

**PART III**  
**SYNOPSIS OF DRAINAGE LAWS OF THE 35 STATES**  
**WHICH REPORTED ORGANIZED DRAINAGE**  
**ENTERPRISES**

## SYNOPSIS OF DRAINAGE LAWS

### SUMMARY

Under the laws of the 35 States which reported organized drainage, enterprises have been established covering 84,408,093 acres of land, with an investment of \$680,732,880, and a maintenance and operation cost, in 1929, of \$7,605,035. The drainage statutes of these States, with amendments, revisions, and additions, up to and including 1929, comprise more than 7,000 pages in the State constitutions, codes, revised statutes, compiled statutes, and session laws. Recent activity of legislatures in dealing with the subject of drainage is revealed by the fact that at the sessions of 1925-26 there were 79 separate amendments or additions to the drainage laws in 32 States; in 1927-28 there were 121 drainage enactments in 35 States; and in 1929 there were 95 statutes added to the drainage laws of 35 States.

The following necessarily brief synopsis of those laws is intended to collect in one place for convenient reference the essential statutory requirements in each of the 35 States for establishing, organizing, financing, and maintaining drainage districts.

In 15 States the jurisdiction to establish drainage districts is conferred by the legislatures on the governing body of the county in which the larger or largest area of the district is situated. In 16 States jurisdiction is vested in the county, district, or circuit courts. In 2 States the clerk of the superior court is vested with this authority, and in the remaining 2 States established boards of drainage commissioners have jurisdiction.

In all instances, however, where jurisdiction is vested in some body other than the courts, provision is made for appeal from all orders of final determination to one or another of these courts, and proceedings for the exercise of the right of eminent domain, which is universally conferred upon drainage districts, are brought before the courts. Provision is also made in all instances for further appeal to the higher courts on most questions. The ultimate jurisdiction, therefore, is in the courts, even when the county commission or some other body is empowered to act in the initial proceedings. The body or tribunal to which the several legislatures have delegated authority to establish drainage districts is shown in the synopsis under the name of each State.

Drainage districts are initiated by petition to the designated authority, signed by a varying number of owners of land in the territory to be affected. The number of required signers ranges from three or more, in Nebraska, to two-thirds of the resident freeholders, in Texas. It is usual to require the signatures of either a majority of the owners representing one-third or more of the land or one-third of the owners representing a major portion of the area, but in instances where less than a majority in number or area is required, the later proceedings provide for an

election on the major issues by all landowners in the district, at which a majority vote controls. In a few States a majority in area is sufficient. The procedure, after the filing of the petition, is designed to give proper notice to all owners whose lands will be affected, particularly those who have not signed the petition, and to afford full opportunity to be heard for or against the organization of the district. Since a minority may be coerced into having its lands included and assessed, and lands not mentioned in the petition may be brought into the district, if benefited, provisions for the service of notice, and public hearings on every step of the proceedings, are minute and specific. In a great number of the States special elections within the districts are required for determining matters of assessment, inclusion of lands, and issuance of bonds. The jurisdiction of the tribunal establishing the district and the validity of the subsequent financial arrangements depend on an exact adherence to the statutes.

All drainage districts are financed by special drainage taxes assessed against the real estate and rights of way and easements in the district, in the proportion which the benefits to each separate parcel bear to the aggregate benefits assessed in the whole district. The assessments are usually made by a board of viewers or appraisers appointed for that purpose by the establishing authority, and are confirmed only after due notice to, and full hearing of, all parties affected. Drainage assessments are collected in the same manner as other taxes and are liens on the property assessed, secondary only to State and county taxes. In most instances where the total cost of the improvement is too great to be conveniently borne by the property in one year, assessments are divided into annual installments bearing interest and extending over a period of from 10 to 30 years. In such case, bonds of the district are issued with dates of maturity synchronized with the annual due dates of the installments of assessments; and bonds of each series are specific liens on the installments of assessments falling due in that year. The first maturity of the bonds is generally postponed for a period of 5 years after the date of the original assessment. The aggregate amount of the bonds which may be issued is usually limited to 90 per cent of the aggregate assessment of benefits. In a number of States the validity of the bonds is predetermined by a review of the entire proceedings in a court of proper jurisdiction in which a decree is entered declaring such bonds to be valid obligations of the district, and the question is then *res adjudicata*.

Maintenance and operation costs, for a fixed period, are frequently provided for in the original assessment of benefits. Otherwise funds may be raised by special annual assessments in the same proportion as the original

assessment for benefits, and collected in the same manner. The procedure is similar to that for the assessment of benefits and usually there is a statutory limit to the per-acre amount which may be assessed for maintenance and operation in any one year.

In general, drainage districts are bodies politic of the State in which organized, with perpetual succession. In a considerable number of States no provision, other than that of the general law, is made for the dissolution of such districts. In other States specific provision is made for dissolution when districts have ceased to be of public utility. The procedure for dissolution is similar to that for organization, but with the restriction that all outstanding obligations must have been satisfied and private rights acquired through the establishment of the district may not be interfered with without due compensation.

While the different laws necessarily have a general similarity, there is a very clear adaptation of the same principles to the peculiar needs of the individual State or group of States, depending on whether the drainage sought to be accomplished involves flood protection as well as drainage, or the drainage of lands already in farms, or the reclamation of swamp lands, or the protection of land against damage from seepage due to irrigation.

It is a uniform requirement that the drainage sought must, in addition to reclaiming or improving land, be of benefit to the public health, utility, or welfare; that the cost of such drainage must not exceed the estimated benefits to be derived therefrom by the property affected; and that the bonds or other evidences of indebtedness issued to pay the costs must not exceed the actual assessments levied for the purpose of liquidating such bonds.

## DRAINAGE LAWS BY STATES

### ARIZONA

(Revised Code of 1928, Art. V, secs. 3515-3605)

**Jurisdiction to establish.**—The board of supervisors of any county may establish a drainage district upon petition of five or more holders of title or evidence of title to agricultural lands which are susceptible of drainage by the same system. The equalized assessment roll is evidence of title, but no person may acquire land for the purpose of joining in a petition or becoming an elector of the proposed district. Petitioners must furnish bond to secure the expenses incurred by the supervisors in the event the organization is not effected. (Secs. 3515-3516.)

**Procedure.**—If the supervisors are of the opinion that a drainage district is necessary and feasible, they give notice by publication of the time and place of a hearing on the petition. Where land is situated in more than one county publication is in each.

At the hearing the board fixes the boundaries of the district, including any land susceptible of drainage by the same system of works, although not within the boundaries of the district, upon application of the owners thereof. The boundaries fixed by the board may not be changed except on appeal to the superior court, except that contiguous lands may be added upon petition of one-half or more of the owners of any certain body of such lands, after a proceeding similar to that for the establishment of the district, and a special election in the district to determine the question.

Appeal from the action of the board of supervisors may be had within 30 days by any interested party who is also a party to the record and the superior court shall hear the case within 30 days and transmit its judgment by remittitur to the board of supervisors within 10 days, when the said board shall enter the judgment on its minutes.

When the district is formed the board of supervisors divides it into three or five divisions as nearly equal in size as practicable, which divisions are numbered consecutively. One director, who must be an elector and resident freeholder of the division, is elected for each division, except that when requested in the original petition three directors may be elected at large.

The board of supervisors gives notice by publication of an election to determine whether the district shall be organized. No person may vote who is not an elector under the State laws and who does not hold title to land within the boundaries of the proposed district on which he has paid taxes, as shown by the tax rolls, for the year next preceding the election.

The supervisors canvass the vote and if a majority is in favor of the organization of the district the board declares it organized, and the persons who have received the highest number of votes in each division become directors. The order of the board must be recorded in the office of the county recorder of any county affected. No board of supervisors in any county shall thereafter allow the formation of another drainage district embracing the same land without the consent of the existing board of directors.

The directors organize by electing a president and secretary, and hold regular quarterly meetings. After the first election members of the board of directors are elected at regular county elections in each alternate year. The board of directors has legal title to all property of the district and to all water, and may exercise the right of eminent domain. (Sec. 3540.)

**Financing—Assessment of benefits.**—When a district is organized the directors, after adopting the plan of construction, appoint two appraisers, who, with the engineer of the district, divide the lands into tracts of not less than 40 acres and, on a system of units, apportion to each the amount of benefits which it will receive, assigning one unit to the subdivision least benefited and a greater number of units successively to the other tracts, in proportion to the benefit. No tract may receive less than 1 unit nor more than 5 units of benefit. The appraisers

then report to the directors the number of units apportioned to each tract. Such apportionment when signed by the appraisers and confirmed by the directors is final and binding on all parties. The schedule so made thereupon becomes and remains the basis of fixing the taxes and assessments thereafter levied. (Sec. 3602.) All assessments are apportioned against the several tracts according to the unit system of benefits. (Sec. 3605.)

**Financing—Bonds.**—The board of directors determine the requirements for construction work within the district, and additional amounts which may be required for maintenance and operation, and call a special election after due notice by publication to determine whether or not bonds shall be issued to the amount of the estimated requirements. If the issuance of bonds is defeated at the special election another election may be had upon the written petition of one-fourth of the qualified voters in the drainage district. (Sec. 3541.) The board of directors may not incur an expenditure of more than \$2,000 before the collection of the first assessment, or the sale of the first bonds.

Bonds are issued in 10 series, the first series becoming due at the end of 10 years, and thereafter fixed percentages of the issue becoming due each successive year for the next 9 years. Bonds are sold to the highest bidder on sealed bids, but they may not be sold for less than 95 per cent of the face value. (Secs. 3542-3543.) Bonds are a lien on all of the real property in the district. (Sec. 3544.)

If the proceeds of the bond issue be insufficient to complete the drainage works, and additional bonds be not voted, then the board of directors, after first submitting the question to the vote of the qualified electors, may levy assessments against the property in the manner subsequently provided.

**Financing—Refunding bonds.**—Should any portion of outstanding bonds or interest be in arrears, a special election may be had to vote on the issuance of funding bonds. Before issuing any funding bonds a petition signed by a majority of the qualified electors in the district must be presented to the board of directors, setting forth the indebtedness proposed to be funded and the total amount of funding bonds sought to be issued, which amount may not be greater than the indebtedness outstanding. A special election is called to vote on the question, and a two-thirds majority of the votes cast is necessary to carry the affirmative. (Sec. 3548.) If voted, the funding bonds are issued in 20 series, the first amounting to 5 per cent of the total issue and maturing on the 1st of January after 20 years and a like per cent of the entire issue maturing each year thereafter until paid. (Sec. 3549.) Such bonds are exchanged for the outstanding obligations of the district, and sold from time to time to pay maturing indebtedness which was outstanding at the time of the issue of such bonds.

**Financing—Annual tax.**—The directors annually furnish to the board of supervisors and the assessor of all interested counties an estimate of the amount needed for the purposes of the district for the ensuing year for the payment of interest, cost of repairs, incidental expenses and an amount sufficient to pay the principal and interest of the bonds maturing during that year. When the district is in more than one county, the estimate is divided by the directors between the counties in proportion to the value of the real estate in the district in each county according to the last equalized assessment roll. (Sec. 3554.) The supervisors levy a drainage tax coincident with county taxes sufficient to raise the reported amount needed by the district, and this tax is collected in the same manner as county taxes and paid to the county treasurer for the use of the district. (Sec. 3557.) The drainage tax may be paid separately and without paying county taxes. (Sec. 3758.)

**Financing—Special assessments.**—The directors may at any time, when they deem it feasible, call a special election to submit to the qualified electors the question of whether a special assessment should be levied for any purpose of the district.

The notice states the amount to be raised and the purpose for which it is to be used. If a majority vote in the affirmative, the board proceeds as in the raising of the annual fund by taxation and the money so raised is used only for the purpose specified in the notice of election.

**Financing—Limit of indebtedness.**—The directors have no power to incur any debt or liability by issuing bonds or otherwise in excess of the specific provisions of this statute, and any such debt is absolutely void, except that before the collection of the first assessment the directors may incur for organization expenses a debt not to exceed \$2,000. (Sec. 3571.)

**Financing—Validating bonds.**—The directors, within 30 days after any order is entered issuing bonds of the district, must present an action to the superior court of the county to determine the validity of such bonds. The proceeding is *in rem* and jurisdiction over all parties is acquired by publication. Any interested party may contest the validity of the bonds. The judgment of the court must be speedily rendered declaring the bonds valid or invalid, with right of appeal by any party, which appeal must be determined within three months. Should the directors fail to bring such action to validate any bonds, it may be brought by any assessment payer within 90 days after the issuance of any bonds.

**Maintenance.**—Maintenance is provided in the annual estimate of the directors furnished to the supervisors and assessors, showing the sum needed in the district for all expenses during the succeeding year. (Sec. 3554.)

**Dissolution.**—Drainage districts may be dissolved upon petition of the board of directors or any landowner showing that the drainage is not longer needed or is taken care of by irrigation or other districts, and that all indebtedness has been paid. The supervisors of the county, after a hearing on such petition and finding that its allegations are sustained, issues an order declaring the district dissolved which has the effect to terminate all the powers and functions of the district.

## ARKANSAS

(Code of 1921, Chapter 51, and Supplements of 1927 and 1931)

ARTICLE I.—Formation of drainage districts, sections 3567–3606

ARTICLE II.—Alternative system of drainage districts, sections 3607–3655

Arkansas has two distinct systems for the formation of drainage districts, the first being for districts in the interest of public health or benefit, and the second for districts principally in aid of agriculture but also conducive to the public benefit.

The county court in every county is authorized to cause to be constructed or improved any ditch, drain, or watercourse in the county, when to do so will be conducive to the public health, convenience, or welfare, or where it will be of public benefit or utility. There must be a petition signed by one or more landowners, if the improvement is less than 5 miles in length, and by 5 or more landowners, if the improvement is more than 5 miles in length, setting forth the necessity for the drainage of such land; a general description of the proposed work; and whether or not it is desired to issue bonds. Bond in the amount of \$50 per mile must be filed to secure the payment of costs if the petition is not granted.

The county court appoints three resident freeholders of the county as viewers of the land and a civil engineer to assist them to make a preliminary survey of the proposed ditch and to report whether the improvement is necessary, practical, and will be conducive to the public health, convenience, or welfare. A hearing on the petition and the report of the viewers is held, after due notice by publication, and any interested person may protest, in writing, against the establishment of the district. If the court is of the opinion that the suggested improvement is not for the public benefit, it dismisses the petition with all costs to the petitioners. If the court finds in favor of the establishment of the district, the petitioners are released from their bond.

If the court finds in favor of the establishment of the district, the land which will be affected or assessed for the improvements constitutes a drainage district to be designated by number and

the court directs the viewers to go with a civil engineer and survey the lands; mark the intersection of the boundaries of lands, townships, and county lines; estimate the material to be removed and the cost for each section of 100 feet; and make a schedule of benefits and damages to each tract of 40 acres or less. They make a separate estimate of the cost of construction of the whole work and apportion the same to each tract of land in proportion to the benefits and damages which will result to each. If so ordered by the court, the commissioners may apportion the construction of a fixed number of lineal feet and cubic yards of said work to each tract of land.

Upon the filing of the viewers' final report, the clerk of the court sets a hearing thereon for the next term, giving notice by publication. The last insertion must be 15 days prior to the date fixed, and this notice is specifically declared to be legal notice of the report of the viewers and the assessments against the property. If the court on the hearing finds the report and assessments to be fair and just, it confirms the report; otherwise the court may order the report amended in any respect. Any interested party may appeal to the circuit court.

The court causes the right to construct the drainage work to be auctioned in sections not less than the number of lineal feet apportioned to each tract of land and makes contracts in writing with the lowest responsible bidder. The owner of any land affected has the right to construct the improvements apportioned to his land at the estimated cost thereof, after giving proper bond.

**Financing.**—When the work is completed, the certificate of the engineer in charge, of the amount due therefore, becomes a lien on the land assessed for such share of the allotment and the holder of the engineer's certificate files same with the county clerk who numbers his certificates and charges them on the tax books against the land assessed with such allotment, and they are collected in the same manner as other taxes. In lieu of bonds, the county court may issue warrants against the district drawing 6 per cent interest and payable in such amounts as will be convenient. The court determines the time and manner in which the assessments are to be paid and orders them placed on the tax book against the respective lots of land to which apportioned.

If bonds have been prayed for in the petition, the court issues same to pay the costs of construction. The bonds mature in not less than 10 years nor more than 30 years, and show on their faces the purpose for which issued and that they are payable only from money derived from assessments and reassessments of the land in this district. The assessments are to be entered in the book known as the "ditch assessment book" and thereupon become a first and paramount lien on the land assessed and are collected in the same manner as other taxes.

In the case of proposed districts lying in more than one county, petitions must be filed with the county court of each county. Each county court appoints one viewer and they meet in the county in which the proposed improvements begin and select an engineer to assist them. They report their findings in duplicate to the county court of each county, estimating the proportion of the cost of improvement which shall be charged to the lands in each county.

**Alternative system of drainage districts.**—Three or more owners of real property within a proposed drainage district may file a petition with the county court for the formation of such district, furnishing bond to pay the costs of survey, etc., in case the petition is denied. They select an engineer, approved by the court, who makes a survey showing the territory to be benefited and a general idea of the character and course of the contemplated improvements with location of the drainage works. All preliminary expenses are paid by the county and are to be refunded from assessments or bonds after the district is established. The county clerk gives notice of the hearing on the petition by publication for two weeks, and at the hearing all property owners may present evidence for or against the establishment of the district. If the court is of the opinion that the best interest of the property owners within the proposed district will be served by its establishment, it orders the same to be established as a drainage district under this article. The districts are to be numbered consecutively or are to receive names designated by the court. If the land in the proposed district is situated in more than one county, the petition must be ad-

dressed to the circuit court of either county and all proceedings shall be had in such court. The circuit court apportions all costs between the counties in proportion to the benefits assessed in each county and notice is by publication in all counties.

If upon hearing on the petition a further petition is presented to the county court signed by a majority, either in number or in acres, or in value of the holders of real property in the proposed district, praying for the formation of the district, it is mandatory that the court make an order establishing the district, without further inquiry.

The order of the county court establishing a district has the full force and effect of a judgment. Any owner of real estate in the district may appeal from such judgment within 20 days, but if no appeal be taken, the judgment is binding and conclusive upon all real property in the district and the owners thereof. Any owner may likewise appeal from an order refusing to establish a district.

Upon establishing a district, the court appoints three owners of real property within the county as commissioners of the district to prepare plans of improvement and they may employ an engineer and an attorney, and if for any reason the improvements are not made, the costs of the commissioners and of such employment will be a charge upon the real property in the district and paid by assessment. If a majority in value of the owners of real property in the district shall petition the court for the appointment of a particular person as commissioner, then it is the duty of the court to appoint the person so designated. The court must remove any commissioner upon the petition of a majority of the owners of land within the district who own a majority of the acres therein.

**Financing—Assessments.**—The commissioners assess the benefits and damages to each tract of land in the district in tabulated form and file same with the clerk of the county court for record. A further hearing on the report is then held, after notice by publication. Any aggrieved party must file his objections within 10 days. The court then enters its judgment, confirming or overruling the assessment complained of, and its finding has the force of a judgment from which appeal may be had within 20 days by any party.

Any property owner may accept the assessment of damages made in his favor or acquiesce in the failure to assess damages, and is presumed to have done so unless within 30 days he demands an assessment by jury. In this event the commissioners may institute, in the circuit court, an action to condemn the property, which action shall be the same as an action in eminent domain, with the right to pay into court such sum as the court may fix, and thereupon proceed with the work before the assessment is made by the jury.

The county court at the time that the assessment of benefits is filed, or when called on by the commissioners so to do, shall enter upon the records an order having the force and effect of a judgment, providing that there shall be assessed upon the real property of the district a tax sufficient to pay the cost of improvements, with 10 per cent added for contingencies, which tax is to be paid by the real property in the district in proportion to the amount of the benefits assessed thereon, in annual installments of not to exceed 25 per cent in any one year. This tax becomes a lien entitled to preference over all other liens, and shall so continue until paid. The remedy against such tax is by appeal within 20 days to the circuit court, and on such appeal the presumption shall be in favor of the validity of the tax. Any property owner within the district may compel compliance with the statute by writ of mandamus.

The tax provided for in the preceding section is collected by the tax collector along with other State and county taxes, and the collector is subject to a penalty in each case in which he collects county taxes and fails to collect the drainage tax.

If the first tax levied be insufficient to complete the authorized improvements or to pay maturing bonds, then the county court may levy an additional assessment but not to exceed in the aggregate the amount of the benefits assessed. By the act of February 25, 1929, a reassessment of benefits may be made not oftener than once a year by the same authorities who made the original assessment and after the same procedure. Such reassessment is collected in the same manner and is a lien similar to the original assessment.

**Financing—Bonds.**—In order to construct the drainage works the board of commissioners may borrow money at not to exceed 6 per cent interest and may issue negotiable bonds therefor, and may pledge all assessments in payment of such bonds. Bonds may run not more than 30 years and are to be so divided that a portion thereof will mature each year, or they may all be payable at one time if proper provision for a sinking fund is made.

**Funding bonded indebtedness.**—By the act of February 25, 1929, the board of commissioners or directors of any drainage

district have the power to fund any bonded indebtedness and extend the maturity of such indebtedness on such terms as they may deem to be the best interests of the districts. They may fund all or any part of the matured or unmatured principal and the matured interest of such bonded indebtedness and may exchange new bonds for outstanding bonds, or sell new bonds and use the proceeds to liquidate outstanding bonds. Funding bonds may not be issued in a greater amount than is necessary to pay outstanding bonds with interest to date, plus the necessary expenses of issuance. Such funding bonds have the same security as bonds issued for the original construction and may be further secured by a pledge and mortgage of the assessments of benefits to be executed by the directors or the commissioners. By the act of March 29, 1929, any drainage district may issue funding bonds to pay outstanding certificates of indebtedness, notes, warrants, or any unsatisfied judgments in the same manner and with the same effect as in the case of funding of outstanding bonds provided for in the act of February 25, 1929. The district may sell such bonds and take up the outstanding indebtedness with the returns, or may exchange the funding bonds for the evidences of indebtedness.

If bonds or interest be delinquent for 30 days, the court, upon application of any person in interest, shall appoint a receiver for the collection of drainage taxes and such receiver is empowered to proceed in the same manner as the drainage commissioners.

**Maintenance.**—The district does not cease to exist upon completion of the drainage works but continues for the purpose of preserving those works and keeping them in efficient operation. The commissioners may from time to time apply to the court for the levy of additional taxes for maintenance purposes. The proceedings in such instances are by publication of notice and hearing in substantially the same manner as in the organization of the district.

**Delinquent lands.**—If the drainage taxes are not paid when due, the collector of taxes reports them to the board of commissioners who must add a penalty of 25 per cent and enforce the collection by chancery proceeding in a court of the county having chancery jurisdiction. The court enters judgment and the judgment is enforced wholly against the land in the drainage district and not against any other property of the delinquent owner. At a judgment sale the land may be bid off in the name of the drainage commissioners and they may take deed and title for the benefit of the drainage district. The owner may redeem in 2 years by paying the tax penalty and costs for the year in which the land was delinquent.

## CALIFORNIA

The 4 principal drainage statutes of California are: An act to promote drainage, approved March 18, 1885 (Statutes of 1885, p. 204); an act to provide for the organization and government of drainage districts for the drainage of agricultural lands other than swamp and overflowed lands, approved March 20, 1903 (Statutes of 1903, p. 201); an act providing for drainage improvement districts containing wet, swampy, or overflowed lands susceptible of drainage by a system of ditches, approved May 13, 1919 (Statutes of 1919, p. 731); and a drainage act of 1923 providing for the drainage of wet and overflowed land and irrigated land, approved May 24, 1923 (Statutes of 1923, p. 196).

### THE LAWS OF 1885

(Statutes of 1885, p. 204)

Under this statute the owners of two-thirds of a body of land susceptible of one mode of drainage may form a drainage district by petition to the boards of supervisors of the counties in which the lands are situated. After a hearing on the petition and its approval by the supervisors, the petitioners may make by-laws governing the appointment of a board of trustees to control and manage the district and to accomplish the work of drainage. The board of trustees when formed has power to employ engineers to plan, locate and estimate the cost of the work and to construct the necessary improvements and keep same in repair.

The board of supervisors by which the district was formed appoints three disinterested persons residing in some county in which lands of the district are situated, to assess upon such lands a part of the whole expense of the improvement, proportionate to the benefits which will accrue.

The board of trustees has absolute control of the district and may acquire rights of way and land needed for its purposes by purchase or condemnation.

Whenever any district, susceptible of one mode of drainage, is entirely owned by parties who desire to drain same and to manage such drainage without trustees or by-laws, they may file their petition stating their intention to undertake the drainage upon their own responsibility. If the petition is granted, these owners acquire all the rights of the board of trustees.

#### ACT OF 1903

**Jurisdiction to establish.**—Whenever 50, or a majority, of the holders of title to agricultural lands, other than swamp and overflowed lands, which are susceptible of one general mode of drainage by the same system of works, desire to provide for the drainage of such lands, they may propose the organization of a drainage district under this law. The last equalized county assessment roll determines title, provided that no person who has acquired title for the purpose of becoming an elector in such district will be permitted to sign the petition, but such elector signing the petition will not invalidate it if there is otherwise a sufficient number of signers.

A petition is presented to the board of supervisors of the county in which the lands or the greater part thereof are situated, and must describe the boundaries of the proposed district and pray that the same be organized under this act. The petitioners provide bond in double the amount of the probable cost of organization, conditioned upon the payment of such cost in the event the district is not organized. The petition must be presented at a regular meeting of the board and must be published at least two weeks before presentation, in newspapers in the county where presented, and in any other county having land within the district.

**Procedure.**—The board of supervisors hears the petition within four weeks and defines and establishes the boundaries of said district, but it may not so change the boundaries as to exclude any land susceptible of drainage by the same system of works nor include any land which in their opinion will not be benefited by drainage by the proposed system. Any person whose lands are susceptible of drainage by the same system may, upon application, have such lands included in the district. The board determines whether the petition is in proper form and complies with law, and enters its determination on its minutes. All parties in interest have the right of appeal to the superior court of the county within 10 days. The judgment of the superior court is transmitted to the board and entered upon its minutes at its next regular meeting. Appeals must be heard and determined within 30 days.

**Procedure—Board of directors.**—When the boundaries are established in the foregoing manner, the board makes an order dividing the district into three or five divisions as nearly equal in size as practicable, which divisions are numbered consecutively, and one director, who must be an elector and resident freeholder of the division, is elected by each division; provided, that when requested in the petition three directors having the same qualifications are elected at large by the qualified electors. The board gives notice of an election to determine whether or not the district shall be organized, stating in the notice the name of the district, the boundaries, and the boundaries of each precinct, together with the polling place and the board of election of each precinct. Notice is by publication, for three weeks in a newspaper in each county affected. The supervisors at their next meeting canvass the vote and if at least two-thirds of the votes cast are in favor of organizing the district, the board enters an order upon its minutes declaring the territory duly organized as a drainage district. The persons receiving the highest number of votes, respectively, for directors are declared elected.

The board files a certified copy of its order declaring the district organized in the office of the county recorder of each county affected and also with the clerk of the board of supervisors of each county, and no board of supervisors of any county may thereafter allow another district to be formed including any portion of the land so organized, without the consent of the board of directors. The organization is then complete. The election and organization may be contested by any interested party owning lands which will be assessed, by appeal to the superior court of the county where the petition was filed. If there is more than one contest, they must be consolidated. The superior court determines whether the election was fairly conducted and renders its judgment accordingly. The appeal must be perfected within 20 days and must be determined within 60 days. (Secs. 7-10.)

The directors divide themselves into two classes as nearly equal in number as possible and the terms of the class having the greatest number expire at the next general February election. They then elect a president and appoint a secretary. The directors have the power to conduct the affairs of the district, to employ engineers, make surveys and estimates of costs, and to acquire by purchase or condemnation rights of way for the drainage works. (Secs. 10-14.)

