

DRAINS.

CHAPTER 55.

[H. B. No. 241.]

CONSTRUCTION AND MAINTENANCE OF DRAINS.

AN ACT to Provide for the Establishing, Constructing and Maintaining
Drains in this State.

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

§ 1. DRAINS MAY BE ESTABLISHED—WHEN.] Water courses, ditches and drains for the drainage of swamps, marshes and other low lands may be established, constructed and maintained in the several counties and townships of this State whenever the same shall be conducive to the public health, convenience or welfare, under the provisions of this act. The word drain when used as a noun in this act shall be deemed to include any natural water course open or proposed to be opened and improved for the purpose of drainage, and any artificial ditch or drain proposed and constructed for such purpose.

§ 2. COUNTY DRAIN COMMISSIONERS, HOW APPOINTED.] The board of county commissioners of any organized county in this State shall have power and are hereby authorized at any regular or special meeting by a vote of a majority of all the members elected to appoint, on petition of any person interested, three freeholders of said county as a board of county drain commissioners for such county, which board shall hold office for two years, and the board of county commissioners may in like manner remove, for cause, any or all of such drain commissioners. In case of a vacancy on said board the same shall be filled by appointment by the county auditor and district attorney, or if the board of county commissioners be in session, by such board, and the person so appointed shall hold his office until the next regular meeting of the board of county commissioners.

§ 3. OATH AND BOND OF COMMISSIONERS.] Any person so appointed a member of the board of county drain commissioners shall, within ten days after such appointment, take, subscribe and file with the county auditor an oath to faithfully perform the duties of a drain commissioner under the law, and shall within the same time make, execute and file with such auditor a bond to the board of county commissioners, with sureties to be approved by the auditor, and in the penal sum ordered by the board, con-

ditioned for the faithful discharge of his duties under this act and the orders and resolutions of the board of county commissioners in relation to his actions as such drain commissioner.

§ 4. DRAINAGE IN MORE THAN ONE COUNTY—PROCEEDINGS.] Whenever it may be desired to construct a drain affecting lands lying in more than one county an application signed by at least three freeholders of each county may be presented to the district court of either county, and such court may appoint a special drain commission of three members for the particular drain applied for who shall have power to establish, open and construct a drain, pursuant to such application, in the same manner that the board of county drain commissioners are authorized to do under this act. Such commissioners shall be sworn to faithfully discharge the duties of such special drain commission, and they shall make return of their doings in the same manner that county drain commissioners are required to do, and the full record of such drain shall be made in the county in which the application may be made, and the special commissioners, when required, shall be appointed by the district court of such county. The persons signing the application shall be liable for costs and expenses in the same manner that persons signing an application to a board of county drain commissioners are made liable under Section 6 of this act.

§ 5. PRELIMINARY PROCEEDINGS AND SURVEY.] Application for the construction of any drain except as provided in the last preceding section may be made in writing to any board of county drain commissioners, under the provisions of this act, by any five or more freeholders residing in any one or more townships in which such drain, or the lands to be drained thereby, may be situated. Upon the filing of such application, the board of county drain commissioners shall, as soon as practicable, proceed to examine, personally, the line of the proposed drain, and if in their opinion it is necessary and for the good of the public that the application should be granted, they shall, as a further means of determining the necessity and practicability thereof, cause a survey and measurement of the line of the proposed drain to be made by a competent surveyor, and he shall establish the commencement and terminus and shall determine the route, width, length and depth thereof, and for the purpose he may enter upon any land traversed by any route of such drain, or in anywise connected with the purpose of the proceeding. Such survey shall comprehend plans and specifications of proposed drain, and estimate of cost thereof, a map or plat of the lands to be drained and shall have noted thereon the regular subdivisions of the lands to which they belong and of which they form a part, which plans, specifications and estimates and maps shall be filed in the office of the county auditor of the county or counties traversed by such ditch or drain subject to inspection. In locating a public ditch or drain, the board of county drain commissioners may, under the advise of the surveyor, vary from the

