

WATERS

CHAPTER 345

S. B. No. 197
(Duffy)

PUBLIC WATERS; RECIPROCAL RIGHTS OF OWNERS

AN ACT

To amend and reenact section 61-0101 of the North Dakota Revised Code of 1943, relating to public waters.

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

§ 1. **Amendment.)** That section 61-0101 of the North Dakota Revised Code of 1943 be amended and reenacted to read as follows:

61-0101. Waters Of The State; Public Waters.) All waters within the limits of the state from the following sources of water supply, namely:

1. Waters on the surface of the earth excluding diffused surface waters but including surface waters whether flowing in well defined channels or flowing through lakes, ponds, or marshes which constitute integral parts of a stream system, or waters in lakes; and
2. Waters under the surface of the earth whether such waters flow in defined subterranean channels or are diffused percolating underground waters;

belong to the public and are subject to appropriation for beneficial use and the right to the use of these waters for such use, shall be acquired pursuant to the provisions of chapter 61-04 of the Revised Code of North Dakota of 1943 and acts amendatory thereof.

§ 2. **Reciprocal Rights Of Riparian Owners.)** The several and reciprocal rights of a riparian owner, other than a municipal corporation, in the waters of the state comprise the ordinary or natural use of water for domestic and stock-watering purposes.

Approved March 5, 1955.

CHAPTER 346

H. B. No. 713

(Fristad, Schmidt, Knudson (Morton), Simonson,
(Heimes, Anderson, Lee and Leet)WATER CONSERVATION AND FLOOD CONTROL DISTRICTS;
HEARINGS; TAX LEVY

AN ACT

To amend and reenact sections 61-1602, 61-1605, 61-1615 and section 61-1620 of the 1953 Supplement to the North Dakota Revised Code of 1943, relating to water conservation and flood control districts.

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

§ 1. **Amendment.)** Section 61-1602 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted so as to read as follows:

61-1602. Water Conservation And Flood Control Districts; Requirements, Results After Hearing And Investigation.) Whenever there is presented to the state water conservation commission a petition signed by a county, city, village or township, or by any cooperative grazing association or by fifty percent or more of the freeholders within the limits of a proposed water conservation and flood control district the commission shall fix a date and place for a public hearing on the petition. The place of such hearing shall be convenient and accessible for the majority of freeholders in the proposed district. At least ten days prior to the date of the hearing a notice thereof shall be published in a newspaper of general circulation in the district. Prior to such hearing the state engineer, as chief engineer for the commission, shall make, or cause to be made, an investigation of the need for the proposed district and shall submit a report of his findings to the commission and such report shall be read at the hearing on the petition. If after the hearing the commission finds that it is not feasible, desirable or practical to establish the proposed district it shall make an order denying the petition and shall state therein its reasons for its action. If, however, after investigation and hearing, the commission shall find that the problems of flood control, watershed development or improvement, drainage, water supply or other reasons make the establishment of the proposed water conservation and flood control district desirable, proper and necessary, the commission shall grant the petition and establish such district, and fixing the boundaries thereof.

§ 2. **Amendment.)** That section 61-1605 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted so as to read as follows:

61-1605. Area To Be Included Within District; How Determined.) In determining the area or areas to be included within the water conservation and flood control district, the commission shall disregard township and county boundaries and shall consider only the watershed and drainage areas to be affected by the water development proposed and the probable future development and improvement thereof. Whenever practicable, such boundaries shall follow section lines.

§ 3. **Amendment.)** That section 61-1615 of the 1953 Supplement to the North Dakota Revised Code of 1943 be and the same is hereby amended and reenacted so as to read as follows:

61-1615. Tax Levy By Board Of County Commissioners; Amount By Special Assessments.) At the time of levying taxes for county purposes the board of county commissioners shall consider the estimated expenses certified by each district for the ensuing year and shall levy a tax upon all taxable property therein of not to exceed three mills on each dollar of taxable valuation to cover such estimated expenses, including costs of rights-of-way, easements or other interests in property required for construction, operation and maintenance of any project established therein. Funds produced each year by such levy shall be available for district expenses until expended. If the tax levy in any year will not raise sufficient revenue to pay such costs a sufficient fund may be accumulated to pay the same. The proceeds produced by such tax shall be credited by the county auditor and county treasurer to the district for which it was levied. Such tax levy on taxable property in a district shall be in addition to the mill levy on property therein for county purposes. The acquisition of rights-of-way, easements and the construction, operation and maintenance of a project in a district may, in the discretion of the board, be financed in whole or in part by special assessments against property benefited by such project as provided in this Act, or the board may meet such expenses by a combination of a tax levy and special assessments.

§ 4. **Amendment.)** That section 61-1620 of the 1953 Supplement to the North Dakota Revised Code of 1943 be and the same is hereby amended so as to read as follows:

61-1620. Appearance Of Persons To Express Opinion; Discontinuance Of Proceedings Regarding.) All persons whose land may be affected by a water conservation or flood control project may appear and express their opinion and offer evidence upon matters pertaining thereto. Should two-thirds

of the landowners whose land is subject to assessment for such project, and who own at least one-half of such land, petition the board within fifteen days after such hearing to have further proceedings discontinued, the board, by resolution, shall order all further proceedings in connection therewith discontinued. If no such petition is filed and the board determines to proceed, it shall conduct all proceedings with reference to determining the damages and assessing the benefits to result from such project in accordance with the laws governing the assessment of damages, the payment of damages, the assessment of accruing benefits, the review and return thereof, the computation, apportionment, and taxation of costs, and all other proceedings in connection with the issuance of special assessment warrants and the retirement thereof by payment and the issuance of bonds, substantially in conformity with the procedure and manner now or hereafter provided by law with reference to the establishment and construction of drains under the jurisdiction of a county board of drain commissioners.

Approved March 7, 1955.

CHAPTER 347

S. B. No. 33
(Legislative Research Committee)

DRAINAGE PROJECTS

AN ACT

Relating to drainage projects; providing for the establishment of drainage boards and drainage districts and the operations thereof; and providing a penalty; and repealing chapter 61-21 of the North Dakota Revised Code of 1943, as amended.

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

§ 1. Definitions.) In this chapter, unless the subject matter otherwise requires:

1. The word "drain" shall include any natural water course opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains of any nature or description constructed for such purpose, including dikes and appurtenant works;
2. "Board" shall mean the board of drainage commissioners;

3. "Cleaning out and repairing of drain" shall include deepening and widening of drains as well as removing obstructions or sediment, and any repair necessary to return the drain to a satisfactory and useful condition;
4. "Lateral drain" shall mean a drain constructed after the establishment of the original drain or drainage system and which flows into such original drain or drainage system from outside the limits of the original drain; and
5. "Affected landowners" shall mean landowners whose land is subject to assessment.

§ 2. Water Courses, Ditches And Drains May Be Constructed, Maintained, Repaired, Improved, Or Extended.) Water courses, ditches, drains, and improvements thereto for the drainage of sloughs and other low lands may be surveyed and investigated and established, constructed, maintained, repaired, improved, and cleaned out in the several counties of this state under the provisions of this chapter wherever the same shall be conducive to the public health, convenience, or welfare. The powers conferred by this Act and this section shall extend to and include but shall not be limited to:

1. The deepening and widening or any necessary improvement of drains which have been or hereafter may be constructed;
2. The straightening, clearing, or cleaning out and deepening of channels of creeks, streams, and rivers, and the construction, maintenance, remodeling, repairing, and extension of levees, dikes, and barriers for the purpose of drainage;
3. The location or extension of any drain if such location or extension is necessary to provide a suitable outlet or reasonably drain lands within a practical drainage area of such drains;
4. The establishment, in whole or in part, of a drain and the completion of the same on the line of an abandoned or invalid drain; and
5. The establishment and construction of lateral drains with outlets in drains already constructed.

§ 3. Board Of Drainage Commissioners: Appointment; Term; Removal Of; Compensation.) The board of county commissioners of any county in this state, at any meeting of such board, by majority vote of all the members upon its own motion, or on the petition of any interested person, may

appoint three residents of the county to the board of drainage commissioners of such county. The members of the board shall be appointed for terms of three years each and their terms shall be so arranged that the term of one member shall expire each year. Each member of the board shall hold his office until his successor is appointed and qualified. The board of county commissioners may remove any or all of such drain commissioners and shall appoint successors to fill any vacancies that occur. Each member of the board shall be paid the sum of ten dollars per day for each day actually employed in the performance of his duties as a drainage commissioner, and shall be compensated for expenses incurred in the performance of these duties in the manner and amounts as provided in chapter 44-08 of the North Dakota Revised Code of 1943.

