay such warrants and interest coupons as they mature and are presented for payment.

§ 20. AMENDMENT.] That Section 8247a15 of the Supple-

ment to the Compiled Laws for the year 1913 is hereby amended and re-enacted so as to read as follows:

§ 8247a15. (1). Bonds or improvement warrants issued by any irrigation district, and the interest thereon, and contracts, not payable in bonds or improvements warrants, made and entered into by the district for the acquisition of irrigation works already constructed, or for the establishment and construction of irrigation works, or any part thereof, shall be paid from the revenue obtained from assessments upon the real property of the district and from any other revenues available for that purpose obtained from charges to water users and from the sale of water to any person, firm, corporation, municipality or other irrigation district.

(2). In the discretion of the board of directors, bonds and or district improvement warrants may be secured by a trust indenture by and between the district and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside the State; and the board may vest in such trustee the right to enforce any covenant made to secure or to pay such bonds or improvement warrants.

(3). All money received from any bond issue or from the sale of district improvement warrants shall be placed in a fund and applied solely to the payment of the cost of the works, and there is hereby created and granted a lien upon such money until so applied, in favor of the owners or holders of such bonds or improvement warrants or in favor of the trustee created in connection with such bonds or improvement warrants.

(4). The board of directors is authorized in its discretion to appoint a fiscal agent located in some city within or without the State. Every such fiscal agent shall be an incorporated bank or trust company authorized by the laws of the United States or of the State in which it is located to do a bank or trust company business.

§ 21. AMENDMENT.] That Section 8247a16 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted so as to read as follows:

§ 8247a16. The district assessor shall between the first Monday in March and the first Monday in May of each year, examine each tract or legal subdivision of land in said district including entered and unentered public lands of the United States, subject thereto under any act of Congress, and shall determine the benefits which will accrue to each of such tracts or sub-divisions on account of the construction or acquisition of such irrigation works; and the amount so apportioned or distributed to each of said tracts as finally equalized or confirmed by the district court, as the case may be, shall be and remain the basis for fixing the annual assessments levied against such tracts or sub-divisions in carrying out the purpose of this act. Such assessor shall make or cause to be made, a list of

such apportionment or distribution, which list shall contain a complete description of each sub-division or tract of land of such district with the amount and rate per acre of such apportionment or distribution of cost, and the name of the owners thereof; or he may prepare a map on a convenient scale showing each of said subdivisions or tracts with the rate per acre of such apportionment entered thereon; provided that where all lands on any map or section of a map are assessed at the same rate, a general statement to that effect shall be sufficient. Said list or map shall be made in duplicate and one copy of each shall be filed in the office of the State Engineer and one copy shall remain in the office of the board of directors for public inspection.

Whenever any assessment is made it shall be spread upon the lands in proportion to the benefits received and the whole of the assessment of benefits shall equal the amount of bonds, district improvement warrants or other obligation authorized by this act; provided, however, the assessment of any property in the name of the wrong person shall in no way invalidate the assessment thereof.

The assessor shall also determine and list the amount payable for each tract obligated by contract, if any, to the United States or any department or agency of the United States, or to the State Water Conservation Commission, or to any person, firm or corporation, or to another irrigation district, for the payment of water charges.

§ 22. AMENDMENT.] That Section 8247a17 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted to read as follows:

§ 8247a17. On or before the fifteenth day of May in each year the assessor must complete his assessment roll and deliver it to the secretary of the board of directors. The board shall thereupon fix the time and place when the board will meet to equalize such assessments. The secretary shall give notice of such meeting by posting notice thereof in at least three conspicuous places within the district and by publishing such notice in a newspaper (if any is published) published in each county in which the district is situated. The time fixed for such meeting shall not be less than ten nor more than twenty days from such posting and publication, and until such meeting is held the assessment roll shall remain in the office of the secretary for the inspection of all persons interested.

§ 23. AMENDMENT.] That Section 8247a18 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted to read as follows:

§ 8247a18. Upon the day specified in the notice required by the preceding section, the board of directors shall meet as a board of equalization for the purpose of equalizing such assessments and shall meet and continue in session from day to day, so long as may

be necessary but not to exceed ten days exclusive of Sundays. The board shall hear and determine such objections to the apportionment of benefits and assessments as may come before it; and the board may make such changes in the apportionment of benefits and assessments as shall appear to be just and equitable. The secretary of the board shall be present during the sessions of the board and shall note changes made in the apportionment of benefits and assessments returned by the assessor, and in the names of persons assessed; and within ten days after the close of the session he shall have the apportionment of benefits and assessments, as finally equalized by the board, extended into columns and added.

§ 24. AMENDMENT.] That Section 8247a19 of the Supplement to the Compiled Laws of 1913 is hereby amended and reenacted to read as follows:

§ 8247a19. The board shall then levy an assessment against the lands of the district sufficient to pay the interest on outstanding bonds and or improvement warrants and sufficient to pay any and all obligations of the district due, or to become due during the ensuing year, including payments due, or to become due, under any contract with the United States, or with any department or agency thereof, or under any contract with the State Water Conservation Commission or with any person, firm or corporation, or with another irrigation district. In determining the total of such levy the board shall take into consideration revenue derived from other sources than that obtained from the assessment and taxation of district lands. The secretary of the board shall compute and enter in separate columns of the assessment record the respective sums in dollars and cents required for each purpose, and each purpose shall be denominated a fund. If the board finds it necessary it may levy an assessment for the expenses of organizing the district and for the operation, maintenance and repair of the irrigation works and for the payment of salaries of officers and employees and for general expenses which assessment shall be called the "general fund." The secretary shall compute and enter the sum assessed against each tract for each such purpose or fund and shall thereupon certify to the county auditor of the county in which each such tract of land is situated the amount of such assessment for each purpose, or fund, levied upon each such tract of land by said board. The county auditor shall enter the amount assessed for each fund in a separate column of the tax list of his county. All tax lists when delivered to the county treasurer shall show all assessments levied for each fund on each tract of land within the district. Such assessments or taxes shall be collected by the county treasurer at the same time and in the same manner as other taxes are collected in the county; provided, however, such county treasurer shall receive in payment to the general fund, herein mentioned, for the year in which the assessment is levied, warrants drawn

against such general fund as the equivalent of lawful money of the United States if such warrants do not exceed the amount of the general fund assessment which the person tendering the same owes. Such county treasurer shall also receive in payment of any assessment for any bond fund, or any improvement warrant fund, past due interest coupons on such bonds or warrants, as the equivalent of so much money of the United States if such interest coupons do not exceed the amount which the person tendering the same owes such fund. All such assessments collected or received by the county treasurer shall be paid to the treasurer of such irrigation district upon an order signed by the chairman and secretary of the district, and all warrants and interest coupons received by the county treasurer in payment of assessments, as herein provided, may be turned over, as so much money, to the district treasurer on such orders.

In case the board of directors shall refuse, fail or neglect to cause an assessment or levy to be made for the principal and interest of outstanding bonds, or improvement warrants and for all payments due, or to become due, in the ensuing [ensuing] year to the United States, or to any department or agency thereof, or to the State Water Conservation Commission, or to any person, firm or corporation or to another irrigation district, under any contract entered into by the district, or for expenses incurred in organizing the district, then the assessment of property made for the preceding year shall be adopted and shall be the basis of assessment for the district and the board of county commissioners of each county comprising the district shall, by resolution, make such levy and assessment in the same manner and with like effect as if the same has been made by the board of directors of the district, and the expense incident thereto shall also be levied and assessed against the district. All such taxes or assessments collected by and paid to the county treasurer in his official capacity and he shall be responsible for the safe keeping, disbursement and payment thereof, as herein provided.

§ 25. AMENDMENT.] That Section 8247a20 of the Supplement to the Compiled Laws of 1913 is hereby amended and reenacted so as to read as follows:

§ 8247a20. LIMITS OF WARRANTS BY DISTRICTS.] No irrigation district shall, on account of expenses of operation and maintenance and to pay the current expenses of the district, in any year issue warrants in excess of ninety per cent of the levy of assessments for such year; provided, in case of due and outstanding obligations of the district on account of current expenses and expenses of operation and maintenance contracted prior to the year in which the levy is made, the district board shall have power to make an additional levy, not to exceed one dollar per acre upon all irrigable lands within the district, to create a special fund for the payment of such past due obligations; and provided further, that

whenever the claims or obligations against any fund for any year are fully paid, the board shall have the power to transfer any unused balance to any fund for any preceding or succeeding year.