line described in the petition as they deem best; *Provided*, They commence the ditch at or near the point described in the petition and follow down the line therein described as near as practicable. In all cases in which the route proposed is along highways already established, the commissioners shall locate the ditch at a sufficient distance from the center of such highway, to admit of a good road along the central line thereof. The earth taken from the ditch shall be so placed upon the roadway as to form a turn-pike and no nearer to the margin thereof than two feet, but in locating a drain as above, the commissioners shall not materially depart from the terminal points described in said petition. When there is not sufficient fall in length in the route described in the petition to drain the lands adjacent thereto, they may extend the ditch below the outlet named in the petition far enough, not exceeding one-half mile, to obtain a sufficient fall and outlet, and when it will not be detrimental to the usefulness of the whole work, they shall as far as practicable locate the ditch on the dividing lines between lands owned by different persons, and they shall as far as practicable avoid laying the same diagonally across the lands, but they must not sacrifice the general utility of the ditch to avoid diagonal lines, and all persons whose lands may be affected by said ditch may appear before said commissioners and fully express their opinions upon the matters pertaining thereto.

§ 6. APPLICANTS LIABLE FOR COSTS, WHEN DRAIN FOUND NOT NECESSARY.] If upon such examination and survey, or upon the finding of special commissioners or upon decision in the district court as hereinafter provided, it shall appear that there was not sufficient cause for making such application, the applicants shall be jointly and severally liable to the board of county drain commissioners for the amount of all costs and expenses incurred by the proceedings, to be recovered at the suit of such board in an action before any justice of the peace of the proper county; but if the commissioners shall determine that such drain is necessary and practicable they shall establish the same as hereinafter provided.

§ 7. DISTRICT COURT, HEARING IN—WHEN, NOTICE.] If, within twenty days after such determination, all of the persons on whose lands the proposed drain is to be placed shall not have executed a release of right of way and all damages on account thereof, the board of county drain commissioners shall appoint a time and place of hearing upon the application, which shall not be less than ten nor more than twenty days thereafter, and shall immediately make application to the district court of the county to ascertain the necessity for such drain and for taking private property for the use and benefit of the public for the purpose thereof, and the just compensation to be made therefor. Such application shall be made in writing and shall describe the drain and the route and dimensions thereof, according to the survey, and shall state the facts which constitute the public necessity therefor and shall also state the time and place of hearing upon the application for

such drain. The court to whom such application is made shall at once appoint a time for hearing and considering the same, and shall issue a citation to all persons whose lands are traversed by such drain to appear at the time appointed and be heard with respect to such application, if they desire to do so, which citation shall be annexed to a copy of the commissioners' application to the court and served in like manner with other process of the said court.

§ 8. SERVICE OF CITATION.] The citation required by the last preceding section shall be served on all persons whose lands are traversed by the drain who are known and who reside within the township in which any such lands are situated, or upon the occupants of such lands, in writing, at least five days before the days of hearing, by delivering a copy to such persons or by leaving a copy at the residence of such persons, with some person of suitable age, and if any such owners are minors or are insane or otherwise incompetent, or if such lands are non-resident, such citation and application shall be served upon the legal representative of such persons or upon the agent of such non-resident land owners, residing within the limits aforesaid; but if no legal representative or agent shall there be found, such citation and application shall be posted in not less than three of the most public places in each township in which unrepresented lands may lie, at least ten days before the day of hearing. In case of personal service, at least five full days shall intervene, inclusive of the day of service and day of hearing, and in case of notice by posting, at least ten full days shall in like manner intervene. The court issuing such citation shall require proof of its service by affidavit, or if such citation be served by a duly qualified officer, then by his return showing the manner of such service.

