

# DRAINS.

## CHAPTER 51.

[H. B. No. 65.]

### RELATING TO PUBLIC DRAINS.

AN ACT to Provide for the Establishment, Construction and Maintenance of Drains in This State.

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

§ 1. WHEN DRAINS MAY BE CONSTRUCTED.] Water courses, ditches and drains for the drainage of sloughs and other low lands may be established, constructed and maintained in the several counties 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 in this act shall be deemed to include any natural water course opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains constructed for such purpose.

§ 2. POWER OF COUNTY COMMISSIONERS—PETITIONS.] The board of county commissioners of any organized county in this State shall have power and are hereby authorized at any meeting of the board, by a majority vote of all the members to appoint on the petition of any person interested, three freeholders of the county, as a board of drain commissioners of such county, who shall hold office for two years, and until their successors are appointed and qualified. The board of county commissioners may remove for cause any or all of such drain commissioners, and in case of a vacancy may fill the same by appointment.

§ 3. OATH OF OFFICE—BOND.] Any person appointed as a member of the board of drain commissioners shall within ten days after his appointment take, subscribe and file in the office of the county auditor an oath faithfully to perform the duties of a drain commissioner under the law, and within the same time make, execute and file in such auditor's office a bond to the county with sureties to be approved by the auditor in such sum as shall be ordered by the board of county commissioners, conditioned for the faithful discharge of his duties as drain commissioner.

§ 4. PETITIONS IN WRITING—PLANS AND SPECIFICATIONS.] A petition for the construction of a drain may be made in writing to the board of drain commissioners, if among the leading purposes of the proposed drain are benefits to the health, convenience or

welfare of the people of any city or other municipality. The petition shall be signed by a sufficient number of the citizens of such municipality or municipalities to satisfy the drain commissioners that there is a public demand for such drain. If the chief purposes of such drain is the drainage of agricultural, meadow, grazing or other lands, the drain commissioners shall require that the petition be signed by the owners or legal representatives of such lands, as in the aggregate will, in the event of the construction of the drain, be liable to assessment for a major portion of the cost thereof, upon the presentation of a petition as hereinbefore provided, and filing of the same. The board of drain commissioners shall personally, as soon as practicable proceed to examine the line of the proposed drain and if in their opinion it is necessary and for the public good, they shall cause a survey of the line thereof to be made by a competent surveyor, who shall establish the commencement and terminus and determine the route, width, length and depth thereof. For the purpose of making examinations or surveys, the drain commissioners, surveyor and their employes may enter upon land traversed by any such proposed drain, or upon other lands when necessary, such surveyor shall prepare profiles, plans and specifications of the proposed drain, an estimate of the cost thereof and a map or plat of the lands to be drained, showing the regular subdivisions thereof, all of which shall be filed in the office of the county auditor of the county in which such drain is proposed to be constructed subject to inspection. In locating a drain the board of drain commissioners may under the advice of the surveyor vary from the line described in the petition as they deem best. When the line proposed is along highways already established the drain shall be located at a sufficient distance from the center of such highway to permit a good road along the central line thereof, when the length of the line described in the petition does not give sufficient fall to drain the lands sought to be drained, the board of drain commissioners may extend the drain below the outlet named in the petition far enough to obtain a sufficient fall and outlet. Drains shall as far as practicable be located on dividing lines between sections or regular subdivisions thereof, but the general utility of the drain must not be sacrificed to avoid crossing any tract of land in such direction as the drain commissioners find advisable. All persons whose land may be affected by any such drain may appear before the drain commissioners and fully express their opinions upon the matters pertaining thereto.

§ 5. COMMISSIONERS MAY DENY PETITION—WHEN.] If upon such examination and survey or upon the trial in the district court it shall appear that there was not sufficient cause for making such petition or that the proposed drain would cost more than the amount of benefit to be derived therefrom, the drain commissioners shall deny the petition, and the petitioners shall be jointly and severally liable to the board of drain commissioners for all costs

and expense incurred in the proceedings to be recovered by such board by action.

§ 6. RIGHT-OF-WAY.] The title to the right-of-way for the construction of any proposed drain, if not conveyed to the county by the owner, may be acquired in such manner as may now or hereafter be prescribed by law. Such right-of-way when acquired shall be the property of the county.