**Financing—Bonds.**—For the purpose of constructing improvements the directors estimate the amount necessary and call a special election on the question of whether bonds shall be issued in the amount so determined. Notice is by posting and publication. If a majority vote favors bonds, the directors cause same to be issued, otherwise they are not issued. Bonds are issued in 10 series, the first maturing on January 1, after the expiration of 11 years. The directors may sell bonds from time to time in such quantities as may be necessary to raise money for construction work. Bonds are sold, after public notice, to the highest bidder, but not for less than par. (Secs. 24-29.) Any bond issue is a lien upon the property of the district and the lien of the bonds of any issue is a preferred lien to that of any subsequent issue. Bonds and interest are paid from revenues derived by an annual assessment upon the real property of the district; and all real property in the district shall be and remain liable to be assessed for such payments. (Sec. 30.)

Whenever the district has outstanding bonds or other indebtedness, payment may be provided for by issuing new bonds, when a petition to refund the indebtedness is presented to the directors signed by a majority of the owners of real property in the district, stating the amount of bonds or other indebtedness proposed to be funded, and the purposes for which the funding bonds are to be used. The petition is entered in the minutes of the board and a special election is called. The special election is in all respects similar to the election of officers. If the majority vote is in favor of the bonds, the directors issue refunding bonds; if not, the result is declared and recorded by the board in its minutes.

**Financing—Refunding bonds.**—These bonds conform to other bonds authorized to be issued and are in 20 series beginning after the expiration of 20 years when 5 per cent of the whole become due, and thereafter equal amounts each year. Refunding bonds are turned over to the county treasurer who exchanges them for old bonds or other obligations. When said bonds are issued for the purposes of sale to the highest bidder, the board may sell same from time to time, as may be necessary to pay bonds or other indebtedness, which were outstanding at the time of the filing of the petition and were described therein. Resolution of intention must be declared and notice given and the sale conducted as provided in the statute. Bonds may be exchanged for other indebtedness at not less than par when such indebtedness was set out in the notice of election authorizing the issuance of refunding bonds. (Secs. 32-39.)

Within 30 days after the issuance of any bonds the directors must bring suit in the superior court of the county to determine the validity of such bonds. This is a proceeding *in rem*, and publication for three weeks gives the court jurisdiction of the parties. (Secs. 50-63, as amended in 1929.)

**Election to reduce bonded indebtedness.**—Whenever the directors determine that the authorized bonded indebtedness is greater than will be needed by the district to complete its system of works, the board of directors may call an election on the question of reducing the amount of the indebtedness to such sum as the board may think sufficient for the purposes of the district. (Secs. 89-90.) Notice of election is the same as in other cases.

**Financing—Assessments.**—In case the money received from the sale of bonds be not sufficient, or in case funds be not available and additional bonds be not voted, the directors provide for the completion of the plan of drainage by levying assessments therefor, provided, that first an estimate of the amount required is made by the directors and the question of making such levy is submitted to the voters of the district. The directors enter in their minutes an order submitting the question and fix the date of the election if there be a special election. Notice is by posting in three places in each precinct and publication for three weeks. The election is held in the same manner as that for the board of directors. If a majority votes in favor of the assessment then it is made. Otherwise the failure of the assessment is announced by the board and entered in its records.

The directors furnish the board of supervisors and the auditor of each county having land within the district with an annual estimate of the amount needed by the district for the ensuing

year. This amount must be sufficient to pay bonds, interest, repairs, and expenses for the year. (Sec. 40.) When the district is in more than one county the directors divide the annual amount needed in proportion to the value of the real property of the district in each county. This value is determined from the last equalized assessment roll of each county. (Sec. 41, as amended in 1929.) The supervisors of each county must levy a drainage tax sufficient to raise the amount apportioned to the county. They must determine the rate by deducting 15 per cent for anticipated delinquencies from the total assessed value of the real property of the district within the county, and then dividing the sum required to be raised by the total remaining assessed value. The tax so levied is entered on the assessment roll by the auditor and collected at the same time and in the same manner as State and county taxes. (Sec. 43.)

**Boundaries changed.**—The boundaries of the district may be changed and land excluded, but no such change may affect the rights or privileges of the district or its obligations. The owners in fee of one or more tracts of land may file a petition praying that such land be excluded from the district, describing it and stating the reasons for exclusion. (Sec. 66.) Notice is by publication and posting. (Sec. 67.) The board hears the petition and objections. The failure of a person other than a bondholder to show cause why the land should not be excluded is deemed assent by him to its exclusion. The expenses of the proceeding are borne by the petitioners. (Sec. 68.) The decision rests with the board of directors. (Sec. 69.) The holders of outstanding bonds may give their assent to the exclusion of the land, in writing, and if the land is thereafter excluded, it is released from the lien of said bonds. The assent is acknowledged in the same manner as conveyances of real estate. It is recorded in the minutes of the board and the office of the county recorder. (Sec. 70.) When the land is excluded, the board makes proper record of the boundaries thereof and of the boundaries of the district thereafter in their minutes. (Secs. 71-72.) There is a redivision of the district for the next election of directors. (Secs. 73-75.) The exclusion of the land does not release it from the obligations of the district contracted before the petition for exclusion was filed, but only as to those obligations subsequent to its exclusion. The change of the boundary does not impair the organization of the district. (Secs. 66-75.)

#### DRAINAGE ACT OF 1923

(Statutes of 1923, p. 196)

**Jurisdiction to establish.**—Whenever 50 per cent or a majority of the holders of title who shall hold a majority in acreage, or two-thirds of the holders of title holding one-third of the acreage of a body of wet, swampy, or overflowed land, or land needing drainage, or irrigated land which through the use of water on said land contributes to the need of drainage of other land within the proposed district, situated in one or more counties of this State, the whole or a part of which may be within or without the exterior boundaries of any municipal corporation, shall desire to form a drainage district for agricultural or sanitary purposes, and such district will be conducive to the public welfare, they may proceed under this act. The last equalized county assessment roll determines ownership. Transfers of title for the purpose of establishing or defeating the petition are void. The petition is presented to the board of supervisors of the county in which the greater portion of the land is situated and must be accompanied by bond for the payment of costs in the event that the district is not organized. Signers of the petition may withdraw their names before publication of notice by an instrument in writing acknowledged in the same manner as a transfer of real estate is required to be acknowledged.

**Procedure.**—The board of supervisors appoints an engineer who is selected by the petitioners, subject to the approval of the board, to make a survey of the proposed district and report to the board the limits of the region which will be benefited by the proposed work; whether the work will be conducive to the public welfare; the plan of the work and the location of the proposed improvements in relation to the territory; and an approximate estimate of the cost of construction. This survey and estimate are considered preliminary only.

The board fixes the time and place for a hearing on the report of the engineer and gives notice by publication. Within five days after notice the clerk of the board sends copies of the report, maps, etc., to the State engineer who makes an investigation of the feasibility of the project, and reports his findings in writing to the board before the date of the hearing. The board may modify the engineer's report to conform to the views of the State engineer.

At the hearing the board determines whether the petition complies with the requirements of law and hears all evidence presented, and makes such changes in the proposed boundaries of the district as they deem proper, defining and establishing those boundaries, but the board may not exclude land which will be benefited or any irrigated land which contributes to the need for drainage, and may not deprive itself of jurisdiction by excluding land. After hearing the evidence the board must by resolution grant or dismiss the petition. Dismissal is without prejudice and a new petition may be filed at any other meeting of the board. A certified copy of the order of the board is filed with the recorder of each county in which any land is situated. After this filing of the resolution granting the petition the organization of the district is complete. (Secs. 4-5.)

The board of directors of a district or any party in interest may bring a proceeding in the superior court of the county to determine the validity of the organization. The proceeding is *in rem* and jurisdiction of the parties is acquired by publication. At any time after the issuance of bonds, the board or any interested party may bring action to determine their validity, and appeal from the decision of the superior court may be had by any interested party. (Sec. 8.)

The board of supervisors may appoint three directors for the district, or, upon petition by at least 15 per cent of the property holders, may call an election to select directors. Directors must be holders of land within the district and qualified electors of the State, and the office becomes vacant when the director loses these qualifications.

Directors have power to manage and conduct the business of the district and to acquire rights of way by condemnation where necessary. Upon receipt of the final report of the engineer the board adopts a plan of drainage which is made a part of the records of the district, and if the work is of such nature and in such location as to be within the jurisdiction of the State reclamation board, approval of said board must be obtained before the plan of drainage is adopted.

**Financing—Organization tax.**—Immediately after organizing, the board levies an organization tax, which may not exceed \$2 per acre, upon the land to be assessed, to pay expenses of organization, surveys, assessing benefits and damages, and other necessary expenses to be incurred before funds are available. Such tax is immediately due and becomes delinquent within 60 days and bears interest thereafter at 10 per cent per annum. The regular notice of the levy of this organization tax is given by publication. Not more than one organization tax may be levied in any district, but when land is annexed to the district it is immediately taxed.

**Financing—Assessments.**—After the adoption of the plan of drainage, the board of directors, accompanied by the engineer, proceeds to view the lands and determine the value of all land and other property within and without the district to be acquired for rights of way, assess the amount of benefits, and award the amount of damages that will accrue to each tract or subdivision of land and other property by reason of the plan of drainage. They may adopt a certain number of acres as a maximum unit to be assessed separately. If they determine that the benefits to the land will be uniform they may assess a uniform amount per acre. The assessed benefits to railroads, highways, etc., are based on the increased physical efficiency and decreased maintenance cost, provided that the assessed benefits shall not exceed per acre the benefits assessed on adjoining land. A method is provided in the statute for determining benefits to canals carrying water for irrigation, power, or domestic use. The board prepares a report stating its findings in tabulated form, showing a description of the property, the number of acres, the benefits assessed, the damages awarded and assessment for the construction fund, which must be in proportion to the assessment of benefits. The report must also contain an estimate of the amount of bonds to be issued. The report of the board is filed with the clerk of the board of supervisors of the county in which the district was organized. The supervisors give notice in the usual way of a hearing on said report to be held not less than 10 nor more than 40 days later. Any interested person may remonstrate in writing against the said report on any assessment of benefits or damages. The remonstrances are heard by the board of supervisors and if it appears to them that the assessment of benefits, the assessment for the construction fund, and the awards of damages are just and reasonable, that the cost is not excessive, that the plan is adequate and feasible, and that the proposed bond issue is necessary and ample, they, by order duly entered in their minutes, approve and confirm the report as submitted or as modified, equalizing and finally determining the assessment of benefits on each tract of land and other



property, and approving the bond issue proposed therein. But, if it is found that the assessment for the construction fund is excessive or greater than the assessment of benefits, the board will dismiss the proceeding, and may, upon the unanimous recommendation of the board of directors, declare the district dissolved. (Sec. 22.)

When the plan of drainage is found insufficient, the board of directors may formulate a new plan and additional assessments may be made in conformity with section 20, but the sum of all assessments for the construction fund may not exceed the assessments of benefits. (Sec. 36.) The board of directors on their own motion, or upon petition of the owners against whom 50 per cent or more of the benefits have been assessed, may make a reapportionment of the assessed benefits, provided that 5 years have elapsed since the last equalization, and provided also that the total assessment may not be reduced. (Sec. 37.)

Existing drains may be taken over, consolidation with adjacent districts may be had, existing districts may be reorganized, and reorganized districts may have a reapportionment of assessment under this act. (Secs. 38-41.)

**Financing—Irrigation district bond commission to investigate.**—Immediately after the approval by the supervisors of any bond issue and the report of the directors as provided in section 22, the board of directors must submit a certified copy of said report to the commission authorized by law to approve bonds for irrigation districts for certification as legal investments for savings banks. The provisions of said act are made applicable to drainage districts organized under this act. The bond commission makes such investigation as it thinks proper and reports to the board of directors such matters as it deems advisable. It may state generally its conclusions as to the nature of the soil, its susceptibility to drainage, cost of the work, etc., and whether it is advisable to proceed with the proposed bond issue. If the estimates for bonds and interest made by the board of directors under the provisions of section 20 are approved by the commission, it is lawful for the board, if the bond issue is voted by the electors, to issue bonds and use so much of the proceeds as may be approved for that purpose for the payment of interest. (Sec. 23.)

The bond commission may modify the plan or the amount of the bond issue and may state that the bond issue is not advisable. After the receipt of the commission's report, or within 90 days if no report is received, the directors may declare by resolution that the plan for drainage or some modification thereof is satisfactory, and may make an order determining the amount of the bonds that shall be issued, provided that no district may materially alter the plan of drainage after issuing bonds, without the consent of the irrigation district bond commission, and provided further that if the changes recommended by the commission cause less benefit to any land or property than that approved by the board of directors under section 22, then the board may proceed only after instituting and conducting proceedings similar to those provided for in section 22. (Sec. 24.)

**Financing—Bond election.**—Upon the approval of any bond issue by the irrigation district bond commission the board of directors calls an election upon the issuance of such bonds. Notice is given in the usual way. A roster of the voters is made from the county recorder's records, which roster contains the name of the electors and the number of votes each is entitled to cast. The election is held in conformity to the general election laws. If the bond issue is voted, the bonds are issued, and if the election is against the issuance of bonds, that fact is recorded by the board of directors. (Sec. 25.)

**Financing—Tax levy.**—The board of directors submits a yearly budget showing the amount necessary to be levied upon the land and other property for the current year to provide funds to carry on construction and maintenance, the payment of warrants, and the payment of maturing bonds and interest thereon, plus 15 per cent for contingencies. Before the first Monday in February this budget is certified to the board of supervisors and they levy a drainage tax sufficient to raise the amount thereof. The tax is computed by the county auditor in proportion to the benefits shown by the equalized assessment of benefits as entered on the assessment roll and is collected in the same manner as State and county taxes and paid to the county treasury for the credit of the district. If the budget is not sufficient to provide for the payment of bonds, the board of supervisors shall require that the same be amended.

If the district is in two or more counties, the budget is divided by the board of directors according to the benefits assessed in each county and certified to the board of supervisors of the respective counties.

The county treasurer retains that portion of the assessment required for the bond fund and not less than twice a year pays the balance to the treasurer of the district. The treasurer of any county having land in the district, but in which the district was not organized, must pay not less than twice a year the assessment collected by him to the treasurer of the county in which the district was organized. (Sec. 29.)

**Financing—Bonds.**—Bonds may not exceed 90 per cent of the assessment for the construction fund. They may not mature later than 20 years from date of issue, bear interest at 6 per cent and are of denominations of from \$100 to \$1,000. They may not be sold at less than 90 per cent of par to the highest bidder after advertisement.

**Dissolution.**—Any district organized under this act in which action has been taken by the board of directors subsequent to that provided for in section 22 may be dissolved as hereinafter provided.

The board of directors present to the superior court of the county in which the district is organized a verified petition signed by not less than three-fourths of the holders of title owning not less than three-fourths of the acreage as shown by the last assessment roll, praying for dissolution. The amount of outstanding bonds and other obligations of the district must be stated as well as the estimated cost of dissolution. The assets of the district are also stated and the amount standing against each tract of land. Provision is made for closing the affairs of the district upon payment of all of its obligations, and distribution of any surplus.

This act recites that it in no wise modifies the provisions of any other act relating to the subject of drainage and is intended as an independent and alternative means of organizing and governing drainage districts.

## DRAINAGE IMPROVEMENT DISTRICTS

(Statutes of 1919, p. 731)

**Jurisdiction to establish.**—Whenever 20 or more property owners or the owners of a majority of land within a proposed district, which district contains wet, swampy, or overflowed land susceptible of drainage by ditches, drains, or a system of both, shall file with the board of supervisors of the county a petition for the establishment of such works, defining the boundaries of the proposed district and giving a general description and approximate location of the works, and shall give bond required by the board for the payment of costs in the event that the petition is not granted, said board within 30 days appoints a day for hearing on the petition and gives notice of same by publication.

**Intercounty drains.**—When the land lies in more than one county the petition is presented to the board of supervisors of the county in which is located the greater portion of the land to be benefited, and the petition must be signed by at least 10 property owners or the owners of a majority of the land in the district within each of the counties affected. Otherwise the petition is the same. The board of supervisors of the county having the larger portion of land in the proposed district has jurisdiction to proceed and the officers of said county are the officers of the district with the powers and duties herein described. All notices of hearings are by publication in the respective counties so far as practicable.

**Procedure.**—Upon the filing with the recorder and tax collector of said counties of a certified copy of the plat and report of the engineer of construction and the order of the board levying the assessments hereinafter provided for, said county or counties other than the county having jurisdiction shall each year collect and pay over to the county having jurisdiction the total amount of the assessments levied in such year. Thereafter all costs of every nature which may be incurred or made necessary in the maintenance or extension of any works or improvements shall be borne by the county or counties affected by such work or improvement. But, by amendment to section 2 of the act of June 6, 1929, Statutes of 1929, page 1321, it is provided that after the original assessments have been collected and paid to the county having jurisdiction, all costs of every nature which may be necessary in the maintenance of, change in, or addition to the improvement shall be borne by the district and the necessary funds therefor provided as set out in section 23a.

Section 23a, as amended by act of April 13, 1927, provides that the board of supervisors shall each year levy an ad valorem tax upon the taxable property, in each drainage improvement district in its county organized under this act, sufficient to raise the revenue which will be needed for the current year for main-

tenance, repairs, changes, or additions to the works of the district. When collected, it is to be placed in the treasury of the county to the credit of the district and to be used only for the purposes for which levied. If the district is in more than one county, the ad valorem tax must be collected by each county from that portion of the lands within its boundaries and paid over to the county having jurisdiction of the district.

Whenever a part of any ditch will cross or run along the boundary line of any municipal corporation and when adjacent land within a municipality will be benefited by such work or improvement, such adjacent territory may be included within the boundaries of the district. Any such territory so included becomes subject to the provisions of this act. Work may be done within or without the boundaries of the district when necessary to carry out its purposes. (See the amendment to this paragraph by act of April 13, 1927, Statutes of 1927, p. 220.)

The board of supervisors may, in its discretion, in concluding the hearing on the petition, and after a determination of all questions arising at such hearing, by resolution entered upon its minutes, grant or deny the petition. The petition may not be granted unless the public health, convenience, or welfare will be promoted by the organization of the district. (Sec. 3.) The county surveyor is the engineer of construction and his deputies are deputy engineers of construction. He surveys the work to be done and estimates the cost.

**Procedure—Resolution of intention.**—Before the passage of any resolution of intention, plans and specifications for the work substantially as set out in the petition shall be prepared by the engineer of construction. If the work is of such nature as to be within the jurisdiction of the State reclamation board, the approval of such board shall be obtained before the plans are adopted.

Before ordering any work to be done the board of supervisors shall pass a resolution of intention so to do. The form of the resolution is set out in the statute. It gives a general description of the work which will be done, a statement of the probable cost, a statement that bonds will be issued in the total amount of the estimated cost, a description of the bonds, a statement that a special fund to pay the bonds and interest is to be provided by levying an assessment and special taxes upon all of the land within the district, a statement of the boundaries of the district, and notice of the time and place when all matters will be heard and specifications for the work will be finally determined and established. Twenty days after due publication of the resolution of intention, the board is declared by the statute to have acquired power to proceed with the hearing and determination of all matters relating to the district.

At any time before the date of the hearing stated in the resolution of intention, any property owner, alone, or with other property owners, may file with the clerk of the board of supervisors written objections to the ordering of the work as a whole, but not merely to some part thereof. Property owners are declared to be only those who own property which will be liable to assessment. First, the board hears such objections as may be made to the plans and specifications, and thereafter objections to the boundaries of the district. The board of supervisors in concluding said hearing, and after a sufficient determination of all questions arising thereat, by resolution entered upon its minutes, declares its findings, determining either that the work shall be ordered or that the proceedings shall be abandoned. If the board determines that the work shall be ordered it further determines the boundaries of the district and finally approves the plans and specifications. If any change is made in the boundaries of the district, the resolution shall set forth such boundaries fully. The boundaries of the district so determined shall be the boundaries for all purposes of the proceeding and until any bond issue for the cost of the work has been fully paid. The plans and specifications so approved shall be the plans and specifications for the improvement of the district. The board then orders the work done upon the receipt of the proposals for doing same.

**Financing—Assessment of benefits.**—After adopting the plans and specifications the board directs the engineer of construction to make an estimate of the total cost of making the improvements and to assess the same in proportion to the benefits thereof to the lands in the said district. The engineer views the land and may examine witnesses under oath. He assesses against the land within the district the estimated amount of the cost of the proposed work in proportion to the benefits to be derived as nearly as he can estimate same, including in such estimate the real property of any railroad. He states the amount to be assessed on each parcel of land separately and divides the total assessment on each parcel of land into yearly installments of an amount clearly sufficient to retire the bonds

and to pay the interest thereon for each year that said assessment shall continue. Such estimate is based on the bid by the successful bidder for doing the work set forth in the plans and specifications together with an estimate of the incidental expenses to be incurred.

The report of the engineer when filed with the board is set down for hearing at a time fixed by notice given by publication for three weeks in the designated newspapers. The form of the notice is set out in the statute. Any property owner may file with the clerk of the board, at least one day before the hearing, written objections to said report as a whole or in part, and to the assessments as a whole or on the several parcels of land. At the hearing the board passes upon the objections and upon the report and may confirm, correct, or modify same, or order a new report. The action of the board upon the report and the objections thereto is final and conclusive as to all matters therein. Upon the adoption of said report by order entered upon its minutes the board levies against all land within said district a special assessment upon the land found to be benefited in the amount set forth in the report of the engineer of construction as adopted, which amount is available for the payment of bonds and interest.

**Financing—Bonds.**—After the final order the clerk of the board of supervisors transmits to the county treasurer an attested copy of such final order, and upon receipt of same the treasurer proceeds to issue bonds amounting in the aggregate to the principal sum for which bonds are to be issued, as stated in the final order. Bonds may be in any amount, provided that the aggregate of the bonds made payable in any one year is the proper part of the whole principal of the bond issue. The board of supervisors may determine the number of years, not to exceed 20, within which the aggregate principal of the bonds must be paid, and may fix the rate of interest not to exceed 7 per cent. The form of the bond is set out in the statute. The bonds are signed by the chairman of the board of supervisors and countersigned by the treasurer of the county, and have the seal of the board of supervisors affixed. Said bonds are delivered by the treasurer to the contractor or his order.

All costs and expenses of the proceedings, including salaries of the engineer and his assistants, and costs of publication, are first paid by the county, but the amount thereof immediately becomes a charge upon the contractor and shall be repaid by him to the county before bonds are delivered by the treasurer, provided that if not paid within 10 days a sufficient number of bonds may be sold at not less than 95 per cent of par to fully satisfy such cost.

It is the duty of the engineer of construction to obtain rights of way by purchase, if possible, but where not possible the board has the right to condemn the property under the general law. The cost of rights of way is a charge upon the contractor although paid first by the county as provided in section 18.

**Maintenance.**—The board of supervisors each year when levying county taxes, levies an ad valorem tax upon the real estate in the drainage improvement district in an amount sufficient to raise the revenues needed for maintenance and repairs for the current year. This tax is collected in the same manner as State and county taxes. When collected it is placed in a maintenance fund and may be used only for maintenance purposes. In the case of intercounty drainage the taxes are collected in each county and paid over to the treasurer of the county having jurisdiction of the district. (Sec. 23-A, and amendment of April 13, 1927.)

## COLORADO

(Compiled Laws of 1921 and Session Laws)

**Jurisdiction to establish.**—The county commissioners in the county where the larger portion of the land is situated have authority to establish drainage districts upon petition of owners of agricultural lands susceptible of drainage by the same system of works. The legislature declares that the drainage of lands not cultivated or useful, or not fully so, is conducive to the public benefit and welfare. (Sec. 2107.)

**Procedure.**—The petition must be signed by a majority of the owners of land whether resident or nonresident of the county, as well as by the owners in the aggregate of a majority of the total acreage sought to be included in the district. (Sec. 2108.) The petition must be accompanied by a general description of the proposed district with the names of the owners of record of each tract of land and must pray that the board cause the question of organization to be submitted to a vote of the landowners. (Sec. 2107.) Where so large a part of the land in a proposed district is unoccupied or so many of the owners are nonresidents that an election would be imprac-

licable, the petition may pray that the commissioners establish the district without election. (Sec. 2116.)

A committee of three landowners is selected by the petitioners to publish the petition for two weeks in the county where it will be presented and give notice of the time and place of presentation to the commissioners. (Secs. 2108-2112.) At the time thus fixed the commissioners determine whether the petition has been properly signed and hear all interested parties and any applicants for the inclusion or exclusion of their land. (Sec. 2113.) The commissioners may change the boundaries by excluding land which will not be benefited but may not exclude any lands which will be benefited by the system. (Sec. 2114.) After the hearing and the establishment of the boundaries, the commissioners call an election, if it has been requested, to determine whether the district shall be organized. (Sec. 2117.) The notice of election designates three persons eligible to be directors who must be owners of land within the district, and the board, if requested, will divide the district into three nearly equal divisions and one director is elected from each division. (Sec. 2118.) Landowners who are citizens of the United States or who have declared their intention to become citizens and who are residents of Colorado are entitled to vote in the division where they reside, and nonresidents vote in the division in which the larger portion of their lands is situated. (Sec. 2122.) If a majority favor the organization, the commissioners declare the district organized, and the persons receiving the highest number of votes to be the directors. (Sec. 2123.) A copy of the order of the commissioners and a map of the district are filed with the clerk of each county affected and thereafter no land embraced in the district may be included in any other district without the consent of the owners of land to be included. (Sec. 2124.) The filing of the order and plan completes the organization of the district and the directors enter upon their duties upon qualification. (Sec. 2125.) No action attacking the validity of the organization may be entertained unless it is commenced within one year thereafter. (Sec. 2127.)

The directors, after organization, have a survey of the proposed work made and acquire rights of way by purchase or condemnation, but may not spend in excess of \$5,000 without the approval in writing of a number of the landowners equal to a majority of the votes cast at the last election. (Sec. 2130.) No contract involving expenditure of more than \$10,000 may be made unless authorized at an election. Upon authorization by an election in the district, the directors may contract with the State or the United States for plans and specifications, or the construction, of a system of works, and provide for payment by collecting assessments in such amount as may be agreed upon in the contract. (Sec. 2130.)

By the act of March 30, 1927, the owners of land in irrigation districts may drain and reclaim same when seeped or marshy by filing a petition with the board of directors, setting forth the necessity and describing the land. The procedure is similar to that for the establishment of a drainage district and operation, maintenance, and improvement are carried on under the irrigation laws.

**Financing—Assessments.**—The county treasurer is the treasurer of the district. The commissioners may require from the petitioners the payment of cash in advance from time to time to pay the expenses of organization in lieu of bond with the petition. Otherwise the petition is accompanied by bond in double the amount of the estimated cost of organization conditioned to pay the expenses in the event the district is not organized. (Secs. 2109-2111.) Upon organization the expenses incurred are paid by the district to the county treasurer and returned to the petitioners advancing same. (Sec. 2111.)

**Assessments for benefits.**—As soon as the plan for the system has been determined and before the actual work has been begun or bonds have been voted, the board of directors makes a special assessment for benefits by classifying the land in tracts of 40 acres on a graduated scale to be numbered according to the benefits to be received from the drainage. The tracts of land which will receive the greatest benefit are to be marked 100 and those receiving lesser benefits shall be marked a lesser number denoting the per cent of benefit. This classification when established remains as the basis for the levying of taxes; provided, that if the board of directors believes from experience and results that the first classification was not fairly adjusted, they may make a new classification. When the classification is complete, it is tabulated or shown on a map and filed for inspection in the office of the secretary of the district. (Sec. 2161.)

The directors make personal service of notice on the resident owners who may be taxed, stating the time and place when they will meet to hear objections to the classification. On nonresi-

dent owners service is by publication for three weeks prior to the hearing. The affidavit of a creditable person or the certificate of the newspaper in which published is sufficient evidence of publication. (Sec. 2162.)

The board of directors at the hearing receives objections to the classification of the land on the graduated scale and if any injustice is shown, they correct same. Otherwise the classification remains and they enter an order to that effect. Any interested person may appeal to the county court within 10 days upon filing bond, conditioned upon the payment of such taxes as may be finally levied and the costs of appeal in the event the classification is sustained. (Sec. 2163.)