§ 9. HEARING—JURY—DECISION—APPEAL.] The hearing upon said application may be had in term time or out of term time unless a jury be in attendance on the court of at least twenty-four disinterested persons; the court shall cause to be summoned from the county twenty disinterested persons with the qualifications of jurymen, from whom shall be selected in the manner provided by law for the selection of jurors in civil cases twelve men, who shall constitute a jury for the determination of the questions presented by such application. The person or persons interested in the property sought to be taken or damaged may answer such application and may waive a jury trial, but unless such trial be so waived, the trial must be by jury and the jury shall determine:

First. Whether such ditch will be conducive to the public health, convenience or welfare.

Second. Whether the route thereof is practicable.

Third. Amount of damages allowed to any person or persons or corporations.

And the court shall enter the proper judgment thereon. The damages allowed shall be irrespective of the benefits which the

particular parcel of land will receive by the construction of such ditch, but such land shall be assessed for such benefits. The costs of all such proceedings shall be paid out of the fund raised for the purpose of constructing such ditch if the construction of the same be ordered. If no ditch is established such costs shall be paid by the county. Any party aggrieved may appeal from the judgment of the district court as in civil cases, and upon such appeal costs may be awarded in the discretion of the court. In case of a finding by the jury adverse to the establishment of such drain, no other applications for the same object shall be entertained within one year.

§ 10. DAMAGES — BETTERMENTS — OFFSET OF — TAXES.] An order drawn by the board of county drain commissioners on the treasurer of the proper county for the amount of any damages awarded from the location and construction of the said drain and tendered to the person entitled to such damages shall be deemed a sufficient security for the amount thereof. If the owner of any lands upon which any damages may be awarded be unknown, and such lands be not occupied, an order for the amount therefor shall be drawn, payable to the owner of the description of land upon which such damages were awarded, describing such lands by their legal subdivision in such order, which order shall be delivered to the county auditor to be held by such auditor, to be delivered to the owner of such lands when called for, or otherwise lawfully demanded, and the same shall thereby be deemed lawfully tendered to the owner of such lands; *Provided*, The amount chargeable against such lands on account of the cost of construction of the drain, if less than the damages, shall apply in payment of the damages, and if equal to or more than such damages, the same shall apply to the full amount thereof, and for the purpose of accuracy in keeping the account, the board of county drain commissioners shall furnish to the county treasurer, or other officer having the collection of the drain tax, a memorandum of the amount of the damages, and such treasurer or other officer shall credit the amount thereof upon the tax when he receives the tax roll, or so much thereof as may be equal to the tax, and such memorandum shall be a voucher for so much money as paid by such treasurer, and shall be allowed him on settlement.

§ 11. ASSESSMENT FOR COST OF CONSTRUCTION AND MAINTAINING.] Upon the release of the right of way or upon the determination and award of special commissioners, no appeal being taken, or if appeal having been taken, the district court affirms the necessity for the ditch, the board of county drain commissioners shall make their order establishing the drain, and they shall give the same a name by which it shall be recorded and indexed; they shall also assess the per cent. of the cost of construction and maintenance of such drain which any township, city or village shall be liable to pay by reason of the benefit of such drain to the public health, or as to the means of improving any public highway, and

they shall assess the benefits to accrue to the roadbed of any railroad or turnpike by reason of the construction of such drain, and they shall assess proportionately the benefits to accrue, either directly or indirectly, to any piece or parcel of land by reason of the construction of such drain, whether such lands be immediately drained by the said ditch or whether they can be drained only after the construction of other and connecting ditches, but such assessment shall be subject to review by the commissioners upon the request of parties in interest, at or before the time of letting the contracts for the construction of such drain.

§ 12. COMMISSIONERS TO MAKE RETURN TO COUNTY AUDITOR.] Upon the establishment of any drain and the assessment of benefits as provided in the last preceding section, the board of county drain commissioners shall make return thereof to the county auditor, and the auditor to whom such return is made shall record the same in a book to be provided for that purpose. Such return shall contain the application for the drain, or a copy thereof, the minutes of the survey, signed by the surveyor, and the release of right of way where the same has been released, together with the board of county drain commissioners' minutes of their doings in the premises, their order establishing the drain and the assessment of benefits; and where special commissioners have been called the return shall also contain the application to the judge of the district court for the appointment of such commissioners, with the citation and proof of service, and a certificate of their appointment, or copies thereof, with their determination and award; *Provided*, That the return required by this section shall not be made until after a review of the assessment as provided by the last preceding section.