§ 26. AMENDMENT.] That Section 8247a21a of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted so as to read as follows:

§ 8247a21a. ABATEMENT OF ASSESSMENTS.] The board of county commissioners shall have the power with the approval of the Tax Commissioner to abate any assessments made by irrigation districts provided the application therefor is approved by the board of directors of the irrigation district. In case such assessments are made for the purpose of meeting payments due to the United States or any department or agency thereof or to the State Water Conservation Commission, the application shall not be granted unless it also bears the approval of an authorized representative or agent of the United States or of such department or agency, or of the State Water Conservation Commission. And in case bonds or improvement warrants are deposited with a trustee under a trust agreement or trust indenture, the consent of such trustee shall be obtained before abating any assessment for such bonds or improvement warrants. The application for the abatement may be made by the board of directors of the irrigation district instead of by individual taxpayers and any number of tracts of land may be included in a single application.

§ 27. AMENDMENT.] That Section 8247a23 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted so as to read as follows:

§ 8247a23. CUSTODIAN OF FUNDS — PAYMENT OF BONDS; INVESTMENT OF BOND FUND.] The county treasurer shall act as the custodian of sinking funds, or funds created for the payment of bonds or improvement warrants; provided that in case an irrigation district is located in more than one county the board of directors of the district shall, by recorded resolution, designate the county treasurer who shall act as the custodian of such funds, and upon the adoption of such resolution it shall be the duty of the county treasurer so designated to act as such custodian. A copy of such resolution and a copy of each and every contract, trust agreement or trust indenture relating to the issuance and payment of bonds, or improvement warrants, shall be filed with such county treasurer. It shall be the duty of the district treasurer to remit to such county treasurer all moneys received by him in payment of assessments levied for such sinking funds or for the payment of such bonds and or improvement warrants.

The district treasurer shall also remit to the county treasurer moneys raised from water rentals or water charges when directed to do so by the board, and he shall designate the fund or funds to

which such moneys belong; provided that all moneys, from whatever source derived, obligated under the terms of any contract or agreement made and entered into by the district, to meet payments as they become due thereunder, shall be paid and remitted to such county treasurer and shall be credited by him to the proper fund.

Upon the presentation to such county treasurer of bonds or improvement warrants, or the coupons of either, then due and payable, it shall be his duty to pay the same from any moneys in the fund created for the payment thereof. Whenever the fund created for the payment of any series of bonds or improvement warrants shall amount to ten thousand dollars (\$10,000.00) the board shall direct the county treasurer to pay such an amount of such bonds, or improvement warrants, not due, at the lowest value at which they may be offered for redemption; provided, however, that no bond or improvement warrant shall be redeemed at a rate above par. Notice of such proposed redemption shall be advertised at least once in the official newspaper of the county in which the custodian of sinking funds is county treasurer, and in any other newspaper which the board of directors may designate. Such notice shall state that sealed proposals will be received for the redemption of such bonds or improvement warrants at the time and place therein stated. Such proposals shall be opened by the board in open meeting and the lowest bid must be accepted. In case the bids are equal, the lowest numbered bonds or improvement warrants, as the case may be, shall have the preference. If no bonds, or improvement warrants, are presented for redemption the county treasurer, with the approval and consent of the board of directors, shall invest such money in bonds of the United States or in bonds or warrants of the State of North Dakota.

§ 28. AMENDMENT.] That Section 8247a24 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted so as to read as follows:

§ 8247a24. CONSTRUCTION OF WORKS; NOTICE; BOND OF CONTRACTOR.] After adopting a plan of said canal or canals, storage reservoirs and works, the board of directors shall give notice, by publication thereof at least once not less than fifteen days before bids are received, as herein provided, in such newspaper or newspapers as they deem advisable, calling for bids for the construction of the work or any portion thereof; if less than the whole work is advertised, then the portion so advertised, must be particularly described in such notice. The notice shall set forth that plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening the proposals, which at the time and place specified shall be opened in public and as soon as convenient thereafter the board shall let such work either in part or as a whole to the

lowest responsible bidder, or they may reject any or all bids and re-advertise for proposals, or may proceed to construct the work under their own superintendence with the labor of the residents of the district. Contracts for the purchase of materials shall be awarded to the lowest responsible bidder. The person, or persons, to whom a contract may be awarded shall enter into a bond with good and sufficient sureties, to be approved by the board, payable to such district for its use, to an amount equal to twenty-five per cent of the contract price for the faithful performance of the contract; provided, however, in case twenty-five per cent of the contract price shall exceed the sum of fifty thousand dollars, then such bond shall be in the sum of fifty thousand dollars. The work shall be done under the direction and to the satisfaction of the engineer and be approved by the board. Provided, that the provisions of this section shall not apply in case of any contract between the district and the United States or with any department, bureau or agency thereof or with the State Water Conservation Commission.

§ 29. AMENDMENT.] That Section 8247a26 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted so as to read as follows:

§ 8247a26. IRRIGATION PROPERTY—OPERATION—PAYMENT.] The cost and expense of purchasing and acquiring property and of purchasing or constructing the irrigation works and improvements mentioned in this act shall be paid out of funds raised for such purpose or purposes. In case bonds, or the proceeds from the sale of any series of bonds, are insufficient for the purpose or purposes for which they were issued, additional bonds may be issued after submission of the question at a general or special election to the electors of the district; and additional improvement warrants may be issued to supplement such warrants already authorized and issued; provided that bonds and improvement warrants must be paid in the order of their priority.

Any irrigation district may, subject to the approval of the electors at a general or special election, enter into an agreement or contract with the United States or with any department, bureau or agency thereof, or with the State Water Conservation Commission, or with any person, firm or corporation, for the establishment, construction and completion of the necessary irrigation works and may in such contract or agreement provide for the payment of the cost of establishing and constructing such works by the levy and collection of assessments against the lands benefited and or by annual payments from funds raised by the collection of tolls and water charges from persons furnished water for the irrigation of their lands. And for the purpose of defraying the expenses of organizing the district and the maintenance, operation, management, repair and improvement of such irrigation works, including salaries of officers and employees, the board may either collect water rentals

or may levy assessments therefor or may collect such charges and also levy assessments. For the purpose of obtaining financial aid from the United States or from any department, bureau or agency thereof or from the State Water Conservation Commission, the board of directors may agree to conform to the laws of the United States and to the regulations of any department, bureau or agency thereof, or may agree to conform to the regulations of the State Water Conservation Commission and to the supervision of such Federal agency, bureau or department or to the supervision of the State Water Conservation Commission, as the case may be.

If after the levy of the annual assessment for the current year the board finds that because of some unusual or unforeseen cause that funds raised through the collection of such assessment, and from other sources, will not be sufficient for the proper maintenance and operation of the district, and the irrigation works therein, the board shall have the power to borrow additional funds needed to an amount not to exceed fifty cents per acre for the lands within the district and to pledge the credit of the district for payment of the same; or the board may issue and register warrants in anticipation of future collections, and the board shall include in the levy for the ensuing year the amount required to pay such loan or to retire such warrants.

§ 30. AMENDMENT.] That Section 8247a47 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted to read as follows:

§ 8247a47. RE-DIVISION OF DISTRICT; DIRECTORS.] In case of the inclusion of any land within any district by proceedings under this act the board of directors shall, if such district contains, or will contain after the inclusion of such land, five hundred acres or more, at least thirty days prior to the next succeeding general election, make an order re-dividing such district into three divisions as nearly equal in size as may be practicable, which shall be numbered, and one director shall thereafter be elected by and from each division.

§ 31. AMENDMENT.] That Section 8247a51 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted so as to read as follows:

§ 8247a51. WHEN BOARD EXCLUDES LAND FROM DISTRICT.] The board of directors, if they do not deem it for the best interest of the district that the lands mentioned in the petition, or some portion thereof, should be excluded from the district, shall order that the petition be denied; but if they deem it for the best interest of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, or if having shown cause withdraws the same, and also if there are no outstanding bonds or improvement warrants of the district and no contract between the district and the United States, or with any department or agency

thereof, or with the State Water Conservation Commission or with any person, firm or corporation, the board may then order that the lands mentioned in the petition or some defined portion thereof be excluded from the district.

§ 32. AMENDMENT.] That Section 8247a52 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted so as to read as follows:

§ 8247a52. If there be outstanding bonds or improvement warrants of the district, or if the district shall have entered into a contract with the United States, or with any department or agency thereof, or with the State Water Conservation Commission or with any person, firm or corporation, the board may then adopt a resolution to the effect that the board deem it to be for the best interest of the district that the lands mentioned in the petition, or some portion of such lands, should be excluded from the district. The resolution shall describe such lands so that the boundaries thereof can be readily traced. The holders of such outstanding bonds, or improvement warrants, may give their consent in writing to the effect that they severally consent that the board may make an order by which the lands mentioned in the resolution may be excluded from the district, and in case a contract has been made with the United States, or any department or agency thereof, or with the State Water Conservation Commission or with any person, firm or corporation, the authorized representative thereof may assent to such change. The assent may be acknowledged by the several holders of such bonds or improvement warrant in the same manner and form as is required in case of conveyance of lands, and the acknowledgement shall have the same force and effect as evidence as an acknowledgement of such conveyance. The assent of an authorized representative of the United States, or of any department or agency thereof, or of the State Water Conservation Commission need not be acknowledged but the authority of such representative to act must be shown. The assent must be filed with the board and must be recorded in the minutes of the board; and such minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the assent; but if such assent is not given, the board shall deny and dismiss the petition.

