

North Dakota or to physicians and surgeons of the United States Army, Navy and the United States Public Health Service, nor to duly licensed osteopaths, nor chiropractors.

§ 15a. Provided, however, that nothing in this act shall prohibit the sale of orthopedic shoes or arch supports in the stores of this state.

§ 16. Any person violating the provisions of this act shall be punished by a fine of not less than \$100.00 nor more than \$500.00 or imprisonment in the county jail of not less than ninety days nor more than one year or by both such fine and imprisonment.

§ 17. The Board of Registration in Chiropody shall have full power to make rules and regulations not inconsistent with the provisions of this Act as may be necessary to give full force and effect to this Act.

§ 18. This act is hereby declared to be an emergency measure, and shall be in full force and effect immediately upon its passage and approval.

Approved March 7, 1929.

CONSERVANCY DISTRICTS

CHAPTER 96

(H. B. No. 194—Muus, R. A. Johnson, Lindgren and Burns.)

CONSERVANCY DISTRICTS

An Act providing for the organization of conservancy districts and to define the powers and purposes thereof, authorizing the levying of taxes, issuance of bonds, providing for the election of officers thereof and authorizing the construction of improvements by special assessment of property to be benefited thereby, and to authorize and empower counties to construct bridges, bridge approaches, and highways in connection with improvements made in such districts.

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

§ 1. SHORT TITLE.] This act may be known and cited as "The Conservancy Act of North Dakota."

§ 2. DECLARATION OF PUBLIC PURPOSE.] The control of waters for the purpose of preventing or alleviating floods, the protection of public and private property from inundation, the reclaim-

ing and filling of low lands or lands subject to periodical overflow, the reclaiming and filling of water courses which are abandoned as a result of the change of a channel of a stream, the construction of bridges and bridge approaches across new or enlarged water courses, the construction of levees, dikes, and channels, and changing, enlarging, widening, and deepening of channels of flowing streams incidental thereto, are all and each of them declared to be public purposes and conducive to public health, safety, and welfare of the inhabitants and property in the vicinity of such project. For the accomplishment of such public purpose conservancy districts may be created in the manner herein specified and when so created are declared to be public corporations vested with all the rights, powers, and duties specified in this act. For the correction of the evils at which this act is directed it shall be liberally construed to effect the purposes herein expressed.

§ 3. DEFINITIONS.] Except when otherwise specifically prescribed herein, or when the context hereof requires a different meaning, the following terms herein shall be deemed and construed to have the following meanings:

(a) The term "property" includes real and personal property.

(b) "Real Estate" or "real property" or "lands" includes all uplands, lands under water, the waters of any lake, pond or stream, all water and riparian rights or privileges, all water powers, water plants, and all dams, races, sluices, and machinery connected therewith, and any and all easements and incorporeal hereditaments, and every estate, interest and right, legal or equitable, in land or water, including terms for years and liens, legal or equitable, on real estate as above defined in way of judgment, mortgage, or otherwise, and all real estate as above defined acquired or used for railroad, highway or other public purposes.

(c) "Assessed valuation of taxable property" means the full and true value of all taxable property as last previously and finally equalized by the several boards of equalization and certified to the county auditor of the county for use in preparing the assessment rolls for general state and county taxes.

(d) "District" means a conservancy district created pursuant to the provisions of this act.

(e) "Published notice" means an official statement of the thing required, signed by the officer required to give such notice, published in a newspaper of general circulation in the county wherein the district is wholly or principally situated, and, unless otherwise specified, one publication in such paper of such notice not less than

ten days before the date specified therein for the hearing or other action to be taken or thing to be done, shall be sufficient publication of such notice.

(f) "Directors" means the board of directors of a district created pursuant to this act. Except as otherwise specified herein, any three of such directors shall constitute a quorum of such board, and may take any action in reference to such district with the same force and effect as though all five of such directors were present.

(g) "Tax" means a specified sum of money levied upon all the taxable property in the district upon an ad valorem basis.

(h) "Assessment" means a specified sum of money levied upon real estate in the district in stated amounts for each piece, parcel or tract of land, such amounts bearing to the whole sum the same proportion that the percentage of benefits to such land bears to the aggregate of benefits to all lands in the district, to be assessed.

(i) "Percentage of benefits" means the relative benefits accruing to the several pieces, parcels or tracts of land in the district determined as specified in Section 25 hereof.

