

§ 3. EMERGENCY.] An emergency exists in this, that there is now no adequate law covering the subject of this act; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved, March 13, 1893.

CITY SEWERS.

CHAPTER 36.

[H. B. No. 90.]

CITY SEWERAGE SYSTEMS.

AN ACT to Amend Article 16 of Chapter 73 of the Laws of 1887, Being Sections 1000, 1001, 1002 to 1007 Inclusive of the Compiled Laws of the State of North Dakota, and to Re-enact the Same so Amended.

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

§ 1. AMENDMENT.] That Article 16 of Chapter 73 of the Laws of 1887 be and the same is hereby amended and re-enacted to read as follows, to-wit:

ARTICLE 16—SEWERAGE.

§ 1. CITY COUNCIL TO ESTABLISH AND MAINTAIN.] The city council shall have power to establish and maintain at any time a general system of sewerage for said city, in such manner and under such regulations as the city council shall deem expedient, and to alter or change the same from time to time as said council shall deem proper; *Provided, however,* That no measure shall be taken for the establishment of such system of sewerage except upon the affirmative vote of at least two-thirds of the members of the city council; *Provided, further,* That whenever a majority of the residents on any street or part of street owning land abutting thereon, shall petition the city council for the construction of a sewer on such street or part of street as a part of or to connect with such system of sewerage, all measures necessary for the construction of such sewer may be taken on a vote of the majority of the city council.

§ 2. CONSTRUCTION, ALTERATION AND REPAIRS.] The cost of constructing, altering, repairing any of the sewers or improvements herein provided for or referred to shall be estimated by the city engineer of the city or such other competent engineer as may be selected by the city council for such purpose, who shall draw plans and specifications therefor; and such estimate together with

said plans and specifications shall be filed with the city auditor of the city before any bids for work thereunder are advertised for, and shall remain on file in his office and shall be open to the inspection of all persons until after the contract for such work shall be let. The city engineer shall retain a copy of such plans and specifications in his office and shall furnish to any person applying therefor copies of the same, and may charge and receive for such copies at the rate of one dollar an hour for the time necessarily employed in making the same.

§ 3. PROPOSALS FOR CONSTRUCTION.] The city council shall then cause proposals for said work to be advertised for in the official paper of such city, once in each of three consecutive weeks, which advertisement shall specify the work to be done and shall call for bids upon a basis of cash payment for said work. Bids for such work shall be forwarded to the city auditor of such city securely sealed so as to prevent their being opened without detection and shall be endorsed upon the outside thereof with a statement as to what work such proposals are for. Each bid shall be accompanied by a bond running to such city in the penal sum of at least 50 per cent. of the amount of the bid, which bond shall be executed by the bidder as principal and by two or more good and sufficient sureties, who shall justify in like manner, as required by the general laws of this State relating to arrest and bail, which bond shall be conditional that the bidder will well and faithfully perform the work bid for, in pursuance to the plans and specifications therefor, in case such contract be awarded to him, and further conditioned that in case of default on the part of the bidder to perform such work as provided in his contract, or in case of his failing to enter into such contract in case the same shall be awarded to him under his bid therefor, then the sum named in said bond shall be taken and held to be fixed and liquidated damages in favor of said city, and the full amount thereof may be recovered of said bidder and his sureties on such bond in an action by the city against them on said bond. Such bids shall be opened by the city council at the expiration of the time limited in said notice for receiving the same, or at such other time as the city council may appoint therefor.

§ 4. CONTRACTS—HOW MADE.] The city council shall have the right to reject any and all bids for such work if in their opinion the interests of the city will be best subserved by so doing; but if all such bids be not rejected the contract shall then be awarded to the lowest responsible bidder upon the basis of cash payment therefor; *Provided, however,* such bidder shall have complied with the forgoing requirements and shall have guaranteed to the satisfaction of the city council the proper and speedy completion of said work. Such contract shall be made on the part of the council in the name of the city, and shall be executed on the part of the city by the mayor thereof and countersigned by the city auditor, with the corporate seal of the city attached,

and an attested copy thereof shall be filed in the city auditor's office; *Provided, however,* That no such contract, except for the construction of a sewer upon petition as provided in Section 1 of this article, shall be awarded except upon a two-thirds vote of all the members of the city council, and there shall be reserved in any contract so let the right of the city council in case of the improper construction of such work, to suspend work thereon at any time and to relet the contract therefor, or to order a reconstruction thereof, or of any part thereof improperly done.

§ 5. PART PAYMENTS—AMOUNT RESERVED.] In case the contractor to whom any such contract shall be let shall properly perform the work therein designated, the city council may from time to time in their discretion as the work progresses, pay to such contractor upon an estimate made by the city engineer of the amount already earned thereunder, sixty per cent. of the amount shown by such estimate to have been so earned.