§ 13. CONTRACTS FOR CONSTRUCTION—LETTING OF.] Upon the establishment of any drain, as hereinbefore provided, the board of county drain commissioners shall, without delay, proceed to divide the route thereof into convenient sections for the purpose of construction, and shall make diagrams of the same, with specifications of the width of excavation at the bottom, slope of sides, and other things necessary to be done in the opening and construction of such drain, and they shall set stakes not more than forty rods apart, along the center line of such drain, and indicate distinctly on each stake the number of the division from the point where such drain begins and the depth thereof at the upper end, and the fall at each point where such stakes are placed from stake to stake throughout the whole length of such drain. The board of county drain commissioners shall give at least ten days' notice of the time when and of the place where they will meet parties for the purpose of letting contracts for such construction. Such notice shall be published in one or more newspapers of general circulation in the county and by printed handbills, not less in number than five in each township interested in such drain, to be posted at such points as will be likely to secure the greatest publicity for such notice. Such notice

shall also state that at the time and place of such letting of contracts the assessment of benefits will be subject to review.

§ 14. HEARING ON ASSESSMENT AND LETTING OF CONTRACT.] At the time and place appointed, the drain commissioners shall proceed to hear all complaints relative to such assessment and correct the same, and let contracts for the construction of such drains, by sections, as they shall have apportioned the same, and they shall let such contracts to the person who will do the work according to the specifications for the least sum of money, and who will give adequate security for the performance of the same within such time as the contracts shall specify. The commissioners may adjourn such letting in whole or in part, and from time to time to such other time or place to be by them at the time of such adjournment publicly announced, as shall to them seem proper, but not in all more than sixty days from and after the time of the letting as first advertised, and they may reserve the right to reject any or all bids. The parties who are to be assessed for the construction of such drain and who may be bidders for contracts thereupon, shall, if equal bidders with other parties, be preferred in the awarding of such contracts.

§ 15. COST OF CONSTRUCTION—HOW COMPUTED.] Upon the letting of such contracts the commissioners shall make a computation of the cost of such drain, which shall include all the expense of locating and establishing the same, including the drain commissioner's fees, cost of survey, and fees and expenses of the special commissioners, advertising and all other expenses, the amount of damages awarded by the special commissioners and the amount of contracts, and in case contracts shall not have been let for the construction of the whole of such drain, the board of county drain commissioners shall estimate the cost of the unlet portion, predicating their estimate so far as may be upon the cost of those portions that have been let. They shall add the whole in a gross sum, and shall add thereto ten per cent. to cover contingent expenses; delinquencies and any extra charges that may accrue, and the sum thus ascertained shall be the cost of construction of such drain.

§ 16. APPORTIONMENT OF ASSESSMENT—HEARING THEREON.] The board of county drain commissioners shall apportion to each township, city or village benefited by such drain from sanitary or other considerations, the amount chargeable against such municipality on account of the construction of such drain, according to the per cent. which, by Section 12 of this act, they are required to fix and determine, and they shall apportion the balance of the cost of construction upon the lands to be benefited by such drain, and assess the amount to be paid on each description of land in proportion to the benefits it receives from such drain. They shall make a list showing such apportionment and assessment and shall serve a copy thereof upon the clerk of each township or upon the clerk of any city or village against which any sum is assessable or

