

husband to provide for the maintenance of the children of the marriage, having regard to the circumstances of the parties respectively; and the court may from time to time modify its orders in these respects.

Approved February 24, 1899.

---

## DRAINS.

---

### CHAPTER 79.

[H. B. 46.]

#### CONSTRUCTION OF DRAINS.

AN ACT to Amend Sections 1447, 1448, 1450, 1452, 1453, 1454, 1457 and 1466 of the Revised Codes, Relating to the Establishment, Construction and Maintenance of Drains.

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

§ 1. AMENDMENT.] That sections 1447, 1448, 1450, 1452, 1453, 1454, 1457 and 1466 of the Revised Codes of 1895 be amended so as to read as follows:

§ 1447. 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 board of drain commissioners that there is a public demand for such drain. If the chief purpose of such drain is the drainage of agricultural, meadow, grazing or other lands, the board of drain commissioners shall require that the petition be signed by the owners, their agents duly authorized in writing or the legal representatives of the owners 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 its opinion it is necessary and for the public good, it 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 board of drain commissioners, surveyors 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 it seems best. When the line proposed is along highways already established, the drain shall be located at a sufficient distance from the center of such highway to permit a good road along the central line thereof; when the length of the line described in the petition does not give sufficient fall to drain the 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 board of drain commissioners find advisable. All persons whose land may be affected by any such drain may appear before the board of drain commissioners and fully express their opinions upon the matters pertaining thereto.

§ 1448. 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 board of drain commissioners shall deny the petition, and the petitioners shall be jointly and severally liable to such board for all costs and expenses incurred in the proceedings to be recovered by such board by action. If it shall appear that there was sufficient cause for the making of such petition, and that the proposed drain will not cost more than the amount of the benefit to be derived therefrom, the board of drain commissioners shall thereupon make an order establishing the drain, and give the same a name by which it shall be recorded and indexed.

§ 1450. 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 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 cannot be negotiated, 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 142, making return to the county auditor containing all that is required in section 1453, and make, serve and file the list provided for in section 1457, and no further proceedings shall be taken until the special tax levied to pay for the right of way is collected and paid into court for the benefit of the owners of the right of way.

§ 1452. Upon acquiring the right of way, if the assessment of benefits has not already been made under the provisions of section 1450, the board of drain commissioners shall assess the per cent of the cost of constructing and maintaining such drain, and of providing the right of way therefor, 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 lot, 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.

§ 1453. After the assessment of benefits has 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 by the county for that purpose. Such return shall contain the petition for the drain, the minutes of the survey signed by the surveyor, a copy of the order establishing the drain, conveyances of the right of way, if any, and the assessment of benefits.

§ 1454. After filing the return with the county auditor, as hereinafter 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 grade stakes to show the depth of cuts 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 all and at least one in each township or municipality interested in such drain shall be posted in such township and municipalities at such points as will be likely in the opinion of the board, 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 1451.

§ 1457. The board of drain commissioners shall make a list showing the amount which each municipality and lot or 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 1452 it is 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. And the common council, or other proper taxing authorities of each city, or other municipality, against which such assessment is made as aforesaid, shall include in the first general tax levy thereafter made in said city or municipality, the amount so assessed against it, by the board of drain commissioners, and the same shall be extended upon the tax lists of the county for the current year by the county auditor against all the taxable property in such city or municipality in the same manner and with the same effect as other taxes are extended.

§ 1466. 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 chapter, 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 or 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 cost 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 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.

If any proceedings for the location, establishment or construction of any drain under the provisions of this chapter, have been heretofore, or shall be hereafter enjoined, vacated, set aside, declared void, or voluntarily abandoned by the board of drain commissioners, in consequence of any error, irregularity or want of jurisdiction affecting the validity of such proceedings, and if any drainage warrants have been or shall hereafter be issued in connection with such aforesaid invalid or abandoned proceedings, the board of drain commissioners may nevertheless proceed under the provisions of this chapter to locate, establish and construct drains under the same or different names, and in the same or different locations from those described in the invalid or abandoned proceedings; provided, however, such new proceedings shall be in accordance with the general provisions of this chapter.

In case new proceedings shall be had, resulting in the location and establishment of a drain in the same or substantially the same location as that described in the invalid or abandoned proceedings, then the board of drain commissioners shall proceed to ascertain and determine the real value of services rendered, moneys expended, and work done under such invalid or abandoned proceedings, and the extent to which the same have contributed or will contribute to the construction and completion of such drain, as subsequently established and constructed. A meeting of said board of drain commissioners shall be held for the purpose of determining and fixing the value aforesaid, at which meeting all persons interested, whether as holders of warrants issued under invalid or abandoned proceedings, or as owners of land benefited or to be benefitted by such drain, may appear and be heard. Ten days' notice of such meeting shall be given, in the manner at the time, and as a part of the notice provided for in sections 1451 or 1454, and the notice as published shall state briefly the purpose of such meeting, and that all persons interested may appear and be heard. The board shall thereupon, and after such hearing, by an order made and entered in their minutes, find and determine: (1) the real value of all work done, money expended and services rendered under such invalid or abandoned proceedings, to the extent only to which they contribute to the drain as subsequently located and established; (2) the names of all persons or corporations owning or holding drain warrants issued under such invalid or abandoned proceedings, and the dates and several amounts of such warrants. The board shall then proceed to issue warrants to an amount not exceeding the value of the work done, moneys expended and services rendered under such invalid or abandoned proceedings, and deliver such new warrants to the owners or holders of the old warrants upon surrender and return of the latter: provided, however, that the value of any ser-

vice rendered, or money expended, or work done, shall in no case be declared to be greater than the warrant issued therefor, under the invalid or abandoned proceedings, and if found to be less, the new warrant shall not be issued or delivered except upon the surrender and return of the old warrant, in lieu of which it is issued. The real purpose and intent of this act is to afford compensation for services rendered, work done, and moneys expended, under invalid or abandoned proceedings, to the extent only to which the same contributes to the completion of a drain located and established in pursuance of the provisions of this chapter.

§ 2. EMERGENCY.] Whereas, an emergency exists in that there are no adequate provisions of law relating to or governing the matters enumerated in the foregoing amendments; and, whereas, it is desirable that such amendments shall take effect at once for the purpose of expediting the work of constructing drains during the spring months; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved February 17, 1899.

## CHAPTER 80.

[S. B. 118.]

### DRAINS IN PEMBINA COUNTY.

AN ACT Providing for an Appropriation to Pay Expense of Construction of Drains Through School Lands Situated in Pembina County.

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

§ 1. APPROPRIATION.] There is hereby appropriated out of the general fund, not otherwise appropriated, the following sums: \$16.00 and \$165.00 to pay the assessment levied as benefits on drains number two and five through the southeast quarter of section thirty-six, township one hundred and fifty-nine, range fifty-two, and through the southwest quarter of the southeast quarter of section thirty-six, township one hundred fifty-nine, range fifty-two, Pembina County. Said lands belong to University and school lands.

Approved February 24, 1899.