§ 7. ASSESSMENT OF DAMAGES—HOW MADE.] Upon the assessment by the jury, court or referee of the amount of damages to which the respective owners of the right-of-way to be used for the construction of any proposed drain are entitled, the board of drain commissioners shall assess the per cent. of the cost of acquiring the right-of-way in the manner provided in Section 9 of this act make a return to the county auditor, containing all that is required in Section 10 of this act, except an order establishing the drain and make, serve and file the list provided for in Section 14 of this act. Thereupon the board of drain commissioners may issue warrants in a sum sufficient to pay the damages assessed for right-of-way, drawn upon the proper county treasurer and payable out of any funds in the hands of the treasurer for the construction of the drain for which such right-of-way is sought to be obtained and shall negotiate the same at not less than the par value thereof and pay into court for the benefit of the owners of the right-of-way the amount to which each is entitled according to the assessment of damages, paying the surplus, if any, to the county treasurer, who shall place the same to the credit of the proper drain fund. If warrants are not issued, or if issued, cannot be negotiated, no further proceedings shall be taken until the special tax levied to pay for the right-of-way is collected and paid into the court for the benefit of the owners of the right-of-way.

§ 8. ASSESSMENT OF BENEFITS SUBJECT TO REVIEW.] Every assessment of benefits provided for in this act shall be subject to review and ten days notice of the time and place when and where such assessment will be reviewed by the drain commissioner shall be given in the manner provided in Section 11 of this act. At the time and place appointed the drain commissioners shall proceed to hear all complaints relative to such assessment and correct or confirm the same.

§ 9. ACCRUING BENEFITS.] Upon acquiring the right-of-way either by conveyance or proceedings in court, the board of drain commissioners shall make an order establishing the drain, give the same a name by which it shall be recorded and indexed, and assess the per cent. of the cost of constructing and maintaining such drain, which any county, township, city, village or town shall be liable to pay by reason of the benefits of such drain to the public health, convenience or welfare, and which any railroad company shall be liable to pay by reason of benefits to accrue to its property, and which any piece or parcel of land shall be liable to pay, by reason of benefits to accrue thereto, either directly or

indirectly, by reason of the construction of such drain, whether such lands are immediately drained thereby, or can be drained only by the construction of other and connecting drains, but such assessment shall be subject to review by the commissioners as hereinafter provided.

§ 10. COMMISSIONERS SHALL MAKE RETURN TO AUDITOR.] After the order establishing a drain, and the assessment of benefits have been made as provided in the last section, the board of drain commissioners shall make return thereof to the county auditor, who shall record the same in a book to be provided for that purpose. Such return shall contain the petition for the drain, or a copy thereof the minutes of the survey signed by the surveyor, conveyance of the right-of-way, if any, a copy of the judgment in the action to acquire the right-of-way, if any, together with the minutes of the doings of the board of drain commissioners in the premises, the order establishing the drain, and the assessment of benefits.

§ 11. MANNER OF LETTING CONTRACTS—NOTICE PUBLISHED.] Upon the establishing of the drain, as hereinbefore provided, the board of drain commissioners shall without delay divide the line thereof into convenient divisions for construction, make diagrams of the same with specifications of the width of excavation at the bottom, the slope of the sides, and such other matters as may be necessary for the proper construction of the drain, and set suitable stakes in such places as may be necessary to show the beginning and end of divisions and the number of the division and grade stakes to show the depth of cut at such intervals as may be necessary. Such board shall give at least ten days notice of the time when and the place where they will meet parties for the purpose of letting contracts for such construction. Such notice shall be published in some newspaper of general circulation in the county and printed notices not less than five in number shall be posted at such points in each township or municipality interested in such drain 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, unless such assessment has already been reviewed under the provisions of Section 8 of this act.

§ 12. COMMISSIONERS MAY DEFER LETTING OF CONTRACT.] At the time and place appointed the drain commissioners shall proceed to hear all complaints relative to such assessments, unless a hearing has already been had under the provisions of Section 8, of this act, and correct and confirm the same. Such commissioners shall then proceed to let contracts for the construction of the drain by divisions as they shall have divided the same, to the person who will do the work, according to the specifications, for the lowest price and give adequate security for the performance of the same within such time as the contract shall specify. The commissioners may adjourn such letting in whole or in part and from

time to time to such other time and place, to be by them at the time of such adjournment publicly announced, as shall to them seem proper and they may reserve the right to reject any and all bids. The parties who are to be assessed for the construction of such drain and who may be bidders for contracts thereon shall, if equal bidders with other parties, be preferred in the awarding of such contracts; *Provided*, That contracts for the building of the bridges and culverts mentioned in Section 20 of this act may be deferred, until the construction of the drain has reached such a stage of completion that the character of the bridges and culverts which will be needed can be determined. As soon as the character of such bridges and culverts can be determined such board shall cause plans and specifications of the bridges and culverts to be constructed in connection with such drain to be prepared and shall give at least ten days' notice of the time and place when and where they will meet parties for the purpose of letting contracts for such construction. Such notice shall be published in some newspaper of general circulation in the county. Such contracts shall be let to the lowest bidder as hereinbefore, in this section provided.