in which any lands are situated that are assessable under such apportionment, and the amount assessable upon any such township, city or village shall be levied as part of the township tax for the year, and the amount assessable upon any description of land shall be assessed and levied against such land by the assessing officer as drain taxes, naming the particular drain for the construction of which the same is assessed. The amount of drain taxes apportioned against each description of State lands shall be certified to the State Auditor, who shall draw his warrant on the State Treasurer therefor, and the amount shall be forwarded to the county treasurer, to be credited to the proper fund, and no patent shall issue for such lands until such drain taxes are paid. Within two days after the service of such notice as aforesaid, the board of county drain commissioners shall appoint a time and place of such apportionment and assessment and shall give notice thereof by a notice which with such apportionment list, must be published once in each of two consecutive weeks in a newspaper of general circulation printed and published in said county, and on the day mentioned in such notice such commissioners shall meet and hear all complaints on such apportionment and assessment and correct and confirm the same, and the said list shall thereupon be filed in the office of the county auditor in which such lands, cities, towns and townships are located, and shall constitute the assessment roll of such drain. Said commissioners may adjourn from day to day and if a quorum be not present less than a quorum may adjourn such meeting.

§ 17. DISPOSITION OF DRAIN TAXES.] In case of drains established by the board of county drain commissioners, the drain taxes, when collected, and all moneys received on account of State lands shall be returned to the county treasurer, and all moneys so collected or returned shall be credited to the drain fund to which they belong, and such county treasurer shall be the treasurer of such drain fund. Orders drawn by the drain commissioners in payment for the construction of any drain shall be payable from the proper drain fund and shall be receivable for the taxes levied for the construction of such drain by the county treasurer or by the State Treasurer, as the case may be.

§ 18. DELINQUENTS—PROCEEDINGS RELATIVE TO.] If the taxes levied for the construction of any drain are not collected, the land upon which they are levied shall be returned in a separate return as delinquent, at the same time and manner as lands are returned for other taxes, and such taxes may be paid to the county treasurer, with 7 per cent. interest and cost of advertising, at any time before sale, as hereinafter provided. And a list of such uncollected taxes shall be returned to the Treasurer of this State for the information of non-resident owners, but no application to pay the same at the Treasurer's office shall relieve the county treasurer from interest and charges, and if paid to the State Treasurer,

he shall immediately forward his warrant for the amount thereof to the county treasurer.

§ 19. DELINQUENT DITCH LANDS—SALE OF.] If such taxes, interest and costs are not paid, the county treasurer shall advertise and sell the lands against which the same are levied as delinquent ditch lands, at the same time, place and manner as lands are advertised and sold for other taxes, and he shall give certificates to purchasers at such sales as in other cases, and the owners of the lands or persons interested may redeem such lands as in other cases, at the county treasurer's office, and within the same time, with 10 per cent. interest and cost of advertising and twenty-five cents for the certificate, to the treasurer, and if the lands so returned shall not be sold at public sale, those remaining may be purchased at private sale at any time and certificates of sale given to purchasers in like manner as in case of public sales, and they may be in like manner redeemed, with interest and costs, within one year from sale.

§ 20. DELIVERY OF DEEDS—WHEN.] The lands so sold at public or private sale, if not redeemed within one year after such sale, shall be conveyed to the purchaser or his assigns by deed from the county treasurer, on surrender of the certificate of sale, and the same may be recorded and admitted in evidence in all courts, with the same force and effect as tax deeds in other cases.

§ 21. HOMESTEADS, ETC., LIABLE TO ASSESSMENT.] Persons occupying lands or holding title thereto under any pre-emption or homestead law shall be liable for any drain taxes assessed under the provisions of this act against lands so occupied or held. No amount exceeding 25 per cent. of the assessed valuation of any piece of property shall be assessed against such property under this act. The taxes assessed upon any lands under the provisions of this act, shall be and are hereby declared to be a perpetual lien upon such lands, to remain such until such taxes, with all lawful costs, interest and charges, are fully paid or otherwise legally discharged.

§ 22. FURTHER ASSESSMENT, WHEN MADE—COLLECTION.] In case the amount realized from the assessment made for the construction of any drain shall not be sufficient to complete such drain, and to pay fees and all incidental expenses, or in case of an enlargement or deepening of such drain, or an extension of the line thereof becomes necessary, a further assessment shall be made to meet the deficit or additional expense, and the amount thereof shall be levied and collected in the manner hereinbefore provided.