On the appeal it is the duty of the district court to cause to be summoned six landowners living outside of the district who are not interested in the land or the works in said district and not kin to the interested parties to meet at a fixed time to hear the appeal. The said six landowners should have knowledge of the costs and benefits of farm drainage and must be sworn as a special jury to try the case. The case may be tried by three qualified jurors, if the parties so agree. This special jury hears the evidence produced and visits the land, if requested so to do, and renders its judgment as to the correctness of the classification. Its final determination is made in writing and filed in the records of the court. The classification so established is recorded in the drainage record. Any party disagreeing with the decision of the special jury may ask the judge for permission to appeal to the district court and the judge in his discretion grants or denies that request. If further appeal be not asked or be denied, the classification of the special jury is final and conclusive. In the event of further appeal, the same bonds are required and the same proceedings followed in the district court as to a special jury. The decision of this last special jury on appeal is final and conclusive and no further appeal may be had. The classification as fixed and determined in the district court and entered in the record of the district in which the land is situated is thereafter the basis on which assessments for benefits are made. (Sec. 2164.)

Appeals may not delay the collection of taxes from which no appeal has been taken, nor delay the progress of the work nor the issuance of bonds. (Sec. 2165.)

Before the 1st of July of each year the board of directors determines the amount required to meet the expenses of the coming year and by resolution orders such amount to be raised by special assessment apportioned among the several tracts according to the acreage of each. The directors then make a special tax list in tabulated form, showing the land and the tax against it, and separating into different columns the portion for current expenses and the portion for bonded indebtedness and interest. (Sec. 2167.) The directors then designate the time for hearing objections to the tax list, but the classification of the lands may not be judged at such hearing. (Sec. 2168.)

**Financing—Alternative method of assessment.**—After the plan of drainage has been determined and before work has been begun or bonds have been voted, the directors assess the amount of benefits which will accrue to each tract of 40 acres or less. This assessment is in tabulated form. The directors estimate the cost of the work as set out in the plan, filing a copy of the estimate with the recorder of the county in which the district was organized. The clerk then gives due notice in each county that exceptions may be filed within 10 days. Exceptions are heard in a summary manner by the board, and if satisfied that the estimated cost of construction is less than the benefits assessed, they confirm the assessments as originally filed or as modified. The confirmed assessments are recorded with the county clerk and recorder of each county affected.

After the list of the assessed benefits has been filed with the county clerks and recorders, the directors levy a tax on such portion of said benefits in such amount as may be found necessary to pay the costs of construction, plus 10 per cent for emergencies. When bonds have been issued, interest is included in the tax but is not included in determining whether the costs will be greater than the benefits assessed. If the original tax levy is not sufficient to pay the principal and interest of all bonds, then the directors make additional levies on the benefits assessed, but not in excess thereof, to pay such principal and interest. (Sec. 2169.)

**Financing—Bonds.**—The directors may estimate the amount necessary to construct the system, acquire necessary rights of way and pay the first year's interest, and call a special election in the district on the question of whether bonds shall be issued to the estimated amount. If the vote be in favor of the bond issue, the directors immediately issue same. Not less than 5 per cent of said bonds mature each year after the expiration of 11 years until at the end of 20 years thereafter all bonds have matured. (Sec. 2182.) The district may by majority vote of

the electors arrange for bonds which will mature not less than 20 years, payable in yearly series. (Sec. 2184.) When the proceeds of previous issues of bonds have been exhausted in authorized expenditures, additional bonds may be issued, if approved at a special election of the qualified voters of the district, and the lien for tax for the payment of the principal on any bond issue is a prior lien to any subsequent bond issue. (Sec. 2185.)

The directors may commence separate proceedings, in the district court of the county in which the district was organized, by which the issuance of bonds may be judicially examined, approved, and confirmed. (Sec. 2193.)

State lands included in any district are considered in all respects in the same manner as the lands of the freeholders so long as they remain unsold. When sold, the assessments are paid by the purchaser, but if such purchaser defaults in the payment of drainage taxes, the certificate of purchase is canceled and the land reverts to the State and the State thereafter pays the annual assessments. (Secs. 2122 and 2123.)

**Maintenance.**—The board of directors, on or before the 1st of July of each year, must determine the amount of money required to meet the current expenses for the coming year, including costs of construction, maintenance, operation, ordinary expenses, deficiencies in the expenses already incurred, and bond interest unpaid. They must also include the amount of the bonded indebtedness with interest which will fall due during the ensuing year and by resolution order such aggregate amount to be raised by special assessment on the lands within the district. The assessment is apportioned among the several tracts according to the acreage of each and it is classified on the graduated scale so that each tract shall bear an equal burden in proportion to its benefits. (Sec. 2039.)

**Dissolution.**—Whenever a majority of the landowners in a district representing a majority in acres petition the directors to call a special election on the proposition to dissolve the district, it is the duty of the board, upon proof that all obligations of the district have been paid, to call such election. If the vote be in the affirmative, the directors enter upon their records an order declaring the district dissolved and a certified copy of the same is recorded in the clerk's office of each county affected.

## FLORIDA

(Compiled General Laws of 1927, Chapter 20)

Section 1524, Compiled General Laws, provides that the governor, controller, State treasurer, attorney general, and the commissioner of agriculture, and their successors in office shall constitute the board of drainage commissioners for the State of Florida. The statutes then provide for general drainage of contiguous bodies of wet or overflowed land in one or more counties for sanitary or agricultural purposes, and when conducive to the public welfare (sec. 1451 et seq. and sec. 2757).

**Jurisdiction to establish.**—The circuit court of the county in which the greater portion of the land to be included in a drainage district is situated has exclusive jurisdiction, coextensive with the boundaries of the district and without regard to county lines, to establish and control drainage districts, upon proper petition therefor. (Sec. 1452.)

**Procedure.**—The State board of drainage commissioners or a majority of the owners either in number or acres of any contiguous body of land may file a petition with the circuit court stating the name of the proposed drainage district and the number of years it is to continue; the boundaries; a description of the land and the number of acres owned by each petitioner; that the petitioners obligate their land for the payment of taxes assessed for organization, construction, and maintenance; and containing the prayer that said land be organized into a drainage district. (Sec. 1451.)

The clerk of the circuit court gives notice by publication of a hearing on the petition and any landowner who has not signed the petition may file objections in writing. The objections are heard by the court in a summary manner and if it be of the opinion that the formation of the district will be of advantage to the landowners and the public welfare, the objections will be overruled and the court will declare and decree the district to be a public corporation of the State for a term not exceeding the time mentioned in the petition, but no district may be established without the approval of the owners of a majority in acres of the lands in the district. No person may have the petition dismissed as to him without the

consent of the majority in acres of the landowners. A copy of the decree establishing the district is filed with the Secretary of State and with the clerk of the circuit court of each county affected. (Sec. 1453.)

Within 20 days the clerk, after notice by publication, calls a meeting of the landowners for the purpose of electing a board of three supervisors composed of landowners, at least two of whom must be residents of the county or counties in which the district is located or of an adjoining county. At this election each acre represents one share and each owner is entitled to one vote for each acre owned. The board of drainage commissioners of the State have the right to vote any State land. The owners of a majority in acreage are necessary to constitute a quorum for the purpose of holding an election. In the event of the failure of a quorum, the State board of drainage commissioners will appoint three competent persons as supervisors. (Sec. 1454.)

Within 30 days after organization the supervisors appoint a chief engineer who has control of the engineering work of the district. He makes necessary surveys of the land in the district and of adjoining lands which will be benefited and prepares maps and profiles and a complete plan, with estimates of cost, for draining the lands described in the petition and lands adjacent thereto which will be benefited. (Sec. 1458.) The chief engineer makes a report in writing once each year and oftener if required and, upon making his final report, the supervisors adopt same or some modification thereof approved by the engineer and such adopted report is the plan of reclamation. (Sec. 1459.)

Within 20 days after adopting the plan of reclamation a certified copy is transmitted to the clerk of the court organizing the district and the supervisors at the same time petition the court to appoint a board of three commissioners to appraise the land within and without the district to be acquired for drainage works, and to assess the benefits and damages to all the land within the district. The court appoints three appraisers not interested nor related to the landowners to appraise the land. (Sec. 1461.)

The appraisers assess the benefits and damages accruing to each government lot, 40 acre tract or other subdivision, according to ownership. They report on a tabulated form prescribed by the statute an estimate of the cost of the work, including damages, organization, and administrative expenses. If the report covers assessments on lands not included in the district, the supervisors must file a petition asking that the boundaries of the district be extended to include such land, and the proceeding thereon is the same as for the original proceeding. (Sec. 1463.)

Exceptions to the report of the appraisers may be filed by any party in interest and are heard by the court in a summary manner. If no exceptions be filed, or if upon the hearing on the report it appears to the court that the costs of construction will be less than the estimated benefits, the court will confirm the report after amending it in accordance with any sustained exception. Appeal from the decision of the court must be taken to the supreme court within 30 days. Certified copies of the decree of confirmation are transmitted to the supervisors and to the county clerk of each county affected, for permanent record. (Sec. 1465.) The supervisors have full power to carry out the plan of reclamation and the chief engineer is superintendent.

**Financing—Organization.**—The supervisors may levy a uniform tax not to exceed 50 cents per acre to be used for the expenses incurred before the board is authorized to provide funds for the total cost of the improvement. This assessment is collected in the same manner as drainage taxes and is a lien upon the land assessed. When money is necessary before this assessment can be levied, the supervisors may borrow and issue notes or bonds therefor, pledging any and all assessments for the refund thereof. When an installment of taxes has been levied for the payment of any obligations or of maintenance charges, the supervisors are authorized to borrow 75 per cent of such taxes on notes bearing 8 per cent interest and payable out of such installments when collected. (Sec. 1460.)

**Financing—Assessments.**—When the report of the appraisers is confirmed the board of supervisors levies a tax of such portion of the benefits assessed as may be found necessary to carry out the plan of reclamation and an additional 10 per cent for emergency. The tax is levied in proportion to the benefits assessed and not in excess thereof. In the case of bonds being issued, the tax shall be levied in a sum not less than an amount, 90 per cent of which shall be equal to the principal of said bonds. The amount of bonds to be issued is determined by the supervisors, provided the amount may not be more than 90 per cent of the assessed benefits. State land is taxed in the same manner

as other land. The secretary of the board of supervisors prepares a list of the taxes levied and records same in a drainage tax book. (Sec. 1467.)

The collector of each county having land in the drainage district receives the drainage tax book each year and collects the amount of the taxes therein shown at the same time and in the same manner as he collects State and county taxes.

All taxes remaining unpaid after the first Monday in April of each year in which they are levied carry a penalty of 2 per cent per month until paid. (Sec. 1470.) Drainage taxes are a lien upon the land equal in dignity with State and county taxes. (Sec. 1472.)

When the owners of 25 per cent or more of the acreage in a district file a petition with the circuit court citing that there has been a material change in the values of property in the district since the last assessment of benefits, and asking a readjustment of benefits, the court will hold a hearing on such petition and the procedure is the same as for the original assessment of benefits. If the readjustment of benefits is ordered, the assessment is not limited to the aggregate of the original assessment but the limitation of 10 per cent for maintenance applies to the readjusted assessments. There may not be a readjustment oftener than once in 5 years. (Sec. 1497.)

**Financing—Bonds.**—The supervisors may issue bonds of the district, when in their judgment it seems best, in an amount not to exceed 90 per cent of the taxes levied, exclusive of the amount levied for interest. Bonds bear 6 per cent interest and mature in annual intervals within 30 years, commencing after a period not longer than 10 years. They may be sold at not less than 95 per cent of their face with accrued interest. A sufficient amount of drainage taxes is apportioned to and set aside for the payment of bonds when due. If the drainage tax is insufficient to meet bonds issued subsequent to June 1, 1927, additional taxes proportioned to the amount of the drainage taxes may be levied in such amount as may be necessary to pay such bonds. (Sec. 1493.) The holder of bonds delinquent for 60 days may apply to a court of competent jurisdiction for a receiver for the district who may collect the taxes and foreclose liens against the land and apply the proceeds to the payment, first, of interest and then pro rata to the payment of matured bonds. When all obligations are paid in full, the receiver is discharged. No bonds may be issued without approval of the board of drainage commissioners of the State. (Sec. 1492.)

**Maintenance.**—To maintain the works and pay current expenses the supervisors may, upon completion of the work in whole or in part, levy a maintenance tax on each parcel of land in the district. Such tax is apportioned on the basis of the net assessment of benefits for original construction and shall not exceed 10 per cent thereof in any one year. This maintenance tax is certified to the collector of the county in which the land is situated at the same time that the annual installment of taxes is certified. (Sec. 1496.)

**Consolidation.**—Adjacent districts may be consolidated whether in separate counties or not. The board of supervisors of each district calls an election in the same manner as for the original board of supervisors. If a majority of the acreage voted in each district is in favor of consolidation, the board of supervisors of each district presents a petition to the circuit court of the county in which the greatest amount of land is situated, accompanied by a complete return of said election, with the names of the original districts, date of incorporation, names of the owners of land and boundaries of the district. After notice and hearing in the same manner as in section 1452, and objections being overruled, the court makes an order uniting the districts under an appropriate name and they become one district with all the rights and powers conferred by the act. The new district is subject to the liens, liabilities, and obligations of the original district. A new board of supervisors is elected and all orders are spread on the minutes of the board and a certified copy thereof filed in the circuit court of each county, and with the secretary of state. (Sec. 1498.)

**Extending corporate existence.**—When necessary to extend the corporate existence of a district beyond the period limited in the original petition, the board of supervisors calls a meeting of the landowners, and if a majority of the acres represented vote in favor of extending, the board presents a petition to the circuit court for that purpose. The meeting is conducted in the same manner as in the election of a board of supervisors. If the petition is granted, the clerk of the court transmits a copy of the decree to the board of supervisors, to the Secretary of State, and to the circuit court of each county having land in the district. (Sec. 1499.)

**Riparian rights in lakes.**—Riparian rights in lakes in drainage districts in counties having a population of not less than 63,000 and not more than 64,000, according to the State census of 1925,

where the high water level has been lowered by drainage, are given to the abutting property owner by extension of his lateral boundary to the high water mark after drainage. (Sec. 1520.)

**Subdistricts.**—If any drainage district organized under this act be within the boundaries of a district theretofore established, the last organized district is designated a subdistrict, and the lien of the taxes assessed on said subdrainage district shall be of equal dignity with the taxes assessed for the district first established, provided that the sale of any land within a district for State and county taxes shall not operate to release the land from the lien of subsequent installments of drainage taxes, which lien may be enforced as though no such sale had been made. (Sec. 1472.)

**Dissolution.**—In determining objections filed to the appraiser's report if the court finds that the estimated cost of the improvement will exceed the benefits, it will declare the incorporation of the district to be dissolved as soon as all costs and obligations have been paid. If the uniform tax levied is not sufficient to pay all obligations, the supervisors may levy additional uniform taxes. (Sec. 1488.)

Drainage districts being incorporated for a definite term, would, in the absence of proceedings to extend their corporate existence, become defunct at the expiration of the stated term.

**Public drains.**—Sections 2757 to 2783 of the compiled statutes provide for the construction of public drains for the drainage of swamp or overflowed lands upon petition by two or more landowners to the board of county commissioners of the county in which the land is situated. If the drain is in two or more counties, the petition is signed by one or more landowners in each county and filed with the clerk of the county containing the head or source of the proposed ditch, and a certified copy is filed with the clerks of the other counties. The respective boards of commissioners appoint a joint board of viewers who have the same function as the viewers in single county drains. The proceeding is similar to that for the formation of a drainage district with the board of county commissioners acting in place of the circuit court. When there is objection to the report of the viewers, the county commissioners appoint a board of reviewers and upon the report of the reviewers modifying or sustaining the viewers' report, the commissioners establish the drain. The assessments of the viewers as confirmed by the commissioners are a lien upon the lands assessed and the proceeds of such assessments are used for construction and maintenance.

## GEORGIA

(Code of 1926, art. 12, and Supplement of 1931)

**Jurisdiction to establish.**—The clerk of the superior court, with the commissioners of roads and revenue, or in the absence of such board the ordinary of the county, constitute a court having jurisdiction to establish and improve drainage districts and construct necessary works and drain swamp lands and surface water from agricultural lands. (Sec. 439-1.)

**Procedure.**—The proceeding for establishing, improving, and extending drainage systems is the same as that for public roads. A petition signed by the majority of the landowners or the owners of three-fifths of all the land which will be affected is filed in the office of the clerk of the superior court in any county in which a part of the land is situated. The petition must describe the land, allege that the public welfare will be served by draining it, give a general description of the proposed drainage works, and furnish bond for the payment of costs. The clerk issues a summons to all landowners in the proposed district who have not signed the petition and on the return day the court appoints a board of three viewers composed of a disinterested engineer and two disinterested freeholders to examine the land and report thereon. (Sec. 439-2.)

The viewers have a survey made, if necessary, and report whether the district is practical; whether it will benefit the public health or welfare or any public highway; whether it will benefit the land; and whether all the land benefited is included in the proposed district. They file a map of the drainage works. The court reviews the report and if it is to the effect that the district is practical and conducive to the public welfare, fixes a hearing on the petition and report, after due notice by publication, posting, and mail. If at the hearing it appears that any land in the district will not be affected by the drainage, such land will be excluded. Land which will be affected but is not included is brought in by the same proceedings as on the original petition. The sufficiency of the petition having been established to the satisfaction of the court and the boundaries having been fixed, the court orders the establishment of the district giving it a name or number. (Secs. 439, 4; 439, 5.)

After the district has been established the court refers the viewers' report back to them for complete survey of the lands, specifications for the work, and further report. The viewers then assess the damages accruing to any parcel of land separate and apart from any benefit which the land would receive, which damages are paid by the board of drainage commissioners when any fund comes into its hands. The viewers, in determining the benefits which will accrue from the improvement, consider the degree of wetness of the land, its proximity to the outlet and the fertility of the soil. The land receiving the highest benefit is classed "A" and the classes are stepped down to class "E" which is land receiving the least benefit. The holdings of one owner may not necessarily be all in one class, but the number of acres in each class must be ascertained as well as the total number of acres benefited in the district and the total number owned by each person in each class. The ratio of assessment for the different classes is from 5 to 1 in mills. (Sec. 439-12.)

The final report of the viewers, after notice and hearing of all objections by the court, is confirmed after such changes as may be necessary to render substantial justice, but only when the court finds that the benefits which will accrue from the construction of the improvement will exceed the cost thereof. Aggrieved parties may appeal to the supreme court.

When the district is established and the final report of the viewers is approved, the court appoints a board of three drainage commissioners, after they have first been elected by the landowners in such manner as the court may prescribe. Such board of drainage commissioners immediately becomes a body corporate with the usual rights of corporations and they have control of the construction, operation and maintenance of the district.

**Financing—Assessments—Bonds.**—Drainage commissioners prepare an assessment roll and levy assessments against each tract according to the benefits shown by the classification of the viewers. Assessments are levied in the same manner as State and county taxes. For the purpose of meeting any deficit in the collection of annual drainage assessments there is levied each year in which bonds are to mature an assessment which will yield 5 per cent more than the principal and interest of such bonds. (Sec. 439-31.) If the total cost of the work is less than an average of 25 cents per acre, the assessments are collected in one installment by the same officer who collects the other taxes. If the total be more than 25 cents per acre, the commissioners give notice by publication and posting that they propose to issue bonds for the payment of construction. Any landowner may within 30 days pay the full amount of the assessment and have his land released from the lien of the bonds. (Sec. 439-32.) Any person failing to pay his assessment in full within 30 days waives his right to object to the issuance of bonds. (Sec. 439-33.) Thirty days after the notice is given the commissioners may issue bonds for the full amount of the assessments not paid, plus interest, cost of collection, and any incidental expenses. The bonds bear 6 per cent interest and the first installments are to mature after 3 years and then each year for 9 years. The bonds may not be sold for less than par. The assessment to pay bonds constitutes a paramount lien, second only to State and county taxes, and is collected in the same manner as other taxes. (Sec. 439-34.)

Where bond issues do not exceed \$100,000, the board of commissioners may fix the rate of interest thereon not to exceed 8 per cent. The board may borrow money to pay principal and interest on bonds and give notes secured by unpaid assessments. Bonds must be validated as other bonds of the State are validated under existing laws. (Sec. 439-42 to 44.)

Within 30 days after determining that bonds will be issued, the board of commissioners serves notice on the solicitor general of the circuit or in his absence upon the attorney general of the State. Within 20 days the solicitor general files a petition with the superior court in each of the counties in which any lands of the district are situated, this being an original action by the State of Georgia against the drainage district seeking the issuance of bonds, setting forth the record, the amount of the bonds proposed to be issued, the interest, and attaching to said petition maps and plats of the district, details of the classification and assessment of land therein. He obtains from the judge of the superior court in each county affected an order requiring the commissioners to show cause in each instance why the bonds shall not be confirmed and validated. The judges of the several superior courts determine the matter and if the bonds are confirmed and validated, notice is given of the right to file objections within 20 days. In the event no exception is filed, or if filed the action of the court is confirmed by a ruling of the supreme court, the judgment is conclusive and final and forever

binding upon said drainage district and the landowners therein. (Sec. 439-45.)

Bonds issued under the authority of this act are lawful security for insurance companies. They may be deposited by banks as securities for State funds and may be used for deposit for insurance companies in cases where deposits are required by law. (Sec. 439-46.)

**Maintenance.**—Whenever the extra 5 per cent added for the purpose of meeting any deficit in the collection of the annual assessments accumulates until it is more than 10 per cent of the total amount of the outstanding bonds, the commissioners may use such sum for maintenance and upkeep of the drainage system. (Sec. 439-31.)

The system when completed is under the control of the board of drainage commissioners and they must keep same in repair and levy assessments for that purpose in the same manner as original assessments were levied. (Sec. 439-29.)

## IDAHO

(Compiled Statutes of 1919, Chapter 179, and Session Laws)

The first drainage law of Idaho, enacted in 1903, was declared unconstitutional in 1912 in the case of *Ferbrache v. Drainage District 23185*, 128 Pac., page 553. The following synopsis is taken from the act of 1913 and session laws since 1919.

**Jurisdiction to establish.**—The district court of the county in which the larger portion of the land is situated is authorized to receive any petition for the establishment of a drainage district under a board of drainage commissioners. Any portion of a county requiring drainage or diking may be organized into a drainage district. Any municipality may exercise the functions of a drainage district or be included with other territory in a common district. Such districts have the usual rights of corporations, including perpetual succession. (Secs. 4493-4495.)

**Procedure.**—The petition sets out the temporary boundaries of the proposed district; the number of acres included; a general description of the proposed system of drainage; and contains an allegation that such drainage will be conducive to the public welfare and increase the public revenue. The petition must be accompanied by a bond in the sum of \$500 conditioned to pay the costs in the event that the district is not organized. By an amendment of March 12, 1927, no person signing the petition is allowed to withdraw his name or lands without tendering into court his pro rata share of the costs incurred to the date of such withdrawal. A further amendment of February 19, 1927, changes the required signatures to the petition from the owners of one-fifth of the acreage in the proposed district to the owners of one-third of such acreage.

The judge of the district court fixes the time for a hearing on the petition and gives notice thereof by publication. Interested parties may offer objections to the formation of the district and the judge makes the finding on the facts presented for or against the petition. If the district is organized, the court causes an order to be entered and recorded in each county in which any lands are situated, defining the temporary boundaries of the district and describing the land therein, and this order has the effect of a *lis pendens*. (Sec. 4498.) The district may be established and the work may be performed even if the outlet is outside of the county or State. (Sec. 4498.) If the district judge finds that the system is conducive to the public welfare or increases the public revenue or benefits a majority of the acreage, he declares it to be fully organized and a certified copy of his order is filed in the office of the secretary of state and from that date the organization is complete. (Sec. 4509.)

The court thereupon appoints a board of 3 drainage commissioners, residents of the county, for terms of 1, 2, and 3 years, respectively, and annually thereafter appoints 1 commissioner. (Sec. 4500.) The board of commissioners examines the land and reports on the questions of feasibility, cost, maintenance, damages, and whether the benefits will exceed the cost, plus damages. The board assesses the estimated cost on the lands benefited, in proportion to such benefit. It also reports what additional lands will be benefited or damaged and the amount thereof in the same manner as if such land had been included in the petition. (Sec. 4504.) The court holds a hearing on the report of the commissioners after notice by publication and personal service on the landowners. Any party may remonstrate in writing as to any question relating to the formation of the district. Upon the demand of any interested party the court will impanel a jury to try the questions of whether the damages are adequate or the assessments too high, and the

court and jury may fix damages and assessments. All other issues are tried by the court alone. (Sec. 4512.) If the finding of the court is in favor of the validity of the proceeding, the report is modified to conform to the finding and is confirmed. This act is final and conclusive in the absence of appeal to the supreme court. (Sec. 4513.) State, county, school, and other public lands requiring drainage are subject to the provisions of this act and may be made parties in all proceedings affecting such lands. (Sec. 4518.) Where the work set out in the plan of drainage is found insufficient, a new estimate of benefits may be made based on the additional work, and additional assessments may be made on the land benefited, in conformity with the original proceeding. (Sec. 5422.)

A district established above any other established system of drainage desiring to connect with the lower system must make that system a party to the proceedings and must state that the lower district is essential as an outlet. If the works of the lower district will have to be enlarged, then the plans and specifications for such enlargements must be filed with the petition. The jury must first find whether the enlarged facilities will be adequate to drain both districts and if the finding is in the negative, the proceeding is dismissed. All costs of enlarging the lower district are assessed to the landowners of the upper district. (Sec. 4537.)

In determining the amount of benefits, the commissioners consider the damages done to lowlands by saturation and seepage of irrigation water from highland, and the necessity for carrying off waste water and such high lands are considered benefited to the extent that they are responsible for damage to the lowlands from seepage and saturation. (Sec. 4506.)

**Financing—Assessments.**—Upon entering the order confirming the apportioning of the costs and the awards of damages the clerk of the district court prepares a transcript containing a list of the lands so assessed and damages awarded, and certifies same to the recorder of the county in which the land is located. The list specifies the amount of the assessment on each tract or other property and of the easements or rights of way required by the district and the amount of damages awarded. Upon being recorded, the list becomes notice of the lien of said assessment and establishes the rights of way and easements of the district, and the district thereafter is entitled to occupy such land on the payment of the awarded damages. (Sec. 4526.) The auditor enters such list on the tax rolls against the land and taxes levied are collected in the same manner and subject to the same penalties for delinquency as other taxes. (Sec. 4527.)

**Financing—Bonds.**—The commissioners are authorized to issue bonds to pay the costs of construction and organization including the entire expenses of proceeding. The bonds mature in not less than 5 nor more than 20 years from their date and the aggregate amount of such bonds may not exceed 90 per cent of the assessments levied against the lands. By amendment of February 26, 1929, the board of directors may fix the maturity of said bonds not exceeding 20 years from the date of their issuance and an amortization period which shall not be less than three-fourths of the maximum maturities. During the first fourth of the period covered by the last maturity provision may be made in the discretion of the board for the payment of interest only. The maturities must be so arranged that during at least the latter three-fourths of the period covered by the last maturity, the principal shall be amortized by payment thereof in annual or semiannual installments so arranged that the combined principal and interest payments shall be approximately the same for each year.

Refunding bonds may be issued for the purpose of refunding any outstanding warrants or obligations of the district, and such obligations become payable immediately upon the receipt of money from such refunding bonds and cease to bear interest within 30 days after the publication of notice of the call of the treasurer for such obligations. An act of February 10, 1925, authorizes the commissioners of any district to issue refunding bonds for the purpose of refunding any bonded indebtedness of the district whether due or not, when there are no funds in the treasury available for the payment or redemption of such bonds and interest outstanding and unpaid for more than three years. The commissioners file a petition in the district court of the county in which the greater portion of the land is situated for the examination of the proceeding and approval and confirmation of same. The court holds the usual hearing thereon and must ratify and confirm same if it finds that the assessment roll of the district is adequate security for paying such refunding bonds, and that it will be to the best interests of the district to issue such bonds. Five years before bonds become due commissioners are required to levy an annual assessment sufficient to liquidate same at maturity and such assessments when collected

are kept in a separate fund for the sole purpose of liquidating bonds. (Sec. 4547.)