§ 33. AMENDMENT.] That Section 8247a53 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted to read as follows:

§ 8247a53. OBJECTIONS TO PROPOSED EXCLUSION; VOTE; NOTICE.] If the holders of bonds or improvement warrants, or contracts, assent to the exclusion of such lands, then the board may order an election to be held in the district to determine whether such lands shall be excluded. The notice of such election shall describe the boundaries of all lands which it is proposed to exclude, and shall be published once each week for two weeks prior to such

election in a newspaper published in each county comprising the district and such notice shall be posted at least fifteen days prior to such election in at least three conspicuous places within the district. The ballots for such election shall be in substantially the following form:

“For Exclusion”-----☐

“Against Exclusion”-----☐

Such election shall be conducted in the same manner as general elections of the district are conducted.

§ 34. AMENDMENT.] That Section 8247a56 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted to read as follows:

§ 8247a56. EFFECT OF CHANGE ON OFFICE OR DIRECTOR; VACANCY.] If the lands excluded from any district shall embrace the greater portion of any division of such district, then the office of director for such division shall become and be vacant at the expiration of ten days from the final order of the board excluding the lands, and such vacancy shall be filled by appointment by the other directors of the district. A director thus appointed shall hold office for the balance of the term in which the vacancy occurs.

§ 35. AMENDMENT.] That Section 8247a57 of the Supplement to the Compiled Laws of 1913 be and the same is hereby amended and re-enacted to read as follows:

§ 8247a57. RE-DIVISION OF DISTRICT.] At least thirty days before the next general election of such district the board of directors thereof shall, if such district embraces or contains five hundred acres of land, or more, make an order dividing said district into three divisions as nearly equal in size as practicable, which shall be numbered, and one director shall be elected by and from each division.

§ 36. AMENDMENT.] That Section 8247a59 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted to read as follows:

§ 8247a59. The board of directors of any irrigation district organized under the provisions of this act, shall, before issuing any bonds or improvement warrants of such irrigation district, and in their discretion before making any contract or levying any assessment or taking any special action, commence a special proceeding, in and by which the proceedings of such board and of said district, the making of any contract or levying any assessment or taking any special action shall be judiciously examined, approved and confirmed or disapproved and disaffirmed.

§ 37. AMENDMENT.] That Section 8247a60 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted to read as follows:

§ 8247a60. The board of directors of the irrigation district shall file, or cause to be filed, in the district court of any county in which lands of the district are situated as petition praying that the proceedings had for the issuance of bonds or improvement warrants or, if the board shall deem it advisable, the proceedings had preliminary to the making of any contract, or for levying assessments or taking any special action, be examined, approved and confirmed by the court. The petition shall state the facts concerning the proceedings had for the issuance of bonds, improvement warrants, the making of any contract, levying any assessment, or concerning any special action of the board, as the case may be, and shall state generally that the irrigation district was duly organized, and that the directors were duly elected and qualified, but the petition need not state, unless the board of directors so requires, the proceedings resulting in the organization of the district or the election of the directors.

§ 38. AMENDMENT.] That Section 8247a61 of the Supplement to the Compiled Laws of 1913 be amended and re-enacted to read as follows:

§ 8247a61. SAME; HEARING; JUDGMENT.] The court shall fix the time for the hearing of the petition, and shall order the clerk of court to give and publish a notice of the filing of the petition, stating the time and place when the court will hear the petition and that any person interested in the organization of the district, or in the proceedings for the issuance of bonds or improvement warrants, or in the assessments levied, or in the special action taken by the board, as the case may be, may on or before the day fixed for hearing of the petition, demur to or answer the petition. The petition may be referred to and described in the notice as the petition of----- (name of petitioner) praying that the proceedings set forth therein be examined, approved and confirmed by the court. Such notice shall be given by publishing the same in the official paper of the county in which the petition is filed, once each week for two consecutive weeks. Such hearing shall be held, in the discretion of the court, not less than fifteen days nor more than sixty days after the last publication of such notice. It shall be the duty of the secretary of the board of directors of the district to post, or cause to be posted, in three conspicuous places within the district at least fifteen days before such hearing, copies of such notice.

§ 39. AMENDMENT.] That Section 8247a63 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted to read as follows:

§ 8247a63. JURISDICTION OF THE COURT, COSTS, ETC.] At the time and place set for such hearing the court shall find and determine whether the notice of the filing of such petition has been duly posted and published. When the court has determined that it has

jurisdiction to hear the petition, it shall proceed with the hearing and shall conduct the same in the same manner as a trial of an equity action without a jury. The court shall have the power and the jurisdiction to examine into and determine the legality and validity of proceedings for the organization of the district under the provisions of this act from and including the petition for the organization thereof, and all matters affecting the legality or validity of proceedings for the issuance of bonds, or improvement warrants or the making of contracts by the board of directors, and the levying of assessments. The court shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties to such hearing. The court shall permit the petition to be amended so as to conform to the evidence and facts presented at such hearing.

Upon the conclusion of such hearing the court shall determine the legality and validity of the proceedings had for the organization of the district and of the proceedings had for the issuance of bonds, improvement warrants, the making of any contract, as the case may be, and the proceedings had for levying assessments and shall determine the validity and legality of any other matter properly before the court. The court shall prepare its findings of fact and conclusions of law and shall order that the decree of the court be entered in conformity therewith. The costs of the hearing may, in the discretion of the court, be allowed and apportioned between the parties thereto. The secretary of the board of directors of the district shall file with the State Engineer a certified copy of the court's findings of fact, conclusions of law, order and decree.

§ 40. AMENDMENT.] That Section 8247a64 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted to read as follows:

§ 8247a64. When any irrigation district shall find it necessary to procure its supply of water for the irrigation of the lands within the district from outside the boundaries of this State, such district may enter into an agreement or contract with any State board, commission or bureau, or with any person, association, company, corporation or irrigation district, having the control and jurisdiction over the water of such other State, for water rights, therein or for supplying the district with water sufficient for its irrigation needs. The making of such contract and the issuance of bonds or improvement warrants and the levying of assessments, or other method agreed upon for the payment of rights, franchises or water charges to obtain the required supply of water shall be deemed valid, and of full force and effect, and shall have the same validity and legality as though the same rights and franchises existed wholly within this State.

§ 41. AMENDMENT.] That Section 8247a65 of the Supple-

ment to the Compiled Laws of 1913 is hereby amended and re-enacted to read as follows:

§ 8247a65. MAY CONTRACT FOR WATER SUPPLY.] The board of directors of any irrigation district in this State may enter into a contract or contracts for a supply of water for the irrigation of lands within the district with the United States or with any department or agency thereof, or with the State Water Conservation Commission, or with any person, association, firm or corporation, or with another irrigation district, and under such contract may agree to pay for the water, furnished or delivered to the district, from collections obtained from tolls or charges to water users and/or from assessments levied against the lands irrigated. The source of supply of such water may be either within or without the boundaries of the State of North Dakota, and such water supply may be the entire supply for said district or to supplement an appropriation of water already made by said district.

§ 42. APPEALS.] An appeal may be taken to the district court from all orders, act and decisions of the board of directors of an irrigation district by any person claiming to be aggrieved thereby at any time within twenty (20) days after the order, act or decision appealed from has been made by the board. Such appeal shall be taken by serving notice of appeal on the chairman of the board of directors or upon the secretary of the board and by filing the notice of appeal, proof of service thereof, and the undertaking herein required with the clerk of the district court of the county in which the appeal is taken. To effect an appeal, an undertaking must be executed by the appellant and sufficient surety conditioned that the appellant will prosecute such appeal without delay and pay all costs adjudged against him in district court. Such undertaking shall be made to the irrigation district and may be enforced by the district as obligee. The appeal shall be taken to the district court of the county in which the land claimed to be adversely affected by the act, order or decision appealed from is situated and if such land is situated in more than one county, such appeal may be taken to the district court of any county in which such land, or any part thereof, is situated. All appeals thus taken shall be docketed as other causes pending in the district court are docketed and the same shall be heard and determined denovo. The district court may enter such order as the court shall deem just and proper.