§ 23. RELETTING OF CONTRACT—FORFEITURE.] The board of county drain commissioners shall have power to grant a reasonable extension of time for the completion of any contract. When any contract shall not be finished within the time specified, or to which it may be extended, the board of county drain commissioners may in their discretion, or at any time thereafter, relet

such unfinished portion or any part thereof, by public sale or otherwise after not less than five days' public notice thereof, to the lowest responsible bidder or bidders, and shall take security as before. The cost of completing such parts over and above the contract price, and the expense of notices and reletting shall be collected by the board of county drain commissioners of the parties at first contracting; *Provided*, That in no case shall the board of county drain commissioners forfeit and annul a contract without ten days' notice to the contractor, if found, and if not found, then by written notice left at his last place of residence, if known to be within the county.

§ 24. POWERS OF COMMISSIONERS—TO INCLUDE WHAT.] The powers conferred by this act for establishing and constructing drains shall also extend to and include the deepening and widening of any drains which have heretofore been or may hereafter be constructed; also to straightening, clearing out and deepening the channels of creeks and streams, and the construction, maintaining, remodeling, and repairing of levees, dykes, and barriers for the purpose of drainage, and the board of county commissioners may relocate or extend the line of any drain if the same be necessary to provide a suitable outlet, and shall cause a survey thereof to be made; but no proceedings affecting the rights of persons or property shall be had under this section except upon notice, hearing, and award prescribed in this act for the construction of drains in the first instance.

§ 25. DRAINS AT STATE EXPENSE—PROCEEDINGS.] In any case where a State ditch or drain may have been or may hereafter be established and partly constructed by means of lands or other State appropriations, but left uncompleted, the same if situated within any one county shall be under the jurisdiction of the board of county drain commissioners of such county. If any such drain be situated in more than one county, the county commissioners of the counties in which situated may appoint a special board of drain commissioners to whom such drain shall be assigned. Any drain thus assigned shall be deemed to be established, and the board of drain commissioners having charge thereof shall proceed to its completion in the same manner as provided by this act for the establishment of other drains. In case an extension of any such drain becomes necessary, the same proceeding shall be had as in establishing a drain in the first instance, but no application therefor shall be required.

§ 26. DRAINS, CONNECTED WITH ROADS OR RAILROADS—OBSTRUCTIONS—CULVERTS.] Drains may be laid along, within the limits of, or across any public road; and when so laid out and constructed, or where any road shall hereafter be constructed along or across any drain, it shall be the duty of the board of county commissioners or township supervisors, as the case may be, to keep the same open and free from all obstructions. A drain may be laid along any railroad when necessary, but not to the injury

of such road, and when it shall be necessary to run a drain across a railroad, [it shall be] the duty of such railroad company, when notified by the county drain commissioners to do so, to make the necessary opening through said road, and to build and keep in repair a suitable culvert.

§ 27. BRIDGE—CULVERT—EXPENSE OF.] When any drain crosses a highway, the cost of constructing the necessary bridge and culvert shall be charged in the first instance as part of the cost of constructing such drain, after which such bridge and culvert shall be maintained as part of the highway. There shall be constructed at least one bridge or passageway over each drain where the same crosses any enclosed field or parcel of land and the cost of construction thereof shall be charged as part of the cost of construction of such drain, and such bridge or passageway shall be maintained under the authority of the board of county commissioners or township supervisors, as the case may be, and the necessary expense thereof shall be deemed a part of the cost of keeping such drain open and in repair; *Provided*, That the board of county commissioners may contract with the owner or occupant of land crossed by any drain to keep such drain and the necessary passage way therefor open and in repair across and upon such land at an annual cost not to exceed four (4) cents per rod.