§ 4. State And County Officers Not Eligible As Drain Commissioners; Matters Of Personal Interest To Drain Commissioners.) No person holding any state or county office shall be eligible for the office of drain commissioner, and any drain commissioner accepting any state or county office shall be deemed to have vacated the office of drain commissioner. No member of the board shall be qualified to act as such in any matter or proceeding before the board in which he is personally or financially interested and the board of county commissioners shall appoint an alternate commissioner who shall act in the place of any disqualified or absent commissioner, but shall so act only upon matters in which a commissioner is disqualified or while a commissioner is actually absent from an entire meeting of the drainage board. The term of office of such alternate commissioner shall be three years.

§ 5. Powers Of Board.) The board shall have all powers provided in section 2 and elsewhere in this Act, except as specifically limited by this Act. A drain commissioner may administer any oath required in any proceeding had before the board or in which such member may be called to act officially. The board of drain commissioners of any county may make rules and regulations on the subject of drainage within such county as it may deem proper, not inconsistent with the provisions of this chapter, including regulations in regard to clearing out and keeping clear the channels of streams and the construction and maintenance of dams thereon. Such regulations shall have reference to the capacity of such streams for drainage and may require the owners of dams to perform reasonable service in cleaning and keeping such streams clear, as consideration for the right to erect dams thereon.

§ 6. Board's Report To Board Of County Commissioners; Contents; Inspection Of; Liability Of Drain Commissioner On Bond.) The board shall make an annual report to the board

of county commissioners of all drains begun, in process of construction, or finished, and shall render a full account of all moneys which shall come into its hands. The report required by this section shall include an itemized statement of all expenses and warrants drawn on account of each drain. The books, records, and accounts of the board at all times shall be subject to inspection, audit, and investigation by the board of county commissioners. Every drain commissioner shall be liable on his bond for any misapplication of money coming into his hands as such commissioner.

§ 7. Oath And Bond Filed By Drain Commissioners; Organization Of Board; Quorum.) Any person appointed as a member of the board within ten days after his appointment shall take, subscribe, and file in the office of the county auditor an oath faithfully to perform the duties of a drain commissioner, and at the same time he shall make, execute, and file in the auditor's office a bond to the county in the sum of two thousand dollars to be approved by the auditor, conditioned for the faithful discharge of his duties as drain commissioner. The members of the board, upon qualifying for their office, shall organize by electing one of their members as chairman, who shall serve for a period of one year from the date of his election as chairman. Two members of the board shall constitute a quorum for the transaction of business.

§ 8. Office, Records, Clerk, And Employment of Personnel.) The board of county commissioners shall provide suitable office space for the board of drainage commissioners and their employed personnel. The county auditor or person designated by him shall act as clerk of the drainage board and shall maintain records of all the proceedings and acts of such board. Such records shall be open for public inspection and shall have the same force and effect as other public records. The state's attorney in each county shall furnish such legal assistance to the board as it may request. The board shall have power to employ all additional legal, clerical, or technical assistance as may be necessary for the performance of its duties. All notices and communications signed by the attorney or clerk of the board shall be deemed to have come from the board.

§ 9. Levy For Administrative Expense; Payment Of Commissioners' Salaries And Overhead Expense.) The board of county commissioners shall have authority to levy a sufficient amount, not to exceed one-tenth mill in any year, upon all taxable real and personal property in the county for the purpose of paying salaries of drainage board commissioners, office and administrative expenses of the board, or other items of expense that cannot be directly allocated to any specific drainage district. Such levy shall be over and above any mill levy

limitation provided by law and the proceeds thereof shall be placed in a special fund by the county treasurer, to be known as the "county drainage board fund" and shall be disbursed for the purposes stated in this section upon the order of the board of county commissioners.

§ 10. Petition For Construction Of Drain: Purposes Of Drain: Signers To Petition.) A written petition for the construction of a drain may be made to the board. Such petition shall designate the starting point, terminus, and general course of the proposed drain. If among the leading purposes of the proposed drain are benefits to the health, convenience, or welfare of the people of any city or village, the petition shall be signed by a sufficient number of the property owners of such city or village to satisfy the board that there is a public demand for such drain. The petition shall be signed by at least six property owners or a majority of the landowners within the proposed district whose property will be drained by the proposed drain.

§ 11. Bond Required From Petitioners.) The board shall require the petitioners referred to in section 10 of this Act to file a bond with the petition in a sum sufficient to pay all expenses of surveys and of the drainage commissioners should the petition be later denied.

§ 12. Examination Of Line For Drain; Designation Of Surveyor; Specifications; Cost Estimates.) Upon presentation of a petition as provided in section 10 of this Act, the board shall examine the line of the proposed drain, and if in its opinion further proceedings are warranted, it shall adopt a resolution to that effect and designate a competent surveyor or engineer to assist the board. For the purpose of making examinations or surveys, the board or its employees may enter upon any land traversed by any proposed drain or any other lands necessary to gain access thereto. The surveyor or engineer shall prepare profiles, plans, and specifications of the proposed drain, estimates of the total cost thereof, and a map or plan of the lands to be drained showing the regular subdivisions thereof, which map or plan shall be filed in the office of the county auditor for inspection by the public. In determining the best location for the proposed drain, the board may in its discretion set the location on lines differing from the lines described in the petition. When the length of line described in the petition does not give sufficient fall to drain the land sought to be drained, the board may extend the drain below the outlet named in the petition. The estimate of costs prepared by the surveyor or engineer shall be in sufficient detail to allow the board to determine the probable share of

the total costs that will be assessed against each of the affected landowners in the proposed drainage district.

§ 13. Hearing On Petition To Establish Drain And Surveyor's Report; Notice Of.) Upon the filing of the surveyor's or engineer's report provided for in section 12 of this Act, the board shall fix a date and place for public hearing on the petition. Such place of hearing shall be in the vicinity of the proposed drain and shall be convenient and accessible for the majority of the landowners subject to assessment for such drain. At least ten days' notice of such hearing shall be given by publishing a notice at least once in the official newspaper of the county in which such proposed drain is located. In addition, each owner of land subject to assessment for the proposed drain as shown by the record in the office of the register of deeds or county treasurer shall be mailed a notice of such hearing at his post office address as shown by such records. Notices of such hearing shall contain a copy of the petition and the time and place where the board will act upon the petition. An affidavit of mailing signed by the attorney or clerk of the board or other person mailing such notices shall be filed with the county auditor who shall file such affidavit with the records of the proceedings pertaining to that drain. All persons whose land may be subject to assessment for such drain may appear before the board, fully express their opinions, and offer evidence upon the matters pertaining thereto.

§ 14. Conduct Of Hearing On Petition To Establish Drain.) Prior to the hearing provided for in section 13 of this Act, the board shall first prepare a roster or roll of affected landowners subject to assessment for such drain, and shall limit voting rights to such affected landowners. A record shall be made by the board of affected landowners present in person or by agent and such records shall be preserved in the minutes of the meeting. Affected landowners shall then be informed of the probable total cost of the project and their individual share of such costs. The board shall fix a reasonable time within which objection to the establishment of the drain shall be filed with the board. Such objections shall be in writing, but a telegram shall be deemed writing, and any form of written objection that sufficiently indicates the intention of the writer shall be sufficient. Once the deadline for filing objections has been reached, no further objections can be filed and no person objecting shall withdraw his or her name from the list of those objecting after the deadline for filing objections has been reached. Any withdrawals of objections before that time shall be in writing only, under the same rules as govern the making of objections. When the objections of affected landowners have all been filed and the deadline for filing objec-

tions has been reached, the board shall immediately proceed to determine whether or not a majority vote as determined by section 16 of this Act is opposed to the construction of the drain. Until such determination is made, the board is without jurisdiction to take any further steps in the matter except to determine whether a majority vote is objecting and to adopt a resolution for discontinuance, if a majority objects.

§ 15. Denying Or Making Order Establishing Drain: Costs When Petition Denied.) If, upon the examination by the board before the survey has been made, or, if upon the hearing upon the petition 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 the benefits to be derived therefrom or that the majority of all possible votes of affected landowners as determined by section 16 of this Act are opposed to such drain, the board shall deny the petition. The petitioners shall be liable jointly and severally to the board for all costs and expenses incurred in the proceedings, to be recovered by the board by action against the petitioners or upon their bond. If it shall appear, after due hearing as provided in sections 13 and 14 of this Act, that the proposed drain will not cost more than the amount of the benefits to be derived therefrom and is not objected to by a majority of the possible votes of the affected landowners as determined by section 16 of this Act, the board shall make an order establishing the drain, accurately describing it, and giving the same a name under which it shall be recorded and indexed.