§ 43. AMENDMENT.] That Section 8247a66 of the Supplement to the Compiled Laws of 1913 is hereby amended and re-enacted to read as follows:

§ 8247a66. If a contract, made and entered into by any irrigation district pursuant to Section 43 of this act, provides for the payment of the entire purchase price of an annual or yearly supply of water, the board of directors shall, if other revenues are not available for the payment of such purchase price, adopt a resolution

that assessments be made against the lands within the district sufficient to produce such sum and such sum shall be apportioned, assessed and levied at the time specified in this act for the apportionment and levy of assessments.

§ 44. VALIDATING ORGANIZATION AND ACTS OF IRRIGATION DISTRICTS.] Nothing contained in this act shall be construed as impairing, invalidating or in any manner affecting the validity of acts or proceedings of irrigation districts organized pursuant to the provisions of Chapter 38 of the Code of Civil Procedure of the Supplement to the Compiled Laws of 1913 and prior to the taking effect of this act. The organization of any irrigation district prior to the passage, approval and taking effect of this act in substantial compliance with the provisions of this act, is hereby declared to be a valid and legal district; and all acts and proceedings of such district, and the board of directors thereof, done and performed in substantial compliance with the provisions of this act are hereby validated and are hereby declared legal and valid.

§ 45. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 46. EMERGENCY.] An emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage and approval.

Approved March 16, 1939.

CHAPTER 254

H. B. No. 56—(Symington and Dalzell)

IRRIGATION

An act to amend and re-enact Sections 4262 and 4263 of the Compiled Laws of 1913 as relating to irrigation and conservation of water, authorizing submission to the voters of organized townships the question of irrigation and conservation of water by building dams, dugouts, creating ponds or reservoirs on creeks or coulees, and other improvements in connection therewith, and authorizing a levy therefore; declaring an emergency.

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

§ 1. AMENDMENT.] That Section 4262 of the Compiled Laws of North Dakota for 1913 be amended and re-enacted to read as follows: Whenever ten free holders of any organized township petition the township board fifteen days previous to any annual township meeting to submit the question of irrigation or the question of conservation of water by building dams or dugouts to create ponds or reservoirs on any of the creeks or coulees in the town-

ship, it shall be the duty of the board to submit the question to the voters at the next annual township meeting and the township clerk shall cause three notices to be posted specifying the place and nature of such proposed improvement.

§ 2. AMENDMENT.] That Section 4263 of the Compiled Laws of North Dakota for 1913 be amended and re-enacted to read as follows: Whenever two-thirds of the legal voters of any organized township in this State, at their annual meeting, agree that it is advisable and for the public good that certain specified creeks or coulees should be improved to increase the water supply for the purpose of irrigation or for the conservation of the water supply, it shall be lawful for such voters to levy a tax upon all taxable real property in said township to be expended in the building of dams to create ponds, reservoirs, and dugouts, by and under the direction of board of supervisors of township; provided such improvement shall be wholly in said township; and no lands shall be flooded without the consent of the owner or without just compensation therefor, which compensation shall be determined as provided in the chapter on eminent domain in the code of civil procedure.

§ 3. EMERGENCY.] Whereas it is necessary in many sections of the State because of the drought and to conserve the water supply, an emergency is declared to exist and this act shall take effect from and after its passage and approval.

Approved January 30, 1939.

CHAPTER 255

H. B. No. 293—(Committee on Irrigation and Drainage)

PUBLIC WATERS

An act to amend and re-enact Section 8235 of the Compiled Laws of 1913, relating to waters subject to beneficial appropriation and declaring an emergency.

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

§ 1. AMENDMENT.] That Section 8235 of the Compiled Laws of 1913 is hereby amended and re-enacted so as to read as follows:

§ 8235. WATERS OF STATE, PUBLIC WATERS.] All waters within the limits of the State from all sources of water supply belong to the public and are subject to appropriation for beneficial use.

§ 2. EMERGENCY.] An emergency is hereby declared to exist and this act shall take effect and be in force from and after its passage and approval.

Approved March 7, 1939.

CHAPTER 256

H. B. No. 274—(Committee on Irrigation and Drainage)

STATE WATER CONSERVATION ACT OF 1939

An act to provide for the creation, the powers, the duties, the authority and the jurisdiction of the State Water Conservation Commission; prescribing its powers and duties to investigate, plan, regulate, control, and supervise for all purposes of flood control, water conservation, water irrigation, water rights, and pollution of water, all public or private navigable or non-navigable surface and sub-surface, waters, streams, lakes, ponds, water-courses, surface waters, run-off waters, and water sheds, located in or within the jurisdiction of the State of North Dakota and to exercise powers of contracting, of sale and of purchase, and of leasing and sub-leasing with respect thereof; providing for the construction, operation, maintenance and financing of a system of works for the conservation, development, storage, distribution and utilization of water, and for the acquisition and disposition of property necessary therefor; authorizing the issuance and sale of water conservation revenue bonds of the State, payable from the revenues of such works and the funds received from the sale or disposal of water and from the operation, lease, sale or other disposition of the works, property, and facilities to be acquired out of the proceeds of such bonds; authorizing the commission to obligate or pledge moneys available in its operating or construction fund to insure the payment of twenty per cent of the par value of revenue bonds; providing for the lien upon bond proceeds, for exempting property of commission from taxation; providing for trust indentures; providing for the creation of certain funds in connection with the act; providing for necessary help and expenses; providing for contracts with the United States; with political sub-divisions of the State, with associations, groups, and persons, providing for powers and duties concerning inter-state compacts and commissions; providing for the purchase and condemnation, and otherwise to acquire lands and water rights and for the sale and lease thereof; making an appropriation; providing for the creation of a revenue bond payment fund; providing duties of State agencies acting intra-state, concerning water conservation, flood control and pollution of waters and providing duties of State agencies concerning inter-state compacts with respect to water conservation, flood control and pollution of waters; providing for the collection and payment of moneys into said fund and disbursements therefrom; for methods of paying principal and interest thereon by State Treasurer; providing for levy of tax, if necessary, to pay principal and interest of revenue bonds, and reimbursement of such levy, and to provide that the State Water Conservation Commission may mortgage property; and designating said Water Conservation Commission as a public corporation and agency of the State; and to grant additional powers to the commission concerning irrigation, the sale and lease of water, and water rights; to borrow moneys; providing for authority of Bank of North Dakota to act as fiscal agent, to purchase and sell revenue bonds and to make loans; validating proceedings and acts of the State Water Conservation Commission done and performed under the provisions of Chapter 255 of the Session Laws of 1937; repealing inconsistent acts and declaring an emergency.

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

§ 1. WATER CONSERVATION, FLOOD CONTROL AND ABATEMENT OF STREAM POLLUTION DECLARED A PUBLIC PURPOSE.] It is hereby declared that the general welfare and the protection of the lives, health, property and the rights of all people of this State require that the conservation and control of waters in this State, public or private, navigable or un-navigable, surface or sub-surface, the control of floods, the regulation and prevention of water pollution involve and necessitate the exercise of the sovereign powers of this State and are affected with and concern a public purpose.

It is hereby further declared that any and all exercise of sovereign powers of this State in investigating, constructing, maintaining, regulating, supervising, controlling any system of works involving the aforesaid subject matter embraces and concerns and is hereby declared to be a single object, and that the State Water Conservation Commission in the exercise of all powers conferred upon it herein, and in the performance of all its official duties, shall be considered and construed to be performing a governmental function pursuant to a single object and for the benefit, welfare and prosperity of all the people of this State.

§ 2. DEFINITIONS.] As used in this act, the following words and terms shall have the following meanings:

(a) The word "commission" shall mean the State Water Conservation Commission hereinafter created.

(b) The word "works" shall be deemed to include all property rights, easements, and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the commission in connection with such works, and shall embrace all means of conserving and distributing water, including without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, lateral ditches, pumping units, mains, pipe lines and waterworks systems, and shall include all such works for the conservation, development, storage, distribution and utilization of water including, without limiting the generality of the foregoing, works for the purpose of irrigation, watering stock, supplying of water for public, domestic, industrial, recreational, fire protection and other uses and works, for the purpose of draining lands injured or in danger of injury as a result of such water utilization.

(c) The term "cost of works," shall embrace the cost of construction, the cost of all lands, property, rights, water rights, easements and franchises acquired, which are deemed necessary for such construction, the cost of all water rights acquired or exercised by the commission in connection with such works, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three (3) years after the completion of construction, cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other

expenses necessary or incident to determining the feasibility or practicability of any project, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction of the works and the placing of the same in operation.

(d) The word "owner" shall include all individuals, associations, corporations, districts, municipalities and other political subdivisions of the State having any title or interest in any properties, rights, water rights, easements or franchises to be acquired.

(e) The word "project" shall mean any one of the works hereinabove defined or any combination of such works which are physically connected or jointly managed and operated as a single unit.