§ 13. GENERAL DUTIES OF COMMISSIONERS.] After the letting of such contracts or a major portion thereof the commissioners shall make a computation of the cost of such drain which shall include all the expenses of locating and establishing the same, including the costs of right-of-way, the drain commissioners' fees, costs of survey, costs of building bridges and culverts, interest on all warrants issued or to be issued by the board of drain commissioners on account of the drain, accumulated or to accumulate prior to the time when the tax levied or to be levied to pay for the right-of-way or construction of the drain is collectible by law and all other expenses and the amount of the contracts and in case contracts shall not have been let for the construction of the whole of the drain or of the bridges and culverts, the board of drain commissioners shall estimate the cost of such unlet portion and of the bridges and culverts predicating their estimate so far as may be upon the cost of those portions that have been let or upon similar work. The sum of all the costs and expenses incurred or to be incurred shall be the cost of the construction of the drain.

§ 14. LANDS BENEFITTED—SPECIAL TAX.] The board of drain commissioners shall make a list showing the amount which each municipality and tract of land benefitted by the drain for which the tax is levied is liable to pay on account of procuring the right-of-way or the construction of any drain, or both according to the per cent which by Section 9, of this act they are required to fix and determine, a copy of which shall be served on the clerk or auditor of each municipality against which taxes are to be assessed. Such list shall thereupon be filed in the office of the county auditor of the county in which the municipalities and

lands benefitted by the drain are situated, and the auditor shall thereupon extend upon the tax lists as a special tax as provided by law the several amounts shown by the drain commissioners' list, specifying in such tax lists the particular drain for the construction or procurement of the right-of-way of which such special tax is assessed, which special tax shall be collected and enforced in the same manner as other taxes. When such special tax is for right-of-way the same shall when collected be paid by the county treasurer into court for the benefit of the owners of the right-of-way.

§ 15. COUNTY TREASURER SHALL COLLECT DRAIN TAX.] The drain taxes shall be collected by the county treasurer and all moneys so collected shall be credited to the drain fund to which they belong and the county treasurer shall be the treasurer of such drain funds. Payment of all expenses and costs of locating and constructing any drain shall be made by the drain commissioners issuing warrants in such amounts and to such persons as by said drain commissioners may be found due. All warrants drawn by the drain commissioners in payment for the right-of-way or construction of any drain shall be payable from the proper drain fund and shall be receivable for the taxes levied for the right-of-way or construction of such drain by the treasurer. All such warrants after presentation to the county treasurer for payment and non-payment for want of funds shall be registered by the county treasurer and thereafter shall bear interest at the rate of seven per cent. per annum.

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

§ 17. EXTENSION OF TIME TO CONTRACTORS.] The board of 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 drain commissioners may in their discretion or at any time thereafter, relet such unfinished portion or any part thereof, after not less than five days notice thereof to the lowest responsible bidder 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 drain commissioners of the parties at first contracting; *Provided*, That in no case shall the board of drain commissioners forfeit and annul a contract without five 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.

§ 18. EXTENSION OF POWERS—WHEN NECESSARY.] 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 drain commissioners may relocate or extend the line of any drain if the same is necessary to provide a suitable outlet and shall cause a survey thereof to be made but no proceedings affecting the right 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.

§ 19. DUTY OF RAILROAD COMPANIES.] Drains may be laid along, within the limits of, or across any public road, and when so laid out and constructed or when 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 drain commissioners to do so, to make the necessary opening through said road and to build and keep in repair suitable culverts or bridges.

§ 20. CONSTRUCTION OF BRIDGES AND CULVERTS.] When any drain crosses a highway the cost of constructing the necessary bridge or culvert shall be charged in the first instance as part of the cost of constructing such drain, after which such bridge or culvert shall be maintained as part of the highway. The board of drain commissioners shall construct such bridges or culverts over or in connection with each drain as may in their judgment be necessary to furnish a passage from one part to another of any farm or tract of land intersected by such drain and the cost of the construction thereof shall be charged as part of the cost of constructing such drain and such bridge or passage-way 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.