§ 16. Voting Right Or Power Of Landowners.) In order that there may be a reasonably fair relation between the amount of liability for assessments and the power of objecting to the establishment of a proposed drain, the voice or vote of affected landowners on the question of establishing the drain shall be arrived at in the following manner:

1. The landowner or landowners of tracts of land affected by the drain shall have one vote for each one hundred dollars or fraction thereof of assessment that his land is subject to as estimated by the board under the provisions of section 12 of this Act. It is the intent of this subsection to allow only one vote for each one hundred dollars of assessment, or any fraction thereof, regardless of the number of owners of such tract of land. Where more than one owner of such land exists, the vote shall be prorated among them in accordance with the owner's interest, but where such proration results in a fraction of a vote, a full vote shall be allowed for such fraction.

A written power of attorney shall authorize an agent to cast the votes of any affected landowners.

§ 17. Notice Of Order Establishing Drain And Period For Appeal.) Upon the making of an order establishing or denying establishment of a drain, the board shall give notice to all affected landowners by publishing a notice in a newspaper of general circulation in such county. Such notice shall include a copy of such order and shall advise the affected landowners that their right to appeal to the district court from such order will expire upon thirty days from and after the date of such publication.

§ 18. Appeal To District Court; Time: Undertaking: Hearing.) Any person whose land is assessed or may be assessed for the construction of a drain under the provisions of this chapter may appeal to the district court from the order of the board establishing or denying the establishment of the drain. Such appeal shall be taken and perfected within thirty days from and after the date of publication of the "notice of order establishing the drain and time of expiration of right of appeal". The appellant must file with the clerk of court, and serve upon a member of the board, a notice of appeal, and must give an undertaking to be approved by the clerk of the district court in the sum of two hundred fifty dollars for the payment of the costs in the event that the appellant is unsuccessful in the district court. Such undertaking shall run in favor of the county in which the drain is located, and, if located in more than one county, it may run in the name of either of the counties in which the drain is located. The judge shall hear such appeal not less than ten days nor more than thirty days after the filing of such appeal with the clerk, the day of hearing to be fixed by the court, but such time for hearing may be extended by the court for good cause for a period not to exceed thirty days. The case shall be tried in all respects as a court case without a jury and costs shall be allowed and taxed as costs are taxed in said courts in civil actions and upon like notice. Where such appeal is perfected, the district court upon the hearing may try and determine the question as to whether, in the first instance, there was sufficient cause for making the petition for the establishment of the drain, whether the proposed drain will cost more than the amount of the benefits to be derived therefrom, and whether such drain was objected to by a majority of the affected landowners in accordance with the weighted voting provisions of section 16 of this Act.

§ 19. Right-of-way; How Acquired; Assessment of Damages; Issuance Of Warrants.) The right-of-way for the construction of any proposed drain, if not conveyed to the county by the owner, may be acquired by eminent domain in such manner as may be prescribed by law. Where lands assessed for drainage benefits are not contiguous to such drain, access right-of-way

thereto over the land of others may be acquired in the same manner. Such right-of-way, when acquired, shall be the property of the county. The board may issue warrants in a sum sufficient to pay the damages assessed for such right-of-way. Such warrants shall be drawn upon the proper county treasurer, and shall be payable out of any drain funds in the hands of the treasurer which have been collected for the construction of the drain for which such right-of-way is sought to be obtained. The board shall negotiate the warrants at not less than the par value thereof and shall 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.

§ 20. Assessing Cost Of Constructing And Maintaining Drain.) After the making of the order establishing the drain, the board shall assess the percentage of the cost of acquiring right-of-way and constructing and maintaining such drain in accordance with benefits received, against:

1. Any county, township, city, or village which is benefited thereby; and
2. Any lot, piece, parcel, or interest in land which is either directly or indirectly benefited by such drain or by such drain in connection with other existing or proposed drains.

No land already included in and being assessed by an existing drainage district shall be included and assessed in any newly formed drainage district unless it can be shown that such land will be benefited by the construction of the new drain. The board in considering the benefit and assessing the percentage of costs to each affected tract, parcel or piece of land may, among other things, take into consideration the present drainage facilities under any existing drainage district, potential use of the proposed drain by such land, whether any such lands will be benefited or harmed by any change in the existing flow and course of drainage water by reason of the construction of the drain, and such other matters as may be pertinent to the question of benefits.

§ 21. Assessment Subject To Review; Notice Of Time And Place.) The percentage assessments provided for in section 20 of this Act shall be subject to review, and ten days' notice of the time and place where such percentage assessments will be reviewed by the board shall be given by publication in a newspaper having general circulation in the county. In addition, each owner of land affected by the proposed drain as shown by the record in the office of the register of deeds or county

treasurer shall be mailed a notice of such hearing at his post office address as shown by such records, and an affidavit of mailing shall be filed with the proceedings of such drain.

§ 22. Hearing On Assessment: Appeal To State Engineer: Correction Of Assessments: Relocating Drain: Fees Of State Engineer.) At the hearing provided for in section 21 of this Act, the board shall proceed to hear all complaints relative to the percentage assessments and shall correct or confirm the same. Should landowners subject to assessment for the construction of the proposed drain having a majority of the possible votes, as determined by section 16 of this Act, believe that the assessment had not been fairly or equitably made, or that the drain is not properly located or designed, they may appeal to the state engineer by petition within ten days after the hearing on assessments, to make a review of such percentage assessments and to examine the location and design of the proposed drain. Upon the receipt of such petition the state engineer shall proceed to examine the lands assessed and the location and design of the proposed drain, and should it appear to him that such assessments have not been made equitably, he may proceed to correct the same, and his correction and adjustment of said assessment shall be final. Should it appear that, in the judgment of the state engineer, the drain has been improperly located or designed, he may order a relocation and redesign. Such relocation and redesign shall be followed in the construction of the proposed drain. For his services in making such review of assessments and examination of location and design, the state engineer shall be allowed ten dollars per day and actual and necessary expenses during the time he is engaged upon such work. All moneys received by the state engineer shall be paid into the state treasury and credited to the general fund. After the hearing provided in this section, the board shall make a finding that the benefits to all tracts of land will exceed the costs that will be assessed against the lands. Any land owner who may claim that he will receive no benefit at all from the construction of a new drain may appeal the question of whether there is any benefit to the state engineer upon the filing of a bond in the sum of two hundred and fifty dollars with the board for the payment of the costs of the state engineer in the matter. The state engineer shall not determine the specific amount of benefits upon an appeal by an individual land owner, but shall only determine if there is any benefit to the land owner, and the determination of the state engineer upon such question shall be final.

§ 23. Recording Assessment.) After the percentage assessment of benefits has been made, as provided in section 20 of this Act and confirmed upon hearing as provided in section 22 of this Act, the board shall record such percentage assess-

ments in the permanent records of the drain and such percentage assessment shall further be permanently recorded by the county auditor in a book of "drainage assessments".

§ 24. Notice Of Letting Of Contracts.) After the recording of percentage assessments as provided in section 23 of this Act, the board shall then give at least twenty-one days' notice of the time and place where contracts will be let for the construction of the drain. Such notice shall be published twice in the official newspaper of the county, or in counties not having an official newspaper in a newspaper having wide circulation in the county.

§ 25. Letting Of Contracts For Drains.) The board shall let contracts for the construction of the drain, culverts, bridges and appurtenances thereto, or portions thereof at the appointed time and place to the lowest and best bidder. Any person receiving a contract for the construction of a drain or portions thereof shall give a performance bond in an amount set by the board for the proper construction of the work within the time specified in the contract. The board shall reserve the right to reject any and all bids and may postpone the letting of contracts for the construction of such drain or parts thereof from time to time or to such other time and place as the board may publicly announce. Any parties who are to be assessed for the construction of such drain may be bidders on construction contracts and, if equal bidders with other parties and equally well qualified, shall be preferred in awarding construction contracts. Any contracts for the construction of portions of a drain which are not let at the original contract letting may be let at a later time by the board after due notice as provided in section 24 of this Act and in accordance with the provisions of this section.

§ 26. Extension Of Time To Contractors; Reletting Unfinished Part Of Contract.) The board may 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 in its discretion at any time thereafter may relet such unfinished portion or any part thereof to the lowest responsible bidder, and shall take security as before. The cost of completing such unfinished portions over and above the contract price, and the expense of notices and reletting shall be collected by the board from the parties first contracting. In no case shall the board forfeit and annul a contract without giving five days' notice to the contractor, if he can be found or if he has a known place of residence in the county. Such notice may be given to such contractor personally or may be left at his place of residence.