(f) In case any water rights shall be acquired or exercised by the commission in connection with two or more works and/or projects, the commission by resolution shall apportion or allocate to each of such works and/or projects such part of such water rights as it may determine, and upon the adoption of such a resolution, such water rights shall be deemed to be a part of each of such works and/or projects to the extent that such water rights have been so apportioned or allocated thereto respectively.

§ 3. CREATION OF STATE WATER CONSERVATION COMMISSION.] There is hereby created a commission to be known as the "State Water Conservation Commission." The commission shall consist of the Governor and four other members to be appointed by the Governor. Each appointive member shall be a qualified elector of the State and shall be subject to removal by judicial procedure. In case of vacancy the vacancy shall be filled by appointment by the Governor. The Governor shall appoint one member for a term of six years; one member for a term of four years and two members for a term of two years, ending July 1, 1945, 1943 and 1941 respectively. Thereafter each new member shall be appointed and serve for a period of six years. Before entering upon the discharge of his official duties, each appointive member shall take, subscribe, and file with the Secretary of State his oath prescribed by the Constitution for the fulfillment of his duties as commissioner. The Governor shall be the chairman of the commission, which shall designate a vice chairman and a secretary who may, but does not necessarily need be a member of the commission.

§ 4. MEETINGS OF THE COMMISSION.] The Governor, as chairman, shall preside at all meetings of the commission and in case of his absence or disability, the vice chairman shall preside. The commission shall maintain its principal office in the City of Bismarck and may maintain such branch offices in the State as it may determine. All meetings of the commission shall be held at its principal office except that the commission may hold special meetings

at such times, places, and upon such notice as it may by resolution provide.

Notice of any meeting of the commission may be given by telegram to members of the commission at least 48 hours before the meeting, or by written notice sent to each member of the commission at least three days before the meeting, but no notice shall be necessary for any member who has personally signed Admission of Notice and Consent to holding the meeting. The majority of the members shall constitute a quorum, and the affirmative or negative vote of three members shall be necessary to bind the commission, except for adjournments. The chairman, or in his absence or disability, the vice chairman of the commission may issue a call for any meeting at any time.

§ 5. COMMISSION A BODY CORPORATE AND AGENCY OF STATE.] There is hereby created a commission to be known as the "State Water Conservation Commission" which shall act as a public corporation with all of the powers and authority possessed by such corporation in the performance of their duties. The commission may sue and be sued, plead and be impleaded, and contract and be contracted within its corporate name. The commission in the exercise of all its powers and in the performance of all of its duties shall be deemed to be an agency of the State. The commission shall have and adopt a seal bearing its name, which seal shall be affixed to such records and other instruments as it may direct, and all courts shall take judicial notice thereof. It shall have power and is authorized to adopt and enact all rules, regulations, resolutions and by-laws deemed suitable and necessary in the conduct of its business and the performance of its duties. It shall keep accurate minutes and record all of its acts which at all reasonable times shall be open for public inspection and which it may cause to be published as it may deem desirable.

§ 6. COMPENSATION AND EXPENSES OF COMMISSION.] Each appointed member of the commission shall receive, as compensation for his services the sum of seven dollars (\$7.00) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the place at which he performs such duties, together with actual travelling and maintenance expenses while away from his home in the performance of the duties of his office.

§ 7. EMPLOYMENT OF NECESSARY HELP.] The commission is authorized and empowered to hire and employ a [all] necessary aid, help, and assistance, including members of all of the professions, for the efficient performance of their powers and duties, and shall fix their compensation and allowances for their actual expenses, and in so doing the commission shall be guided by the compensation and allowance for expenses permitted and made by the Federal

Government for the performance of similar service by Federal employees and agencies. All claims for compensation and expenses made by the commissioners, their agents, and employees, must be itemized as required by laws of this State and must be presented to the State Auditor and allowed by the State Auditing Board, for payment.

§ 8. POWERS AND DUTIES OF THE COMMISSION.] The commission shall have and there is hereby vested in it full and complete power, authority and general jurisdiction:

(1) To investigate, plan, regulate, undertake, construct, establish, maintain, control and supervise all works, dams and projects, public and private, which in the judgment of the commission may be necessary or advisable:

(a) To control the low-water flow of the streams in the State.

(b) To impound water for the improvement of municipal and rural water supplies.

(c) To control and regulate flood flow in the streams of the State to minimize the damage of such flood waters.

(d) To conserve and develop the waters within the natural water-shed area of the State.

(e) To improve the channels of the stream for more efficient transportation of the available water in the streams.

(f) To provide sufficient water flow for the abatement of stream pollution.

(g) To develop, by restoration and stabilization, the water areas of the State for recreation and wild life conservation.

(h) To promote the maintenance of existing drainage channels in good agricultural lands and to construct any needed channels.

(i) To provide more satisfactory sub-surface water supplies for the smaller towns of the State.

(j) To finance the construction, establishment and maintenance of works, dams and irrigation projects, public and private, which in the judgment of the commission may be necessary and advisable.

(k) To provide for the storage, development, diversion, delivery and distribution of water for the irrigation of agricultural land.

(l) To provide for the drainage of lands injured by or susceptible of injury from the utilization of irrigation water.

(m) To provide water for stock.

(n) To provide water for mining and manufacturing purposes.

(2) To define, declare and establish rules and regulations:

(a) For the sale of waters and water rights to individuals,

associations, corporations, and political sub-divisions of the State, and for the delivery of water to users.

(b) For the full and complete supervision, regulation and control of the water supplies within the State.

(c) For the complete supervision and control of acts tending to pollute water courses, for the protection of the health and safety of the people of the State; provided, that nothing herein contained, or contained in this act, shall be construed to limit or deprive the State Department of Health of its jurisdiction to prevent the pollution of the water of streams, water courses, underground waters or to prevent the pollution of waters wherever found. The commission shall not declare waters to be polluted without a finding to that effect by the State Department of Public Health; and provided further that this act shall not be construed as repealing or limiting any of the public health laws of the State or regulations of the State Department of Health adopted pursuant thereto and in conformity therewith.

(3) To exercise full power and control of the construction, operation and maintenance of works and collection of rates, charges and revenues realized therefrom.

(4) To sell, lease and otherwise distribute all waters which may be developed, impounded and diverted by the commission under the provisions of this act for the purpose of irrigation, development of power, watering of livestock and for any other private or public use.

(5) To exercise all rights, power and authority, express and implied, that may be necessary and to do, perform and carry out all of the expressed purposes of this act and of all purposes reasonably implied incidental thereto or lawfully connected therewith.

In planning and constructing irrigation projects it shall be the policy of the commission to give preference to the individual farmer or groups of farmers or irrigation districts who intend to farm the land themselves. It shall be the duty of the commission to keep full and complete accounts and records of all matters and things relating to works and projects undertaken, established and maintained by the commission; to prepare annual balance sheets, income and profit and loss statements, showing the financial condition of each project, and to file copies thereof with the Secretary of State for public inspection at all reasonable times by any interested parties or citizens of the State.

Upon application by any landowner, or holder of any easement, or holder of any lease of five or more years duration, or of any group or association of such landowners, easement holders, or leaseholders, the commission shall make such preliminary engineering, soil survey and other investigations as may be necessary to determine the feasibility of any proposed project, provided that such applicant submits, with his application, such fees as the commission shall establish for projects of different classes.

Following such preliminary survey and upon further application by the applicant or applicants aforesaid, the commission shall enter into a contract with such applicant or applicants for a complete engineering, soil survey and other investigations of said project, the soil survey to meet such standards as are now or may hereafter be prescribed by the Bureau of Chemistry and Soils of the Federal Government and/or the North Dakota Agricultural College, and the engineering survey to be of sufficient detail and quality to enable the applicant to comply with the requirements now made, or which may hereafter be made, for obtaining a permit to appropriate water, and which will enable any competent contractor to estimate costs and quantities of material needed within reasonable limits and to install such project without further engineering service.

The contract for such engineering service between the applicant and the commission shall require the commission to pay not more than 75 per cent of the cost of such detailed engineering survey and the drawing of the necessary plans and specifications, with not less than 25 per cent to be paid by the applicant.

In any irrigation project undertaken by the commission serving a single individual, or a group of individuals owning irrigable lands, the works of the commission may include preparation of the land for irrigation.

§ 9. No dam exceeding ten (10) feet in maximum height, or capable of impounding more than thirty (30) acre-feet of water, shall be constructed in the State, either in a watercourse or elsewhere, without the prior written approval of the commission. Before granting such approval the commission shall require the person or organization proposing to construct such dam to file plans and specifications satisfactory to its chief engineer. The commission may inspect such work during construction and require any changes necessary to insure its safety and the safety of life and property.

No sewage disposal plant or works for the water supply of any municipality shall be constructed without the prior approval of the commission, which shall be granted only upon the approval of the State Health Department; provided, however, that nothing in this act shall be construed as repealing or affecting any of the laws of this State relating to the functions of the State Health Department.