(j) "Supplemental assessment" means an assessment levied for an additional sum of money to be raised for which no assessment has been levied theretofore.

(k) "Re-assessment" means the levy of a sum of money upon the real estate in a district to make up a deficiency resulting from the non-collection of a part of a previous assessment.

(l) "District Court" means the court of the county wherein the conservancy district is wholly or principally situated.

(m) "County board" means the board of county commissioners of the county wherein the conservancy district is wholly situated.

(n) "Attorney-in-fact" means a person holding a written power of attorney to act in behalf of an owner of property situated in or to be affected by the improvement to be made in the particular district.

§ 4. JURISDICTION OF COUNTY BOARD.] The county board of any county in the state is hereby vested with jurisdiction, power and authority to establish and create conservancy districts of the character and for the purposes and in the manner specified herein, comprising lands and property wholly within their county, upon the filing of a petition therefor and determination by such board after notice and hearing thereon that there is need for such district to accomplish any one or more of the purposes mentioned in such petition.

§ 5. PROCEEDINGS INITIATED BY PETITION.) No action shall be taken by any county board or county auditor for the establishment of a district pursuant to this act until a petition therefor alleging the matters hereinafter specified and signed by the requisite number of persons or municipal, public or private corporations, shall have been filed in the office of the county auditor of such county. A petition for the organization and establishment of a district may be signed and filed by the owner or owners of property situated in a proposed district, including private, public, and municipal corporations. Any municipal or public corporation which has an interest in such improvement, either by reason of the effect thereof on property owned by it or by reason of the public health, safety and welfare of a substantial number of its inhabitants, may sign such petition. A resolution of the governing body of any such public or municipal corporation authorizing the mayor or other official thereof to sign such petition shall be deemed sufficient authority for the signature by such official in behalf of such corporation. Any public service corporation may sign such petition even though the proposed improvement will affect only its intangible interests without affecting any physical property owned by it.

§ 6. CONTENTS OF PETITION.] Such petition shall set forth

(a) The proposed name of the district, and a description in general terms of the improvement which can and ought to be made therein.

(b) A general description of the territory to be included in the proposed district. Said description need not be given by metes and bounds or by legal subdivision, but it shall be sufficient to enable a property owner to ascertain whether his property is within the territory proposed or likely to be included in the district to be organized, and in any event it shall be sufficient if such territory is shown by a map thereof attached to said petition.

(c) That the property in such territory, or substantially such territory as is mentioned in the petition, will be benefited by the creation of such district, and that the making of an improvement therein pursuant to the provisions of this act will accomplish one or more of the purposes specified in Section 2 hereof, specifying such purpose or purposes.

(d) That the petitioners pray for organization of such district pursuant to the provisions of this act.

Such petition shall be deemed sufficiently signed if it is signed by a municipal corporation authorized to sign it by Section 5 of this act or if it be signed by 200 owners of real estate situated in the proposed district or by a majority of the owners of land in the proposed district who reside in the county wherein the proposed

district lies. Such signatures need not be all on one copy of such petition, but counterparts or duplicates thereof may be used and filed and all such counterparts or duplicates taken together shall constitute one petition. No petition with the requisite signatures shall be declared null and void on account of alleged defects, but the county auditor or county commissioners shall at any time permit the petition to be amended to conform to the facts by correcting any errors in the description of the territory or in other particulars.

§ 7. FILING OF PETITION AND DETERMINATION OF SUFFICIENCY.] When any such petition shall be filed in the office of the county auditor of the county wherein the proposed district is wholly or principally located he shall forthwith examine the same to determine its sufficiency as to form and number of signers. In determining the qualification of petitioners the names of property owners as they appear upon the tax rolls shall be prima facie evidence of ownership of the property shown by such rolls to be assessed to such person or corporation. Such petition shall have attached thereto an affidavit of the person or persons who circulated it, stating such fact and that affiant believes each signer thereof duly qualified to sign by the terms of this act. As soon as the county auditor has examined such petition he shall notify the person or persons who circulated the same that he finds it sufficient, or, if not, wherein the insufficiency lies.

§ 8. BOND OF PETITIONERS.] At the time of filing the petition, or any time subsequent thereto, such petitioners, or one or more of them, shall file in the office of such auditor, a bond running to the county, conditioned on the payment to the county of the cost of all proceedings in connection with such petition thereafter to be had in the event that such petition be denied, which bond shall be approved as to form and security by the county commissioners. No bond shall be required in case a municipality within the territory of the proposed district shall be the petitioner, or one of the petitioners. But the municipality shall, by resolution, an authenticated copy of which shall be attached to the petition, agree and promise to defray to the county board the expenses incurred should the petition fail to be granted.