Whenever the county treasurer has on hand as much as \$5,000 of the special bond fund and when said bonds have run for a period of three years, he advertises for such bonds as he is able to pay, in numerical order, and 30 days thereafter the bonds cease to bear interest. (Sec. 4548.) An annual levy sufficient to pay interest on the bonds must be made by the commissioners. Interest coupons have the same status as warrants after presentation and nonpayment and bear interest at the same rate. (Sec. 4549.)

**Maintenance.**—The commissioners on the 1st of January of each year estimate the cost of maintenance of the system including repairs for the coming year. The amount so estimated is certified to the auditor of the county and apportioned to the owners of land in proportion to the maximum benefits already assessed and such amount is added to the general taxes of such landowners and collected therewith.

The commissioners may also levy assessments for any expenses incurred by them for construction, maintenance, repair, or extraordinary reasons and may add to such assessment any deficiencies occurring during the preceding year or any outstanding warrants; provided that any assessment to pay warrants shall not exceed 20 per cent of the original costs of organization and construction, in addition to the assessment which may be levied under section 4527. (Secs. 4552 and 4553.)

## ILLINOIS

After the passage of the constitutional amendment of 1878, the legislature of Illinois passed two separate and distinct drainage acts on the same day (May 29, 1879), one of which, generally known as the drainage and levee act, became effective upon approval, and the other, called the farm drainage act, taking effect on the 1st day of July following. These acts are entirely independent of each other and the drainage districts organized under one act receive no privileges or powers from the other. There have been many amendments and additions to these two statutes up to and including 1929.

In addition to the two drainage acts above mentioned, there have been a number of statutes enacted relating more particularly to special types of drainage districts or designed to meet local conditions. Practically all the drainage reported in Illinois was done under the drainage and levee act or the farm drainage act.

The following synopsis is taken from Cahill's Illinois Revised Statutes of 1931, chapter 42:

### DRAINAGE AND LEVEE DISTRICTS

(Act of May 29, 1879)

**Jurisdiction to establish.**—The county court of any county in which the greater portion of the land which it is proposed to organize into a drainage district is situated, has jurisdiction to organize and establish such district upon the filing of a petition therefor signed by a majority of the landowners representing one-third of the area, or one-third of the landowners who represent a major portion of the area. The petition states the proposed name of the district, the necessity for same, a description of the route and termini of the ditches or levees; a description of the lands to be affected; and the names of the owners of such lands. The petition may be for the maintenance of works already constructed, in which case such works must be described.

**Procedure.**—The clerk of the county court gives three weeks notice of a hearing on the petition by posting and publication. At the hearing the court first determines the sufficiency of the petition as to the required signatures for on this depends the court's jurisdiction. Any transfer of property for the purpose of establishing or defeating the petition is invalid. If the petition is insufficient as to signatures, it will be dismissed at the cost of the petitioners. If the court determines that the petition is sufficient, it will record a finding of that fact, which finding is conclusive upon the landowners signing the petition that they have assented to and accept the provisions to this act. When it further appears to the court that the proposed drain is necessary or useful for the drainage of the lands, it will appoint three competent persons as commissioners to lay out and construct

the works. When the lands are situated in more than one county, not more than two commissioners may be from the same county.

The commissioners organize by taking oath and electing one of their number chairman and one secretary. They examine all the land proposed to be drained and the land upon which any of the works are to be constructed, and determine and report to the court: The proper location of the drainage works; the entire cost, including organization expenses; the probable annual cost of maintenance; the aggregate amount of damages which will be sustained by all lands; what land will be benefited and whether the aggregate benefits will exceed the entire cost of establishing the district, plus the damages; and whether the district will embrace all lands which will be benefited or damaged, with a report on such additional land, if any. If the petition is for maintenance of a ditch or levee already constructed, the commissioners examine such works and report: Whether such works can with proper repair be made efficient; the probable annual expense of keeping same in repair; the land which will be benefited and the aggregate amount of such benefits; whether the annual amount of benefits will exceed the annual cost; and whether the district will embrace all the lands which will be benefited, with a description of any additional land which may be benefited. If the commissioners find the cost, including the damages will be in excess of the benefits, they so report and the petition is dismissed at the cost of the petitioner. If the commissioners find that the proposed work can be done at a cost not exceeding the benefits, they have proper surveys, profiles, plans, and specifications made, and report in detail as to the character of the works to be constructed.

The commissioners are not confined to the work as set out in the petition but may lay out the improvement in such manner as to secure the greatest benefit with the least cost. They may extend or contract the boundaries of the district according to whether they find additional land benefited or land within the boundaries not benefited, provided that the boundaries may not be so changed as to void the petition in the matter of the required number of signers thereof. Persons owning lands adjacent or contiguous may, upon petition and similar procedure, have such land annexed.

Upon filing of the commissioners' report, after due notice, a hearing thereon is fixed by the court and all persons interested may appear and protest the confirmation of the same. If the court is of the opinion that the objections are not well taken or if no objections are filed, it will confirm the report. A plat of the district is recorded and the court issues an order, in the form prescribed by the statute, establishing the district. Thereupon the district becomes immediately a body politic and corporate, by the name given it in the order, and the commissioners constitute the corporate authority. Such order is subject to appeal to the superior court by interested parties. Reversal of the order on appeal does not impair or invalidate the organization as to all other parties not appealing; nor may such appeal delay the work as to the other land.

Immediately after the order establishing the district, the commissioners proceed to acquire rights of way and releases of damages by agreement so far as possible. They then make out an assessment roll showing the names of the owners and the number of acres owned by each; the amount of benefits assessed against each tract, and the amount of damages awarded to each tract. They include all railroads, public highways and municipal corporations affected and the benefits assessed and damages accruing to each. They also make an assessment of the "annual amount" of benefits which each tract will sustain by reason of maintenance and keeping the works in repair.

Upon the filing of the assessment roll with the clerk, the commissioners give ten days notice in the prescribed manner of the time when they will appear before the court for the purpose of having a jury impaneled, as in condemnation proceedings under the law of eminent domain, to hear all questions of benefits and damages. At the hearing, the commissioners file as their claim against the several tracts of land and other property their assessment roll which makes out a *prima facie* case. All parties interested are permitted to present competent evidence to the jury as to their benefits or damages as shown on the assessment roll. (This is par. 19, added by act of May 29, 1909.)

Upon the request of any party, the jury will view the lands or property before rendering its verdict. The verdict, when completed and filed, is a determination of the total sum of the estimated cost of the proposed work and the proceedings incident to the same, together with the amount of benefits which the land will receive and the amount of damages allowed. The court confirms the verdict and enters judgments thereon and has same recorded, which judgments are liens on the lands and property until paid. Appeals are granted as in other proceedings in the county court, but the granting of an appeal in any

one or more cases does not operate to defer the collection of the judgment in other cases, but such collection proceeds as if no appeal had been taken. Judgments confirmed on appeal are added to the judgments from which no appeal was taken.

Immediately after the confirmation of the assessment roll by the court, the clerk certifies a copy thereof to the commissioners of the district and also furnishes a copy of any part thereof which pertains to lands situated in other counties to the recorders of those counties for record, and such recording is notice to all persons of the liens of such assessment.

Upon receipt of the certified copy of the assessment and before any collections are made, the commissioners appoint a treasurer for the district and give notice in the form prescribed in the statute of the assessments of benefits and damages. When the assessments have been made payable in installments, they give like notice immediately after such installments become due. When the annual amount of benefits has been assessed, the commissioners give notice in the same way immediately after September 1 of each year, stating what part of the annual amount of benefits will be collected in that year.

**Financing—Assessments.**—At the time of confirming the assessment roll it is competent for the court to order the assessments to be paid in convenient installments; otherwise the whole amount is payable immediately. Installments draw interest at 6 per cent from the time of confirmation and the court may order the collection of interest yearly in advance. Any owner may pay in cash if bonds have not been issued and be relieved from the lien of the assessment. When the petition is for the repair of works already constructed, the commissioners may cause an assessment of benefits which the land will sustain by repairing the works and also the annual amount of benefits which the land will receive by reason of keeping the works in repair thereafter. The amount assessed may not in the aggregate, for any one year, be more than would be produced by a levy of 30 cents per acre on all land in the district. The "annual amount of benefits" is due on the 1st day of September of each year and is a lien on the land from and after the confirmation of the assessment roll.

When assessments are not paid, the commissioners direct the treasurer to certify a list of the delinquent lands upon which any such assessment or any installment of the annual amount of benefits remains unpaid to the county collector of the county in which the land is situated, on or before the 1st day of the next March. A separate return is made for each county. The collector transfers the return to the tax books and the same procedure is had as in the case of delinquent state or county taxes. By an amendment of 1929 the commissioners may file a bill in the circuit court of the county to foreclose the liens of assessments and interest and have same sold under foreclosure proceedings. Under an addition to the law by act of July 7, 1931, the court in which any such foreclosure suit is pending may, when there is a delinquency after the foreclosure sale, appoint a receiver to take possession of delinquent lands and property involved and collect the returns and profits therefrom.

Additional assessments may be levied from time to time when previous assessments appear to the court to be inadequate to complete the work and to maintain the drainage or when it becomes necessary to construct pumping plants or additional works to protect the district, upon petition of a majority of the landowners representing one-third in area of the land or one-third of the owners representing a major portion in area of the land, or on the petition of the commissioners accompanied by an itemized statement under oath of the money received and expended, with plats and profiles of additional work and estimates of the cost of same, after two weeks' notice and hearing on the petition in the same manner as in the organization of the district. Upon hearing, the court may grant the petition and cause a jury to be impaneled to make such assessments as well as an annual amount of benefits for maintaining and operating pumping plants and keeping additional works in repair, with proceedings as like as possible to the original assessment of damages and benefits. Such additional assessments have the same force and effect and are collected in the same manner as the original assessment. (As amended in 1881, 1885, 1907, 1915.)

The courts are authorized to extend the time of payment of assessments or installments, or to refund bonds issued in anticipation of the collection of the assessments. Bonds not due may be refunded only when the holders surrender same in exchange for refunding bonds or agree to accept payment in cash at par and accrued interest, and provided that all bonds of a particular maturity must be surrendered. The court may divide the assessments into a greater or less number of installments, if in its judgment it is for the best interests of all parties, but it may not extend payment of any assessment beyond 40



years from the date of the refunding order. Whenever it is desired to so extend the time of payment of assessments or to issue refunding bonds, the board of commissioners on its own motion, or upon petition of the owners of land assessed in the aggregate of at least 25 per cent of all the then unpaid assessments in the district, file a petition giving a detailed description of all outstanding obligations with dates of maturity of same; stating whether the holders of bonds will surrender same; and stating the desired maturity of the refunding bonds or the due date of assessments. The court sets the time for hearing the petition after notice by publication and posting, and at this hearing, after finding that the petition is in due form, the court may continue the time of payment of the assessments or authorize refunding bonds to be issued, or change the number of installments. Such assessments and refunding bonds have the same security as the original assessments and bonds. (Par. 38-1; as added by acts of May 5, 1927 and June 26, 1931.)

**Financing—Bonds.**—The commissioners may borrow money not to exceed 90 per cent of the assessments unpaid at the time of borrowing for the construction of any work or payment of any indebtedness lawfully incurred, and may secure same by the notes or bonds of the district bearing 6 per cent interest and running not longer than one year after the due date of the last assessment on account of which the money is borrowed. The commissioners are not personally liable for notes or bonds. The notes or bonds constitute a lien upon the assessments. Such bonds may be issued to the amount of 90 per cent of any one installment and constitute a lien upon such installment alone, falling due one year after such installment is due. (Par. 38, as amended in 1881, 1885, 1905, and 1927.)

By act of June 5, 1895, commissioners of drainage districts are authorized to issue bonds in amount not exceeding 90 per cent of the aggregate amount of the assessments, but not until the property owners representing a majority in area of the lands shall petition the commissioners to issue same. The act also provides for the registration of bonds with the auditor of public accounts and the collection of the assessments to pay same, upon certificate of the auditor transmitted to the county clerk. Upon presentation to the auditor of public accounts of the State, bonds of any drainage district are registered by him in a record kept for that purpose; provided that such bonds are accompanied by a sworn statement by the corporate authority of the district, giving a complete record of the organization of the district and the issuance of the bonds. When any bonds are registered, the auditor of public accounts annually ascertains interest and principal due thereon, plus the cost to the State of collecting and disbursing same and transmits a certified statement thereof to the county clerk of the county in which the district is organized. This statement is thereupon recorded in the drainage record and added to the amount which may be levied within said district for the purposes of State revenue. This sum is apportioned by the clerk among the lands assessed, according to benefits, and added to the tax list. The State is custodian only of such drainage taxes thus collected and applies same to the payment of the registered bonds and interest, returning the cancelled bonds to the corporate authority of the district issuing them.

**Generally.**—The owners of land lying outside of a district who make connections with the drains of a district are deemed to have made voluntary application to be included within the district. The commissioners make complaint in writing to the county court or to a justice of the peace and after notice and hearing, the court or the justice will order the land included and assessed as other lands. (Par. 56.)

The drainage commissioners may enlarge the boundaries of districts by attaching new areas which are involved in the same system of drainage and require the drains of the districts for outlets, on the same kind of petition as for the establishment of the district. Such lands are classified and assessed as though included in the original petition. (Par. 57; as amended May 18, 1917.)

Whenever any district includes contiguous lands which have not been and can not be benefited by the system, such lands may be detached from the district, upon petition of the commissioners or the landowners and after notice and hearing, if, in the opinion of the court, either party will be benefited. (Par. 57-1; added June 26, 1925.)

**Subdistricts.**—If there are lands in particular localities in a district which need more particular drainage, the commissioners, on their own motion or upon petition signed by the owners as in the original petition, make a special report to the court, and after the same proceeding as for organization, the body of land will be established as a subdistrict in which special assessments are made in the same manner as the original assessments and the

money expended only for work in the subdistrict. The commissioners are ex officio commissioners of the subdistrict. There is the same provision that owners of land outside of the subdistrict who connect with its drains are deemed to be voluntary applicants for inclusion in such district. (Par. 58; as amended 1885 to 1929.)

#### FARM DRAINAGE ACT

Under the farm drainage act of 1879 as amended June 27, 1885, four different classes of drainage districts are permitted; namely, districts wholly in 1 town; districts in 2 towns, called union districts; districts in 3 or more towns and possibly in different counties, called special districts; and user districts.

In one-town districts provision is made for a system of combined drainage by a proceeding substantially similar to the organization proceedings under the drainage and levee act. The petition is filed with the town clerk who performs duties similar to those of the county clerk in drainage districts, and the required signatures to the petition are the same. The highway commissioners are the drainage commissioners until organization and then their duties cease and three drainage commissioners are elected by the landowners. These elected commissioners go upon the land and lay out a system of drainage and make a report in writing, with maps, profiles, and estimates of cost, which is filed in the clerk's office and recorded in the drainage record. They then proceed to secure release of rights of way, as far as possible, and, failing to agree with the owners on damages and compensation for land taken, they file a petition before a justice of the peace asking that a jury be summoned to assess damages, which jury views the land, if necessary, and returns its verdict as to each separate parcel. The verdict of this jury is final and conclusive as to damages, but has no relation to the assessing of benefits.

The commissioners then make a classification of all lands in the district on the scale of 100. The tracts which receive the highest benefit are marked 100, and those receiving a lesser benefit are marked at a less number on a percentage basis. After the classification is made, notice is given by publication and posting of the time and place where the commissioners will hear any objections to the classification. At the hearing, interested parties may present their objections and the classification is confirmed in its original or amended form. Appeal may be had to the county court where it is heard by a jury. When the classification is finally confirmed, it establishes a ratio for the levying of assessments. At any time before the commissioners enter into a contract for construction any part of the work may be abandoned upon petition of three-fourths of the landowners representing one-half of the area. (Added by Act of July 1, 1921.)

In two-town districts, the petition is filed with the clerk of the town in which the greater part of the district is situated and he selects the commissioners of the district from the commissioners of highways of the two towns. The procedure thereafter is in all respects similar to that in one-town districts.

In special drainage districts under the farm drainage act, the petition is filed in the county court of the county in which the greater portion of the lands is situated and must be accompanied by a bond for payment of costs in the event the district is not established. After notice and hearing, the court having determined that the petition is signed by the required number of landowners and that proper notice has been given, enters an order to that effect and appoints three commissioners to examine the land and report. A further hearing is had on the report of the commissioners, at which interested parties may present objections to the report, and the court, after hearing such objections and finding that the benefits will exceed the cost, organizes a district. If there are fifteen or more landowners in such a district, an election is held to select the commissioners, otherwise the commissioners are appointed by the court.

Districts by user are permitted, under paragraph 199 of the Revised Statutes, when two or more parties owning adjoining lands which require a system of combined drainage have by voluntary action constructed ditches which form a continuous line or line with branches. If the owners can not agree on their proportion of the repairs and improvements, any one or more of them may petition for the formation of a drainage district to include the lands affected by maintenance of the ditches. The petition must show that the lands are damaged through lack of proper repair or improvement. The form of procedure is determined by the location of the lands and is the same as that in one town, two town or special districts. By amendments of 1901 and 1905, if the works in these districts consist of open ditches, they shall be made into tile drains where practicable.

**Financing—Assessments.**—In one-town and two-town districts the commissioners, after the classification is finally confirmed, make up the tax list and assess the amount needed to construct the work on the basis of the classification. The assessment may be made payable in installments and bonds may be issued.

In special drainage districts, classification of the lands is made by the commissioners as in one-town and two-town districts and the assessment is made in the same way, except the amount required to construct the work is filed by the commissioners with the clerk and he apportions same among the lands according to the classification. A copy of this tax list is filed for record in the counties other than the county in which the district is organized.

Assessments in special drainage districts are liens on land and property assessed for the proportionate share levied against same.

If the commissioners at any time find that the assessments or taxes already levied will not be sufficient to complete the proposed work, they may make additional levies on the original classification, which levies, unless ordered to be paid in installments are due in 30 days. The commissioners may borrow money on notes or bonds of the district bearing 6 per cent interest and running not longer than one year after the due date of the last installment of assessments on account of which the money is borrowed, and such notes or bonds are liens upon the assessments. Commissioners may also issue refunding bonds running not longer than 10 years and not exceeding the amount of the assessments outstanding, when, in their opinion, the payment at maturity of notes or bonds already issued would constitute a hardship on the landowners.

**Consolidated districts.**—Under an act of May 9, 1929, any two or more contiguous districts may consolidate when one-tenth of the landowners in the proposed consolidated district owning one-fifth of the land in each of the existing drainage districts petition the county court of the county in which a majority of the lands in the proposed consolidated district are situated. The proceeding is then substantially the same as for the formation of a district. If the court finds that the consolidation would be beneficial to the owners of a majority of the land in the consolidated district, it enters an order dissolving the existing districts and consolidating them into one district with the name stated in the petition. Upon making such order, the court appoints three commissioners to serve until the first Monday in September following their appointment and until their successors have qualified. The consolidated district thereupon becomes a body politic and corporate and any further proceedings are had in accordance with the procedure for organizing a district. (Par. 16.) Outstanding indebtedness of any district which is merged into the consolidation is paid from the funds of such debtor district and if such funds are insufficient, the court may authorize the commissioners of the consolidated district to levy a special assessment against the lands of the debtor district sufficient to pay same. The merging of any district into a consolidated district does not affect its bonded or other obligations nor invalidate any levy of taxes, but such obligations are taken over and assumed by the consolidated district and annual taxes or assessments are paid by the debtor district to the consolidated district for the payment of such obligations. (Par. 17a); (Laws of 1929, page 371.)

**Outlet drainage districts.**—Whenever any river or stream has become an outlet for drainage of one or more districts and of land not organized into a district and it will be to the benefit of the district and the land not organized to have such stream deepened or otherwise improved, an outlet drainage district may be organized by the same procedure as for the organization of the district, and all land benefited may be included within its boundaries, whether in a drainage district or not.

Commissioners are appointed in the same manner as for a district; special assessments are levied upon the lands and other property in the outlet district which will be benefited, in like manner as in a drainage district. The commissioners have no authority to make any assessment other than for deepening, widening, straightening, or otherwise improving the channel of such stream, and may not drain any land whatever. All the provisions of this act which are applicable are extended to the outlet districts. (Par. 65.)

**Districts by mutual agreement.**—Owners who desire to combine drainage and protection from overflow, may form drainage and levee districts by mutual agreement by an instrument in writing, signed, acknowledged and recorded in the drainage records of the county. They fix their own assessments and methods of doing the work and may ask the county court to appoint three commissioners, whose powers and duties are thereafter the same as in other districts; provided, the agreement may include the selection of three commissioners from their own number, or from others, whose terms will run until the first of September following and one year thereafter, and the commissioners are then appointed by the county court. Such districts have all the powers of other districts. Districts by mutual agreement which have not done any of the principal work for which created, may be included in districts organized under this act. Mutual agreement districts organized to prevent being included in a district organized by petition, may, upon that fact appearing to the county court, be included in a district organized by petition. (Added by act of May 20, 1907, amended June 27, 1927.)

**River districts.**—River districts may be organized in the same manner and with like powers as drainage districts, for the purpose of improving the channels or rivers. The commissioners may levy assessments upon property benefited. When such work is a necessary part of the system of drainage of any organized drainage district it is deemed to belong to the drainage. (Par. 198.)

**Dissolution and abandonment.**—By the act of June 4, 1889, any drainage district may be dissolved by the county court of the county wherein organized, upon a hearing had upon a verified petition signed by not less than four-fifths of the landowners who own in the aggregate not less than three-fourths in area of the assessed lands thereof, when it is determined by the court that six weeks' notice has been given by posting and publication, that no indebtedness exists, and that the cost of dissolution has been advanced; provided, the waterways and improvements of the dissolved district shall remain for the common use of the landowners of the district so dissolved. (Par. 240.)

Under amendments to the drainage and levee act of 1881, 1885, 1909, and 1927, drainage districts may be abandoned at any time before contract for construction is made, upon petition of a majority of the owners representing one-third of the area. If any portion of the work is ordered to be abandoned, after hearing, the assessments are adjusted accordingly.

At any time before the contract for the construction of the proposed works has been made, upon petition of a majority in number of all landowners owning more than one-half in area of the lands assessed for benefits, whose aggregate assessment amounts to not less than half of the cost of the proposed work, and praying that the whole system of works be abandoned, the court must enter an order granting the prayer, upon condition that the petitioners pay all costs up to that time. Any assessments that have been made are refunded. This amendment does not apply to districts organized previously and they may be abandoned under the existing prior law.

## INDIANA

(Annotated Statutes, 1926, and Supplement, 1929)

**Jurisdiction to establish.**—The superior court of any county has jurisdiction to receive petitions for the establishment of drainage when presented by the owners of separate and distinct tracts of land lying outside of any city or town or when presented by a township trustee, the common council of an incorporated city, or the trustee of a town, praying for the drainage of lands; highways, public school grounds or incorporated cities, and alleging that such drainage can not be economically accomplished without affecting the lands of others. The petition describes the land to be drained in tracts of 40 acres or less, and it gives the names of the owners, if known. Lands in incorporated towns are described by lot numbers. The petition is sufficient to give jurisdiction over all lands described and power to fix a lien thereon, if such lands are described as belonging to

the owners according to the last tax duplicate or record of transfer. It must be alleged that the public health will be improved, highways or streets benefited, or that the improvement will be a general public utility. The method of accomplishing the drainage is described and belief that the cost will be less than the benefits is alleged. Bond to pay costs in the event the drainage is not established must be filed with the petition. When the drainage is in two or more counties the superior court or circuit court of the county having the greatest length of the proposed ditch has jurisdiction. (Sec. 6167.)

**Procedure.**—An act of April 10, 1907 (sec. 6166), makes it the duty of the board of county commissioners of every county in Indiana, in January after the passage of the act, to appoint a drainage commissioner for the county for a term of two years. The county surveyor is, under this statute, ex officio drainage commissioner, and provision is made for a third commissioner to be appointed by the courts.

Upon the filing of the petition the court clerk or the petitioners note thereon the day set for the docketing thereof and serve written notice of the contents of the petition on all parties interested residing in the county or counties. Notice to nonresidents is by posting and publication. If it appears to the court that proper notice has been given in accordance with the statute it will order the docketing of the cause as an action pending. Objections to the petition may be filed within 10 days after the day of docketing and will be considered and determined by the court. If within 20 days after the docketing two-thirds of the landowners named in the petition or whose lands will be affected remonstrate in writing against the construction of the drain, the petition will be dismissed at the cost of the petitioners. (Sec. 6169 Supl.) If no remonstrance is filed and the court deems the petition sufficient, it will enter an order referring same to the drainage commissioner. It is at this point that the court appoints a third drainage commissioner for the county. The board of drainage commissioners, composed of the county drainage commissioner, the county surveyor, and the commissioner appointed by the court, makes a personal inspection of the land described in the petition and all other lands liable to be affected, and reports to the court whether the drainage is practicable, whether it will be of public benefit, and whether the cost will be less than the benefits to be derived. If they find any of these questions in the negative, the petition is dismissed at the cost of the petitioners. If they find in the affirmative on all questions they definitely determine the location and character of the work to be done, estimate the cost thereof, and assess the benefits and damages to each separate tract of land and to easements held by corporations or municipalities. The statute provides in minute detail the manner in which the commissioners shall consider and determine the character and kind of drainage and method of accomplishing it. It prohibits the location of a drain within 40 rods of the high-water mark of any lake covering 10 acres or more, unless the drain empties into such lake. The county surveyor is the engineer unless the court appoints some other and he makes a survey to accompany the report of the commissioners. (Sec. 6169 Supl., act of March 15, 1929.)

Upon the filing of the commissioners' report 10 days is allowed for any interested party to file objections to same. Ten grounds on which objections may be made are set out in the statute, referring mostly to the form of the report, the amount of damages or benefits assessed, and the public utility of the work. If two-thirds of the landowners who will be affected by any lateral drain which was not mentioned in the petition remonstrate on the ground that such lateral is not of public utility, the court will strike such lateral from the report and adjust the assessments accordingly. The case is heard by the court without jury and it may dismiss the proceeding, modify or amend the report, equalize the assessments or damages, refer the matter back to the commissioner or confirm same as filed or amended, declare the proposed work established, and assign same to one of the three drainage commissioners for construction. The court may assign the work to a disinterested freeholder of the county for construction after requiring proper bond. The order of the court is final and conclusive in the absence of appeal to the supreme court within 30 days. All proceedings are stayed pending the determination of the appeal. (Sec. 6174.) The cause remains upon the docket of the court and the court retains jurisdiction over all persons, lands, and property over which it acquired jurisdiction in the original proceeding and any supplementary proceeding. (Sec. 6182 Supl., act of May 15, 1929.)

**Procedure—Intracounty.**—When all the property affected is wholly within one county, the petition may be heard by the

board of commissioners of that county and the procedure is the same as in the case of petition to the circuit or superior courts except as specifically provided. Appeal is to the circuit or superior court with like appeal from such courts to the supreme court. The county auditor performs the duties of the court clerk. When the cost of drainage does not exceed \$1,000 the petition is referred to the county surveyor, if he is disinterested, and it is his duty to act in the place of the drainage commissioners and viewers. The procedure from that point forward is substantially the same as in the case of petition to the circuit or superior courts. (Sec. 6194, act of March 4, 1927.)

**Procedure—Repair and change.**—The owners of any lands affected and assessed for construction or tiling of any public drain, under any law, may petition either the court or the commissioners as the case may be for the repair, change, or extension of such drain. Where the petition alleges that the drain as originally constructed is not sufficient and the prayer is to increase the size and number of the tile, change the course, or extend the length of the drain, and that certain landowners have advanced money to make repairs on the drain which has not been repaid, the court if it finds in favor of the petition, will order the repayment of the money advanced as a part of the costs. The proceeding thereafter is in conformity with that for original construction. (Sec. 6196, act March 9, 1927.)