The provisions of this section shall not apply to any works constructed by or under the supervision of the United States or any of its officers or employees.

§ 10. ACQUISITION OF NECESSARY PROPERTY AND POWER OF CONDEMNATION.] The commission shall have full power and authority:

(1) To acquire by purchase or exchange, upon such terms and conditions as it may deem necessary and proper, and/or by

condemnation in accordance with and subject to the provisions of all existing laws applicable to the condemnation of property for public use, any lands, rights, water rights of whatever character, easements, franchise and other property deemed necessary or proper for the construction, operation and maintenance of works. And in condemnation proceedings the commission may and is hereby authorized to follow, and to conform to, the procedure prescribed by Chapter 128 of the Session Laws of 1933 for the purchase and condemnation of right-of-way by the State Highway Commission. Provided, that nothing herein shall be construed to require the commission, in condemning any riparian water right, to condemn also the riparian land to which such right may be incident. The title to all property purchased, acquired or condemned shall be taken in the name of the commission and held in trust for, and for the use and benefit of the people of the State.

(a) To institute, maintain and prosecute to final determination in any of the courts of this or any other State, or in any of the Federal courts, any and all actions, suits and special proceedings that may be necessary:

(a) To enable it to acquire, own and develop lands for irrigation and water conservation purposes and to sell such lands upon such terms and conditions as the commission may prescribe, and to own and hold title to lands for dam sites, reservoir sites, water rights, easements, right-of-ways for diversion and distributing canals, lateral ditches and other means for the distribution of waters in this State, and for any other necessary purpose.

(b) To adjudicate all water rights upon any stream, water course, or source of water supply from which is derived the waters for such reservoir, diversion and distributing canals, lateral ditches and other means of distribution.

(c) To join any and all owners of vested water rights acquired by any person, association or corporation, so that adjudication may be had of all surplus water upon all of the water courses and sources, water supplies or any projects constructed under the supervision and control of the commission.

(d) To join all persons interested, as parties in all actions or condemnation proceedings affecting the title of or holding liens upon the property sought to be acquired as disclosed by the public records and the court in such actions or special proceedings shall implead all parties necessary for a full and final determination of all issues, upon their merits, for the partition and distribution of damages awarded, if any, among such persons in such interests as their rights are made to appear or determined. In the event of controversy between such parties the court may direct the amount of damages awarded to be paid in or deposited with the clerk of court to abide the result of further appropriate proceedings either in law or in equity. The taking possession of property sought to be condemned shall not be delayed by reason of any dispute between rival

claimants or the failure to join any of them as parties to such actions or condemnation proceedings.

§ 11. CO-OPERATION AND CO-ORDINATION WITH ALL EXISTING AGENCIES.] The State Water Conservation Commission is hereby authorized and empowered to investigate, plan co-operate and make all contracts or compacts necessary or requisite;

(1) With the United States and any department, agency, or officer thereof; (2) With the States of Minnesota, South Dakota and Montana, or any one of them, and with any department, agency or officer of any said State; (3) With the Dominion of Canada or any of its provinces and; (4) With any other agency or department or officer of either of them, who may be concerned, or authorized, empowered and covering or involving water conservation, flood control, water pollution, irrigation, soil reclamation, or concerned with any of the powers or duties by this act imposed upon the commission for any of the purposes expressed herein.

This power herewith so granted shall extend to all waters, whether considered as intra-state or inter-state. The Water Commission is specially authorized and empowered to co-operate with the United States or any of its agencies concerned with investigation, planning, conserving, utilizing, developing, and handling water in any form for purposes of water conservation, flood control, prevention of water pollution or soil reclamation, or with any other resources of the State, and concerned with the administration of the public works program of the State or any part thereof; and it is further authorized to act and to fully contract with the United States, or with any department, agency or officer thereof with full power of purchase, sale, or lease for carrying out, developing, or administering any Federal project within the State of North Dakota, or partly within the State, and also to accept and to use any funds provided by the United States or any agency thereof for any such purposes.

§ 12. DUTIES OF STATE AGENCIES ACTING THROUGH INTER-STATE COMPACTS OR AGREEMENTS.] Every State officer, department, board, and commission heretofore or hereafter authorized by any law of this State to act upon or be concerned with any inter-state commission or involving any inter-state compact or upon any foreign commission involving any foreign compact, or with any Federal agency or department of the United States, the subject matter of which in any way concerns or involves water conservation, flood control, irrigation, water pollution or contamination, or the exercise of the powers and duties herein granted to the commission, shall first submit to the commission its plans, purposes, and contemplated action and receive the approval of the commission therefor before making any agreement, contract, purchase or sale, or lease, for any of said purposes. The commission is authorized and empowered to give its aid and assistance to any State agency so act-

ing with respect to any inter-state compact including the Tri-state Waters Commission.

§ 13. DUTIES OF STATE AGENCIES CONCERNED WITH INTRA-STATE USE OR DISPOSITION OF WATERS.] It shall be the duty of every State officer, department, board, and commission heretofore or hereafter authorized by any law of this State, to take any action, perform any duties, or make any contract which concerns the use or disposition of waters, or water rights, within the State to first submit to the commission any plans, purposes and contemplated action with respect to the use or disposition of such waters, and thereupon first receive the consent and approval of the commission before making any agreement, contract, purchase, sale, or lease to carry into execution any works or projects authorized under this act.

§ 14. DUTIES OF PRIVATE PERSONS, AGENCIES AND ORGANIZATIONS.] It shall be the duty of any and all persons, including corporations, voluntary organizations, and associations, when concerned with any agreement, contract, sale, or purchase, or the construction of any works or project which involves the use and disposition of any water, or water rights under the jurisdiction of the commission, to present to the commission all proposals with respect to the use or disposition of any such waters before making any agreement, contract, purchase, sale, or lease in respect thereof.

§ 15. SPECIAL POWERS OF COMMISSION COVERING PLANS AND APPROPRIATIONS OF WATER AND IRRIGATION.] The Water Conservation Commission is herewith empowered and authorized to make plans, investigations, and surveys concerning the use of any and all waters, either within or without this State, for purposes of establishing, maintaining, operating, controlling, and regulating systems of irrigation works and projects in connection therewith within the State. The commission shall have all necessary powers of purchasing and selling, leasing and assigning, rights and interests in the use or in the appropriation of waters concerned with such systems of irrigation projects or works in connection therewith and shall possess full authority and jurisdiction to exercise and assert actual possession over the corpus of all of such waters, and to secure control and regulation of the diversion thereof subject to rules and regulations and methods prescribed by the commission. This power and authority shall include full right to contract and agree with any person, associations, or agency concerning water rights possessed by them through which the commission may be given full authority and jurisdiction over such water and water rights. In connection therewith the commission may co-ordinate, subordinate, supplement and act jointly or subordinately with the United States and any Federal agencies or department thereof covering or concerning any Federal project affecting water use, works or projects in connection therewith.

§ 16. It is hereby declared that the commission shall have full control over all public waters of the State now unappropriated, whether above or under the ground, to the extent necessary to fulfill the purposes of this act.

In acquiring the rights and administering the terms of this act herein prescribed and established, the commission shall not be limited to the terms of the statutes of the State of North Dakota relating to water rights heretofore enacted; but, in addition thereto, may initiate a right to the waters of this State by executing a declaration in writing of the intention to store, divert, or control the unappropriated waters of a particular body, stream, or source, designating and describing in general terms such waters claimed, means of appropriation and location of use, and cause said notice to be filed in the office of the State Engineer, which right shall vest in such commission on the date of the filing of such declaration. The commission shall also file in the office of the State Engineer copies of its plans and specifications involved in completing all appropriations of water; provided, however, that the State Engineer may, subject to the approval of the commission, grant water rights to any person, association, firm or corporation, or to any municipality in the manner provided by law.

The priority of right shall date and continue from the time of such filing or recording, provided, the means of actual appropriation shall be commenced by actual work of construction with[in] two (2) years from the date of original recording. Change in means or place of diversion or control shall not affect the right of priority, if others are not thereby injured.

It shall be the duty of the commission, if it shall modify its plans in connection with any proposed project, concerning which the commission shall have filed a declaration of intention to appropriate waters, to file in the office of the State Engineer a declaration releasing all or part of the waters affected by such declaration.

Upon completing the construction of works and application to beneficial use of the waters described in such declaration, the commission shall file in the office of the State Engineer a declaration of completion of the appropriation, reciting the matters contained in the original declaration of intention to appropriate.

A certified copy of the record of such declaration of intention to appropriate, or of release of all or part of said waters, or of completion of appropriation, shall be received as competent evidence in all courts and deemed to be prima facie proof of all matters therein recited.