§ 6. METHOD OF PAYMENT—BONDS.] For the purpose of paying for the construction of such sewers the city council shall provide as follows:

First. The city council shall forthwith upon the letting of any contract under the provisions hereof create, by appointment of three persons from among the citizens of such city, a "special sewerage assessment committee," who shall each file with the city auditor a written acceptance of such appointment and also take and subscribe in writing an oath to faithfully and impartially discharge the duties of his position as a member of such committee, which oath shall also be filed with the city auditor, and one of such three persons shall be designated by the city council as the chairman of such committee. The city council may from time to time as occasion may require make new appointments to such committee to fill any vacancy arising therein from death or any cause, and to substitute in case of neglect or refusal to act of any person so appointed.

Second. It shall be the duty of such committee to personally inspect any and all lots and parcels of land fronting or abutting upon the work contracted for, as hereinafter set forth, or benefited thereby, and thereupon assess against all such lots and parcels of land, which will in the opinion of such committee be specially benefited by the construction of such system of sewerage, a special assessment in a sum not exceeding such benefit. Whenever such assessment is made and completed as to all the lots, parts of lots or parcels of land to be benefited by the work under any one contract, the said committee shall make or cause to be made a complete list thereof, setting forth the several tracts so assessed and the amount assessed against each, and cause the same to be published once in each of three consecutive weeks in the official newspaper of the city, together with a notice of the time and place, when and where such committee will meet to hear any and all objections which shall be made to any such assessment by any owner

or occupant of a tract so assessed, or other person interested in such assessment, or his or their agent or attorney, and thereupon alter or affirm the same as may in the opinion of the committee be just in the premises. The committee shall then deposit such assessment list with the auditor, who shall forthwith cause the same to be again published once in each of three consecutive weeks in the official newspaper of the city, with a notice to the persons interested that at the next regular meeting of the city council after the expiration of the time of publication of such notice, giving the date thereof, appeals from the decision of such committee in relation thereto will be heard and determined by the city council; *Provided*, That for any sewer constructed upon petition as provided in Section I of this act, only the lots abutting on that portion of the street in which such sewer is to be constructed shall be assessed therefor.

Third. At such meeting of the city council any person aggrieved by the determination of such committee in regard to any such assessment, and who appeared in person or by his agent or attorney before such committee as hereinbefore provided, if a resident of the city, and all non-resident owners of any property so assessed, whether they appeared before such committee or not, may appear before the city council and present their reasons why the action of such committee should not be affirmed by the city council, and the city council shall then hear and determine such appeals and objections, if any, and may alter or affirm the action of such committee in relation thereto as to the city council may seem just in the premises; and shall thereupon cause such list so altered to conform to their action, if any such alteration be made, to be certified as correct by the city auditor and filed in his office.

The city auditor in case no bonds shall have been issued to provide funds for the payment of the construction of said system of sewerage or of said sewers, shall at the times he shall certify to the county auditor of such county the amount of city taxes to be levied for the current year, also certify to such county auditor a list of the lots or tracts of lands assessed for sewer purposes under the provisions of this act, with the whole amount of such assessment, and the county auditor of such county shall extend the same upon the tax roll for the current year and it shall be collected and paid over in the same manner as other city taxes. And when so paid over to the city treasurer shall be credited by said treasurer and the city auditor to the sewer fund and shall be kept by the city treasurer separate and apart from all other funds, and shall be applied to no other purpose whatever than the payment of the construction of the said system of sewerage or sewers, for which the same was assessed, and the city council may direct warrants for such payment to be drawn on such fund in the amount of such assessments before the same are actually collected.

In case bonds shall have been issued for the purpose of raising funds to pay for the establishment, construction and maintenance

of such system of sewerage or of such sewers, the city auditor shall divide the total amount of such assessment into as many parts as said bonds have years to run, and shall annually at the times he shall certify to the county auditor of such county the amount of city taxes to be levied for the current year, also certify to such county auditor a list of the lots or tracts of land assessed for such system of sewerage or such sewers for payment of which such bonds shall have been issued with the amount of one of such parts of such assessment to be collected for the current year, and the county auditor shall extend the same upon the tax roll for the current year, and collect and pay over the same in the same manner as other city taxes.

Fourth. The said committee and the city council upon meeting at the time specified in the printed notices hereinbefore set forth, may adjourn from day to day but not otherwise, until the work of the revision of such list and the determination of said appeals are by them respectively completed, and the chairman of such committee and the presiding officer of the city council shall have power to administer oaths to witnesses whom any party interested may desire to have testify in relation to matter so being considered by such committee and by the city council, and in the interest of the city; the presiding officer of the city council may issue subpoenas for witnesses to testify on behalf of the city, but no appeal shall lie from the decision of the city council to any other tribunal and no objection to any such assessment shall be considered by the city council unless the same objection shall have been first raised before said committee, except in case of non-residents as hereinbefore provided; *Provided, however,* That this restriction shall not apply to the correction of obvious mistakes or clerical errors.