§ 9. ORDER FOR HEARING ON THE PETITION.] Upon the filing of a petition and bond sufficient to comply with this act, the county auditor shall forthwith make an order fixing the time and place for a hearing thereon before the county board, which date shall be not less than ten nor more than twenty days after the date of filing of such petition, and bond, and shall call and order a special meeting of such county board for the date and hour so specified. Such order shall refer to the petition so filed and shall contain a copy thereof except the signatures and except the map thereto at-

tached, if any, and shall direct all persons to appear in person or by attorney-in-law or in fact at the time and place specified for the hearing before the county board, and show cause, if any there be, why said petition should not be granted and such district created. Such order shall be published in at least one issue of at least two newspapers printed and of general circulation in such county, the first of each such publication to be at least ten days prior to the date of such hearing.

§ 10. HEARING ON PETITION.] At the time and place specified in such order the county board shall meet and proceed to hear all parties interested in the matter of the establishment of said district, or their authorized attorneys at law or attorneys in fact, upon the question of the necessity and advisability of establishing such district and upon the truth of the matters set forth in said petition. Such county board may adjourn from day to day or time to time, as the needs of the parties in interest may be, without further notice of such adjournments than the public announcement prior thereto of the time and place to which such adjournment is to be had. Not less than ten days shall intervene between the first day of the hearing and the conclusion thereof. Further adjournment thereafter from day to day may be taken until all persons having filed objections shall have been heard. Such county board may hear and receive testimony and proof upon matters pertinent to such hearing under oath or otherwise as they deem proper, and may require the attendance of engineers or experts whose advice they deem necessary, paying to such engineers or other expert witnesses a reasonable fee therefor.

§ 11. ORDER GRANTING OR DENYING PETITION.] Upon the conclusion of such hearing the county board shall adopt a resolution making findings of fact that the creation of a district as petitioned for, with or without amendments as to the territory to be included therein, is or is not deemed necessary, and should or should not be created, and if they find the district is necessary and should be created such resolution shall state that one or more of the public purposes mentioned in section 2 of this act can, in their opinion, be accomplished by the creation of such district, and that the property therein will be benefited by the accomplishment of such purpose or purposes, and shall specify its name and exact boundaries, which may be varied from the boundaries mentioned in said petition if the evidence received by such county board shall warrant such change, provided, however, that the boundaries of the district so created shall not be extended beyond those petitioned for unless and until the owners of any property so to be included shall have been given published notice of the intention to extend such boundaries and an opportunity to be heard thereon. Such resolution shall declare said district to be organized as a public corporation and political sub-

division of the state of North Dakota vested with all the powers and duties granted and imposed by this act. It shall not be deemed a denial of the petition that the boundaries as established are different from those petitioned for, but if any district be created by such resolution which substantially conforms with that petitioned for the bondsmen in the bond required by Section 8 hereof shall be released. Such resolution or order shall be recorded in the minute books of such county board and a copy thereof shall be certified by the county auditor and forthwith filed in the office of the Secretary of State of North Dakota and a like copy in the office of the county auditor of any other county within which a part of said district may be situated, and no fees or other charges shall be paid or allowed to any county auditor or said Secretary of State therefor. The board of county commissioners shall then by resolution call an election in said District to authorize the formation of said Conservancy District, which election shall be a special election, or the matter may be submitted at any general election occurring in the county within which such district is contained, election to be called for a time not less than twenty days nor more than sixty days after the adoption of the resolution determining the formation of such district, and to be upon notice by publication in the official county paper in the county within which said district is contained, which notice shall be published twice, the first publication to be at least ten days prior to the date of such election, such election to be conducted in all things in accordance with the provisions for election of directors as set forth in Section 13 of this act. If at such election there shall be a majority of the people voting thereon voting in favor of the formation of such district, then the resolution to form such district shall be authorized to proceed to form said conservancy district as provided in this act. However, if at such election said proposition fails to receive a majority of all the votes cast at said election, then all proceedings by reason of petition and resolution forming said district shall cease and said petition and resolution shall be null and void.