§ 17. The right of the commission to the waters within the State of North Dakota so acquired as hereinbefore provided for the purposes defined in this act shall attach at an from their source and while flowing in the streams, traveling to the means of control as well as when actually confined by such means. The authority and

jurisdiction of the commission shall continue over said waters after they are released for purposes of use and shall continue to such places of use, and the commission through and by officers and agents under its authority may continue to exercise and assert actual possession over the corpus of such waters and prevent the diversion thereof without permission first obtained. The commission may reclaim and possess all waters furnished or supplied by it seeping or overflowing from the previous place of use.

§ 18. Wherever natural streams are employed as a means of diversion of water from the place of confinement to the place of use, the commission shall adopt proper methods and means of determining the natural flow of such streams and when the amount of such natural flow is insufficient to satisfy or fill the needs of appropriators prior in right.

All appropriators of the natural flow of said streams shall maintain headgates and measuring devices at their respective points of diversion for the purpose of enabling the commission or its authorized agents to determine the amount of water being diverted at any time, and authority is hereby conferred upon the commission to adopt and exercise any method or act to prevent the diversion of any waters owned by it without permission first obtained.

Any person owning a water right on said stream may agree with the commission that it shall have control of the diversion of waters due under such right, and, in such event, the commission through its officers and agents may exercise the same authority over the waters due said appropriator and cause them to be delivered to him in the same manner as waters appropriated by the commission.

§ 19. For that purpose of obtaining financial aid from the United States of America, the commission may adjust the plans and operation of any project, created under this act, to conform to the laws and regulations of the Federal Government and the supervision of any board, bureau or commission constituted under such authority, and may exercise such powers whenever conferred.

§ 20. The authority of the commission conferred by the provisions of this act shall extend and be applied to any and all rights to the natural flow of the waters of this State which it may acquire by condemnation, purchase, exchange, appropriation or agreement.

For the purpose of regulating the diversion of such waters, the commission may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

The commission shall take into consideration the decrees of the courts of this State having jurisdiction, which purport to adjudicate the waters of any such stream or its tributaries, and a fair, reasonable, equitable reconciliation shall be made between the claim-

ants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by any court.

The commission, at its discretion, may hold hearings relating to the rights of respective claimants after first giving such notice as it deems appropriate, and make findings of the date and quantity of appropriation and use of all claimants, which the commission shall recognize and observe in diverting the waters which it owns. The commission may police and distribute to the owner of any such recognized appropriation the waters due him upon request of such owner and under terms agreed upon.

The commission, when engaged in controlling and diverting the natural flow of any stream under the authority granted by this act, shall be deemed to be exercising a police power of the State of North Dakota, and water commissioners appointed by any court shall not have any authority or jurisdiction to deprive the commission of any of the waters owned or administered under agreement with respective owners, provided the owner of any prior or vested right contending that the commission is not recognizing and respecting such right may resort to a court of law or equity for the purpose of determining whether or not the rights of said claimant have been invaded and the commission shall observe the terms of such final decree.

On the commissioner's impounding or acquiring the right of appropriation of the waters of any stream, it may divert or authorize the diversion at any point on said streams, or any portion thereof, when the same may be done without injury to any prior appropriator or riparian owner whose rights shall not have been acquired by the commission as provided in this act.

Nothing herein contained shall repeal, amend, or modify any existing acts or statutes pertaining to the appropriation or use of water except as herein otherwise provided, and nothing herein contained shall be deemed to interfere with any vested rights to the use of water.

§ 21. WATER CONSERVATION REVENUE BONDS.] 1. The commission is hereby authorized to provide, by resolution, at one time or from time to time, for the issuance of Water Conservation Revenue Bonds not exceeding a total of three million dollars for the purpose of paying the cost as hereinabove defined of any one or more such public works, the principal and interest of which bonds shall be payable from the special fund herein provided for such payment. Such bonds shall mature at such time, or times, either serially or at one time, in not more than thirty (30) years from their date, or dates, as may be fixed by such resolution, but may be made callable before maturity, if so stated in the resolution and on the face of each bond, at 105 per cent of the par value, on any interest paying date, upon thirty days notice, which shall be published once in a newspaper of general circulation in Burleigh County. The

board shall determine the rate of interest such bonds shall bear, not exceeding five per centum (5%) per annum, the time, or times, of payment of such interest, the form of the bonds and the interest coupons to be attached thereto, and the manner of executing the bonds and coupons, and shall fix the denomination, or denominations, of the bonds and the place, or places, of payment of principal and interest thereto, which may be at any bank or trust company within or without the State. In case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until such delivery. All such bonds shall be and shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the Negotiable Instruments Law of the State. Such bonds shall be secured by the revenues of such works and the funds received from the sale or disposal of water and from the operation, lease, sale or other disposition of the works, property and facilities to be acquired out of the proceeds of such bonds and as hereinafter provided.

2. Provisions may be made for the registration of any of the bonds in the name of the owner as to principal alone or as to both principal and interest. The bonds authorized under the provisions of this act may be issued and sold from time to time, and in such amounts as may be determined by the commission and the commission may sell the bonds in such manner and for such price as it may determine to be for the best interests of the State, but no such sale shall be made for less than par value of each bond. The proceeds of such bonds shall be used solely for the payment of the cost of the works and shall be checked out in such manner and under such restrictions, if any, as the commission may provide. Prior to the preparation of definitive bonds, the commission may under like restrictions issue temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. Such bonds may be issued without any other proceedings or the happenings of any other conditions or things than those proceedings, conditions and things which are specified and required by this act or by the Constitution of the State.

3. Each resolution providing for the issuance of bonds shall set forth the project or projects for which the bonds are to be issued, and the bonds authorized by each such resolution shall constitute a separate series. The bonds of each series shall be identified by a series of letter or letters, and may be sold and delivered at one time or from time to time.

4. Whenever the commission shall find it necessary to insure or guarantee the payment of a part of the principal of any series of Water Conservation Commission Revenue Bonds, in order to sell or market such bonds, it is hereby authorized, and the commission may, in its discretion, enter into an agreement to pledge, hypothecate

cate, obligate, place under trust indenture or agree to deposit in a trust fund, moneys appropriated to the commission for operating or construction costs; provided that the payment of any series of such revenue bonds shall not be thus guaranteed or insured in excess of twenty per cent of the par value of such bonds, and provided further that for the biennial period ending June 30, 1941, the commission shall not thus pledge, hypothecate or place under trust indenture, or agree to pledge, hypothecate or to place under trust indenture, an aggregate amount in excess of fifty thousand dollars and provided further that any agreement to thus pledge, hypothecate, or place under trust indenture any amount in excess of fifty thousand dollars shall be, and is hereby declared null and void, provided, however, that the appropriation or use of said fifty thousand dollars shall not be construed to be the pledging of the credit of the State of North Dakota nor the guaranteeing of any bonds issued hereunder.

§ 22. LIEN UPON BONDS PROCEEDS.] All moneys received from any bonds issued pursuant to this act shall be placed in the Construction Fund and applied solely to the payment of the cost of the works and there shall be and hereby is created and granted a lien upon such moneys until so applied, in favor of the holders of the bonds or the trustee hereinafter provided for in respect of such bonds.

§ 23. TRUST INDENTURE, RESOLUTION AND COVENANTS OF COMMISSION.] In the discretion of the commission any series of such bonds may be secured by a trust indenture by and between the commission and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the State. Each trust indenture or an executed counterpart thereof shall be filed in the office of the Secretary of State of North Dakota. The filing of a trust indenture or an executed counterpart thereof in the office of the register of deeds of the county in which the property covered by said trust indenture is located shall constitute constructive notice of the contents thereof to all persons from the time of such filing and no recording of such trust indenture or the contents thereof shall be necessary.

Either the resolution providing for the issuance of bonds or such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the State and the commission in relation to the acquisition, construction, improvement, maintenance, operation, repair, and insurance of the works, the custody, safeguarding and application of all moneys, and may provide that the works shall be acquired, constructed, or partly acquired and partly constructed and paid for under the supervision and approval of consulting engineers employed or designated by the commission and satisfactory to the original purchasers of the bonds issued there-

for, their successors, assigns, or nominees, who may be given the right to require that security given by contractors and by any depository of the proceeds of the bonds or receipts and revenues of the works, or other moneys pertaining thereto, shall be satisfactory to such purchasers, successors, assigns, or nominees. Such resolution or indenture may set forth the rights and remedies of the bondholders and trustee, restricting the individual rights of action of bondholders as is customary in trust indentures, deeds of trust and mortgages securing bonds and/or debentures of corporations. No enumeration of particular powers hereby granted shall be construed to impair any general grant of power herein contained. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation and repairs of the works affected by such indenture.