§ 21. BLIND DRAINS—HOW CONSTRUCTED.] Blind drains may be constructed by the use of drain tile or sewer pipe, when the nature of the ground will admit of so doing. When blind drains are constructed the entrance shall be protected from drift wood and other debris.

§ 22. LEGAL DRAINS SHALL BE RECORDED.] 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 records of any drain may not have been preserved, to see that such record is made in the best manner practicable in the office of the county auditor.

§ 23. TAX OR ASSESSMENT VOID—WHEN.] 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 conveyance or condemnation of the right-of-way, but the court in which any proceeding 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 the labor and costs and expenses 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 order in the premises as shall be just and equitable, and may order such tax to remain on the tax lists for collection, or order the same to be relieved, 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.

§ 24. DRAIN KEPT OPEN AND IN REPAIR—COST OF.] All drains that may have been constructed under 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 be by them kept open and in repair. In all cases when any completed drain is or may be situated in more than one county 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 in the same manner as is provided in this act for the construction of drains in the first instance, and in cases when no assessments of benefits shall have been made the commissioners having charge of or to whose care such drain may be assigned shall make such assessment.

§ 25. RULES AND REGULATIONS.] The board of county commissioners of any county may make rules and regulations on the subject of drainage within such county as 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 cleaning and keeping such streams clear as a consideration for the right to erect dams thereupon.

§ 26. LIABILITY OF DRAIN COMMISSIONER.] Each board of drain commissioners shall make report to the board of county commissioners of all drains begun, in process of construction or finished and shall also render a full account of all moneys which shall come into their hands; 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 warrants drawn on account of each and every drain.

§ 27. COMPENSATION FOR COMMISSIONERS AND PUBLISHERS.] 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 offices as may be fixed by the board of county commissioners. Publishers of newspapers shall receive for publishing legal notices and furnishing evidence of such publication the fees prescribed by law for legal advertisements.

§ 28. PENALTY.] If any person shall willfully and maliciously remove any surveyor's stake set along the line of any drain laid out 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 costs of suit, which penalty may be recovered in an action by the board of drain commissioners or county commissioners, as the case may be; whenever the amount of any recovery shall be collected it shall be deposited with the county treasurer to the credit of the proper drain fund.

§ 29. STATE AND COUNTY OFFICERS—NOT ELIGIBLE.] 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.

§ 30. POWER TO 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.

§ 31. BONDS—WHEN AND HOW ISSUED.] The board of county commissioners of any county in which any such drain is proposed to be located and constructed are hereby authorized to issue bonds in such sums as may be necessary for the purpose of defraying the expenses incurred or to be incurred in obtaining the right-of-way or in locating and constructing any such drain.

Said word expenses to be construed to mean and to cover every item of cost of such drain from its inception to its completion as hereinbefore provided, which bonds shall be paid out of the revenues to be derived from taxes levied or to be levied and collected from that portion of the county found by the drain commissioners to be benefited thereby. Such bonds shall bear interest at a rate not exceeding seven per cent. and shall be payable not exceeding twenty years from the date thereof and the said commissioners shall provide sinking funds for the payment of each series of bonds issued 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 such county and countersigned by the county auditor who shall keep a record of the bonds issued under the provisions of this act. Such board shall have the power to negotiate such bonds at not less than the par value thereof as they may deem best for the interest of all persons interested in such drain. Such bonds shall contain a recital that the same are issued in accordance with the provisions and pursuant to the authority of this act and that they are to be paid out of sinking funds to be created as in this act provided. Whenever such bonds shall be issued the tax 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 lists by the county auditor against the proper parcels of land and property liable to taxation for that purpose in each and every year and collected in such year and such fund shall constitute the sinking fund provided by this section. The board of county commissioners shall in each year at the time of levying the taxes, levy upon the property liable to taxation on account of the location and construction of any drain a tax sufficient to pay the annual interest on any bonds which may have been issued for the purpose of locating and constructing the drain. Separate sinking funds shall be provided for each separate drain for the construction of which bonds shall be issued and no funds in any such sinking fund shall be applied to any other purpose than the payment of the bonds for the payment of which such fund was created. No county shall be liable for the payment of any bonds issued under the provisions of this act, but such bonds shall be paid only out of the sinking funds created as in this act provided.

§ 32. REPEAL.] Chapter 75 of the Session Laws of 1883 and all acts amendatory thereof and all other acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

Approved, March 8, 1895.