**Procedure—Drains on State lines.**—Whenever it is desired to construct or alter drains lying on, along, across or near the State line between Indiana and an adjoining State, which State has a similar law for the construction of interstate ditches, the ditch commissioner and other proper officers of the counties in Indiana are given authority to join with similar officers of the adjoining State and enter into contracts with such officers for such work, the lands in the adjoining State to pay their proportion of the costs. (Sec. 6198, act of April 30, 1913.) The procedure thereafter is substantially the same as for a drain in Indiana, with the county boards in the different States acting as a joint board on all questions. (Secs. 6199-6217.)

**Financing—Assessments.**—The commissioner or other person charged with the execution of the work proceeds to have the same constructed and pays the costs and expenses, with the fund collected from the assessments made and confirmed by the court; provided that all payments must be presented to the court and allowed by it. Such commissioner refunds to the county treasurer whatever money has been paid by him on account of the work; pays all damages assessed and allowed; and pays the costs of construction. For the purpose of raising funds he collects such sums as may be necessary, not exceeding the whole benefits upon any tract, proportioned to the assessment of benefits, and requires the same to be paid in installments of not to exceed 10 per cent per month after giving 30 days' notice by publication. He divides the work into sections of 100 feet in length and computes the excavation in each section and lets the work by contract after publication of notice. Persons whose lands have been assessed have the preference in bidding on the work at the same rate. The commissioner collects the assessments not satisfied or such parts as he deems necessary and if they are not paid makes a certificate showing the amount standing against any tract, and files same with the auditor of the county who places the amount on the delinquent tax duplicate and collects it as other delinquent taxes are collected. No personal property or real estate other than that assessed for benefits may be sold for delinquent taxes. (Sec. 6182 Supl., act of March 15, 1929.)

If pumping plants or flood gates are contemplated in the proposed work, the court at the time of confirming the same may direct the commissioner or other person in charge of construction to take charge of such works and operate them, by the aid of assistants if necessary. At the time of making such order the court directs the commissioner to levy an annual assessment at the same time each year upon the lands and other property originally assessed for benefits, apportioned according to the benefits, of a sum sufficient to pay the costs of operation, repair and maintenance of such work. Such assessment may not exceed 5 per cent of the original assessment of benefits and is collected in the same way. Any person aggrieved by the assessment of benefits or the annual assessment may, before paying same, have a hearing before the commissioner making such levy by filing his remonstrance in writing 10 days before the first installment is payable. The commissioner fixes a time for hearing thereon and determines the remonstrance as in his opinion may be just and reasonable. Aggrieved persons may appeal from the order of the commissioner to the court originally establishing such work where trial is had without a jury. There is

no change of venue. If the court reduces the assessment one-fifth in amount, costs must be paid by the drainage commissioner out of district funds; otherwise the costs are paid by the appellant. The commissioner or other person in charge of the work makes a detailed report to the court annually of all the moneys collected and disbursed by him. (Sec. 6182 Supl., act of March 15, 1929.)

**Financing—Bonds.**—Where the contract price of the improvement exceeds \$2,000 (act of April 25, 1925), drainage bonds may be issued for the costs of construction. The commissioner in charge, after letting the contract, carefully determines the total cost of construction, and incidental costs and expenses, and apportions same to the several tracts of land assessed in proportion to the benefits. Such apportionment must not exceed the benefits assessed against the respective tracts. The commissioner certifies the assessment and apportionment to the board of county commissioners and they determine at what time and in what installments they will require same to be paid; provided such assessment may not extend over a period of more than 10 years and must mature at annual intervals. The board enters its order setting forth such determinations and fixes a day within 90 days on which the owners may pay such assessment in cash and have their lands discharged therefrom. The auditor gives notice by publication that the assessment has been placed in the hands of the county treasurer for collection and states the time and place where same may be paid. After deducting the amount paid in cash from the total estimated cost of the improvement, plus damages and other expenses, the commissioners cause the bonds of the county to be issued for the remainder of such costs and expenses. The bonds fall due annually as the assessments to pay same are collected. They bear 6 per cent interest and show on their face the purpose for which issued and that they are payable from the assessments and not otherwise. The auditor then extends the unpaid assessments upon a special duplicate known as the ditch duplicate and adds to each successive installment interest at 6 per cent until the date of payment. Such assessments constitute a first and paramount lien upon the tracts and parcels of land against which assessed and are collected at the same time and in the same manner as general taxes. When collected, the money is applied to the payment of bonds and interest and to no other purpose whatever. Municipalities and other corporations assessed for benefits to their property or easements, failing to pay same, are deemed to have elected to pay in installments in the same manner as individuals, and, upon failure to pay the installments, are liable therefor, and the bondholders may enforce collection by suit in the name of the State, and the recovery is without relief from valuation and appraisal laws.

Upon issuing bonds the auditor gives notice by publication of the sale of same to the highest bidder for cash. He certifies the results of such sale to the county commissioners at their next meeting. Bonds may not be sold for less than par. The proceeds are turned over to the treasurer of the county and paid out by him only upon the order of the commissioner constructing the work approved by the court. All costs in the first instance are paid out of the county treasury and returned from the first money received from the sale of bonds. Next in order damages are paid and thereafter construction costs. If bonds sell at a premium, the amount of the premium is prorated to the assessment against the several parcels of land and operates as a payment to that extent of the first assessment. In the case of intercounty districts, collections of assessments are made by the county auditor and treasurer of the respective counties for the land situated in each county and transmitted to the treasurer of the county in which the court having original jurisdiction is situated. (Sec. 6183 as amended by acts of 1919, p. 775.) Lands subdivided subsequent to the issuance of bonds may have the installments of assessments allocated to the smallest subdivided parts upon proceedings by the owner. (Sec. 6183-1 to 14, act of March 10, 1927.)

By the act of April 30, 1913, limitation of payment runs against assessments due and payable over 5 years, upon which no payment has been made during that time. (Sec. 6187.) Likewise the lien of any assessment expires 5 years after the time when the assessment becomes due and payable. (Sec. 6188.)

**Maintenance—Other than dredge ditches.**—The cleaning of all ditches constructed under any law, except dredge ditches, is placed in the exclusive charge and supervision of the township trustee of the township in which any part of such drain is located. It is his duty to see that the drains are kept in repair and free of obstruction so as to fully discharge the functions for which designed. He makes and supervises the levy and expenditure of such assessments as may be necessary for that purpose. (Sec. 6218, act of March 15, 1915.) The statute divides the ditches into two groups on the basis of the urgency of the

necessity for cleaning and requires the biennial cleaning in alternate years of each group. (Sec. 6219.) The township trustee may employ a surveyor to more definitely determine the original specifications of the ditch (Sec. 6220) and, after procuring such specifications, lets contracts for cleaning and repair to the lowest bidder (Sec. 6222). Tile drains are repaired under the supervision of the township trustee but are not classified for biennial cleaning. (Sec. 6226.) The trustee provides a fund known as the emergency fund which is equal to approximately 1 per cent of the original cost of construction. He apportions the amount necessary to repair any tile drain and to create or replenish the emergency fund to the land which will be benefited by such repair or cleaning on the basis of the original assessment for construction. (Sec. 6227.) The amount necessary to repair open ditches and to create an emergency fund is raised by levying a uniform tax upon all agricultural lands, town lots, streets, highways, and railroad rights of way which will be benefited. Each town or city lot is deemed to be equivalent to 1 acre of agricultural land and they are assessed at a uniform rate per acre. (Sec. 6228.) The township trustee records such assessments in the township-drainage record and gives notice of a hearing thereon on a form provided in the statute. (Sec. 6229.) He hears all objections to such assessments, confirms or amends same, and enters an order levying the assessments, which is final and conclusive in the absence of appeal within 10 days to the circuit court or the commissioners court of the county. (Sec. 6231.) The tax so assessed is paid to the township trustee, 25 per cent within 30 days after the commencement of the repairs and the remaining 75 per cent in three equal installments at intervals of 30 days as the work progresses, with penalties added for delinquency. (Sec. 6233.) Any person having converted an open ditch into a tile drain through his land may have the tile taken into consideration in making assessments for repairs and the assessments are made only on lands through which the ditch is open. (Sec. 6234.)

**Maintenance—Dredge-constructed drains.**—In cases where public drains have been constructed by the use of a dredge, not less than five owners of real estate assessed for benefits for the original construction, whose lands lie outside of the limits of any city or town, may petition the clerk of the court establishing the drain, or the auditor of the county if established by the board of commissioners, praying for the cleaning and repairing of such ditch. In the case of ditches with floodgates, not less than two-thirds in number of the landowners owning not less than two-thirds of the acres to be benefited and assessed for construction may pray for the installation of pumping equipment. In intercounty drains, the petition is filed with the clerk of the circuit court of the county having the greater length of such ditch. The statute is specific and of much length as to the allegations of the petition, the giving of notice, the hearing of remonstrances and the assessment of lands benefited to pay the costs. The proceeding is similar to that for original construction. The owners of the lands assessed for cleaning and repairs, or for the establishment of pumping plants, may annually select a committee of three landowners, whose lands are assessed, to have charge of the repair of such ditch or the operation of such pumps. The committee may levy an annual assessment for repairs and operation of the pumps, not exceeding 5 per cent of the assessment for cleaning and repairs, reporting same to the auditor who will spread the assessment on the ditch duplicates and collect it as other taxes. (Sec. 6249, amendment of 1925, p. 448.) After due notice and hearing of all objections, the drainage commissioner determines the apportionments and assessments, and enters an order in a record known as the county drainage cleanout record and his action is final and conclusive, unless appeal is taken within 10 days to the court referring the matter to the drainage commissioners. (Sec. 6250.) The drain commissioner proceeds to have the ditch cleaned according to the specifications to its original width and depth, paying therefor with the funds derived from the confirmed assessments, with the approval of the court. Assessments may be paid in installments not to exceed 10 per cent per month and are collected in the same manner as drainage taxes. (Sec. 6251.)

**Maintenance—Repair and cleaning other than dredge ditches.**—Whenever the owners of 20 per cent in acreage of the land affected, except in the case of ditches or drains constructed in whole or in part by a dredge, shall petition the county commissioners that the ditches making up such drainage system be repaired and cleaned, the commissioners enter an order to that effect and thereafter they are maintained as herein provided, except that in 20 days from the filing of the petition the owners of a majority in acreage of the land affected may remonstrate against the proposed method of cleaning and repair, in which

event the petition is dismissed and the work carried on under the general law. Also, when the owners of a majority of the land affected petition the commissioners that the drain be brought within the operation of any other law, the commissioners must so order. (Sec. 6237, act of May 31, 1917.)

**Maintenance—Dredge ditches—Bonds.**—In the case of dredged ditches so cleaned and repaired where the contract price is more than \$5,000, drainage repair bonds may be issued to procure funds to pay cost. After letting contracts, the drainage commissioner determines the total cost of the cleaning and repair, apportioning it to the several tracts of land benefited in proportion to the total assessment, and certifies same to the county commissioners who determine at what time and in what manner they will require same to be paid. Such installments may not be extended over a greater period than 10 years and must mature at annual intervals commencing after a period of one year. The proceedings then are similar to those for the collection of installment assessments for original construction. (Sec. 6254, as amended 1921, p. 155.)

**Maintenance—Public ditch constructed by dredge.**—The act of April 25, 1925, provides that where a public ditch has been constructed wholly or in part by the use of a dredge, 25 per cent of the owners of real estate, which has been assessed for benefits for original construction, may file a petition asking the removal of weeds, willows and natural growth from the channel of such ditch. The proceeding thereon is substantially similar to that in the allotment of work on ditches not constructed by dredges. (Sec. 6237, et seq.)

## IOWA

(Code of Iowa, 1931, Chapters 353 to 361)

The laws of Iowa, in addition to providing for drainage districts wholly within one county and similar districts within two or more counties, further authorize intracounty districts to be converted into intercounty districts when districts in separate counties have common outlets (sec. 7626-a-1); districts to embrace the part or the whole of cities or towns (ch. 353); the establishment of pumping stations in districts already constructed upon petition of one-third of the owners of the land benefited, the cost to be assessed against such land (ch. 357); drainage by an owner through intervening land (ch. 359); drainage in connection with United States levees (ch. 360); interstate drainage districts by agreement with districts in adjoining States (ch. 361); and the management and control of drainage districts by elected trustees (ch. 358).

The following is a brief synopsis of the laws relating to the formation and financing of county and intercounty drainage districts and the control thereof by trustees.

**Jurisdiction to establish.**—The board of supervisors of any county has jurisdiction to establish and construct drainage districts whenever the same will be conducive to the public welfare. (Sec. 7421.) The drainage of surface water from agricultural lands is presumed to be a public benefit and conducive to the public welfare. (Sec. 7422.) Under this statute the word "board" means the board of supervisors of the county, the joint board of supervisors, and the board of trustees in districts under trustee management. "Commissioners" means the persons appointed to classify the lands and fix the percentage of benefits and apportion the costs. "Appraisers" means the persons appointed to ascertain the value of land taken and the amount of damages arising from the improvement. (Sec. 7424.)

**Control and management.**—Drainage districts established and constructed are at all times under the control of the board of supervisors of the county, or of the joint board of supervisors when the district is intercounty (secs. 7556, 7607), except that under chapter 358 when the original construction has been completed and paid for, and upon petition of a majority of the landowners, the board will, after separating the district into three nearly equal divisions, order an election of one trustee for each division who must be a resident of the county and an owner of land in his particular division of the district (secs. 7674 to 7692). The trustees so elected have control of the district with all the powers of the board of county commissioners. (Sec. 7700.)

**Procedure.**—A petition for the establishment of a drainage district signed by at least 25 per cent of the owners of land

affected is filed with the county auditor (sec. 7427), accompanied by proper bond conditioned upon the payment of costs if the district is not established (sec. 7430), describing the land, the works to be constructed and alleging that the public welfare will be promoted by such improvement (sec. 7429). At the next session the board appoints an engineer (sec. 7432) who examines the land described in the petition and any other land which will be benefited by the improvement and makes a survey thereof (sec. 7437). The engineer reports to the court with maps, profiles and a description of each 40-acre tract, giving the boundaries of the district and of any other land which will be affected and furnishing a plan for drainage and an estimate of the cost. (Sec. 7438.) Upon examination of the engineer's report the board may adopt same, amend it, or order an additional examination and survey by the same or another engineer. Adoption by the board of the plan as reported or amended is final and conclusive unless appeal is taken (sec. 7439) to the district court by parties in interest (sec. 7513).

When the plan is approved by the board it is recorded in their proceedings as a tentative plan only. (Sec. 7441.) Notice is given by the auditor, by publication and personal service, of the favorable report of the engineer, the tentative plan of drainage adopted by the board and the time and place for hearing thereon at which all claims for damages, except claims for land required for rights of way, and all objections to the establishment of the district may be filed in writing. (Secs. 7440-7443.) Failure to file claim is held to be a waiver thereof. (Sec. 7445.) At the hearing the board determines the sufficiency of the petition in form and substance, hears all objections, may examine the land, and if it finds that the construction of the improvement will not materially benefit the lands or that the cost will be excessive, or that it will not be of public benefit, it will dismiss the proceedings. (Sec. 7447.) If the board finds in the affirmative on these points and no claim for damages has been filed, it will either locate and establish the district in accordance with the tentative plan, or in its judgment refuse to establish the district and direct another survey and report. If the district is established, the county auditor immediately appoints three appraisers to assess the value of lands required for rights of way. (Sec. 7448.)

The board having found in the affirmative on all the above points and that the proceedings conform to the law in form and substance and that the improvement shall be made, then, if claims for damages have been filed, further proceedings are adjourned to a day certain of which the parties must take notice, and the auditor appoints three appraisers to assess the damages which will be caused by the improvement. (Sec. 7449.) The appraisers, consisting of two freeholders of the county and an engineer, view the premises and fix the damages to which each claimant is entitled and place a separate valuation on the acreage of each owner taken for right of way, and file their report in writing with the auditor. (Sec. 7450.) At the adjourned meeting the board examines the appraisers' report, confirms or amends same and fixes the damages or compensation for land taken due to each claimant. (Sec. 7451.) At this meeting the board considers the cost of construction and the amount of damages and compensation awarded and if the aggregate amount creates a greater burden than should be borne by the land, it will dismiss the petition at the cost of the petitioners. (Sec. 7452.) If, before final hearing, a remonstrance is filed with the county auditor, signed by the majority of the landowners in the district who own 70 per cent or more of the land to be assessed, against the establishment of the district, the board will dismiss the proceeding and assess to the petitioners or to the remonstrators the cost of the proceeding to date, or will apportion the cost between them. (Sec. 7453.)

When the improvement has been finally located and established, the board causes a permanent survey thereof as located, with plats and profiles and report of the engineer, to be filed with the auditor. (Sec. 7455.) Compensation for land taken and damages are paid in the first instance by the party benefited by the improvement or secured by bond. (Sec. 7456.) When this is done, the board divides the improvement into suitable sections for construction (sec. 7457), appoints a supervising engineer to have charge of the work, and advertises for bids for construction (sec. 7459).

When the contract for construction has been let or when the required proceedings have been taken to enlarge, change or extend any district or other works, or to annex other lands, the board appoints three commissioners to classify lands affected and assess the benefits thereto. One of the commissioners must be an engineer and two must be residents of the county, not residing in the district and not interested nor related to any party. (Sec. 7464.) The commissioners inspect and classify

the land in the district in tracts of 40 acres or less on a graduated scale of benefits to be numbered according to the benefits received by each tract and make a full report thereof to the auditor. The land receiving the greatest benefit is marked on the scale of 100 and that benefited in less degree with a proportionate percentage of 100. The commissioners also make equitable apportionment of the costs, expenses and damages computed on the basis of the percentages fixed. (Sec. 7465.) In estimating the benefits to land not traversed by the improvement, the commissioners consider only the benefits which will be received by reason of the construction of the improvement in question as it affords an outlet for the drainage of such land. (Sec. 7467.) In fixing the percentages and assessments of benefits, and apportionment of the costs of construction on lands benefited by lateral ditches as a part of the entire improvement, the commissioners ascertain and fix the same as if the laterals with the sublaterals were being constructed as a subdistrict, and they report separately (1) the per cent of benefits and amount accruing to each 40-acre tract on account of the construction of the main ditch, including pumping plants, if any, and (2) the percentage of benefits and the amount accruing to each 40-acre tract or less on account of construction of such laterals. (Sec. 7468.) Railroads and public highways are assessed in the same manner. (Sec. 7469.) The commissioners report the amount of benefits to highways and railroad property and the percentage of benefits to each of the other tracts and the apportionment and amount of the assessment of costs and expenses against each for (a) main ditches and settling basins; (b) laterals; (c) levees and pumping stations, and (d) the aggregate of all assessments. (Sec. 7471.)

The board fixes a time for hearing on the report of the commissioners and the auditor gives notice thereof to each owner by name in the same manner as the notice for the establishment of a district, stating the assessment and apportionment of costs to each on every 40-acre tract or less and stating also that objections thereto must be filed in writing before the hearing. (Sec. 7472.) At the hearing the board determines all objections filed and affirms or amends the report as may be just and equitable. (Sec. 7473.) The board may hear evidence for or against the report or any portion thereof, but it is not competent to show that any of the land in the district will not be benefited by the improvement to some degree. (Sec. 7474.) The board may increase assessments and serve notice on the parties to appear and be heard. (Sec. 7475.) The classification, thus finally adopted, remains the basis for future assessments for the purposes of the district unless revised by the board in the manner provided for reclassification, except that land destroyed by erosion may be eliminated and the resulting deficiency in assessment be spread over the remaining land. (Sec. 7476.)

**Procedure—Subdistricts.**—After the establishment of a district, any owner of land which has been assessed for benefits but which is separated from the main ditch by lands of others, who desires a drain to be constructed across the intervening lands, may file a petition for the establishment of a subdistrict, and thereafter the proceeding is the same as for the establishment of the original. (Sec. 7490.) Such subdistrict, after construction is a part of the original district under the control of the board. (Sec. 7491.) Subdistricts may be created in intercounty districts, where the land is wholly within one county, by the same proceeding as for original establishment, except that one or more persons may petition for same. (Sec. 7572.)

**Procedure—Reclassification.**—After a district is completed, if the board finds that the assessments are not equitable as a basis for any enlargement or extension which may have become necessary, it may order a new classification and appoint commissioners of the same qualification as the original commissioners to make same. (Sec. 7492.) The subsequent proceeding is the same as for original classification. (Sec. 7494.)

**Procedure—Appeals.**—Any aggrieved person may appeal from any final order of the board to the district court of the county. (Sec. 7413.) In intercounty districts the appeal may be to the district court of any county. (Sec. 7514.) It is not competent, on appeal from the order of the board fixing the amount of the benefits assessed, to show that lands within the district will not be benefited in some degree by the construction of the improvement. (Sec. 7523.) Appeals from orders of the board fixing compensation for land taken for rights of way, or damages, are tried as ordinary proceedings. Other appeals are tried in equity. The court may consolidate equitable appeals. (Sec. 7522.) Upon appeal, the decision of the court in no manner affects the rights or liabilities of any person who did not appeal. The remedy by appeal is exclusive of all other remedies. (Sec. 7527.)

**Procedure—Annexing lands.**—After the establishment of a district, if the board becomes convinced that additional lands are

benefited by the improvement, it may adopt a resolution of necessity for the annexing of such additional lands and appoint an engineer to survey same and report as in the original establishment. (Sec. 7549.) Proceeding thereafter is the same as for original establishment. (Sec. 7550.)

**Procedure—Intercounty districts.**—When the proposed district embraces land in two or more counties a duplicate petition and bond is filed with the auditor of each county. (Sec. 7599.) The board of each county appoints one commissioner and they meet within 30 days and appoint an engineer who acts as commissioner. (Sec. 7600.) A duplicate of the commissioners' report and of the engineer's survey and plats is filed in the office of the auditor of each county. (Sec. 7601.) Subsequent proceedings are before a joint meeting of the boards of each county. (Secs. 7604–7607.) If the tentative plan is adopted, the board of each county selects one appraiser and the joint boards employ an engineer who acts as the other appraiser. (Sec. 7608.) If the boards jointly establish the district they appoint a board of commissioners to classify the land and assess benefits and damages, consisting of one member from each county and a competent engineer selected by the board. (Sec. 7612.) If the boards fail to take action or to agree, any petitioner may have the proceeding transferred to the district court of any of the counties, upon 10 days' notice to the auditors of the several counties. (Sec. 7623.) Except as specially stipulated, the provisions of chapter 353 relating to districts wholly within one county also apply to intercounty districts. (Sec. 7626.)

**Financing—Assessments.**—In establishing a district, damages and compensation for land taken, when finally established by the board, are paid in the first instance by the parties benefited by the improvement, or secured by approved bond in similar amount. (Sec. 7456.) The payment, or the securing of such damages and compensation, is a condition precedent to the commencement of construction. (Secs. 7458–7459.)

After the classification of lands and the final determination by the board of the assessment of benefits and apportionments of cost, the board levies such assessments upon the lands in the district as a tax which bears interest at 6 per cent from that date. (Sec. 7477.) Such tax is a lien upon the property assessed as fully as State and county taxes. (Sec. 7478.) If the first assessment for the original cost, or for repairs, is insufficient, the board may make an additional levy in the same ratio, payable at the next tax period. (Sec. 7479.) The drainage taxes are recorded on the tax records of each county and when collected are kept in a separate fund known as the drainage fund of the district to which they belong. (Sec. 7481.) Drainage taxes may become due at the same time as other taxes and are enforced in the same manner. (Sec. 7482.) All assessments for benefits are levied at one time against the property benefited and are payable at the office of the county treasurer. Each person has the right to pay same in cash within 20 days. (Sec. 7483.) If an owner against whom a levy exceeding \$20 has been made, within 20 days, agrees in writing that in consideration of having the right to pay his assessments in installments he will not make any objection to the legality of his assessments for benefits or the levying of taxes against his property, then he has the following options: (1) To pay one-third of the levy in cash; one-third in 20 days after the work is one-half completed; and the remainder in 20 days after the entire improvement is completed and accepted; (2) to pay such assessments in not less than 10 nor more than 20 equal installments as fixed by the board with interest not exceeding 6 per cent. (Sec. 7484.)

**Financing—Improvement certificates.**—The board may provide by resolution for the issuance of improvement certificates, payable to the bearer or to the contractors, by name, in payment or part payment for work done. (Sec. 7499.) Each certificate states the amount of the assessment or part thereof made against the property, designating it and the owner thereof, liable for the payment of such assessment. Certificates are negotiable and transfer to the bearer all right and interest in and to the tax for such assessment or part thereof described in such certificate, and authorize the bearer to collect and receive every assessment embraced in such certificate by any of the methods provided by law. (Sec. 7500.) Certificates bear interest at 6 per cent. (Sec. 7501.) Any person has the right to pay the amount of his assessment represented by any outstanding improvement certificate with interest at any time. No certificate may be negotiated by the district for less than par and interest. Certificates when paid are surrendered to the party to whom the assessment relates. (Sec. 7502.)

**Financing—Bonds.**—When a drainage district has been established or the making of any repair or improvement determined upon, if the board finds the cost will be more than should be borne by the land in one year, instead of issuing improvement certificates it may fix the amount that is to be levied and collected

each year until such cost is paid and issue drainage bonds of the county covering all assessments in excess of \$20. (Sec. 7503.) Each bond is numbered, has printed on its face that it is a drainage bond, stating the county and number of the district for which it is issued and that it is to be paid only from taxes for drainage improvement purposes levied and collected on the lands assessed for benefits within that district. (Sec. 7504.) The aggregate amount of bonds issued may not exceed the benefits assessed. Bonds may not run longer than 20 years and bear 5 per cent interest. (Sec. 7505.) If any levy of assessments is not sufficient to meet the principal and interest of outstanding bonds, additional assessments may be made on the same classification as previous assessments, and additional bonds may be issued when necessary to complete full payment for the improvement. (Sec. 7509.) Districts may fund or refund any legal indebtedness or part thereof in excess of \$1,000 and issue bonds therefor in the manner provided in section 7663. (Sec. 7509-a-1.) Bonds must be issued so that the proceeds thereof will be available for use not later than 90 days after the actual commencement of work, or where appeals have been taken not later than 90 days after the appeal has been determined. (Sec. 7507.)

**Financing—Refunding bonds.**—When outstanding drainage bonds are due or about to become due and funds are not available for the payment thereof at maturity, the board may extend the time of payment of unpaid assessments, or installments thereof, or renew or extend the time of payment of such bonded indebtedness or any part thereof in the sum of \$5,000 or more, and may refund same and issue drainage refunding bonds therefor. (Ch. 358, sec. 7714-b-1.) Before taking action there must be filed with the board a petition signed by the owners of 15 per cent of the land in the district requesting such action. (Sec. 7714-b-2.) Thereafter upon hearing on a petition with the right of appeal the board may extend the time of payment for not to exceed 15 years from the date when any assessment or installment becomes due. The board fixes the amount to be levied and collected each year and may issue refunding bonds covering the unpaid assessment. (Sec. 7714-b-6 to 14.)

**Financing—Intercounty districts.**—After the amount to be levied against the several tracts of land has been finally determined the several boards, acting separately and within their own counties, levy and collect the taxes apportioned to their respective counties. They may issue warrants, improvement certificates, or bonds to pay the costs in their respective counties with the same rights of the landowner to pay without interest or in installments as in intracounty districts. (Sec. 7614.) All the provisions of chapter 353 (drainage districts wholly within one county) apply to intercounty districts unless especially excepted. (Sec. 7626.)

**Maintenance.**—After the completion of a district it is at all times under the control of the board, except when managed by elected trustees, and it is the duty of the board to keep the same in repair. They may cause the drains to be reopened or extended or change the location, or convert them into tile drains. (Sec. 7556.) If funds of the district are not sufficient to pay the cost and such cost is less than 10 per cent of the original cost, a new assessment is made, without notice, on the basis of the old apportionment. (Sec. 7558.) If the cost exceeds 10 per cent of the original cost or if the character of the work proposed differs from mere repairs, then a new apportionment of the assessment upon the land is made under the same proceedings as for original establishment. (Sec. 7559.) If the original assessment did not specifically designate the amount which each tract should pay for the main ditch or drain and for any tile lateral, then the board reclassifies the land in accordance with the same principles used in original construction. (Sec. 7462.)