§ 27. Apportionment And Taxation Of Costs.) After the

letting of contracts or a portion thereof, the board shall compute the cost of the drain including estimated costs of any unfinished portions. The board shall determine the sum to be levied to pay such cost, which sum shall be prorated and assessed against lands in accordance with the percentage determined under section 20 of this Act. A copy of the list of assessments shall be served on the clerk or auditor of each municipality against which taxes are to be assessed and shall also be filed in the office of the county auditor of the county or counties in which municipalities and lands benefited by the drain are situated. The provisions of section 51 of this Act shall apply to the levies and assessments provided for in this section.

§ 28. Collection Of Drain Taxes.) 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. The county treasurer shall act as the custodian of such drain funds.

§ 29. Payment Of Costs And Expenses Of Locating, Constructing, Maintaining, And Improving Drain; Warrants Issued.) Payment of all expenses and costs of locating and constructing any drain shall be made upon order of the board and warrants therefor shall be signed by the chairman and one other member of the board. All warrants drawn by the board in payment of items of expense of a drain shall be payable from the proper drain fund and shall be accepted by the treasurer in payment of taxes levied in regard to such drain. All such warrants, after presentation to the county treasurer for payment, if not paid for want of funds, shall be registered by him and thereafter bear interest at a rate not to exceed five percent per annum. The county commissioners, by proper resolution, are authorized to purchase drainage warrants from general county funds in instances where such warrants will be funded by a bond issue within six months from the date of purchase.

§ 30. Additional Assessment To Meet Deficit Or Additional Expense.) In case the amount realized from the assessment made for the acquisition of right-of-way or for the construction, improvement, repair, and maintenance of any drain is not sufficient to pay all necessary expenses in regard thereto, or to pay and retire any bonds issued in connection with such operations, a further assessment shall be made to meet such deficit and such additional amount shall be levied and collected in the manner provided in sections 27, 28 and 51 of this Act.

§ 31. Drains Along And Across Public Roads And Railroads.) Drains may be laid along, within the limits of, or across any public road or highway, but not to the injury of

such road. In instances where it shall be necessary to run a drain across such highway, the state highway department, board of county commissioners, or the board of township supervisors, as the case may be, when notified by the board to do so, shall make necessary openings through such road or highway, and shall build and keep in repair all suitable culverts or bridges at its own expense, as provided under the applicable provisions of section 32 of this Act. In instances where drains are laid along or within the limits of roads or highways, such drains shall be maintained and kept open by the board at the expense of the drainage district concerned. 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, the railroad company, when notified by the board to do so, shall make the necessary opening through said road and shall build suitable bridges and culverts and keep them in repair.

§ 32. Construction Of Bridges And Culverts; Cost Of.) The board shall construct such bridges or culverts over or in connection with a drain as in its judgment may be necessary to furnish passage from one part to another of any private farm or tract of land intersected by such drain. The cost of the construction thereof shall be charged as part of the cost of constructing such drain, and such bridge or passageway shall be maintained under the authority of the board of drainage commissioners, and the necessary expense thereof shall be deemed a part of the cost of keeping such drain open and in repair. Whenever any bridge is to be erected on a section line, and the cost of construction shall exceed one hundred dollars or more, such bridge shall be constructed and maintained by the board of county commissioners as provided by sections 24-0801, 24-0802 and 24-0803 of the North Dakota Revised Code of 1943 as amended. Whenever the expense of constructing any such bridge or culvert on a section line shall be one hundred dollars or less, such expense shall be borne by the township in which such bridge or culvert is located.

§ 33. Boards Of Drain Commissioners Of Two Or More Counties May Construct Drains Through Counties.) Whenever it shall be deemed necessary by the boards of drain commissioners of two or more counties in this state to construct or extend a drain through or into two or more counties in this state, the several boards in the counties into or through which such proposed drain may extend when completed may establish, construct, and maintain such drain through or into two or more counties in the manner provided in section 34 of this Act.

§ 34. Procedure To Construct Or Extend A Drain Through Or Into Two Or More Counties.) In order to construct or ex-

tend a drain through or into two or more counties in this state, a petition shall be presented to the several boards of drainage commissioners for the establishment of such drain in their several counties as provided in this Act. The boards of such several counties shall hold a joint meeting and shall determine the necessity or expediency of the establishment of such drain. The several boards of all counties through or into which such proposed drain may run shall agree upon the proportion of damages and benefits to accrue to the lands affected in each county, and for this purpose they shall consider the entire course of said drain through all said counties as one drain. Should the boards fail to agree upon the benefits to accrue to the lands in each county they shall submit the points in controversy to the state engineer of the water conservation commission, and his decision thereon shall be final. They may apportion the cost of establishing and constructing such entire drain ratably and equitably upon the lands in each such county in proportion to the benefits to accrue to such lands. When they have so apportioned the same they shall make written reports of such apportionment to the auditors of the several counties affected, which reports shall show the portion of cost of such entire drain to be paid by taxes upon the lands in each of such counties and such reports shall be signed by the boards of all counties affected. Upon the filing of such reports, the several boards shall meet and assess against the lands in each of such counties, ratably and equitably as provided by this Act, an amount sufficient to pay the proportion of the cost of such drain in each of such counties so fixed by all said boards. The provisions of this Act relating to drains within a single county shall govern the establishment, construction, maintenance, repair, and cleanout of such drains.

§ 35. Cooperating With Drainage Boards Or Officials Of Other States In Drainage Matters.) Any board of drainage commissioners established under the laws of this state, either severally or jointly with other boards, may cooperate with any similar drainage districts or drainage boards in any adjoining state in the establishment of any drainage area or drainage basin for the control of boundary waters between such states.

§ 36. Drainage Boards Or Commissioners Of Different States May Meet In Joint Conference To Effectuate Cooperation.) In order to effectuate the cooperation provided for in section 35 of this Act, any board of drainage commissioners may:

1. Meet in joint conference to agree upon joint plans of procedure;
2. Employ jointly with other similar boards a competent engineer;

3. Carry into effect the plans and suggestions adopted at any such joint conference in accordance with the laws of this state with reference to the construction of drains and drain improvements; and
4. Assess the costs thereof upon the drainage district or area affected in accordance with the benefits received.

§ 37. Proceedings In Drainage Matters Other Than Establishment And Construction Of Drains; Establishment Of Lateral Drains.) Unless otherwise specified, all proceedings under the provisions of this Act affecting the rights of persons and property shall be taken in accordance with the procedure governing the establishment and construction of drains in the first instance, except that a petition for the establishment and construction of a lateral drain shall be sufficient if signed by one or more freeholders whose property will be affected by the lateral drain.

§ 38. Petition For A Lateral Drain; Bond Of Petitioners.) One or more property owners whose property would be affected by a lateral drain may petition the board for the construction of such a drain and shall deposit with the board a good and sufficient bond to be approved by the board conditioned that the petitioner or petitioners will pay all costs of the proposed lateral drain. Whenever improvements of an original drain are made necessary by the construction of a lateral drain the costs of such improvements to the main drain shall be charged as part of the cost of construction of the lateral drain and assessed against the property benefited thereby and collected as other assessments are collected. Unless the petitioner agrees to construct the lateral drain, the board within ten days shall commence proceedings for the construction of such lateral drain according to the provisions of this Act. No person shall dig or construct any lateral ditch or drain which will conduct the flow of water from any land or lands into any drain constructed under the provisions of this Act, except a petitioner as provided in this section. In all instances involving the construction of a lateral drain, the board shall estimate and determine the proportionate share of the cost of the main or original drain which should be paid by such petitioner. The petitioner shall pay into the county treasury the amount so determined, and he shall then be allowed to connect his lateral ditches or drains with the main drain under the direction and superintendence of the board, but at his own cost and expense. The money paid into the county treasury shall be credited to the drainage fund of the specific drain involved.

§ 39. Collection Of Tax Or Assessment Levied Not To Be Enjoined Or Declared Void; Exceptions.) The collection of

any tax or assessment levied or ordered to be levied to pay for the location and construction of any drain laid out and constructed under the provisions of this Act shall not be enjoined perpetually or absolutely declared void by reason:

1. Of any error of any officer or board in the location and establishment thereof;
2. Of any error or informality appearing in the record of the proceedings by which any drain shall have been located or established; or
3. Of a lack of any proper conveyance or condemnation of the right-of-way.