§ 7. SPECIAL ASSESSMENT COMMITTEE—APPOINTMENT—DUTIES.] The city council for the purpose of raising funds to pay for the establishment, construction and maintenance of such system of sewerage or of such sewers, and for the purpose of constructing or purchasing waterworks, and for furnishing a supply of water to the inhabitants of such city, shall have power to issue the bonds of the city to an amount not exceeding 4 per centum upon the assessed value of the taxable property of such city, as determined by the last preceding assessment, payable in not to exceed twenty years from the date thereof, drawing interest semi-annually at the rate of not exceeding 7 per cent. per annum, payable either in New York City or in the city issuing the same, and which shall be signed and executed as provided in the article on special assessment of the said act; *Provided,* That at no time shall there be bonds outstanding or unpaid more than an amount equal to 4 per cent. of the assessed valuation of the taxable property of such city as determined by the last preceding assessment, and such bonds shall not be negotiated for less than one hundred (100) cents on the dollar.

§ 8. LEVY AND COLLECTION OF TAX.] Whenever any such bonds shall have been issued for sewer purposes, the city council shall also in each year at the same time as may be required by law to levy other taxes, levy an annual tax upon all property, real and personal, within the city, upon the basis of the last general assessment of the city in such amount as may be necessary, together with the proceeds of such special assessment to provide for the payment of the annual interest on said bonds and to create a proper sinking fund for the payment of the principal thereof when due, and such tax shall be levied as other city taxes are levied and shall be certified to the county auditor of the county with and in the same manner as other city taxes and shall be collected, enforced and paid over in the same manner as other city taxes.

§ 9. SEWER BOND SINKING FUND—METHOD OF INVESTMENT.] Whenever such bonds shall have been issued for the raising of funds to pay for the establishment, construction and maintenance of such system of sewerage or of such sewers, the proceeds of such special assessment for the sewers for which such bonds are issued and of such annual tax when paid over to the city treasurer shall be credited by said city treasurer and the city auditor to the sewer bond sinking fund; *Provided, however*, that whenever there shall be one thousand dollars or more of such funds in the hands of the city treasurer over and above the amount which shall then be needed to pay the interest on said bonds for the then current year, the city council may by a two-thirds vote thereof authorize the investment of such amount in excess of that required for the payment of interest, in such security or securities as will in the opinion of the city council be safe and readily convertible into cash, and as will secure to said city on the amounts so to be invested interest at the rate of not less than 5 per cent. per annum; or by a like vote may authorize the negotiation and redemption before due of any such outstanding bonds on such terms as will in the opinion of the city council best subserve the interests of the city.

§ 10. PAYMENT OF INTEREST.] Out of the revenue thus to be derived the interest upon said bonds shall be promptly paid when due and the principal thereof be promptly paid at maturity of said bonds.

§ 11. METHOD OF EQUALIZATION WHEN ASSESSMENT HELD VOID.] Whenever any action or proceeding shall be commenced and maintained before any court to prevent or restrain the collection of any special assessment or part thereof, made or levied by municipal officers of any city, town or village, organized under and by virtue of a special act or charter, or under and by virtue of the general law of the State of North Dakota, for the improvement of its public streets by construction of sidewalks, grading or paving the same, or the construction of sewers or the extension of water mains, or for any other purpose authorized by law, and whenever any action or proceeding shall be commenced and

maintained as aforesaid to vacate or set aside any sale of real estate under such special assessment or to cancel any tax certificate or deed given under such sale, and such assessment shall be held to be void by reason of non-compliance with this act, the court shall determine the true and just amount which the property attempted to be so assessed by said special assessment should pay to make the same uniform with other special assessments for the same purpose (and the amount of such assessment as the same appears on such list shall be *prima facie* evidence of such true and just amount) and judgment must be rendered and given therefor against the party liable for such special assessment without regard to the proceedings had for the levy thereof, and such judgment shall be a lien upon the property upon which special assessment should have been levied, and the lien of such judgment shall be enforced by the court in such action.

§ 12. REPEAL.] All acts or parts of acts in conflict with this act, and especially Chapter 30 of the Laws of 1889, entitled "An act to facilitate the collection of special assessments in cities, towns or villages," are hereby repealed.

§ 2. EMERGENCY.] Whereas, An emergency exists in this, that there is no means provided by law for the construction of sewers in cities which have no constitutional power to issue bonds; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved, March 6, 1893.

CHAPTER 37.

[H. B. No. 217.]

PERMITTING DISCHARGE OF SEWERAGE INTO RIVERS.

AN ACT to Authorize Cities to Empty Sewerage Into Rivers Within This State.

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

§ 1. DISCHARGE OF SEWERAGE—PROVISO.] It shall be lawful for any city within this State to empty its sewerage into any river; *Provided*, That where a dam is located within the corporate limits of any city, the sewerage shall in all such cases be emptied below such dam.

§ 2. REPEAL.] All acts or parts of acts in conflict with this act are hereby repealed.

Approved, March 6, 1893.