**Dissolution.**—When for a period of two years after the date of the establishment of a district or within two years from the date when any appeal is determined, no work has been done and no obligations have been issued, the petition may be filed with the auditor signed by a majority of the owners who own 70 per cent or more of the land and setting out the fact that provision has been made by them to pay all costs to date, and the board, at its next meeting, will dissolve and vacate the district by resolution on its records. (Sec. 7454.)

**Districts managed by trustees.**—Any district in which the improvements have been completed and paid for by bond issue or otherwise may be placed under the control and management of a board of trustees elected by the persons owning lands which have been assessed for benefits. (Sec. 7674.) A petition therefor must first be filed with the auditor signed by a majority of the landowners assessed for benefits. (Sec. 7675.) If the board finds the petition properly signed it orders an election for the purpose of selecting three trustees. In intercounty dis-

tricts a duplicate petition is filed in each county and considered by the joint boards. (Sec. 7677.) In districts having 3,000 acres or more the board divides the district into three nearly equal divisions and one trustee is elected for each division. (Sec. 7678.) The trustees must be residents of the county and own land in the division for which elected. (Sec. 7680.) The right to vote for trustees is determined by assessments. (Sec. 7685.) The board canvasses the vote, files a return with the auditor of the county having the greatest acreage and certifies the result to the auditor who issues certificates of election to the persons receiving the highest votes in their respective divisions. (Secs. 7690-7691.) The trustees have the same supervision and control of the districts for which they are elected as the board has under the provisions of chapter 353.

## KANSAS

*(Revised Statutes of 1923, Chapter 24, and Session Laws)*

The statutes of Kansas provide for the construction of drains within townships (acts 1879, R. S. 24, 201) by allotment of the work and under the control of the township trustee; for the drainage of swamp lands and lowlands within a county (acts 1886, R. S. 24, 301), upon petition to the county commissioners, and constructed by apportionment of the work to the landowners, and maintained by the county; for drainage districts within counties or cities (act 1905, R. S. 24, 201), upon petition to the county commissioners, designed to drain overflowed lands, and governed by a board of elected directors; for drainage in the valleys of natural watercourses (acts 1911, R. S. 24, 501), designed to straighten, widen or clean natural watercourses, upon petition to the board of county commissioners and proclamation of the governor, controlled by an elected directorate; for the drainage of swamp or overflowed lands in one or more counties (acts 1911, R. S. 24, 601), for the purpose of reclaiming such land, and organized upon the filing of articles of association with the district court; and for drainage upon petition to the court where the lands of others will be affected (R. S. 24, 701). Almost the entire reported drainage directly in aid of agriculture is done by districts organized under the act of 1905, and county drains under the act of 1886, and the following synopsis refers to those acts.

**Jurisdiction to establish.**—The board of county commissioners of the several counties have power, upon proper petition being presented, to organize and incorporate drainage districts within their respective counties. Any drainage district may include lands subject to overflow from the same watercourses whether such lands are partly or wholly within an incorporated city. (Secs. 24, 401; 24, 402.)

The petition describes the territory to be included in the district, states that the improvement is necessary and will be conducive to the public welfare, and prays for the organization of a drainage district. It must be signed by not less than two-fifths of the taxpayers residing in the boundaries of the district.

At the hearing on the petition the county commissioners determine whether proper notice has been given, and record a finding of that fact. They then ascertain whether the petition is signed by the requisite number of landowners and whether the statements therein are correct. Upon finding these facts the commissioners immediately declare the territory described to constitute a public corporation, and the inhabitants thereof to be incorporated into a drainage district under the name stated in the petition. The territory and inhabitants constitute a body politic and corporate with perpetual succession. (Sec. 24, 405.) The commissioners record all the proceedings, defining the district, fixing the time and place for the first election of officers, and designating the judges and clerks of election. Within five days after incorporation the county clerk ascertains from the tax rolls the names of all taxpayers residing in the district and furnishes a certified list thereof to the judges of election. At the time appointed in the order incorporating the district the first election of three directors is held. The commissioners canvass the vote and issue certificates of election to the persons receiving the highest number of votes for directors. (Sec. 24, 406-411.) The act of March 9, 1929, provides that the directors of any drainage district shall consist of three persons who own land within the district who need not be residents

thereof and that the directors for the first term shall be selected and designated in the petition and shall hold office until the second Tuesday of March next following the incorporation. Thereafter directors are elected for three years and every taxpayer owning real estate in the district is entitled to vote, whether resident of the district or not. (Sec. 24, 459.) All powers of the district are exercised by the board of directors and these powers are very comprehensive and are set out specifically in the statute. Besides the usual powers of drainage districts and corporations, they may control and regulate water-courses; construct bridges, canals, dams, and levees; regulate the grades and elevations of railroad and street railroad tracks at levee intersections and the height of dams; they may take sand, gravel, rock, or other mineral from natural streams without payment; they may construct streets adjoining river walls; they may acquire and hold exclusive possession of all lands situated between the banks of natural watercourses below high-water mark, and convey such land when the channel has been altered or abandoned; and when authorized by vote of the landowners, they may issue bonds payable by general taxation of all the property in the district. (Sec. 24, 407.) They may also create a general fund by levying a general tax not exceeding 5 mills on the dollar on all taxable property in the district.

The directors may, when authorized by special election in the district, construct levees and other works, after receiving the sworn statement of a competent engineer as to the cost thereof; and when they determine that such work will benefit the district or be conducive to the public welfare, they may issue bonds not exceeding 20 per cent of the taxable property of the district to be paid by a general tax levied on all the taxable property. (Sec. 24, 418.) The directors determine what work is necessary and whether the cost thereof will be defrayed by bond issue or general tax levies or assessments. Before any liability is incurred the directors must have an accurate survey made by a competent engineer as to the cost of the improvement and file same in the office of the board for public inspection. (Sec. 24, 419.)

**Financing—Special assessments.**—If the board determines from the report of the engineer that any work should be done, and that costs are to be paid by levying special assessments upon the real estate benefited to the extent of such benefit, then it so declares by resolution on its minutes, and appoints three freeholders, resident of the district, as assessors, who, upon actual view and inspection, assess all the land within the district which will be protected from overflow or be benefited by the proposed work, having reference to the value of such land without such work and the value as benefited by the work. The assessors determine the proportion of the estimated cost of the work which each parcel of land should justly pay. They report to the board of directors and if it appears from the report that the amount to be charged against any tract will not exceed 10 per cent of its actual value, then the directors proceed to do the work and assess the several tracts of land as shown by the assessors' report. (Sec. 24, 422.)

If it appears that the amount to be assessed on any tract will exceed 10 per cent of its value as fixed by the assessors, then the directors call a meeting of the taxpayers whose property will be affected and submit at such meeting the question of making the improvement. The meeting decides by vote and the directors are governed by their decision. (Sec. 24, 423.)

After the report of the assessors is filed, the secretary gives notice by publication that the said report is open for inspection and that it charges real estate of the district with special assessments, and gives notice that aggrieved persons may be heard. After hearing all interested parties the directors confirm or amend the report of the assessors and, thereupon, the amount charged against each tract becomes a special assessment and lien thereon. The action of the board is final and conclusive and the special assessment is certified to the county clerk and entered on the tax rolls and collected as other taxes, and no court may entertain an appeal from such action after a lapse of 30 days. (Sec. 24, 424.)

**Financing—Bonds.**—When the directors deem it necessary to issue bonds to be paid by general taxation, which issue requires the sanction of the taxpayers, they enter an order calling an election for that purpose. Notice is by publication. The election is held in the same manner as other elections and the directors are governed by the result. (Sec. 24, 425.)

By act of March 9, 1929, in addition to the powers conferred upon drainage districts incorporated under Article IV, chapter 24, Revised Statutes of 1923, and notwithstanding any provisions therein to the contrary, said districts have authority to cause suitable plans to be perfected and drainage works to be executed and assessments of benefits to be made in accordance with law; provided that said work may be done, assessments

levied and bonds issued without the submission of same to a vote of the electors; and until and unless the total face of the bonds issued, exclusive of interest, shall equal or exceed the sum of 5 per cent of the assessed valuation of all the taxable property in the district, as determined by the last assessment thereof, bonds may be issued and special assessments levied and spread to redeem same, with interest, without submission of same to a vote of the electors of said district; and provided that when the total amount of the bond issue shall equal or exceed the above named sum, no bonds shall be issued nor assessments made without the submission of same to a vote of the electors. All assessments made as provided in section 24, 422, of Article IV may be made by three disinterested assessors appointed by the board of directors from the electors of the county or counties in which the district is located. (Sec. 24, 486.)

**Financing—Improvement bonds.**—Directors may provide for the payment of special assessments in installments of an equal amount each year, and for the issue of improvement bonds therefor, maturing in like installments for as many years as is advisable. No bonds may be issued until 30 days after the report of the assessors has been confirmed. (Sec. 24, 430.) When improvement bonds are issued to be paid from special assessments against specific property, the directors levy an assessment each year against such property sufficient to redeem the installment of bonds next thereafter maturing. (Sec. 24, 433.) By an amendment of March 9, 1929, it is provided that when improvement bonds are or have been issued under the next preceding section of this act for improvements, the cost of which is to be charged by special assessment against specific property, the directors shall levy special assessments each year sufficient to produce an amount equal to and not to exceed by more than 10 per cent the amount required to redeem such bonds next thereafter maturing, and interest thereon. In computing the amount thereof interest shall be added from the issuance of the bonds to the date of maturity. The assessed valuation established for the first year's assessment shall be retained for the assessments for succeeding installments of bonds. (Sec. 24, 433.)

**Maintenance.**—Maintenance is carried on under the general powers conferred on the commissioners by section 24, 407.

**County drains.**—Sections 24, 301 to 24, 317 provide for the construction of drains within a county by the commissioners of such county upon finding that the same will be conducive to the public welfare and after the filing of a petition by one or more persons owning land adjacent to such drain. The commissioners hold a hearing on the petition and upon proper showing establish the drain, divide the work into suitable sections and apportion it among the owners. They assess the costs and expenses of locating the drain and apportion same equitably among the parties benefited. The clerk prepares a statement showing the amount of the costs assessed to each person and the apportionment of the work. The action of the board is subject to appeal to the probate court where the appeal is tried by a jury of six disinterested freeholders who determine whether the drain will be of public benefit, the compensation due each person for damages, and the amount of the construction to be performed by each owner. The finding of the jury is recorded and the judge orders payment of the assessments and performance of work in accordance therewith. Upon failure to perform the work allotted or failure to complete same in the time specified, the commissioners sell the work to the lowest bidder and assess the amount against the landowner so in default and collect same as taxes.

## KENTUCKY

(Carroll's Kentucky Statutes, 1930, Chapter 76)

The act of March 19, 1912, which is Subdivision I of the chapter on lands, sections 2380-2381, and the act of March 26, 1918, which is Subdivision II of the same chapter, have been held by the Supreme Court of Kentucky (187 Ky. 123) not to be a single code of laws but separate and alternative codes for the reclamation of wet lands. Under Subdivision I the county judge of any county has authority to establish drainage districts upon petition of 25 per cent of the landowners or of the owners of 25 per cent of the land. When the petition is for the reconstruction of drainage works, it must be signed by 50 per cent of the owners or the owners of 50 per cent of the land. Under Subdivision II the county and circuit courts have original concurrent jurisdiction to establish, operate, and maintain drainage districts upon petition, with the same requirements as to signers.



Under either act when the proposed district is intercounty, the petition may be filed in either court of any county in which lands are situated. Section 2380-b-3 of Subdivision II provides that the petition must state the proceeding is to be under this later act and unless so stated it is deemed to be brought under the act of 1912. Since the general provisions of the two acts are very similar and some of the sections of the later act are amendatory of the prior statutes, the following synopsis is taken from the act of 1918, Subdivision II.

**Jurisdiction to establish.**—Original concurrent jurisdiction is conferred upon the county and circuit court to establish, organize, and provide for the operation and maintenance of drainage, levee, and reclamation districts. Appellate jurisdiction is conferred on the circuit courts on appeal from final orders of the county court, and the court of appeals of the State will entertain appeals from the circuit court. On appeal to the circuit court the trial is *de novo* and as though the proceeding had originated in that court.

Proceedings are commenced by not less than 25 per cent of the landowners or the owners of not less than 25 per cent of the land and the court in which the petition is first filed has exclusive jurisdiction, coextensive with the boundaries of the district without regard to county lines.

**Procedure.**—The petition, after the usual allegation of public welfare and the reasons therefor, gives a general description of the sanitary, agricultural, or commercial expediency and necessity for the improvement; shows the names and addresses of the owners of land; and is accompanied by bond in the sum of \$2,000 conditioned for the payment of costs if the district is not established. On the first day of the succeeding term of court the judge appoints a board of 3 viewers, 2 of whom must be resident freeholders of a county in the district, and none of whom may be owners of land or other property in the district nor related to any owner. The other member of the board is a competent civil or drainage engineer.

After organizing, the viewers examine the land and other property in the district and all land which will be affected; make surveys of the permanent boundaries; report to the court whether the improvement will be of public benefit; report the names of the owners and description of the property not mentioned in the petition which will be benefited; and provide maps of all land which will be benefited and of the boundaries of the district. The report must be sworn to by not less than two members of the board.

If the viewers' report recommends the establishment of the district, the clerk of the court gives notice on a form prescribed in the statute of a hearing at which objections may be filed to the report. The clerk attaches to the report a certificate showing the giving of such notice. This certificate has the same effect as the sheriff's indorsement of service, and, when issued, all persons named in the viewers' report are deemed to be before the court as fully as if personally served. By reason of such certificate the court has complete jurisdiction with authority to establish the district, to cause necessary assessments to be levied, and to issue bonds with which to pay the costs and expenses. The court then sets the report of the viewers for hearing and if it finds that the territory, or some part of it, should be organized into a drainage district, it issues an order on a form prescribed by the statute stating that the district is established and is a body corporate, and ordering the proceedings into the hands of the board of drainage commissioners. (Secs. 2380-b-5 to 2380-b-10.)

**Procedure—Board of drainage commissioners.**—The county judge in all counties where a public drain has been established is charged with the duty of appointing a board of three drainage commissioners for that county who are freeholders and who shall have charge of all public drainage ditches and all work of improvement in any district organized by the county or circuit court. Boards of drainage commissioners in existence are continued for four years without reappointment and then the county court appoints a new board. Immediately upon appointment the board becomes a body corporate and organizes and elects a treasurer of all the districts under its control.

Upon receipt of the reference from the court the board of drainage commissioners appoints a chief engineer who makes necessary surveys of all lands and reports to the board a plan for the drainage of the district. This report is the plan of reclamation and upon being adopted by the drainage board is filed with the clerk of the court in which the district was organized. Thereupon the court refers the proceedings to a board of appraisers which it appoints, consisting of three resident free-

holders not interested in the district and not related to the landowners, which board appraises the land and other property needed for the district and assesses benefits and damages. (Secs. 2380-b-12 to 2380-b-16.) The board must appraise each parcel of land separately and assess benefits and damages which will accrue to each tract. They have no power to change the plan of reclamation but they must report the quantity of land in each tract to be taken for rights of way or other purposes, the damage which will result to each tract, if any, and the enhancement in value *by the acre* which each tract will receive from the improvement. Upon the filing of the appraisers' report, after the usual notice, a hearing is held thereon. Exceptions to assessed damages are first tried and a jury trial may be had if demanded. Damages awarded must be paid or secured before land is taken for rights of way or other purposes. After the trial on assessed damages, if any, the court will hear the exceptions to benefits and classifications in a summary manner, and, finding that the cost of the improvement is less than the benefits which will accrue, the court will determine the correctness of the assessments on each tract of land and confirm the appraisers' report. If a majority of the landowners at this time desire to abandon the improvement, they may do so; and the court will dismiss the petition if it is shown that the cost of the improvements will exceed the benefits. If the owners of 75 per cent of the land in the district, or any part thereof, which is practically separated from the rest of the district, file a petition requesting that the improvement be abandoned, the court will dismiss the petition as to the whole or such part. (Sec. 2380-b-16.) Appeals lie from the decision of the court but do not stay the execution of judgment except as to the particular tract of land involved. The clerk of the trial court transmits to the drainage board a copy of the report of the appraisers, corrected in accordance with the judgment of the court, and the drainage board records such judgment and transmits a copy to the clerk of the county court of each county affected.

Upon reference by the court of the report of the viewers to the board of drainage commissioners of the county, it levies a uniform tax of not more than 50 cents per acre upon the land in the district to pay the cost of establishing same and expense of assessing benefits and damages. (Sec. 2380-b-13.) This tax is a lien on the property from the time levied and if it be more than sufficient to pay the preliminary cost, the surplus goes into the general fund for construction costs.

The drainage commissioners are empowered to construct the improvements and carry out the plan of reclamation and, after the receipt of the appraisers' report and the court's judgment thereon, they may borrow money not to exceed 75 per cent of the aggregate assessed benefits. This money may not be borrowed for longer than 5 years and shall be paid as soon as money from assessments and bonds are available.

**Financing—Assessments.**—Within 30 days after contract is let for the work called for under the plan of reclamation the drainage board ascertains the cost of all work and the other expenses of the district, adds thereto 10 per cent of the total, and the aggregate sum thus obtained is known as the minimum district assessment. If bonds are to be sold, the board determines how long they shall run and calculates the total interest which will accumulate upon the entire issue. The par value of any bond issue may not exceed 90 per cent of the minimum district assessment. The total of such interest is the district interest assessment. The sum of the minimum assessment and the interest assessment becomes the maximum district assessment. The board then ascertains what per cent the minimum district assessment is of the total assessed benefits as shown by the appraisers report and in like manner determines what per cent the total interest assessment is of the total benefits. It then apportions the minimum district assessment to each tract of land or other property so that each shall bear its ratable share. In like manner they apportion the interest assessment. The board then levies the drainage assessments upon the lands of the district for the amount of the minimum assessment and of the interest assessment and prepares a "drainage assessment record" on the form prescribed in the statute and files a copy with each county affected and with the clerk of court where the proceeding is pending. After notice a hearing is had on exceptions to the assessment record which are determined by the court in a summary way, upon the record and such evidence as may be competent, and the court will, after correcting any errors found, approve the assessment record. Such approval is final and conclusive and may not thereafter be questioned by any party to the record. Such assessments so made are a lien upon the property of the district superior to all other liens except State and county taxes. (Secs. 2380-b-22 to 2380-b-24.)

**Financing—Bonds.**—When the drainage board receives the assessment record the secretary gives notice to all persons whose property has been assessed. They may in not less than 30 nor more than 60 days pay such assessment to the treasurer. Immediately after the expiration of the time within which payment may be made, the drainage board adopts a resolution stating the total amount of bonds which will be issued, and the secretary of the board prepares an assessment register containing the names of each owner, the minimum assessment against his property, the interest assessment against same, and the annual installments to be paid each year during the time the bonds are to run. The drainage board may defer the time for the payment of annual installments but for not longer than five years. An assessment to cover interest on the bonds is levied. During the month of December in each year the drainage board certifies to the sheriff the amount of the annual installment of assessments, which are due and collected at the same time as State and county taxes. Property delinquent for drainage taxes is sold in the same manner as for State and county taxes and purchasers acquire same subject to subsequent installments of drainage taxes. (Secs. 2380-b-25 to 2380-b-42.)

Bonds may be issued by the drainage commissioners in amount not to exceed 90 per cent of the minimum district assessment. They may not be sold for less than par; and a sufficient amount of the drainage assessment is kept in a separate fund for the purpose of paying bonds and interest at maturity and for no other purpose. If the original levy of assessments is insufficient to pay the bonds the board may levy further assessments as may be necessary but not beyond the aggregate of the benefits to the property as shown by the confirmed appraisers' report. (Sec. 2380-b-42.)

**Maintenance.**—To maintain and conserve the drainage works the board of drainage commissioners may upon completion of the improvement and upon the first Monday in December of each year thereafter, levy a maintenance assessment apportioned on the basis of the benefits assessed for original construction. They may not exceed 10 per cent of the original assessment in any one year and are collected at the same time and in the same manner as the annual installment.

## LOUISIANA

[Annotated Revised Statutes (Marr) Supplement of 1924; Session Laws]

The constitution of Louisiana adopted June 18, 1921, Article XV thereof, authorizes the legislature to adopt the necessary laws for the purpose of draining and reclaiming marsh, swamp and overflowed lands; to organize drainage or subdrainage districts; to impose taxes and forced contributions on lands benefited; and to issue bonds when their payment is based upon such taxes and forced contributions. Article XIV of the same constitution authorizes municipal corporations, including drainage districts, to issue negotiable bonds when authorized by vote of a majority in amount of the taxpayers qualified to vote. Section d of Article XIV provides that the legislature may by general law authorize the police juries of the several parishes to create gravity drainage districts and subdistricts and to incur debt and issue negotiable bonds to construct same. Section f of Article XIV limits the aggregate of debts which may be incurred to 10 per cent of the assessed valuation of the taxable property of the district, but does not prohibit the legislature from authorizing gravity drainage districts to impose an acreage tax not exceeding 50 cents per acre per year for a period of not more than 40 years. An amendment to the constitution adopted November 4, 1924, provides that the legislature may authorize gravity drainage districts, when debts have been incurred and ad valorem or acreage taxes levied, to incur additional indebtedness and levy additional taxes without further submission to the property taxpayers, for the purpose of perfecting and completing any system of gravity drainage 80 per cent of which has been accomplished at the time of incurring such additional indebtedness.

This amendment further provides that the legislature may authorize gravity drainage districts upon the vote of a majority in number and amount of the property taxpayers qualified to

vote, to collect an acreage tax, for a period not to exceed 10 years, which shall not be funded into bonds but shall be annually collected and used for the purpose of maintaining the system. Under these sections of the constitution the drainage laws of Louisiana provide for the establishment of two classes of drainage districts, namely, those draining marsh, swamp and overflowed lands which must be leveed and pumped in order to be reclaimed, and gravity drainage districts.

After the adoption of the constitution of June 18, 1921, the legislature on November 18 of the same year (Supplement R. S. 1924, p. 455) passed an act relative to drainage and subdrainage districts to drain and reclaim the undrained or partly drained marsh, swamp, and overflowed lands that must be leveed and pumped in order to be drained and reclaimed.

### DRAINAGE BY LEVEE AND PUMPING

**Jurisdiction to establish.**—The police juries of the various parishes were authorized, on their own initiative, to create drainage districts embracing all or part of the lands in their respective parishes, provided that the land in all drainage districts should be contiguous. They were authorized to create interparish districts by joint resolution or ordinance of one police jury approved by the other police juries interested. No district might contain less than five landowners and no land might be included in more than one district. (Sec. 2.)

Upon failure or refusal of the police juries to act, they must form a district on the petition of property owners owning a majority of the acreage in the proposed district. The petition must be accompanied by a certificate of the clerk of court as to the ownership of land. In interparish districts the petition is presented in the county having the largest acreage. (Sec. 3.) No district may be created unless the State board of engineers approves same and furnishes a map showing the land properly to be included. If necessary to include high lands it will not invalidate the district but such high land is taxed only in such proportion, if any, as it will be benefited.

All districts formed under this act are governed and controlled by a board of five commissioners, which commissioners, or their spouses, must each be the owner of real estate in the district of the value of \$500 or more. Commissioners may hold office in one or more districts. In the ordinance creating the district, the police jury appoints the commissioners upon the recommendation of the majority in the number of acres of the landowners, where the district contains 40 or less in number, and where there are more than 40 landowners, the appointment is on the recommendation of 25 or more. (Sec. 7.) Districts so created are bodies corporate with perpetual succession and have power to expropriate property in acquiring lands necessary to their works. (Sec. 9.) The ordinance creating a district, after being recorded in a drainage record is published for two weeks and any interested person may contest the legality of the organization within 60 days, and thereafter no such right exists. Failure to contest the organization carries the conclusive presumption that the district was legally organized and the lands within the boundaries were legally included. Any contest is heard in a summary manner without jury and the plaintiff has the right of appeal. (Sec. 14.)

**Subdistricts.**—The board of commissioners of any district has the right to form two or more subdistricts in the territory within the district by simple resolution to that effect, and subdistricts may be composed entirely of the land of one individual or corporation, provided that no subdistricts can be created after the adoption of the plan of reclamation. Subdistricts are treated in the manner of debts, bonds and taxes like drainage districts, except that the governing authority is the board of commissioners of the drainage district.

**Procedure—Plan of reclamation.**—The act of November 18, 1921, was amended by Act 235 of 1924 (Supl. R. S. p. 486), which made material changes in the procedure to establish a district. Section 21 as amended provides for the employment by the commissioners of a chief engineer who makes all necessary surveys and reports in writing with maps and profiles and a complete plan for draining, leveeing, and reclaiming the lands in the district. He furnishes an estimate of the total cost of the improvement; shows the location of highways and railroads; and divides the lands into 40-acre tracts or other small subdivisions, according to ownership. He recommends any subdrainage districts which should be formed. The engineer reports once a year or oftener as required and upon receipt of his final report the commissioners may adopt same or any

modification thereof approved by the engineer, and thereafter such report becomes the plan of reclamation. Section 22 as amended provides that upon the adoption and filing of the plan of reclamation the owners of a majority in acres, if they desire to proceed with the work either in a drainage or sub-drainage district, may present a petition to the commissioners to that effect, and it is thereupon the duty of the commissioners to proceed with the construction of the improvement and provide for financing same. (Sec. 22.)

Within 20 days after receipt of such petition the commissioners name three appraisers, not landowners and not related, to be known as the board of appraisers. They appraise the land to be acquired for the purpose of the district and assess benefits and damages to all lands in the district. (Sec. 23.) In assessing benefits, all lands enjoying a servitude of natural drainage are entitled to continue to receive equivalent artificial drainage without charge therefor and without having same considered as an element in assessing benefits against such lands. The appraisers make their report in tabulated form and, with the assistance of the engineer, estimate the cost of the improvement under the plan of reclamation, including in such estimate the cost of all property to be acquired for the purposes of the district, the value of the improvements already constructed, if any, and the probable expense of organization and administration. (Sec. 25.)

Upon the filing of the appraiser's report the commissioners file a petition in the district court of the parish where the district is domiciled, requesting confirmation of such report, and at the same time the commissioners sue for the expropriation of all property required for the purposes of the district. (Sec. 26.) Notice of the petition is by publication, posting, and citation against each property owner whose property is to be taken for the district. The suit is set down by the clerk for hearing between 16 and 30 days thereafter and the judge hears and determines all issues in a summary manner without a jury. If it appears to the court after hearing all objections that the estimated cost of the improvement is less than the benefits to be derived, he will approve and confirm the report or a modified form thereof, and such report as confirmed is made a part of the court's decree ordering the condemnation and expropriation of all property needed for the district and fixing the amount to be paid for same. Appeals may be had from the action of the court as in other cases. The decree, as rendered or as modified by appeal, is conclusive upon all persons as to the legality in every respect of the report of the appraisers and of the right of the commissioners to proceed to construct the improvement and finance same. (Sec. 27.) If the court, after full hearing, finds that the estimated costs of the improvement exceed the estimated benefits, it will issue a decree prohibiting the board of commissioners from putting the plan of reclamation into effect. In such case, when petitioned by the landowners owning a majority of the acreage in the district or subdistrict, the board has power to cause an amended plan of reclamation to be prepared, provided funds for the payment of costs are advanced by the petitioners.

**Procedure—Consolidation of districts.**—Any two or more adjacent districts, whether in the same or different parishes, may be consolidated into one district with the same powers. The owners of a majority in acreage in each district present a joint petition, approved by the board of commissioners and chief engineer of such district and by the board of State engineers to the police jury of the parish in which the majority of the land of the proposed consolidated district is located. It is then the duty of the police jury to adopt an ordinance consolidating such district and appointing a board of commissioners therefor. Such consolidated district is subject to all the provisions of this act, and the property therein is subject to all the liabilities and obligations that existed against it before the consolidation. (Sec. 50.)