The court in which any proceeding may 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 therefor, on application of either party, shall appoint such person or persons to examine the premises, or to survey the same, or both, as may be deemed necessary. The court, on a final hearing, shall make such order in the premises as shall be just and equitable, and may order such tax or any part thereof to remain on the tax lists for collection, 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 such proceedings shall be apportioned among the parties as justice may require.

§ 40. Establishing New Drains In Location Of Invalid Or Abandoned Drain.) If any of the proceedings for the location, establishment, or construction of any drain under the provisions of this chapter shall have been enjoined, vacated, set aside, declared void, or voluntarily abandoned by the board, for any reason whatsoever, the board may proceed under the provisions of this chapter to locate, establish, and construct a new drain at substantially the same location as the abandoned or invalid drain. When a new drain is established at substantially the same location, the board shall ascertain the real value of services rendered, moneys expended and work done under the invalid or abandoned proceedings and the extent to which the same contributes to the construction and completion of the new drain. The board shall then issue warrants in an amount not exceeding the value to the new drain of the work completed on the invalid or abandoned drain and shall deliver such new warrants, pro rata, to the owners or holders of old warrants or bonds issued under the invalid or abandoned drainage proceedings, upon the surrender of such old warrants or bonds by the holder or holders thereof.

§ 41. Drain Kept Open And In Repair By Board.) All drains that have been constructed in this state except township drains shall be under the charge of the board and it shall

be the duty of the board to keep such drains open and in good repair. When a drain is situated in more than one county, the drainage board of each county shall have charge of the maintenance of that portion of the drain located in its county. It shall be the mandatory duty of the board, within the limits of available funds, to clean out and repair any drain when requested to do so by petition of fifty-one percent of the affected landowners. The percentage of affected landowners of record in the treasurer's office or register of deeds' office favoring such cleaning out or repairing shall be determined by the weighted voting method as provided in section 16 of this Act.

§ 42. Assessment Of Costs Of Cleaning And Repairing Drains.) The cost of cleaning out and repairing a drain shall be assessed pro rata against the lands benefited in the same proportion as the original assessment of the costs in establishing such drain, or in accordance with any reassessment of benefits in instances where there has been a reassessment of benefits under the provisions of section 43 of this Act. In cases where no assessment for construction costs or reassessment of benefits has been made, the board shall make assessments for the cost of cleaning and repairing such drain after a hearing thereon as prescribed in this Act in the case of a hearing on the petition for the establishment of a new drain. The governing body of any incorporated city or village, by agreement with the board, is authorized to contribute to the cost of cleaning out, repairing, and maintaining a drain in excess of the amount assessed under this section, and such excess contribution may be expended for such purposes by the board.

§ 43. Reassessment Of Benefits.) The board may at any time, and upon petition of any affected landowner after a drain has been in existence for at least one year shall hold a hearing for the purpose of determining the benefits of such drain to each tract of land affected. At least ten days' notice of such hearing shall be given by publication in a newspaper having general circulation in the county and by mailing notice thereof to each owner of land affected by the drain as determined by the records of the register of deeds or county treasurer. The provisions of this Act governing the original determination of benefits and assessment of costs shall apply to any reassessment of benefits carried out under this section. The board shall not be forced to make such reassessment more than once every ten years, nor shall any assessment or balance thereof supporting a drainage fund be reduced or impaired by reassessment or otherwise as long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest.

§ 44. Contracts For Work Of Cleaning And Repairing Drains.) If the cost of any work of cleaning out or repairing

any drain does not exceed one thousand dollars in any one year, such work may be done on a day work basis or a contract may be let without being advertised. In cases where the cost of such work exceeds one thousand dollars in any one year, a contract shall be let to the lowest and best bidder in the manner described in this Act for the letting of bids for construction of drains. The board may reject any and all bids for the cleaning and repairing of drains and have such work performed by county equipment at the expense of the drainage district.

§ 45. Maximum Levy; Accumulation Of Fund.) The levy in any year for cleaning out and repairing a drain shall not exceed fifty cents per acre on any agricultural lands in the drainage district. Agricultural lands which carried the highest assessment when the drain was originally established, or received the most benefits under a reassessment of benefits, may be assessed the maximum amount of fifty cents per acre. The assessment of other agricultural lands in the district shall be based upon the proportion that the assessment of benefits at the time of construction or at the time of any reassessment of benefits bears to the assessment of the benefits of the agricultural land assessed the full fifty cents per acre. Non-agricultural property shall be assessed such sum in any one year as the ratio of the benefits under the original assessment or any reassessment bears to the assessment of agricultural lands bearing the highest assessment. In case the maximum levy of fifty cents per acre for any year will not produce an amount sufficient to cover the cost of cleaning out and repairing such drain, the board may accumulate a fund in an amount not exceeding the sum produced by such maximum permissible levy for one year.

§ 46. Expenditures In Excess Of Maximum Levy.) If the cost of maintenance, cleaning out, and repairing any drain shall exceed the amount produced by the maximum levy of fifty cents per acre in any year, together with the amount accumulated in the drainage fund, the board may proceed with such cleaning out and make an additional levy only upon petition of at least sixty-one percent of the affected landowners. The percentage of the affected landowners signing such petition shall be determined in accordance with the weighted voting provisions in section 16 of this Act.

§ 47. Reconveyance Of Land No Longer Required For Drainage Purposes.) Whenever land has been acquired for drainage purposes and is no longer required for such use, the board of county commissioners may reconvey such land to the present owner of the adjacent property if such party in payment thereof surrenders all warrants issued in payment of the land or repays the amount of cash paid therefor.

§ 48. County May Pay Share Of Drainage Taxes On Tax Deed Lands.) If lands acquired by the county by tax deed are assessed drainage taxes, the county commissioners shall pay such taxes from general funds if it appears after a due appraisal that the value of the land exceeds the total of the delinquent taxes for which foreclosure proceedings were instituted plus the total drainage tax assessment. If the total of taxes assessed at foreclosure plus drainage taxes exceeds the value of the land, the county shall not pay the drainage assessments but upon sale of such land any excess of the sales price over and above the amount of taxes for which the foreclosure proceedings were instituted shall be paid to the drainage district to the full extent of drainage taxes due. Any income from the property shall be first credited to the general taxes and any surplus income shall be paid to the drainage district to the extent of drainage taxes due.

§ 49. Drain Warrants; Terms And Amounts.) Drain costs shall be paid upon order of the board by warrants signed by the chairman and one other member of the board. Such warrants shall be payable from the proper drain fund and, upon maturity, shall be receivable by the treasurer for drain assessments supporting such fund. Such warrants may be issued at any time after the order establishing the drain has become final and after incurring liability to pay for any drain work to be financed by drain assessments and in anticipation of levy and collection of such assessments. Every such warrant not made payable on demand shall specify the date when it shall become payable. Demand warrants not paid for want of funds shall be registered by the county treasurer and shall thereafter bear interest at the rate of five percent per annum. Warrants of specified maturities shall bear interest according to their provisions at a rate not exceeding five percent per annum payable annually or semi-annually, and may be made and issued with interest coupons attached. All drain warrants shall state upon their face the purpose for which they issue and the drain fund from date when it shall become payable. Demand warrants not paid for want of funds shall be registered by the county treasurer and shall thereafter bear interest at the rate of five percent per annum. Warrants of specified maturities shall bear interest according to their provisions at a rate not exceeding five percent per annum payable annually or semi-annually, and may be made and issued with interest coupons attached. All drain warrants shall state upon their face the purpose for which they issue and the drain fund from which they are payable, and shall be in denominations of not more than five thousand dollars each. Such warrants may be used to pay drain obligations, or may be sold at not less than par value, provided that the proceeds of warrants sold shall be placed in the proper drain fund and used exclu-

sively for drain expenses. Any unpaid warrants issued for the acquisition of right-of-way or the construction of any drain, including all incidental costs in connection therewith, shall be funded by a bond issue within one hundred and eighty days from and after the filing of the assessment of all such costs with the county auditor as provided in section 27 of this Act, but such requirement shall not be construed as prohibiting the funding of warrants or the issuance of bonds after such one hundred and eighty day period.

§ 50. Payment Of Drain Assessments; Interest.) Drain assessments may be paid in full or in part at any time after the same have been filed in the office of the county auditor, provided that all such assessments shall bear interest at a rate to be set by the board, which rate shall be not less than the rate payable on warrants or bonds issued for the drain financed by such warrants or bonds. Interest shall be computed from the date of filing the assessment list in the office of the county auditor, or, where bonds are issued for right-of-way or for construction, extension or renovation, from the date of first publication of the preliminary bond issue resolution, whichever date is the earlier.