§ 28. BLIND DRAINS—REDUCTION OF DAMAGES.] Blind drains may be constructed by the use of drain, tile or sewer pipe, where the nature of the ground will admit of so doing, and where such drains may be constructed across any land so that the surface of the land can be restored, the commissioners, in making their award, shall take that fact into account in the reduction of damages. Where blind drains are constructed, the entrance shall be protected from drift-wood and other debris.

§ 29. EXISTING DRAINS—RECORD OF.] All drains regularly established, opened or constructed, under existing provisions of law, shall be deemed legal drains, and it shall be the duty of all boards of county commissioners, in cases where the record of any drains may not have been preserved, to see that such record is made in the best manner practicable in the office of the county auditor.

§ 30. ERROR OR INFORMALTY NOT TO VITIATE PROCEEDINGS—DUTY OF COURT.] The collection of no tax or assessment levied or ordered to be levied to pay for the location and construction of any drain laid out and constructed under this act shall be perpetually enjoined or declared absolutely void in consequence of any error of any officer or board in the location and establishment thereof, nor by reason of any error or informality appearing in the record of the proceedings by which any drain shall have been located and established, nor for want of proper release or condemnation of right of way, but the court in which any proceeding is now pending or may hereafter be brought to reverse or to declare

void the proceedings by which any drain has been located or established or to enjoin the tax levied to pay for the labor and costs and expenses, shall, if there be manifest error in said proceedings, set the same aside and allow the plaintiff in the action to come in and show wherein he has been injured thereby. The court shall, on application of either party, appoint such person or persons to examine the premises, or to survey the same, or both, as may be deemed necessary; and the court shall, on a final hearing, make such an order in the premises as shall be just and equitable, and may order such tax to remain on the roll for collection, or order the same to be re-levied, or may perpetually enjoin the same or any part thereof, or if the same shall have been paid under protest, shall order the whole or such part thereof as may be just and equitable, to be refunded, the costs of said proceedings to be apportioned among the parties as justice may require.

§ 31. DRAINS UNDER CONTROL OF COUNTY COMMISSIONERS—EXPENSE OF MAINTAINING.] All drains that may have been constructed under and by virtue of any law of this State, or that may be constructed under the provisions of this act and situated in this State, shall, except as otherwise provided, be under the charge of the board of county commissioners and their successors in office, and to be by them kept open and in repair. In all cases where any completed drain is or may be situated in more than one county, and in all cases where any State ditch or drain may have been established and constructed, the care of the portion thereof lying within any county is hereby assigned to the board of county commissioners of such county to be by them kept open and in repair. The cost of such keeping open and in repair shall in all cases be assessed, levied and collected and in the same manner as is provided in this act for the construction of drains in the first instance, and in cases where no assessment of benefits shall have been made the commissioners having charge of or to whose care such drain may be assigned, shall make such assessment.

§ 32. RULES AND REGULATIONS.] The board of county commissioners of any county may make rules and regulations on the subject of drainage within such county that they may deem proper, not inconsistent with the provisions of this act, and especially with regard to clearing out and keeping clear the channels of streams and the construction and maintenance of dams thereupon, with reference to their capacity for drainage, and may require of the owners of such dams reasonable service in clearing and keeping such streams clear as a consideration and for the right to erect dams thereupon.

§ 33. REPORT OF DRAIN COMMISSIONERS.] Each board of county drain commissioners shall make report to the board of county commissioners of all drains constructed, finished or begun and shall also render a full financial account and vouchers in each case; and every drain commissioner shall be liable on his bond for

any misapplication of money coming into his hands as such commissioner. The report required by this section shall include an itemized statement of all expenses and disbursements on account of each and every drain, and the receipts of money on account thereof, and a debit and credit balance of each and every such drain.

§ 34. PER DIEM—FEES.] Drain commissioners shall receive for their services such amount, not less than two nor exceeding three dollars per day, for the time actually spent by them in performing the duties of their office, as may be fixed by the board of county drain commissioners. Publishers of newspapers shall receive for publishing legal notices and furnishing evidence of such publication the fees prescribed by law for legal advertisements.