**Procedure—Reorganized districts.**—Existing districts may be reorganized under this act and adopt a plan of reclamation and carry out same in accordance with its provisions, provided that bonds issued must begin to mature not later than 10 years after that date. Existing indebtedness, bonded or otherwise, of reorganized districts may be funded or refunded by the issuance of bonds. (Sec. 55.)

**Financing—Acreage tax.**—Immediately after organization the commissioners levy a uniform acreage tax of not more than 25 cents per acre to pay the organization expenses, surveying costs and cost of assessing benefits and damages. If the boundary lines of the district are subsequently extended, the same tax is levied on the additional land. If the confirmed report of the board of appraisers shows lands included which are not benefited nor assessed, any uniform acreage tax paid by the owners of such land is refunded. (Sec. 19.)

**Financing—Tax.**—After the decree of the court confirming the assessor's report has been certified to the board of commissioners, they levy a tax of such portion of such benefits on all the land and property in the district as may be found necessary to complete the proposed improvement shown in the plan of reclamation, plus 10 per cent for emergencies. If bonds are to be issued, the estimated interest thereon plus a like 10 per cent is added, but such interest may not be considered as a part of the cost of construction in determining whether the cost is greater than the benefits. (Sec. 30.) Drainage taxes thus provided for constitute a tax lien upon all the lands and other property upon the filing of a certificate, on the form provided in the statute, with the clerk of court and recorder of mortgages for the parish. The certificate provides that the tax is payable in annual installments which will later be determined, together with such maintenance taxes as may be levied from time to time, and that such amounts are a tax lien on the property.

**Financing—Maintenance tax.**—To maintain the work and defray the current expenses of the district or subdistrict the commissioners, on or before September 1 of each year, levy a maintenance tax upon the land and other property apportioned on the basis of the net assessments of benefits. This tax may not exceed in any one year 5 per cent of the assessed benefits. (Sec. 32.)

**Financing—Collection of tax.**—The commissioners certify the installment of taxes to be collected each year, and the amount of the maintenance tax, to the sheriff and tax collector of each parish affected, but the installment of the assessments to be collected in any one year may not exceed 10 per cent of the total taxes levied. (Sec. 33.) Neither the State nor any of its subdivisions is liable for any of the taxes or forced contributions levied under the drainage law. Drainage districts may purchase land at delinquent tax sales and hold same, in the same manner as the State upon nonpayment of taxes, subject, however, to State and parish taxes. (Sec. 34.)

**Financing—Bonds.**—All bonds issued by any drainage district or subdrainage district are exempt from taxation. (Sec. 39.)

Section 48 of Act 85, 1921, as amended by Act 235 of 1924 (Supl. R. S. p. 493), provides that the board of commissioners may, when they deem it necessary, issue coupon bonds not to exceed 91 per cent of the total amount of taxes levied under the provisions of section 30. Bonds bear 6 per cent interest and mature at annual intervals for a period not exceeding 40 years, commencing after a period no later than 5 years. In case the original tax levy is insufficient to pay bonds as they mature, with interest, then the commissioners may make an additional levy upon the benefits assessed sufficient to pay same. Under no circumstances may any tax levy be made which will impair the security of said bonds, provided that the total taxes levied shall not exceed the total assessed benefits as decreed by the court under section 27, and provided further that the annual installments of taxes will not exceed 10 per cent of the total taxes levied.

**Financing—Change of assessments.**—Upon the petition of the owners of 25 per cent or more of the acreage of land in a district, stating that there has been material change in the values of property in the district since the last assessment of benefits, and praying for a reassessment as a basis for the levying of maintenance taxes, the clerk of the court gives notice of a hearing on such petition and at the hearing the court, finding the allegations of the petition correct, orders a reassessment and appoints appraisers to proceed in the same manner as in the original assessment. In making the readjustment of benefits, the appraisers are not limited to the aggregate of any original or prior assessment and the limitation of 5 per cent for the annual maintenance tax still applies to the benefits as reassessed. There may not be a readjustment of assessments oftener than once in 5 years.

**Financing—Refunding bonds.**—Any district created, consolidated or reorganized under this act, or any subdistrict, may for the purpose of funding or refunding, readjusting, extending, or unifying any or all of its authorized indebtedness, bonded or otherwise, or both, issue and sell refunding bonds or pay the whole indebtedness by exchanging bonds therefor. There must first be a petition by the owners of a majority of the acreage in the district. Such bonds run not longer than 40 years and begin to mature not later than 10 years after their date. (Secs. 56-57.)

Section 60 of the act of November 18, 1921, declares that the provisions of this act shall apply only to drainage districts organized under Article XV of the constitution of 1921, or reorganized hereunder, for the purpose of draining lands which must be leveed and pumped in order to be reclaimed, and does not apply in any way to districts provided for in Article XIV

of said constitution, which said districts are gravity drainage districts. This act shall be considered a general law on the subject of such drainage or reclamation districts, under which all such districts created in the future must be organized.

#### DRAINAGE BY GRAVITY

(Act 238 of 1924, Supplement R. S. p. 500)

The act of July 17, 1924, for the purpose of carrying into effect section 14 of Article XIV of the constitution of 1921, provides for the creation of gravity drainage districts and gravity subdrainage districts. It defines the powers and duties of the commissioners; authorizes them to levy acreage taxes or forced contributions and to hold public elections on the question of incurring debt and issuing negotiable bonds; and to reorganize existing districts; and declares this statute to be the general law governing gravity drainage and subdistricts.

**Procedure.**—As to the publication of the ordinance creating the district; the appointment of commissioners; interparish districts; the creation of subdrainage districts; its corporate entity and powers; taxing; and the issuance of bonds, the provisions of this act are substantially similar to those of drainage districts requiring leveeing and pumping under Article XV of the constitution.

**Jurisdiction.**—The police juries of the various parishes are authorized to create districts in their respective parishes from lands which drain by gravity. Districts may not contain the whole area of the parish. With the approval of the drainage commission they may change the boundaries prior to the incurring of debt.

Section 13 authorizes the commissioners in their discretion to impose and collect an annual acreage tax or forced contribution not exceeding 50 cents per acre for a period of not exceeding 40 years, upon the petition of two-thirds in amount of the landowners owning more than two-thirds of the acres in such district. The commissioners must, upon petition of a majority in number of landowners and a majority in number of acres, order an election to be held to determine whether or not such tax shall be imposed. They may incur debts to run not longer than 40 years when secured by such taxes, when authorized to do so by a majority in number and amount of the property taxpayers qualified to vote, at an election held for that purpose. The total amount of debt is limited to the aggregate amount raised by such acreage tax. By section 14 the governing authority of the district may call a special election on the question of levying a forced contribution or acreage tax and issuing negotiable bonds secured thereby.

Section 36, as amended by act of July 17, 1928 (Laws of 1928, p. 270), provides that police juries may include within a drainage district or subdistrict land and territory situated in an incorporated town or municipal corporation, although the charters of such corporation may exempt such land from the authority of police juries for parish purposes. Section 37 requires the expenses of preliminary survey to ascertain the cost of the improvement to be advanced by the petitioners to be reimbursed out of any funds realized from the sale of bonds if the district is established. The total legal expenses and the expenses of issuing bonds may not exceed 1.5 per cent of the bond issue where it is less than \$300,000 and 1 per cent where it is more. The cost of engineering work is limited to 5 per cent of the cost of the work. The acreage tax may be increased or diminished as the needs of the district require, but not to exceed the amount voted and no tax which secures the issuance of bonds may be reduced until the bonds are paid.

**Reorganization.**—Under section 42 as amended by act of July 15, 1926, drainage districts and subdistricts organized under existing laws, composed wholly of land which drains naturally or by gravity, may reorganize under the provisions of this act. Section 43 provides that the districts composed of both land which drains by gravity, and marsh, swamp and overflowed land which does not drain by gravity, may not be reorganized under the provisions of this act, but that portion of such districts which drains by gravity may be organized upon the request of the board of commissioners into a gravity drainage district. Such districts in the issuance of bonds, based on an acreage or ad valorem tax, are limited to the amount authorized under Article XIV, less the proportionate amount of any debt secured by an acreage or ad valorem tax incurred by the original district.

Section 44 as amended by the act of July 15, 1926, declares that this act shall apply to all gravity drainage districts and subdrainage districts authorized under Article XIV of the constitution of 1921, and shall not apply to any district organized under Article XV or to any other district or subdistrict now existing. All gravity drainage must, after the adoption of this statute, organize under it.

**Maintenance.**—An act of July 16, 1928 (Laws of 1928, p. 227), provides that the governing authority of a gravity drainage district or subdrainage district, when authorized by a majority vote in number and amount of the taxpayers qualified to vote, may collect an acreage tax or forced contribution not to exceed 5 cents per acre per year, for a period not exceeding 10 years, which tax shall not be funded into bonds but shall be annually collected and used for the maintenance and repair of the system of gravity drainage.

**Dissolution.**—Section 40 provides that at any time before bonds are issued the governing authority of a district may submit to the property taxpayers the question of revoking any tax previously voted and at the same time the question of whether the gravity district or subdistrict shall be dissolved. If dissolution is voted, the district is deemed dissolved except so far as it is necessary to collect acreage taxes to pay any existing indebtedness. No proceeding may be taken to dissolve a gravity district or subdistrict so long as any of its unpaid bonds are outstanding.

#### ACTS OF 1928

Acts of July 18, 1928 (Laws of 1928, p. 309), provide that gravity drainage districts and subdistricts, when debts have been incurred and ad valorem or acreage taxes have been levied as authorized by Article XIV of the constitution, may, without further submission to the property taxpayers, incur additional indebtedness and levy additional taxes and fund same into bonds for the purpose of perfecting and completing the system, when 80 per cent of such system shall have been completed at the time of incurring the additional indebtedness. The procedure is the same as for creating other indebtedness except that there must first be an estimate by the supervising or other engineer showing at least 80 per cent of the work has been completed.

The act of July 19, 1928 (Laws of 1928, p. 485), authorizes drainage districts organized prior to the adoption of the constitution of 1921 and not reorganized under its provisions, which have incurred debts and issued bonds, to issue refunding bonds in the manner provided, but the amount due in any one year as principal and interest on the bonds, together with the cost of maintenance, must not be greater than \$3.50 per acre per annum on the lands of the district.

An act of July 18, 1928 (Laws of 1928, p. 322), reciting that it relates to the creation, organization and functioning of drainage districts and the procedure to be observed in relation thereto, provides that under the conditions thereafter specified the police juries of the several parishes are empowered and required to create drainage districts. Section 1 provides that whenever the owners of a majority of contiguous partly drained lands in any drainage districts heretofore organized or in process of organization under any existing law, or the owners of a majority of such lands in contiguous portions of two or more districts, or the owners of a majority of the land in contiguous portions of one or more drainage districts and contiguous lands not in any drainage district, petition the police jury of the parish in which a majority of such lands are situated, stating that such lands must be leveed and pumped in order to be drained, and asking that such lands be created into a drainage district, it is the duty of the police jury to establish same. The petition must be signed by the owners of a majority of the acreage to be included in such district and must be accompanied by certificate of the court clerk and recorder as to ownership. The board of State engineers must first approve the formation of such district and furnish a map showing the land which in their opinion should be included therein. The same forms of procedure are observed as in the creation of drainage districts under act of June 18, 1921, but the creation of such districts does not affect the validity of any indebtedness of the former organization, which indebtedness attaches to and becomes the liability of the new organization, or of the lands originally liable, until paid. No right of action is allowed against any of the land in the new district by virtue of any contract made prior to its organization as herein provided, which did not exist and was not allowed by statute against such land prior to such organization. Districts within which such lands were formerly included continue to collect all taxes and charges for which such lands were liable therein, to the same extent, but no further,

as if said land had not been separately organized, but the district in which formerly organized has no other right, control or authority over such lands herein set forth. Where such lands were alone liable for any indebtedness or contract, funded or otherwise, then the governing authority of the former district shall have no right, control or authority whatever over such lands after they shall have been separately organized as provided in this act.

No district created under this act shall be subject to the provisions of any law forbidding lands to be in more than one drainage district and all districts created herein are expressly exempted from such provisions.

## MICHIGAN

The statutes of Michigan were compiled in 1929, and the following synopsis of the drainage laws is taken from Volume I of the Compiled Statutes, section 4838, et seq.

Drainage in Michigan is accomplished by first establishing and designating drainage districts which are either county or intercounty, dependent upon whether the lands affected or liable to be assessed are wholly within one county or not. Thereafter, in a separate proceeding, county and intercounty drains, respectively, are laid out and constructed within a designated drainage district.

All drainage is under the supervision of a drain commissioner elected biannually for each county at the general election.

**Drainage districts—Authority to organize.**—The drainage commissioner, with the assistance of a board of determination consisting of 3, 5, or 7 county supervisors appointed by the probate judge, has authority to establish a county drainage district upon application therefor signed by not less than 10 freeholders of the township in which the land is situated, one-half of whom must be owners of land liable to be assessed.

A joint board of county drain commissioners of whom the State commissioner of agriculture is chairman, have authority, without the intervention of a board of determination, to establish an intercounty drainage district, upon presentation of an application to any drain commissioner by a like number of freeholders, five of whom must own lands liable to be assessed.

**Petition.**—Before a drain commissioner takes any action on applications to establish drainage districts there must be filed with him a petition to lay out and designate a district with reference to a proposed drain therein. The application must describe the drain and must be signed by not less than 10 freeholders in the township in which the land is situated, one-half of whom must be owners of land liable to be assessed. If the proposed district does not contain 10 freeholders whose lands are liable to be assessed, then the application is received if signed by any freeholders. The eligibility of the signers of the petition is determined by the records of the register of deeds or the courts.

**Procedure—County drainage districts.**—Upon receipt of an application for a drainage district, accompanied by a petition to lay out a particular drain, the commissioner, within 15 days, serves a copy thereof on the judge of the probate court of the county. The judge appoints a board of determination composed of 3, 5, or 7 members of the board of supervisors of said county. The commissioner gives notice of a meeting of the board by personal service on the county clerk and the proper officers of every political subdivision of the county or State which will be affected, and publishes such notice for two weeks. At the meeting, the board determines the practicability of the drain and whether it will be conducive to the public welfare. Any interested persons may appear for or against the proceeding. If the board finds that the drain is not practicable or is not conducive to the public welfare, they will order the application dismissed and no further application for the same district may be made within one year. If the board finds the drain practicable and of public benefit, it files with the commissioner an order approving the establishment of the district. Upon the receipt of such order, the commissioner immediately causes a survey to be made to determine the area which will be drained and the route and type of construction most suitable. In any county having a board of auditors, their approval is necessary before the survey is made. If the survey shows the lands affected are in more than one county, the commissioner must proceed under the statutes relating to intercounty drains. The surveyor makes a detailed survey with plans, specifications, and estimates of costs and lays out a drainage district and files

his report with the commissioner. The commissioner thereupon prepares and files in his office an order designating a drainage district, giving it a name and number, describing its boundaries and naming all lands, highways and political subdivisions of the county or State which will be liable to assessment. He then gives notice of such order designating a drainage district, by publication in a newspaper of general circulation.

**Procedure—Intercounty drainage district.**—In the case of an application for an intercounty drainage district, the procedure and requirements as to application and petition are the same as in county drainage districts. Within 20 days after the receipt of such application, the commissioner sends a copy thereof by registered mail to the State commissioner of agriculture and to the drainage commissioners of each county affected. The commissioner of agriculture calls a joint meeting of such commissioners, to be held in the immediate locality of the proposed district, and gives notice of such meeting by posting in each county, by personal service on the clerk of each county, and by publication for two weeks. The commissioner of agriculture, or his deputy, is chairman of the meeting, but has no vote except in the event of disagreement among the commissioners, in which case he decides the issue. The chairman and the drain commissioners constitute a joint drainage board, which board considers the sufficiency of the application and if deemed necessary views the proposed district and takes competent testimony. All interested persons may appear for or against the proceedings. Thereafter the proceedings are identical with those in the case of a county drainage district, with the joint board functioning in the place of the drain commissioner and board of determination. After the proposed district has been surveyed, the chairman of the joint board issues an order designating the district and giving it a name or number. Notice of such designation is given by the State commissioner of agriculture, by publication in each county for two weeks and filing copies in the office of the county drain commissioner of each county affected.

**Procedure—County drains.**—After a county drainage district has been designated and the order establishing same has been filed in the office of the drain commissioner, a petition to locate and construct a county drain therein may be filed with the commissioner. Such petition is signed by a number of freeholders whose lands would be liable to assessment for benefits, equal to one-half of the number of freeholders whose lands would be traversed by the drain. The eligibility of the signers is determined by the records of the recorder of deeds and the county courts at the time the petition is filed. The petitioners are, jointly and severally, liable for all costs and expenses in case the proceedings are dismissed.

The drain commissioner serves a copy of the petition on the judge of the probate court and the proceedings then are a repetition of those for designating a county drainage district, down to the point when the order of the board of determination establishing the drain is filed with the drainage commissioner. Upon receipt of this order, the commissioner makes his first order of determination in writing, giving the name of the district and establishing the size, termini, and type of construction of the drain. A copy of this first order of determination is recorded in the commissioner's office.

Within 30 days thereafter, the commissioner endeavors to secure from the owners of each tract of land traversed by the drain a release of right of way and damages on account thereof. If within 30 days, he has been unable to secure all releases, the commissioner applies to the probate court for the appointment of three disinterested special commissioners who must be resident freeholders of the county and not residents of any township affected by the drain. If the court upon examination finds the proceedings up to that time to be in accordance with law, it cites all parties named in the petition, who have not released rights of way or damages, to show cause on a certain date why the petition should not be granted. Questions of error in the proceedings must be raised at this meeting, or are presumed to be waived. At the time set, the court hears objections from all interested parties and if no sufficient cause is shown to the contrary, appoints three qualified special commissioners, to fix the damages and compensation for rights of way. The court designates the time and place where the special commissioners, the drain commissioner, and the interested parties will meet, and makes public announcement thereof. At the meeting, the special commissioners determine the necessity for taking private property for the use of the public, and the just compensation to be paid therefor, which compensation is without reference to the benefits which may accrue. Within 30 days they make a report in writing of their awards and file same with the drain commissioner. Such return by the special

commissioners is deemed a sufficient conveyance to fix the fee of the land necessary to be taken for such drainage, in trust for the uses and purposes of drainage and for no other purposes, provided that the awarded compensation is paid.

The drain commissioner deducts the damages awarded from the benefits assessed on the tracts which include the rights of way, and in case the damages exceed the benefits he draws an order on the county treasurer in favor of the owner for the difference.

**Procedure—Intercounty drains.**—After an intercounty drainage district has been designated, and the order establishing same has been filed with the drain commissioner, a petition to locate and construct an intercounty drain may be filed with any drain commissioner having jurisdiction over any land described in the order as being benefited. The petition must be signed by a number of freeholders in the district whose lands would be liable to assessment equal to one-half the number of freeholders whose lands would be traversed by the drain.

The drain commissioner notifies the State commissioner of agriculture, who calls a joint meeting of the commissioners of each county as a drainage board. The joint board takes the place of the drain commissioner and the board of determination in the case of a county drain, and the same procedure is had. In addition the joint board determines the percentages of cost which must be borne by each county and the number of installments in which the drainage taxes shall be collected. The first order of determination is signed by the chairman, showing the determination of necessity, the determination of percentages, and the determination of installments and a copy is filed with the drain commissioner of each county.

**Procedure—Apportionment and review.**—Upon the release of rights of way and damages, or upon the determination in the report of the special commissioners, the drain commissioner of each county affected makes a final order of determination for his county establishing the drain and dividing it into convenient sections for construction. The commissioner apportions the percentage of the benefits accruing to any parcel of land, highway, township, or city, and such apportionment, when finally approved, is assessed against same.

The drain commissioner gives 10 days notice by personal service, posting and publication, of a public meeting for the review of the apportionment of benefits and for letting contracts for construction. At this meeting he hears evidence presented by interested parties and defines and equalizes the apportionment of benefits. Aggrieved parties may ask the probate court within 10 days for a board of review and must give bond for payment of costs if such appeal is not sustained. The probate court notifies the drain commissioner of the appeal and appoints three disinterested freeholders not residents of the township affected as the board of review. The action of this board is final.

**Financing—Assessments.**—Within 10 days after the letting of contracts, and in case of an appeal, then forthwith after the appeal is decided, the commissioner makes a computation of the entire costs of the drainage in his county, adding to the gross sum 10 per cent for contingent expenses. He thereupon makes a special assessment roll for each drain for each township, city, village, or State highway affected, which roll is designated the drainage special assessment roll. He enters upon the roll the amount apportioned to each of the political subdivisions and attaches a memorandum of the installments and the year or years when they shall be spread, adding a certificate in writing of his determination whether the taxes assessed for benefits shall be paid in one or more years. This roll must be filed before the last Wednesday in September of each year. The commissioner prepares a tax assessment roll for each year for the collection of taxes for the current year, and certifies same to the county clerk on or before the annual meeting of the board of supervisors. He adds to the roll interest on the unpaid installments to the date of the tax collection, and the amount necessary to pay all outstanding bonds and interest thereon to maturity. All drainage taxes are subject to the same interest charges and are collected in the same manner as general taxes. When collected, they are returned to the county treasurer to be disbursed by him. All taxes levied under this law remain a perpetual lien upon the land against which assessed, and a personal claim against the owner, until paid.

**Financing—Bonds.**—When the commissioner determines that the taxes assessed against benefits are to be collected in more than three installments, he may borrow money in anticipation of the collection of all installments after the first, and may issue as evidence of such indebtedness, the bonds of the district.

Bonds state on their face that they are payable out of the installments of drainage taxes thereafter to be collected. The

amount of such bonds may not exceed the aggregate of the installments levied. Bonds are signed by the commissioner on behalf of the district and by the county clerk, and are payable in the same number of installments as the installments of taxes, and must mature not earlier than March 1 nor later than June 1 of any year following the due date of the respective installments of taxes. The number of installments may not exceed 20. In counties having a population of over 500,000 no drainage bonds may be sold nor drainage contracts let without written consent of the county board of auditors, but such consent is not required in proceedings relative to intercounty drains. If there are not sufficient funds in a particular drain at the time of maturity of the bonds last to mature to pay same with interest, the commissioner levies an additional assessment to make up the deficit. Any surplus remaining after the payment of all bonds remains in the county treasury for the maintenance of the drain.

**Financing—Revolving fund.**—The board of supervisors of each county collects annually by general taxation, such amount as it may deem necessary to create a revolving drainage fund, but the revolving fund first collected may not exceed the amount held by the treasurer as a total of the specific drainage funds. The revolving fund is used for preliminary expenses of establishing drains and is reimbursed from the first money received by the treasurer for the specific drain for which the sum was used.

**Maintenance.**—Whenever a drain wholly in one county needs cleaning or repairing, any five freeholders of the township or townships in which such drain is situated, two or more of whom shall be owners of land liable to assessment for benefits for such work, may petition the commissioner, setting forth the necessity for such work, and he proceeds in the same manner as for the location, establishment, and construction of the drain; except that, in the event that the apportionments made by the commissioner are the same as the last recorded apportionments, no review is necessary.

In case of intercounty drains, the petition for cleaning or repair must be signed by 10 freeholders within the drainage district. Upon receipt of the petition, the commissioner notifies the State commissioner of agriculture and the commissioners of each county, and they proceed as in the original establishment of an intercounty drain.

The drain commissioner or the joint drainage board causes an annual inspection of all drains to be made and the commissioner or the board is authorized to expend for repairs, where necessary, 20 per cent of the original cost in any one year without petition therefor, and may reassess the drain for the expenses if the funds on hand are insufficient.

**Abandonment and dissolution.**—Any drain which has ceased to be a public utility and is no longer necessary, may be declared by the commissioner or the joint board to be abandoned. Such action may not be taken except upon petition therefor as in the establishment of a county or intercounty drain and after five days' notice by posting. Private rights acquired by reason of the establishment of such drain may not be interfered with. Any money remaining in the county treasury to the credit of such drain is prorated to the township treasuries in the proportion in which the township has been assessed.

Whenever the indebtedness of any drainage district is paid in full, the county drain commissioner shall declare such drainage district vacated and abandoned. The drainage commissioner serves notice thereof upon the county treasurer and the county clerk and the township clerks in the townships in which the drain is located. (Act of May 26, 1929.)

**Interstate drain.**—Whenever a proposed drain lies partly within an adjoining State, the application to designate a drainage district and petition for construction of the drain may be filed with any commissioner of any county in Ohio having land which will be affected, and the same procedure is had as to the portion in Ohio as if the whole district were in that State, provided that before any expenses may be incurred, a voluntary release of rights of way and damages in the adjoining State, and an agreement to keep the drain in repair in such State, must first be obtained and filed with the drainage commissioner.

## MINNESOTA

Drainage in Minnesota is accomplished mainly through three classes of public enterprises under the control of the district courts and county boards, known as State drains, judicial drains, and county drains. State drains are initiated by the department of drainage and waters for the drainage of State lands and are established under the exclusive jurisdiction of the district courts. Judicial drains are those established by the

district courts, either under exclusive jurisdiction, as in the case of drainage and conservancy districts or intercounty drains, or under jurisdiction concurrent with boards of county commissioners. County drains are established by the boards of county commissioners of the counties in which the lands are located.

Drainage and conservancy districts under the law of 1917, are designed mainly for flood control, and are separate bodies corporate, controlled by boards of directors, under the supervision of the district courts. No reports were received for such districts.

**Department of Drainage and Waters.**—A department of drainage and waters was created in 1907 and superseded the State drainage commission. The commissioner of drainage and waters has general advisory power in the drainage of the State and is specifically authorized to drain State lands when in sufficient contiguous bodies to warrant it; to change the beds of watercourses; and to drain lakes, whether meandered or not, when they have become normally marshy, of no substantial use, and petition for such drainage is presented by 60 per cent of the freeholders residing within 4 miles, whose lands will be affected. The commissioner makes topographical surveys of the various watersheds of the State to secure data for use in establishing uniform systems of drainage and furnishes such data to the auditors of the various counties affected. He prepares specifications covering the strength, quality, and general properties of drain tile, and advises drainage engineers concerning proper tile sizes under varying conditions. He advises the courts and the county boards in drainage matters whenever requested.

The procedure for the establishment of a State drain is substantially the same as for other judicial drains, except that the petition which is filed by the commissioner of drainage and waters need not be accompanied by a bond to pay costs; the commissioner appoints one of the three viewers who is not a resident of the county in which the land is located; and in cases where the cost of construction is assessed against the land and the department proposes to change the bed of a natural watercourse, the commissioner is authorized to pay one-half of such costs from any State drainage fund available.

**The Law of 1925.**—The legislature at its session of 1925 (ch. 415) passed a comprehensive drainage law which amounts to a revision and codification of the prior laws relating to drainage and which expressly repealed, except as to pending proceedings, a large number of acts and parts of acts, and permitted all proceedings already begun under any law and not completed, to be continued under the terms of this act. (Mason's Statutes of 1927, secs. 6840-1 to 6840-140.) The following synopsis relates to this 1925 statute and minor amendments in 1927 and 1929.

**Authority to organize.**—The county boards of the several counties and the district courts of the several districts have jurisdiction to establish public drainage systems; to change the beds of watercourses and extend same through towns or villages, where necessary to secure suitable outlets; to construct and operate necessary drainage works and equipment; and, with the consent of the governor of the State, to drain, or establish the water level in meandered lakes which have become normally shallow and marshy, and are no longer of substantial public use. These acts are authorized upon the filing of a petition therefor, signed by not less than a majority of the resident owners of land in the proposed system, or by owners of not less than 51 per cent of the land.

**Petition.**—Petition for a county drain must be filed with the county auditor, and for a judicial drain, with the clerk of the district court of any county having lands affected. The proper officials of townships and municipalities which are liable to be affected or assessed may sign the petition. A bond in the sum of \$2,000 must accompany the petition, conditioned on the payment of costs in the event that the district is not established.