§ 12. DISTRICT A PUBLIC CORPORATION AND GENERAL POWERS.] Immediately upon the adoption of such resolution and order the district therein specified shall be and become a body corporate and politic as a political subdivision of the state. It shall have perpetual existence and shall have a corporate seal of such design as its directors shall thereafter choose and shall have power by and through its directors to sue and be sued, contract and be contracted with, incur and pay debts, liabilities and obligations, exercise the power of eminent domain, issue bonds, certificates of indebtedness or warrants, levy taxes, assessments, supplemental assessments, and re-assessments, all in the manner authorized by this

act, and generally to do and perform all the acts and things necessary and proper to the performance of the powers and duties granted and imposed by this act.

§ 13. ELECTION OF DIRECTORS.] The governing body of such district shall be a board of directors to consist of five members, one of whom shall be elected for a term ending January first next after the succeeding first general election occurring after the organization of such conservancy district; two for a term ending January first next after the second general election after the organization of such conservancy district, and two for a term ending January first next after the third general election after the organization of such conservancy district, and which shall hold office until his successor is elected and qualified. The successors to the directors whose term expires shall be elected at the general elections thereafter held in the State of North Dakota. At the time of the adoption of the resolution of the county board declaring the district organized, the county board shall adopt another resolution calling a special election in and for said district to be held not less than twenty nor more than ninety days after the date of such resolution, and shall specify therein a polling place in each voting precinct and two judges and two clerks of election for each such polling place. Such resolution shall also divide such district into not less than two nor more than five voting precincts, according to the needs and convenience of the voters of such district. At such election all the voters in said district shall vote at the polling place specified for the precinct in which they reside. The judges and clerks of such election shall keep a poll list showing the names of the persons voting thereat, and may administer oaths to any person presenting himself to vote at said election and question him to ascertain his residence and voting qualifications, and shall refuse to receive the ballot of any person who appears to be not a resident of such precinct or not a qualified voter under the general election laws of the state. The ballot at such election shall contain the names of the candidates for the several terms who have been nominated therefor as hereinafter specified, and appropriate instruction and squares for the marking of such ballots. Each voter shall be entitled to vote for one candidate for each of the five terms for which such directions (directors) are to be elected. Such election shall be conducted in the manner provided by law for general elections, except as otherwise provided herein. The directors of any conservancy district formed under this law shall receive as compensation the sum of \$25.00 per month for his services as director, together with any actual and authorized expense incurred by any of the Directors which shall be paid as other bills are paid against such conservancy district.

§ 14. NOMINATIONS.] Any qualified voter residing in said district may be a candidate for election as such director. Not less

than 15 days before such election, nominating petitions signed by not less than fifty qualified voters of the district, naming a candidate and specifying whether he is a candidate for the two, four or six year term, may be filed in the office of the county auditor wherein the petition for the creation of the district was filed, and every person so nominated shall have his name printed upon the ballots for said election as a candidate for the particular term for which he was nominated.

§ 15. NOTICE OF ELECTION.] Immediately after the expiration of the period for filing nominating petitions, the county auditor shall prepare a notice of election specifying the date and hours of said election, which hours shall be from nine a. m. to five p. m., the boundaries of each voting precinct, the polling place therein, and the names of the candidates for the respective terms of office. He shall cause such notice to be published at least once in not less than two newspapers of general circulation in the county, each of such publications to be not less than ten days before the date of said election. He shall also cause printed ballots to be prepared and delivered to the judges of election in sufficient numbers to supply the needs of the voters at said election and forms for a poll list and tally sheet for each precinct. Upon the closing of the polls the judges and clerks shall count and canvass the ballots and make returns thereof to the county auditor. Each successful candidate shall qualify by filing in the office of the county auditor the oath required by section 211 of the constitution of the State and an oath that he will faithfully and impartially perform the duties of his office, and that he will not be interested, directly or indirectly, in any contract let by said district, and each director shall also furnish a corporate surety bond at the expense of the district in amount and form to be approved by the county commissioners, conditioned upon the faithful performance of his duties as such director. Upon the filing of such oaths and bonds the county auditor shall issue to the successful candidates a certificate of election.