§ 51. Lien For And Enforcement Of Drain Assessments.) Drain costs determined by the board shall be extended upon the proper assessment list of benefited tracts in specific amounts computed according to the proportionate benefits found for each tract affected by the drain or by work done on the drain. A true copy of every such list affecting lands in a city or village shall be served on the auditor or clerk thereof promptly following completion. The assessment list shall then be filed in the office of the county auditor of the proper county or counties and said auditor shall extend upon the tax lists against the land affected, the specific amounts of the drain assessments according to the drain assessment list prepared by the board. From and after the filing of a drain assessment list with the county auditor the specific amounts levied and assessed against each benefited tract shall constitute a special tax thereon and shall be a lien upon such tract until fully paid. Such lien shall have precedence over all other liens except general tax liens, and shall be of equal rank and order with the lien of general taxes and shall not be divested by any judicial sale, tax sale, or foreclosure. This Act shall be notice to all subsequent encumbrancers of the superior rank of drain liens imposed under the provisions hereof. Special drain taxes shall be collected and enforced as other taxes are collected and enforced. The affected real property shall be sold to enforce the collection of drain assessments which have become delinquent at the same time and in the same manner as is provided in the title Taxation for the sale of real property for

delinquent general taxes. The sale shall be made by the same officer, upon like notice, subject to redemption and on like record as a sale of real property for delinquent general taxes. If property to be sold is subject to sale for general taxes and also for drain assessments, such property shall be advertised and sold for the total due for both general taxes and drain assessments and one certificate shall issue. If there are no bids for real estate so offered for sale, the county auditor shall sell the same to the county and shall issue one certificate of sale therefor. If the property to be sold is not subject to sale for general taxes it may be sold for drain assessments alone and a certificate of sale for such assessments shall issue to the proper drain board, unless sale is made to a private bidder. The board may purchase from the county any unassigned tax certificates against property sold to the county for general taxes and for drain assessments made by the board or its predecessor. Assignments of such certificates shall be on the terms provided for assignments to individuals except that the amounts of drain assessments shall not be collected. If no redemption is made, the affected property shall pass absolutely to the board on expiration and termination of the time for redemption and may thereafter be sold by the board at public sale. The governing body of each city or village against which a drain assessment is made shall include in the earliest possible tax levy the amount assessed against it by the board, which amount shall be extended against all of the taxable property in such city or village as general taxes are extended, and such levy shall be over and above mill levy limitations prescribed by law. When the cost of any drain, or of an extension or enlargement or renovation thereof, shall be in such amount that the board finds that assessment of such total cost against the affected property for collection in full in a single payment would be unduly burdensome to such property, the board may determine to divide such cost into equal annual amounts to be assessed and collected over a period of not more than fifteen years. Drain costs and drain assessments shall include all expenditures for work and materials for the drain, including anticipated expenses, interest charges and a reasonable charge for the establishment of a reserve fund with which the board may from time to time purchase tax delinquent property affected by the drain.

§ 52. Drain Bonds.) The board may issue bonds to finance acquiring drain right-of-way, locating and constructing drains and funding unpaid drain warrants heretofore issued, or issued hereafter under the provisions of this Act. Drain bonds issued in whole or in part to finance expenditures for which warrants have not been issued shall not be authorized until after firm contracts for projected drain work have been made and proper undertakings therefor have been executed and filed, or until

after the drain work has been completed. Proceedings for the issuance of such bonds shall be initiated by the adoption of a preliminary resolution of the board which shall include information and findings as follows:

1. The maximum amount of drain bonds proposed to be issued;
2. The maximum interest rate such bonds shall bear;
3. Designation of the calendar years in which such bonds shall mature;
4. The complete name of the drain for which such bonds are to be issued; and
5. The purpose or purposes for which the proceeds of the bonds will be used, including the total amount of drain warrants to be bought with such proceeds.

When such preliminary resolution has been duly adopted by the board, the board shall proceed to have the text thereof published in a legal newspaper of general circulation in the locality in which the particular drain is situated, and there shall be published with and as a part of such text a statement that from and after the expiration of thirty days next following the date of the first printing of such text, no action may be commenced or maintained, and no defense or counterclaim may be recognized in the courts of this state to question or impair the drain warrants resolved to be funded, or the drain assessments supporting such warrants. There shall also be included in such publication the further statement that a complete list identifying the drain warrants proposed to be funded has been filed in the office of the county auditor of the county or counties in which the affected lands are located. Such publication shall be made once each week for three successive weeks and proper proof thereof shall be filed with the board. The validity and enforceability of any drain warrant or of any assessment supporting the same shall not be vulnerable to attack in the courts of this state unless an appropriate action or proceeding is commenced or a defense or counterclaim is served within thirty days next following the date of first printing of such publication. It shall be the duty of the board to cause to be prepared and filed with the auditor of the proper county or counties a complete list identifying the drain warrants proposed to be funded by such bonds, and such list, or true copies thereof, shall be so filed prior to the date of first printing of said preliminary resolution. Within a reasonable time, and more than thirty days after the first printing of such preliminary resolution, the board may proceed to authorize the preparation and sale of drain bonds in accordance with such resolution. Such bonds shall bear interest at a rate not

to exceed six percent per annum, shall contain a provision that interest thereon shall cease at maturity unless the holder shall present the same for payment and payment is refused, shall designate the fund from which they are payable and shall be offered for sale and sold as provided in chapter 21-03 of the North Dakota Revised Code of 1943, as amended, for the offering and sale of general obligation bonds of governmental subdivisions of this state. Wherever drain bonds are issued for drain warrants, such bonds in the appropriate amount may be exchanged for such warrants, but the basis of exchange shall be such that the average annual net rate of interest on the bonds will not exceed the rate on the warrants refunded. Drain warrants purchased with the proceeds of bonds shall not be canceled but shall be retained by the board as assets of the drain fund from which such warrants are payable. Such fund shall be continued and payments therefrom shall be made on the warrants drawn thereon without reference to the bond issue, but all such payments shall be placed in the fund from which the bonds are payable and shall be applied to service such bonds and to pay the interest thereon. Bonds issued by drainage districts shall be eligible for purchase by the various trust funds of the state of North Dakota and its instrumentalities.

§ 53. Sinking Funds And Bonds.) The board shall establish a sinking fund for each issue of bonds, which fund shall consist of all drain assessments made for the bonds, all warrants funded and all assessments for such warrants, all accrued interest received on sale of bonds, all proceeds of bonds sold not actually expended for the drain, the reserve fund authorized for purchase of tax delinquent lands affected by the drain, all general tax levies for payment of obligations of the drain and any other moneys which may be appropriated to the sinking fund. Separate sinking funds shall be provided for each separate drain for which bonds shall have been issued. Until the purpose of the sinking fund has been fulfilled, no moneys in any such sinking fund shall be applied to any purpose other than payment of the bonds for which such fund was created.

§ 54. Liability For Deficiencies: Maintenance Of Sinking Fund.) During the month of June of each year the board shall prepare a complete statement of the condition of the finances of each drain and shall cause the same to be filed with the county auditor on or before July 1 next following. At its July meeting next following the filing of each statement of financial condition of any drain, the county board shall examine such statement and determine whether or not any drain has defaulted or will default on its financial obligations. Where it appears to the county board that any drain does not have moneys and drain assessments receivable equal to one

hundred ten percent of its obligations coming due within thirteen months next following, the county board shall pay from the county general fund into the sinking fund for drain warrants or bonds or shall proceed to levy a general property tax, the proceeds of which, together with drain moneys on hand and the probable prior yield of drain assessments will amount to one hundred ten percent of the obligations of the drain becoming due during the thirteen months next following. Such tax or payments shall be appropriated to the sinking fund for the drain warrants or bonds, and certificates of indebtedness may be issued against the same as levied. On redemption of all warrants or bonds against any sinking fund, or upon accumulation of moneys in such fund sufficient to redeem all outstanding warrants or bonds, all surplus moneys in such fund shall be payable to the general fund of the county or counties levying general property taxes or making such payments, up to the amounts of such levies or payments.

§ 55. Dissolution Of Drainage District.) The owners of property subject to fifty-one percent or more of the liability for maintaining any drain as determined in section 16 of this Act may petition the board for the abandonment and dissolution of such drain. Upon receipt of such petition, the board shall call a public hearing on the petition and if they find the number of valid signatures to represent property liable to fifty-one percent or more of the cost of upkeep of such drain, as determined by section 16 of this Act, and that such drainage district has no outstanding indebtedness, the board shall then declare such drain to be abandoned and such drainage district to be dissolved, and shall record such declaration upon the minutes and publish the same in a newspaper having wide circulation in that county. In case the drainage district extends into two or more counties, the board upon receipt of the petition above referred to shall convene in joint session and call the public meeting above provided. When a drain has been abandoned and dissolved, it may then be reestablished in whole or in part only in the same way as a new drain is established.