§ 35. OBSTRUCTION—PENALTY.] If any person shall wilfully or maliciously remove any division stake set along the line of any drain laid out by and under the provisions of this act, or obstruct or injure any such drain, he shall for each and every such offense be subject to a penalty not exceeding ten dollars, together with such sum as will be required to repair such damage, and cost of suit, which penalty may be recovered in an action at the suit of the board of county commissioners before any justice of the peace of the proper county; whenever recovery shall be made and the same collected, it shall be deposited with the treasurer of the proper drain fund.

§ 36. DRAIN COMMISSIONER NOT TO HOLD OTHER OFFICE.] No person holding any State or county office shall be eligible to the office of drain commissioner, and drain commissioners accepting any such office shall thereupon be considered as having vacated the office of drain commissioner.

§ 37. MAY ADMINISTER OATH.] Drain commissioners shall have power to administer any oath required in any proceeding had before them or in which they may be called to act officially.

§ 38. ISSUE OF BONDS—TAX—SINKING FUND.] The board of county commissioners of each county wherein such ditch or ditches are proposed to be located and established are hereby authorized to issue the bonds of said county, in such sums as may be necessary for the purpose of defraying the expenses incurred or to be incurred in locating, constructing and establishing the same, said word "expenses" to be construed to mean and to cover every item of cost of said ditch, from its inception to its completion, and the said counties to be reimbursed as hereinbefore provided. Said bonds shall bear interest at a rate not exceeding 7 per cent. and shall be payable not exceeding twenty years from the date thereof, and the said commissioners shall provide a sinking fund for the payment of said bonds at maturity and for the payment of the annual interest on the same. The bonds issued under the provisions of this act shall be signed by the chairman of the board of county commissioners of said county, and countersigned by the county auditor, who shall keep a record of the bonds is-

sued under the provisions of this act. The said board shall have the power to negotiate said bonds as they shall deem best for the interest of said county; *Provided*, That they shall not negotiate the same at less than par value. All such bonds shall contain a recital that the same are issued in accordance with the provisions and pursuant to the authority of this act. Whenever such bonds shall be issued the tax and assessment hereinbefore provided for shall not be collected all in one year, but shall be divided into as many parts as such bonds have years to run, and one of such parts shall be extended upon the tax roll by the county auditor against the proper parcel of land in each and every year and collected in such year, and such fund shall constitute the sinking fund provided by this section, and the board of county commissioners shall in each year, at the time of levying the taxes, levy a tax sufficient to pay the annual interest on said bonds.

§ 39. REPEAL.] An act entitled "An act to enable the land owners of lands to drain and reclaim them, prescribing the powers and duties of county commissioners and other officers in the premises and to provide for the repair and enlargement of such drains," approved March, 1883, and all acts amendatory thereof and all other acts or parts of acts inconsistent with the provisions of this act are hereby repealed, saving all acts done, all rights acquired at the time this act shall take effect, and any proceedings had or begun under existing law may be carried forward and completed thereunder the same as they might have been had this act not been passed.

Law, by limitation, March 18, 1893.

EDUCATION.

CHAPTER 56.

[H. B. No. 58.]

REPEALING CONFLICTING AND OBSOLETE SCHOOL LAWS.

AN ACT Repealing Chapter 40 of the Political Code of 1877, Relating to Public Education; Chapter 14 of the Session Laws of 1879, Being an Act to Establish a Public School Law for Dakota Territory; Chapter 24 of the Laws of 1881, Being an Act to Empower School Districts to Issue Bonds for Building School Houses; Chapter 64, of the Laws of 1881, Being an Act to Amend an Act Entitled "An Act to Establish a Public School Law for Dakota Territory," Approved, February 22, 1879; Chapter 65 of the Laws of 1881, Being an Act to Amend Sections 8 and 29 of an Act to Establish a Public School Law for Dakota Territory, Approved,