§ 16. ORGANIZATION OF BOARD AND EMPLOYEES.] At any time after the election and qualification of such board of directors, the chairman shall call a meeting at the court house of the county in which such conservancy district or the greater portion thereof is located, which county courthouse in such county shall be the principal place of business and the principal office of such conservancy district and of the board of directors thereof. At such first meeting, the board shall organize by the election of a chairman. At such meeting, or any subsequent meeting thereafter, the board may select and appoint agents and employees and take any and all action in reference to the organization of said district and making of the improvement thereon. The county treasurer of the county in which

said district, or the majority thereof is situated, shall be the treasurer of such conservancy district, the county auditor of the county in which said district is situated, or his duly appointed and qualified deputy shall be the secretary of such conservancy district. The employment of the chief engineer and attorney or attorneys for the district shall be evidenced by agreements in writing, which so far as possible, shall specify the amounts to be paid for their services. The chief engineer shall be superintendent of all works and improvements and shall make a full report to the board of directors each year, and oftener if required by the board, and may make such suggestions and recommendations to the board as he may deem proper. Such agents and employees of the district as the board of directors may require shall furnish corporate surety bonds at the expense of the district in amounts of form fixed and approved by the board, conditioned upon the faithful performance of their respective duties. The chairman of the board shall sign all orders, resolutions, warrants, bonds, certificates of indebtedness, and other contracts in behalf of the district, and shall preside at all meetings of the board, provided that in his absence the remaining directors shall designate an acting chairman who shall have and exercise all the rights, powers and duties of the chairman while so acting. The secretary shall attest all orders, resolutions, warrants, bonds, certificates of indebtedness and other contracts of the district and shall sign all notices authorized by the board. He shall keep and be the custodian of the records of the board and its corporate seal, and shall assist the board in such particulars as it may direct in the performance of its duties. He shall attest under the corporate seal of the district all certified copies of the office records and files of the district which may be required of him by this act or by person ordering the same and paying the reasonable cost thereof. Any portion of the records so certified and attested shall prima facie import verity. The treasurer shall be the custodian of all the moneys of the district and shall deposit them in the banks designated by the board of directors, taking and holding from such bank or banks such security therefor as the board may specify and shall not be responsible for the loss of any moneys so deposited through the failure of such bank.

§ 17. TAX LEVY FOR PRELIMINARY FUND.] At the first or any subsequent meeting of the board of directors they may levy a tax upon all the taxable property in the district in an amount not exceeding three mills on the dollar thereof. Upon the adoption of a resolution therefor specifying the amount thereof the secretary shall certify a copy thereof to the county auditor of the county or counties wherein the district lies, and such auditor shall cause such levy to be placed upon the tax rolls for the year in which such levy is made, and such tax shall be collected in the same manner as other

general taxes in the county. The proceeds of such levy shall be paid over by the county treasurer to the treasurer of the district and his receipt taken therefor, and such moneys may be used for any purpose not contrary to the provisions of this act as ordered by the board of directors. If the district comprises lands in more than one county the mill rate shall be computed by taking the assessed valuation of all taxable property in the district and dividing it by the total amount of such levy.

§ 18. SUBSEQUENT TAX LEVIES.] Thereafter the board of directors may levy annually a tax upon all property in the district not exceeding one mill in any one year for the purpose of paying the current operating expenses of the district or for such other purposes as the directors may determine.

§ 19. CERTIFICATES OF INDEBTEDNESS.] In anticipation of the collection of any tax levied by the board of directors pursuant to Sections 17, 18, hereof the board of directors may issue and sell certificates of indebtedness of the conservancy district in the form and manner provided by Chapters 326 and 327, Laws of North Dakota 1923 and acts amendatory thereof relating to public and municipal corporations.

§ 20. The board of directors shall have full control of any and all streams, lakes, ditches and the banks thereof, and of all cuts, drains, levees, dikes and other water courses within the district and are hereby authorized and empowered to prevent damage thereto by dumping any refuse therein or filling or obstructing the same in any manner and shall have authority to make rules and regulations to prevent such damage and to provide for punishment for violation of such rules and are hereby authorized to bring any proper and necessary action in any court to restrain any such damage, filling or obstruction.

§ 21. Upon presentation to the board of county commissioners of a petition signed by not less than 10 per cent of the electors of the district as shown by the vote for governor at the last general election, praying for discontinuance of further action under this act, such board shall call and hold an election to determine whether or not further proceedings shall be discontinued. Notice of such election shall be given and the same shall be conducted as herein provided for the election of directors. If a majority of the voters voting at such election shall vote for discontinuance then all further proceedings hereunder shall immediately cease.

§ 22. EMERGENCY.] In the opinion of the legislature of the State of North Dakota, an emergency exists. Therefore this act shall take effect and be in force from and after its passage and approval.

Approved March 11, 1929.