§ 56. Penalty For Violation Of Chapter.) If any person willfully and maliciously shall remove any surveyor's stake set along the line of any drain laid out under the provisions of this chapter, or shall obstruct or injure any such drain, or shall violate any valid rule or regulation promulgated by the board, for each and every such offense he shall be subject to a penalty not exceeding twenty-five dollars together with such sum as will be required to repair such damage and costs of suit. Such penalty may be recovered in an action by the board. 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.

§ 57. Existing Obligations And Regulations.) The passage of this Act shall not affect the validity of any valid outstanding warrants, bonds or other obligations of drainage districts and all sinking funds created for the payment of such obligations shall continue in force until the liquidation of such obligations. All valid rules and regulations promulgated by any board of county commissioners or board of drainage commissioners shall remain in full force and effect until altered or repealed by the board of drainage commissioners in the county concerned.

§ 58. Repeal.) Chapter 61-21 of the North Dakota Revised Code of 1943 as amended is hereby repealed.

Approved March 8, 1955.

CHAPTER 348

S. B. No. 67

(Committee on Natural Resources)

GARRISON DIVERSION CONSERVANCY DISTRICT

AN ACT

Creating the Garrison Diversion Conservancy District in order to facilitate the establishment, construction and maintenance of the Garrison Diversion Unit of the Missouri River Basin Project and defining its purposes, functions, powers and duties and repealing chapter 61-24 of the 1953 Supplement to the North Dakota Revised Code of 1943.

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

§ 1. Development And Utilization Of Land And Water Resources Declared A Public Purpose; Declaration Of Intention; Interpretation.) It is hereby declared that more effective development and utilization of the land and water resources of this state, protection and preservation of the benefits therefrom, opportunity for greater economic security, protection of health, property and enterprise, and the promotion of the prosperity and general welfare of all of the people of North Dakota involve, necessitate and require the exercise of the sovereign powers of the state and concern a public purpose, the accomplishment of which, among other things, demands, and it is hereby declared necessary, that the Garrison Diver-

sion Unit of the Missouri River Basin Project as authorized by Act of Congress approved December 22, 1944 (58 Stat. 887), and acts amendatory thereof and supplementary thereto, be established and constructed:

1. To provide for the future economic welfare and prosperity of the people of this state, and particularly of the people residing in the area embraced within the boundaries of the conservancy district created by this Act;
2. To provide for the irrigation of lands within the sections of such district periodically afflicted with drought, and to stabilize the production of crops thereon;
3. To replenish and restore the depleted waters of lakes, rivers and streams in such district, and to stabilize the flow of said streams;
4. To replenish the waters, and to restore the level of Devils Lake, Stump Lake, Lake Williams and Turtle Lake;
5. To make available within the district, waters diverted from the Missouri River for irrigation, domestic, municipal and industrial needs, and for hydroelectric power, recreation and other beneficial and public uses.

The provisions hereof shall not be construed to, in any manner, abrogate or limit the rights, powers, duties and functions of the state water conservation commission, but shall be held to be supplementary thereto and an aid thereof. Nor shall this Act be construed as limiting or in any way affecting the laws of this state relating to the organization and maintenance of irrigation districts, flood irrigation districts, water conservation and flood control districts, drainage districts, or watershed protection districts, nor as precluding the establishment of any such district wholly or in part within the boundaries of the district created by this Act.

§ 2. Garrison Diversion Conservancy District Created.)
There is hereby created within the state of North Dakota, a conservancy district, to be known as the "Garrison Diversion Conservancy District", hereinafter referred to as the "district", and consisting of that part of the state which is included within the boundaries of the following counties, to-wit: Barnes, Benson, Bottineau, Cass, Dickey, Eddy, Foster, Grand Forks, Griggs, LaMoure, McHenry, McLean, Nelson, Pierce, Ramsey, Ransom, Renville, Sargent, Sheridan, Stutsman, Ward, and Wells.

Such district shall be, and it is hereby declared to be a governmental agency, body politic and corporate with the authority to exercise the powers specified in this Act, or which may be reasonably implied.

Any county adjoining the district as herein created, or as hereafter composed, may join such district upon application of its board of county commissioners and the approval of such application by the board of directors of the district. The board of directors, as a condition of approval of such application, may require the levy of such taxes within said county as may be equitable to equalize the burden of such county with the obligations paid or assumed by the other counties in the district. Such county is hereby authorized to levy such taxes as may be necessary to carry out its part of the agreement for becoming a part of the district, which levy shall be in addition to the amount which may otherwise be legally levied for county purposes.

§ 3. Appointment Of Directors; Organization Of Board.) Within thirty days after the state water conservation commission shall so request, the board of county commissioners of each county of the district shall appoint a director who shall be a resident and elector of such county. The directors thus appointed shall constitute the board of directors of the district. They shall meet at a time and place designated by the state water conservation commission, and shall organize by electing from their number a chairman and vice chairman. They shall also elect a secretary and a treasurer. The offices of secretary and treasurer may be held by the same person, and a director of the district may hold either or both offices. In case the office of any director of the district becomes vacant by reason of removal, death, resignation or otherwise, the vacancy shall within thirty days be filled by the board of county commissioners of the county in which the vacancy occurs. Whenever a board of county commissioners shall fail to appoint a director or fill a vacancy within the time specified, the state water conservation commission may do so.

§ 4. Compensation Of Directors.) Each member of the board of directors of the district shall receive from the district the same compensation per day as that paid a county commissioner, and in addition the actual and necessary expenses while attending meetings of the board or otherwise engaged in the official business of the district. A director traveling in his personal automobile while attending meetings or engaged in the official business of the district shall receive the same mileage as that paid a county commissioner for such travel.

§ 5. Term Of Office; Oath Of Office; Bonds.) Each member of the board of directors of the district shall hold office for a term of three years, and until the successor in office has been appointed and qualified, provided, that one-third of the board first appointed shall hold office for a term of three years, one-third for a term of two years, and the other directors shall

hold office for a term of one year, from the first day of July next following the date of their appointment. The term of the directors first appointed shall be determined by lot when they meet to organize as provided in section 3 hereof. Before assuming the duties of the office, each director shall take and subscribe the oath of office prescribed by law for civil officers. The district treasurer shall be bonded in such amount as the board may prescribe.

§ 6. Meetings Of The Board; Quorum; Board To Adopt Rules, Regulations And Bylaws.) The board of directors of the district shall adopt such rules and regulations and bylaws for the conduct of the business affairs of the district as they may deem necessary, including the time and place of regular meetings of the board. Special meetings may be called by the secretary on order of the chairman of the board or upon the written request of the majority of the qualified members of the board. Notice of a special meeting shall be mailed to each member of the board at least six days before such meetings, provided, that a special meeting may be held at any time when all members of the board are present or consent thereto in writing. A majority of the members of the board of directors shall constitute a quorum for the transaction of business, but any number may adjourn the meeting for want of a quorum.

§ 7. Attorney General Shall Act As Legal Adviser; Chief Engineer Of State Water Conservation Commission To Assist Board; Employment Of Counsel And Engineers.) The attorney general shall, as far as his duties permit, act as the legal adviser of the board. The chief engineer of the state water conservation commission shall furnish such engineering services and assistance as the duties of his office permit. When the district has funds available, the board of directors may employ other counsel to advise and represent it in its proceedings and affairs, and may employ other engineers and engineering services in connection with its work and the affairs of the district.