In connection with the issuance of any such bonds for the purpose of paying in whole, or as supplemented by a grant as aforesaid from the United States of America or any instrumentality or agency thereof, the cost of any works or project, or in order to secure the payment of such bonds, the commission shall have power:

(a) To pledge all or any part of the income, profit and revenue of such works or project, and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale or other disposition of all or any part of such works or project, and to covenant to pay such income, profit and revenue into the Revenue Bond Payment Fund.

(b) To covenant against pledging all or any part of the income, profit and revenue of such works or project and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale or other disposition of all or any part of such works or project.

(c) To covenant against mortgaging all or any part of such works or project, or against permitting or suffering any lien thereon.

(d) To covenant to fix and establish such prices, rates and charges for water and other services made available in connection with such works or project so as to provide at all times funds which will be sufficient, (1) to pay all costs of operation and maintenance of such works or project together with necessary repairs thereto, and (2) to meet and pay the principal and interest of all such bonds as they severally become due and payable, and (3) to create such reserves for the principal and interest of all such bonds and for the meeting of contingencies in the operation and maintenance of such works or project as the commission shall determine; and to make such further covenants as to such prices, rates and charges as the commission shall determine.

(e) To create special funds, in addition to those required by this act, for the meeting of contingencies in the operation and maintenance of such works or project and to determine the manner in

which, and the depository or depositories in which, such funds shall be deposited and the manner in which the same shall be secured, and it shall be lawful for any bank or trust company incorporated under the laws of the State to act as such depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the commission on all deposits exceeding the sum of five thousand dollars.

(f) To provide for the replacement of lost, destroyed, or mutilated bonds.

(g) To covenant against extending the time for the payment of the principal or interest on any of such bonds, directly or indirectly by any means or in any manner.

(h) To prescribe and covenant as to the events of default and terms and conditions upon which any or all of such bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived.

(i) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation.

(j) To vest in a trustee or trustees the right to enforce any covenant made to secure or to pay such bonds, or to foreclose any trust indenture in relation thereto, to provide for the powers and duties of such trustee, or trustees, to limit the liabilities thereof, and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any such covenant or exercise the right of foreclosure.

(k) To make covenants and do any and all such acts and things as may be necessary or convenient or desirable in order to secure such bonds, or, in the absolute discretion of the commission to make such bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated or expressly authorized herein.

(l) It being the intention hereof to give the commission power to do all things in the issuance of such bonds, and in providing for their security that may not be inconsistent with the Constitution of North Dakota.

§ 24. MORTGAGE OF COMMISSION.] In the discretion of the commission any trust indenture executed by it as security for a series of such bonds may contain provisions for conveying in trust or mortgaging the works, the project, or any part of such works or project (including all water rights, which are a part thereof), constructed with the proceeds of such bonds or with such proceeds as supplemented by the proceeds of a grant to aid in financing such construction from the United States of America or any instrumentality or agency thereof, and may be in such form, and with such

rights, remedies and provisions as is customary in trust indentures, deeds of trust, and mortgages securing bonds and/or debentures of corporations. Any purchaser at any sale of any works or project pursuant to a judgment or decree in an action to foreclose a trust indenture conveying in trust or mortgaging any works or projects shall obtain title to such works or project free from any trust or other obligation of the commission, the State of North Dakota, or the public thereof, as to its operation, maintenance, use or disposition except the obligation to use all water impounded in such works or project for sale, rental distribution, or other beneficial use.

§ 25. FUNDS.] The commission shall create three funds to be known as "Administration Fund," the "Construction Fund" and as the "Revenue Bond Payment Fund." The moneys in each such fund shall be deposited in such depository or depositories and secured in such manner as may be determined by the commission. It shall be lawful for any bank or trust company incorporated under the laws of this State to act as such depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the commission on all deposits exceeding the sum of five thousand dollars.

The commission shall establish a complete system of accounting to show—the total expenditure of and investment in each project and the total revenue derived therefrom and to prepare periodic reports giving the financial statement of each project and the status of all projects together.

§ 26. CONSTRUCTION FUNDS.] The proceeds of the bonds of each series issued under the provisions of this act shall be placed to the credit of the Construction Fund, which fund shall at all times be kept segregated and set apart from all other funds. There shall be also credited to the Construction Fund all accrued interest upon the bonds and the interest received upon the deposits of moneys in such fund and moneys received by way of grant from the United States or from any other source for the construction of the works. The moneys in the Construction Fund shall be paid out or disbursed in such manner as may be determined by the commission, subject to the provisions of this act, to pay the costs of the works as hereinabove defined. Any surplus which may remain in the Construction Fund, after providing for the payment of the cost of the works, shall be added to and become a part of the Revenue Bond Payment Fund hereinafter provided for.

§ 27. REVENUE BOND PAYMENT FUND.] To identify and distinguish the fund provided and available for the payment of the bonds issued pursuant to this act and there is hereby created and established, as a part of the moneys of this State received and kept by the State Treasurer, a fund to be designated the Revenue Bond Payment Fund. All moneys received by the State Treasurer whether from payments made by the commission or from legislative appro-

priation or from the proceeds of taxes or otherwise, which shall be by law or by other authoritative designation made applicable to the payment of said bonds or interest thereon shall be kept by the State Treasurer in such fund distinct from all other moneys and shall be disbursed by him only for the particular purpose or purposes for which such moneys shall be delivered to him and no other appropriation shall ever be made of the moneys in such fund until such bonds shall be fully paid.

§ 28. APPROPRIATION TO PAY PRINCIPAL AND INTEREST OF REVENUE BONDS.] There is hereby appropriated all moneys paid to the State Treasurer by the commission for conversion into the Revenue Bond Payment Fund and all moneys constituting the Revenue Bond Payment Fund or so much thereof as may be necessary from time to time to pay the interest and the principal payment on such revenue bonds; and such appropriation is out of moneys not otherwise appropriated and is irrespective of the provisions of the bill concerning the budget and whenever any of such revenue bonds, or any coupons thereon, being due, shall be presented for payment, the State Treasurer shall pay the same out of such fund applicable thereto.

§ 29. The State Treasurer shall pay the interest on said bonds upon presentment to him of the coupons for such interest when due, and shall redeem such bonds upon their maturity by paying the principal thereof, all such payments to be made out of the Revenue Bond Payment Fund without Auditor's warrant. All moneys in such fund, or so much thereof as may be necessary is hereby appropriated for the payment of the interest and the principal of such bonds, and this appropriation shall not be repealed, and no provisions made in this act for the payment of said bonds and interest shall be discontinued until the debt evidenced by said bonds, both principal and interest, shall have been paid.

§ 30. All the property of the commission shall be exempt from taxation.

§ 31. All general administrative expenses of the commission, the compensation and expenses of its employees, and the cost of investigations, planning, surveying, as authorized by this act, shall be paid from the Administrative Fund and also the cost of all preliminary work on any project and all expenses directly chargeable to such project, prior to the receipt of the proceeds of bonds, shall be paid from the Administrative Fund. The amount of all such expenses on account of any project and such part of the general administrative expenses of the commission, its employees and of the cost investigation as shall be properly chargeable, in the opinion of the commission to such projects, shall be reimbursed to the Administration Fund upon the receipt of the proceeds of revenue bonds issued and sold pursuant to this act. No liability or obligation shall be in-

curred under the provisions of this act beyond the extent to which money shall have been provided under its authority.

The commission shall have authority to receive and accept appropriations and contributions from any source of either money or property or other things of value, to be held, used, and applied for the purposes in this act provided.

§ 32. VALIDATION OF ACTS OF STATE WATER CONSERVATION COMMISSION.] All acts and proceedings of the Water Conservation Commission done and performed by said commission under and pursuant to the provisions of Chapter 255 of the Session Laws of 1937 be and the same are hereby declared valid.

§ 33. ACT LIBERALLY CONSTRUED.] This act, being necessary for the welfare of the State and its citizens, shall be liberally construed to effect the purposes hereof.

§ 34. PROVISIONS OF THIS ACT SEVERABLE.] The sections and provisions of this act are severable and are not matters of mutual essential inducement, and it is the intention to confer the whole or any part of the powers herein provided for, and if any section or provisions or part thereof is for any reason held to be unconstitutional, void or inoperative, it is the intention that the remaining sections and provisions and parts thereof shall remain in full force and effect.

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

§ 36. EMERGENCY.] Because of the inability of thousands of citizens throughout the State to find employment and to support themselves and their families in the present depression, and because of serious crop failures, and health hazards, resulting from unprecedented drought conditions, it is necessary to proceed immediately with the construction of the works authorized by this act in order to create employment, assist the growing crops and prevent irreparable injury to the people of the State. An emergency is hereby declared to exist, and this act shall be in full force and effect from and after its passage and approval.

Approved March 16, 1939.