§ 8. Powers And Duties Of The District Board of Directors.) The board of directors of the Garrison Diversion Conservancy District shall have the power:

1. To sue and be sued in the name of the district;
2. To exercise the power of eminent domain in the manner provided by the title Judicial Remedies for the purpose of acquiring and securing any right, title, interest, estate or easement necessary to carry out the duties imposed by this Act, and particularly to acquire the necessary rights in land for the construction of dams, reservoirs, canals, hydroplants, irrigation systems and any other device for the conservation, storage and use of water,

and to secure the right of access to such works and the right of the public access to the waters impounded thereby or emanating therefrom;

3. To accept funds, property and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance and operation of the Garrison Diversion Unit, or any part thereof;
4. To cooperate and contract with the state water conservation commission and any political subdivision and municipality in promoting the establishment and construction of the Garrison Diversion Unit, or any part thereof;
5. To furnish assurances of cooperation and as principal and guarantor or either to enter into a contract, or contracts, with the United States of America, or any department or agency thereof, and with public corporations of North Dakota for the performance of obligations entered into with the United States for the construction, operation or maintenance of works of the Garrison Diversion Unit of the Missouri River Basin Project as defined by Act of Congress, approved December 22, 1944 (Stat. 887), and acts amendatory thereof or supplementary thereto;
6. To equip, maintain and operate an office and principal place of business for the district;
7. To appoint and fix the compensation of such employees as the board shall deem necessary to conduct the business and affairs of the district;
8. To appoint from their number an executive committee and vest the same with such powers and duties as the board may from time to time delegate thereto, in order to facilitate the duties and work of the board in connection with the business affairs involved in the development, construction, operation and maintenance of the Garrison Diversion Unit, or any part thereof;
9. To levy a tax of not to exceed one mill annually on each dollar of taxable valuation in the district for the payment of the expenses of the district, including, but not limited to, per diem, mileage and other expenses of directors, technical, administrative, clerical, operating and other expenses of the district office, and for the cumulation of a continuing fund through such levy for the performance of obligations entered into with the United States of America in connection with the construction, operation and maintenance of works of the

said Garrison Diversion Unit of the Missouri River Basin Project. All moneys collected pursuant to such levy shall be deposited in the Bank of North Dakota to the credit of the district and shall be disbursed only as herein provided. The amount which may be expended or obligated in any one year for operating the district, exclusive of disbursements in connection with obligations to the Federal government, shall not exceed ten percent of the maximum permissible.

§ 9. District Budget; Determination Of Amount To Be Levied; Adoption Of Levy; Limitation.) The board of directors of the district shall at the time of the organization of the board, and in July annually thereafter, estimate and itemize all the expenses and obligations of the district, including, but not limited to, expenses of directors, expenses of operating the office, debt service and retirement, and obligations and liabilities to the United States for which provision must be made. After the district shall have entered into any contract with the United States, the board of directors may include in such budget funds deemed necessary to create a reserve fund to meet future payments under such contract. Upon the completion and adoption of such budget, the board of directors shall make a tax levy in an amount sufficient to meet such budget. Such levy shall be in the form of a resolution, adopted by a majority vote of the members of the board of directors of the district. Such resolution shall levy in mills, but not exceeding one mill, sufficient to meet all the expenses, obligations and liabilities of the district as provided in the budget.

§ 10. Certified Copies Of Levy And Budget Sent To County Auditors.) Immediately after completion of the budget and the adoption of the annual tax levy by the board of directors of the district, but not later than October first, the secretary of the district shall send one certified copy of the levy as adopted and one certified copy of the budget to the county auditor of each county in the district, and one certified copy of such levy and one certified copy of such budget to the state tax commissioner.

§ 11. County Auditors To Extend Tax Levy.) The county auditor of each county in the district shall extend the levy upon the tax list of the county for the current year against each description of real property and all personal property within the county in the same manner and with the same effect as other taxes are extended.

§ 12. County Treasurers To Collect And Remit District Taxes.) The treasurer of each county in the district shall collect all district taxes, together with interest and penalty thereon, if any, in the same manner as the general taxes are

collected, and shall pay over to the treasurer of the Garrison Diversion Conservancy District, on the first day of each month, on demand, all taxes so collected during the preceding month, with interest and penalties collected thereon, and forthwith shall notify the secretary of the district of such payment.

§ 13. District May Enter Into Contract For The Construction, Operation And Maintenance Of Works.) When the board of directors of Garrison Diversion Conservancy District is notified by the United States, or by any department or agency thereof, that it is necessary for the district to enter into a contract as principal and guarantor or either, for the repayment of any part of the cost incurred, or to be incurred in the construction, operation and maintenance of works of the Garrison Diversion Unit of the Missouri River Basin Project, the board shall give notice of hearing on such proposed contract as herein provided. The board shall hold hearings on such contract in at least three places in the district. Notice of the time and place of such hearings shall be published at least ten days before such hearing in not less than three newspapers of general circulation in the district. Anyone interested in, or affected by such contract if entered into, may appear at any such hearing and show cause, if any, why such proposed contract should or should not be approved. After considering the terms and conditions of such proposed contract and the support therefor and objections thereto, the board shall adopt a resolution approving or disapproving such contract, and if a disapproval, may enter into further negotiations with the United States concerning terms for a new or amended contract. At least thirty days before any hearing is held on such contract for construction of facilities or works, plans therefor shall be filed with the secretary of the district and shall be open to public inspection.

§ 14. When Contract Is Approved.) After any such contract shall have been duly executed, as herein provided, the board of directors shall, in accordance with the provisions of such contract, adopt a resolution that a tax be assessed and levied upon all the taxable property in the district. Such tax shall be within the limitation herein provided and shall be levied annually on each dollar of the taxable valuation in the district until the contract obligations have been paid, or a sufficient fund has been accumulated to pay the same. The resolution shall state the purpose of such levy and the amount thereof. A certified copy thereof shall be mailed to the county auditor of each county in the district. Upon the receipt of such resolution or as soon thereafter as county levies are made, such county auditor shall spread the levy specified in such resolution for the current year and annually thereafter as required by such resolution.

§ 15. Proceedings To Confirm Contract.) The board of directors of the Garrison Diversion Conservancy District, after entering into a contract with the United States Government or with any public corporation of the state of North Dakota, may commence a special proceeding in and by which the proceedings of the board and the making of such contract, or contracts, shall be judicially examined, approved, and confirmed, or disapproved and disaffirmed. Such proceeding shall comply as nearly as possible with the procedure required in the case of irrigation districts under the laws of North Dakota.

§ 16. County May Be Excluded From Conservancy District If Not Directly Benefited.)

1. Any county in the conservancy district not directly benefited by the establishment of the Garrison Diversion Unit of the Missouri Basin Project as authorized by act or acts of Congress may be excluded from the district as provided herein. The board of county commissioners of any such county may, by resolution direct the county auditor and the chairman of the board to file with the board of directors of the conservancy district a petition, for and on behalf of the county, requesting the board of directors of the district to exclude such county therefrom. A certified copy of the resolution of the county board shall accompany and be filed with such petition. The petition and resolution shall state specific reasons why such county will not be directly benefited by the establishment and development of the Garrison Diversion Unit.
2. Within fifteen days from the date of filing said resolution and petition for exclusion from the district the district board shall meet to consider such petition. It may grant such petition or it may fix a time and place for a hearing thereon. If a hearing be set, the secretary of the board shall cause notice of the filing of such petition for exclusion, and of the time and place for a hearing, to be published once each week for two consecutive weeks in a newspaper of general circulation printed in the district. The hearing mentioned in such notice shall be held not less than ten nor more than twenty days after the last publication of such notice. The notice shall state that any person, corporation, municipality and county in the district may appear or be represented at the hearing and show cause why the petition should or should not be granted. The board shall hear the petition at the time and place mentioned in the notice.
3. If after the hearing on the petition the district board of directors shall determine that the county requesting

to be excluded from the district will not be directly benefited by the establishment and development of the Garrison Diversion Unit of the Missouri Basin Project as authorized by act of Congress, the district board shall by resolution grant the petition and shall direct the chairman and secretary to execute the order of the board excluding such county from the conservancy district. If, however, the district board shall decide that such county will be directly benefited it shall deny the petition and direct the chairman and secretary to execute its order refusing to exclude such county from the district. A county excluded from the conservancy district shall not be liable for any obligations thereof incurred after exclusion but shall be liable for and shall pay to the district taxes levied before exclusion.

4. If any contract shall have been made with the United States or any agency thereof before such petition is filed, such petition shall not be granted unless consented thereto by the appropriate agency of the United States and if such agency gives its consent upon condition, such conditions shall be included in the order of exclusion and the county may be required to and in that event such county shall continue to pay any tax levies required to meet the obligations of any such contract.

§ 17. Appeal From Orders Of District Board.) An appeal from an order of the board of directors of the conservancy district denying a petition for exclusion may be taken to the district court of the petitioning county. The appeal, provided for herein must be taken within thirty days after the order of the district board has been filed with the secretary thereof. The appeal shall be taken by serving notice of appeal upon the secretary of the district. The appeal shall be docketed as any cause pending in district court is docketed and thereupon the court shall have and exercise original jurisdiction and shall hear and determine the cause de novo without a jury. An appeal to the supreme court may be taken by the petitioning county or by the conservancy district, from any judgment entered therein in district court, and from any order of said court if an appeal would lie from such order if entered by the court in a civil action.

§ 18. Repeal.) Chapter 61-24 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby repealed.

Approved March 4, 1955.