**Procedure.**—Upon the filing of the petition, the county board, if it is a county drain, or the district court if it is a judicial drain, appoints an engineer to make a preliminary survey and report with accompanying maps, profiles, and plan of the works. Upon the filing of the engineer's report, the board, or the court, fixes a time and place for a hearing thereon after due notice to interested parties. If, upon the hearing, the proposed improvement is shown to be not practical or not of public benefit, the petition is dismissed. If, however, the board or the court is satisfied of the necessity, practicability, and public utility of the proposed improvement, it will find in favor of the petition and order a detailed survey and report, with plans, specifications,

and cost estimates for both open ditch and tile drain. Upon the filing of this final report of the engineer, a copy is furnished the commissioner of drainage and waters, who in turn files his approval or recommendation for modification with the auditor or clerk. Thereupon the court or the board appoints three resident freeholders, not interested in the construction and not kin to any party, as viewers. These viewers meet at a time and place fixed by the clerk or the auditor and make a tabulated statement containing a description of each tract of land, highway, or corporation affected; the name of the owner; the number of acres benefited or damaged; the number of acres and the value of land added by total or partial drainage of any meandered lake; the damage to any riparian rights; the amount that each tract, highway, or corporation will be benefited or damaged; the total estimated benefits of the entire system; and an estimate showing whether the expenses of construction, plus the damages awarded, will be greater than the benefits.

With the filing of the viewers' report, the auditor or the clerk gives notice of a hearing thereon by publication and mail, and also notifies the commissioner of drainage and waters. Upon service of such notice the court or the board acquires jurisdiction of each tract of land in the proposed district. At the hearing, after considering the engineer's and viewers' reports, and other testimony if offered, the court or the board makes such alterations in the reports as they deem proper, and, finding that the benefits will be greater than the total cost, plus damages; that the improvement will be a public utility; and that all proceedings have been regular; issues an order establishing the district.

Any aggrieved person may appeal to the district court from the order of the county board or a district judge as to the benefits assessed against such party, the damages allowed, or an order refusing to establish the district. All appeals from an order of the district court refusing to establish a district may be taken to the supreme court of the State.

**Financing.**—A copy of the viewers' report and tabulated statement as confirmed, is certified by the clerk of the district court to the auditor of each county having land affected, together with a statement of the part of the total cost of the system which is apportioned to such county by the district court. Damages awarded are paid by the county board from the general ditch fund, or if no money is available in that fund, from the county treasury.

After the expiration of 30 days following the certification by the clerk to the auditor of the order establishing the system, the auditor and the chairman of the county board where it is a county drain, or the auditors of the respective counties, where it is a judicial drain, proceed to advertise for bids to do the work under one or more contracts. They contract for the work in the name of the county or of the respective counties as the case may be. After the letting of contracts for construction, the county auditor for each county affected prepares a tabulated lien statement according to a prescribed formula and proportioned to the total cost, showing the amount that each tract of land, highway, or corporation will be liable for, and must pay into the treasury of such county for the construction of the system. This lien statement is filed by the auditor with the recorder of deeds, whereupon it immediately becomes a paramount lien on the property against which assessed. These liens are payable to the county treasury, in 10 annual installments, beginning on the first day of the following November. By order of the district court, however, they may be paid in 15 annual installments, beginning five years after the first day of the subsequent November. The liens so established may, upon proper proceedings in the district court, be proportioned between specific parts of any one tract.

The county board of any county where land is assessed for benefits, when the lien statement prepared by the auditor has been filed with the recorder of deeds, may issue bonds of such county in such amount as may be necessary to construct and maintain the system in that county. These bonds may not run over 30 years, nor bear more than 6 per cent interest. The proceeds of such bonds are placed in the county ditch fund to the credit of the proceeding in which they were issued and the county auditor keeps a separate account for each system. Bonds so issued are backed by the full faith, credit and resources of the county, which in turn looks to the assessments on the benefited property for payment of such bonds.

**Maintenance.**—The county boards of the several counties are required to keep all portions of any drainage system in such county in proper repair, and may do so without assessment, if there be sufficient funds to the credit of the system, but no part of the original fund may be so used until the improvements are entirely complete. For the purpose of creating a maintenance fund, the board is authorized to levy an annual assessment in

the same proportion as the original assessment at a rate not exceeding 30 mills on each dollar. No such assessment may be made when the general ditch fund to the credit of the system exceeds 3 per cent of the total original assessment of benefits. If the system is wholly within one county, or if the repairs will not cost more than \$500, the board has authority to act on its own initiative. If the repairs will cost in excess of 30 per cent of the original cost of construction and the property owners owning 51 per cent of the property affected join in a petition, the court or board will proceed as in the case of original construction to raise a fund for maintenance and repair. If the cost of repairs and improvements does not exceed \$3,000, the board has discretion to make assessments payable in 3 or 5 annual installments; when the cost is more than \$3,000, it may be paid in 5 annual installments, and the board may issue bonds as in the case of original construction.

**Generally.**—Drainage in Minnesota is done through public systems authorized by law and operated by State and county officials, rather than through separate incorporated districts under the control of elected or appointed directors. Conservancy districts are bodies corporate controlled by a board of directors and their main purpose is flood control and drainage is incidental thereto.

When meandered lakes are drained, the viewers report the number of acres which will be added to the land of each riparian owner who will be assessed, and the value of such added land. Prior to drainage, the beds of lakes can not be assessed because they belong to the State, but in assessing benefits to lands to which portions of such lake beds will eventually attach, the value to the owner of the additional land to be acquired is taken into consideration.

Drainage being done through public systems by State or county officials, with provisions for perpetual maintenance, no special provision is made for the abandonment or dissolution of drainage systems.

## MISSISSIPPI

The following synopsis of the laws of Mississippi relating to drainage is taken from chapter 107 of the Code of 1930, which is subdivided into four articles treating, respectively, of districts with county commissioners, districts with local commissioners, existing districts, and swamp-land districts.

The opening section of the chapter (sec. 4371) declares that all drainage districts heretofore or hereafter organized shall be managed by three county drainage commissioners of the county in which the organization was effected, and by the chancery court, or chancellor in vacation, of such county, except as provided in articles 2, 3, and 4. The next section provides that the board of supervisors of each county in which there is a drainage district, or in which a drainage district may be organized, shall appoint three county drainage commissioners for that county.

**Art. 1.—Organization of districts with county commissioners (secs. 4371-4447).**—Drainage districts may be organized to reclaim wet and overflowed land for agricultural purposes, or when the drainage of such lands would be conducive to the public health, and in order to drain such lands, drains and levees may be built over the lands of others. A majority of the owners of land in a district, representing one-third of the land, or one-third of the owners, representing more than one-half of the land, may file a petition in the chancery court of the county, setting forth the name, necessity, description, and the names and post-office addresses of the owners of land in the proposed district. If it be intercounty the petition is filed in the county in which the greatest or greater acreage is located, and the chancery court of that county and the drainage commissioners appointed by the board of supervisors of that county, have jurisdiction of the entire district, whether it be wholly within the county and judicial district or not.

Upon the filing of the petition the clerk of court gives notice by posting and publication of the time and place set for a hearing thereon. At the hearing, if the petition be contested by one-third of the landowners owning more than one-half of the land, then it must be dismissed. If the court finds the petition to be in due form an order to that effect is entered on the court record and the petition is referred to the drainage commissioners of the county for a report. The commissioners view the land and determine: the starting point, route, and terminus of the proposed works; the location and size of the ditches, and whether or not such works will successfully drain the land; the probable

cost of construction, including preliminary costs; what land will be injured or damaged and the probable aggregate amount of damages; and what land will be benefited and whether the aggregate amount of benefits will equal or exceed the costs. The commissioners may employ an engineer to make estimates and maps.

When the commissioners report to the court with plans and maps, notice is given by posting and publication of a hearing on the report, and all interested persons may appear and protest against the confirmation. The court may confirm, modify, or call for an additional report. If the report is confirmed the court enters an order, which, with a map of the district, is recorded in its minutes. The law declares the district to be thereupon organized as a body politic and corporate, with right of perpetual succession; and the board of drainage commissioners and their successors, from the date of the order, constitute the corporate authority of that district.

The commissioners then assess the benefits to be derived by each tract of land in the district, and record the same in writing on a form provided by the statutes, and also record in parallel column the amount of damages that any tract of land will sustain, and an estimate of the cost is apportioned to each tract of land and recorded on the prescribed form. The commissioners also make appraisal of lands needed for right of way. Any objections to the appraisal on the part of the landowners must be in writing and will be heard by the chancery court. Interested parties may appeal from the decision of the chancery court to the supreme court of the State. Should there be no objections to the report the appraisal is confirmed, and upon payment of the amount thereof to the clerk of court the commissioners enter upon and take over the right of way.

**Districts with county commissioners.—Financing.**—Money expended in good faith by the parties interested in the organization of the district may be returned by the drainage commissioners when the organization is completed, as a part of the costs of the district. Should the district be not organized the court determines and decrees what payments are equitable and just, and may assess an acreage tax against the land of the petitioners to cover such cost. After final confirmation of the report of the commissioners, they are authorized to issue certificates of indebtedness of the district to raise funds to cover the cost of organization, and to have surveys of the property made, but no certificate may run longer than two years or bear more than 6 per cent interest. These certificates are paid as soon as the district is organized and funds come into the hands of the commissioners. If petitioners signing the original petition later withdraw their names and so defeat the petition, the court may assess the entire cost against the land of those so withdrawing, on an acreage pro rata basis.

The court may order assessment of the lands to be paid in installments, otherwise the whole amount is payable in cash on confirmation of the commissioners' reports. If a landowner elects to pay his assessment in cash within 30 days, then his land is not further liable for the payment of then existing assessments or bonds. Assessments and bonds are liens against the land, which may be sold for nonpayment.

Upon organization of the district, and as soon as the commissioners have procured rights of way, they make an estimate of the entire cost, including commissioners' fees, and file a levy, certifying the amount required by them for the construction of the proposed works. They may order the assessments of benefits to be paid in cash, or in not to exceed 40 installments, with interest. Or, the commissioners may order that bonds be issued not to exceed 80 per cent of the assessed value of the benefits, such bonds to be payable in from 1 to 40 years, and the remaining 20 per cent of the assessment to be paid in cash.

On the first Monday in September of each year the commissioners levy a tax on the amount of the original or supplemental assessments of benefits, which is in the same proportion as the installments authorized by the court to become due that year, and certify such assessments to the board of supervisors, who must levy a tax in that amount plus 10 per cent for contingencies. The 10 per cent may be omitted when the contingent fund exceeds 20 per cent of the amount of the assessed benefits in any year. The yearly levy is apportioned to each tract of land in proportion to the benefits assessed, and may not be in excess thereof. The assessment roll is certified to the sheriff, who makes collection in the same manner as State and county taxes. When bonds have been issued the levy includes an amount sufficient to meet the maturing bonds and interest. Bonds issued by the district must not be sold below par unless such sale be authorized by the court and the board of drainage commissioners. When a district is unable to pay all or part of its outstanding indebtedness, refunding bonds may be issued to pay same. (Sec. 4437.)



**Intercounty districts.**—The drainage commissioners for that county in which the greatest or greater number of acres in a district are situated, have jurisdiction, under the chancery court, of the entire drainage district as though it were in one county. In reporting the levies to be made for the payment of bonds and other obligations the commissioners report the assessments on all of the lands lying in each county to the board of supervisors of such county, and they make the levies, collect the assessments, and account to the treasurer of the drainage district therefor.

**Subdistricts.**—When one-third of the landowners owning a majority of the acreage, or a majority of the landowners owning one-third of the acreage within an organized district, petition the court and file bond for expenses, asking that they be organized into a subdistrict, the court directs the drainage commissioners to have survey made of the land in question, covering the same information as required for the original petition. The same report and hearing are provided, and if the court finds that such subdistrict will be conducive to the public benefit it is established. It is specifically provided that nothing in this chapter shall prohibit the organization of subdistricts wholly within an organized drainage district. When so organized the subdistrict lands remain liable for assessments of the original district in addition to their own separate assessments. The drainage commissioners of the county are the managers of the subdistrict and may issue bonds of the subdistrict in the same manner as of the original district, but must keep a separate financial account for the subdistrict.

**Collection of taxes.**—Drainage taxes are payable at the same time as State and county taxes and payment is enforceable in the same manner. When land is sold for taxes and no bid equal to the amount of such taxes is received, the land is considered sold to the State for delinquent State and county taxes. The board of drainage commissioners may pay the taxes, and, at the end of two years, may take possession of the land in the name of the district, and place all returns from it to the credit of the drainage district.

**Art. 2—Districts with local commissioners (secs. 4448-4519).**—One-fourth or more of the landowners in a proposed district may file the usual petition with the chancery court, and notice is given by publication in the same manner as for districts with county commissioners. Unless, at the hearing, a majority of the landowners owning one-half or more of the land shall object, then further proceedings on the petition are had in the following manner.

**Districts with local commissioners—Organization.**—The court appoints three temporary commissioners who must be landowners of the territory proposed to be drained, who are required to give bond, and whose appointment expires on the organization of the district. The temporary commissioners immediately appoint an engineer to make survey and ascertain the region which will be benefited by the proposed improvements as well as the general character and cost of the drainage works required, all of which is reported to the court by the commissioners.

The preliminary expenses are paid by the county, to be refunded out of the proceeds of the first assessment levied. The temporary commissioners, however, with the permission of the court, may borrow money at 6 per cent interest to pay expenses, cost of survey, attorneys' fees, etc., and may issue negotiable notes, signed by all of them, payable within or without the State, in payment of work done. They may pledge all assessments on the land as security for payment. None of these evidences of indebtedness may run over two years. These evidences of indebtedness have priority of payment when an assessment of the lands is made, or, if the district is not organized, then the board of supervisors of the county may levy an acreage or ad valorem tax against the land of the proposed district to pay same.

Immediately after filing by the temporary commissioners of the report of the engineer the clerk of court gives the second notice, by publication, of a hearing on the report. At this second hearing the court, after hearing all persons interested, and if deeming it to be of advantage to the owners of said land and to be a public benefit, enters an order establishing the drainage district. Thereafter, upon organization it becomes a body corporate, and through its commissioners has all the powers of a corporation, and may do all things necessary to accomplish the purposes for which it was organized.

If, upon the second hearing, a petition praying for the improvements is presented, signed by a majority of the landowners owning one-third of the land, or one-third of the landowners owning a majority of the land, it is mandatory that the court establish the district without further inquiry; provided that, if at the hearing a petition is presented, signed by the same number and ownership, praying that the improvements be not made,

then the court must dismiss the proceeding. But, in the absence of such petition, the chancellor being of opinion that the establishment of the district will be to the advantage of the landowners, and of public benefit, he will establish such district. Petitions may be signed by women, guardians of minors, and corporations owning land in the proposed district.

The order of court establishing a district has the force of a judgment, and appeal is directly to the supreme court, within 20 days. If there be no appeal the judgment is conclusive and binding upon all the real property within the boundaries of the district. Appeals may also be had from an order refusing to establish a district.

When the district has been established the court appoints three owners of real property within the district as commissioners of the district, and such commissioners become a body politic and corporate by the name and style selected for the district. Such commissioners must qualify within 30 days, and give bond. They may elect officers and adopt by-laws not inconsistent with law. They hold office 2, 4, and 6 years, respectively, and their successors are appointed by the court for 6 years. If a majority in number of owners of the land in the district petition for the appointment of a particular person as commissioner, it is the duty of the judge to appoint the person so designated. Vacancies in the board are filled by the court, and the court will remove any commissioner upon petition of a majority of the owners of land, who own a majority of the acreage.

When, for any reason, the contemplated improvements are not made the costs of organization are charged against the real property in the district and collected by assessment, and such assessment is levied by the board of supervisors by means of an acreage or ad valorem tax. If the district is intercounty the court apportions the assessment among the counties.

Plans and estimates for the work to be done are to be filed with the clerk of the board of supervisors and shall be accompanied by maps and estimates of the cost.

**Intercounty districts.**—If the land in the proposed district is situated in two or more counties the petition may be addressed to the chancery court of any of the counties and all proceedings shall be had in such court. Costs are apportioned between the counties by the court. All notices are published in all counties. Such districts shall be numbered consecutively or receive such names as may be selected by the court.

**Districts with local commissioners—Assessments.**—The district commissioners assess the land and inscribe in a book a description of each tract and the benefits to accrue thereto, and place the benefits opposite the description, together with an estimate of the cost to the landowners for the first year. The assessment is not only on the land but on all railroad and other property which will be benefited by the drainage. The commissioners also must assess and place on the same book, opposite the description of the land, all damages that will accrue by reason of the construction of the works. If additional lands are found to be benefited, they shall also be assessed, and the clerk of court shall give the owners thereof the usual notice to show cause why they should not be assessed, failing which they are included in the district. Appeal from such decision is to the supreme court.

When the assessments are completed, the commissioners sign and file same with the clerk of the court, there to be kept as a public record. Notice of the filing of the assessment roll is then given by publication. Any aggrieved person may appear before the court on the date fixed and protest, and the order of the court on the hearing is final, with right of appeal by either side.

The assessment roll so prepared when approved by the court, is a final assessment of benefits upon the land, and so stands, unless the commissioners find it necessary to raise the assessments to secure funds for additional improvements.

Any owner of land may demand assessment by jury by giving notice to the commissioners within 30 days of the filing of the assessment roll, and thereupon the commissioners must institute a proceeding in eminent domain to condemn the land. In such cases the commissioners may pay the amount of the award into court and then proceed to take possession of the land and construct the works, notwithstanding an appeal.

Drainage districts are specifically given the right of eminent domain. The commissioners of the district have the right to condemn a right of way for an outlet outside of their district.

The court, at the same time that assessments of benefits are filed, or at any time when requested to do so by the commissioners, will enter an order for a special assessment, or levy, to pay the estimated costs of improvements, with not less than 10 per cent added for deficiencies. This order has the effect of a judgment. This assessment bears the proportion which the

assessment of benefits against any tract bears to the assessment of benefits against all the property in the district. These assessments may be paid in 10 annual installments, or may be paid in cash before any bonds are issued. They are a lien on all of the real property in the district from the date of the order of the court, in an amount not to exceed the total amount of estimated benefits, and are entitled to preference to all demands, executions, incumbrances or liens whatever, and so continue until paid. The remedy against such order of assessment is by appeal to the supreme court within 20 days. Assessments are collected by a levy made by the board of supervisors of the county, and, if the first levy is insufficient, additional levies may be made.

**Districts with local commissioners—Bonds.**—Commissioners may borrow money at 6 per cent and issue negotiable evidences of indebtedness therefor, or serial bonds, not exceeding the total amount of benefits assessed. The bonds are signed by the board of commissioners, in amounts not less than \$100 payable within or without the State, may be payable to bearer, are not to run more than 30 years, and mature in such yearly amounts as the commissioners may fix. Bonds may not be sold at less than par, but the cost of lithographing and necessary expenses of sale of the bonds "may be incurred." The bonds are registered and an accurate record of them kept by the commissioners.

**Maintenance.**—A drainage district does not cease to exist upon the completion of its works but continues as a body corporate for the purpose of maintaining the system of drainage. For this purpose the commissioners may borrow money and may, from time to time, apply to the court for additional assessments on the benefits, with the same notice, hearing, and right of appeal.

**Taxes.**—Drainage taxes are payable at the same time as State and county taxes and the collector may not accept any sum less than the entire aggregate amount. In the event of default the tax collector sells the land for all taxes due thereon including drainage taxes, together with 25 per cent damages. Right of redemption under State laws applies. If bids received are not sufficient to pay taxes the land is sold to the State. No restriction shall be enforced as to the quantity of land which may be purchased by any one person in any one year.

All evidences of indebtedness issued by commissioners are a lien upon the property of the district in an amount not to exceed the benefits assessed, and the board is required to see that assessments are levied annually so long as they be necessary for the payment of such obligations, and every interested party is given the right to enforce such levy by mandamus.

All revenues of the district and all real estate in the district are specifically pledged by this act to the payment of the obligations of the district in an amount not to exceed the amount of benefits assessed.

**Dissolution.**—Any drainage district organized under this act which has no other matured bonded indebtedness and has constructed no levees, canals or other drainage improvements, may be dissolved by the chancery court by which it was organized, but not within 6 years of its organization.

Whenever, after the expiration of 6 years, 20 or more of the landowners shall sign and file with the clerk of court by which the district was organized, a petition for its dissolution, three weeks notice by publication is given by the clerk commanding all persons interested to show cause why the district should not be dissolved. After the first publication all operations of every kind by the district and its commissioners shall be discontinued until the hearing of the cause.

The court hears the case in chancery, and if it determines that the best interests of the landowners will be served, the district is dissolved and the commissioners are required to deposit with the clerk of court, within 30 days, all papers and records of the district. If it shall appear not to be to the best interests of the landowners to dissolve the district, the case is dismissed with costs against the petitioners, and no other petition for dissolution may be filed within three years thereafter.

Dissolution does not affect or impair any contract against the district. The court retains jurisdiction of the cause for the liquidation of the district and may appoint three liquidating commissioners with all of the powers of the drainage commissioners.

**Subdistricts.**—One-third of the landowners owning a majority of the land, or a majority of the landowners owning one-third of the land within a proposed subdistrict composed of lands wholly within an organized district, or partly within and partly without such district, may petition the court for the formation of a subdistrict, giving bond for costs. The court directs the commissioners of the main district to cause a survey to be made

of the subdistrict with an estimate of costs, etc., the same to be filed with the clerk. With the same notice and procedure as in the original organization, the court either establishes a subdistrict or dismisses the petition. It is specifically provided that nothing in this section shall prohibit the formation of a drainage district wholly or partly within a district already organized, but a district independent of the district originally organized may be organized where a part or all of the lands are not in the original district, provided that one-third of the landowners owning a majority of the acreage, or a majority owning one-third of the acreage within a proposed subdistrict, shall so petition the court. Then the proceedings are the same. When organized, the lands of a subdistrict included in any previously organized district are still liable for the assessments of the original district.

**Special powers (sec. 4513).**—Drainage districts having comprehensive general plans to control overflows and surplus waters, are given authority to construct by-passes for conveying overflow water by means of ditches, canals, levees and other artificial means by shorter and more direct routes from tributaries of natural streams and their water sheds to natural outlets, provided that the drainage works empty the water directly into the same watercourse by which it would naturally flow.

**Art. 4—Existing districts (sec. 4527).**—Drainage districts previously organized have the privilege to operate under the laws as then in force, and the adoption of this code does not repeal such laws so far as such districts are concerned, provided that all drainage districts hereafter organized must operate under the provisions of this chapter.

**Art. 4—Swamp land districts.**—Those heretofore organized, may continue to operate under the provisions of the laws as then existing, and such laws are not repealed as to such swamp land districts, but it is provided that no district shall hereafter be organized or operate under such laws.

## MISSOURI

(Code of 1929, Chapter 64)

The principal drainage law of Missouri is contained in Article I of chapter 64 of the 1929 code and relates to the organization of drainage districts under the jurisdiction of the circuit court of the county in which the greater portion of the lands is situated. Under Article II of the same chapter, drains may be constructed and improved under the jurisdiction of the county court of the county in which the land is situated, upon petition of one or more landowners. Under Article III of the same chapter individual owners are permitted to drain their lands through intervening lands upon payment of actual damages upon petition to the county board of commissioners.

**Jurisdiction.**—The owners of a majority of the acreage in any contiguous body of land may form a drainage district for sanitary or agricultural purposes, or when conducive to the public welfare or benefit. The general declaration of the petition is substantially the same as required in other States bordering on the Mississippi River, and the petition must state the period for which the district is incorporated. The petition is addressed to the circuit court of the county in which the lands are located and in the case of intercounty lands it is addressed to the circuit court of the county in which the most of the lands are situated. The clerk gives notice of a hearing on the petition by publication, and the court thereafter has original and exclusive jurisdiction, coextensive with the boundaries of the district regardless of county lines.

Objections of persons not signing the petition must be made before the first day of the term at which the cause is to be heard. The hearing is a summary proceeding, and if the court is of the opinion that the district should be formed for any of the purposes mentioned in the petition, it so decrees. Any person signing the petition has no right to have the proceedings dismissed as to him without the written consent of a majority in acres of the owners who sign the petition. Within 60 days after the district is decreed by the court to be a corporation the clerk of court must transmit to the secretary of state a certified copy of the findings and decree, and the same is filed in the same manner as other articles of incorporation. A copy of the decree and a plat of the land is also filed with the recorder of each county in which any land is situated.

**Board of supervisors.**—Within 30 days after incorporation the circuit court gives notice, by publication for 2 weeks, of a meeting of the owners of real property situated in the district, for the purpose of electing a board of 5 supervisors to be com-

posed of owners of real estate in said district, 2 of whom, at least, shall be residents of the county or counties in which the land is situated, or of an adjoining county. At the meeting the landowners shall organize, and each owner is entitled to one vote for each acre owned by him. The 5 persons receiving the highest number of votes are declared elected supervisors, and they draw lots for terms of 1 to 5 years, respectively, and until their successors are elected. Each year thereafter the circuit court calls an election in the same manner, at which one supervisor is elected for a term of 5 years. Supervisors may fill any vacancy in their board until the next election. There is a proviso, however, that after the report of the commissioners to assess the land is confirmed by the court, only the owners of land against which benefits have been assessed shall be entitled to vote. The board organizes immediately and selects a president and secretary.

Within 60 days the board must appoint a competent engineer to have control of the engineering work of the district, and he makes a survey within the boundaries of the district and of all land adjacent that may be benefited, and makes a report in writing to the board of supervisors with maps and profiles of the said survey, including the plan for drains, levees or other works. Upon the engineer's final report to the board of supervisors they adopt or modify same, and thereafter the adopted report becomes the plan of reclamation.

**Cost of organization.**—Immediately after adopting the plan of reclamation the board levies a uniform tax of not more than 50 cents per acre upon each acre of land, which tax is used for organization expenses, survey, assessment of damages, benefits, etc.

**Commissioners.**—A copy of the plan of reclamation is filed with the clerk of the circuit court, and at the same time the board of supervisors files a petition asking the judge of the circuit court to appoint commissioners to appraise the land needed for a right-of-way and drainage works of the district, and to assess benefits and damages to all land in the district. Within 30 days the court must appoint three commissioners, who shall be freeholders, residing in the State of Missouri, not landowners within the district nor the kin of landowners, and a majority of whom constitute a quorum for the transaction of all business.

The circuit court clerk notifies the commissioners of their appointment. They shall immediately organize and the clerk of the board of supervisors meets with them and furnishes a complete list of the owners and plan of reclamation with maps and profiles. The commissioners elect a chairman and the secretary of the board of supervisors becomes secretary to the commissioners.

Within 30 days after organization the commissioners begin to view the land, accompanied by the engineer or his assistant, and determine the value of all land that will be affected by the improvements, whether within or without the district; they assess the benefits and damages which will accrue to each lot, 40-acre tract, or other division of land according to ownership. They may consider only the benefits and damages which will accrue to any land by carrying out the plan of reclamation. They also make an estimate of the entire cost of the work, and file a written report with the clerk of the circuit court.

On the filing of the report of the commissioners the clerk gives the usual notice, by publication for three weeks, of a hearing on said report. Any landowner may file exceptions to the report within 10 days. All exceptions are heard by the court in a summary manner so as to carry out liberally the purposes of the district, and if the estimated costs of the improvements in the plan of reclamation do not exceed the assessed benefits, then the court will approve the commissioners' report. The clerk of court transmits a certified copy of the decree of confirmation to the clerk of the board of supervisors of the district, who in turn submits a copy to the recorder of each county in which any land is situated.

**Board of supervisors.**—After confirmation of the commissioners' report the board of supervisors have power to carry out the plan of reclamation and they must levy a tax upon all of the land in the district for such portion of the benefits assessed as will enable them to carry out such plan, plus 10 per cent for contingencies. The tax is apportioned and levied on each tract of land in proportion to the benefits assessed against said tract. The secretary of the board of supervisors, as soon as the tax is levied, prepares a "drainage tax record," showing the name of the owner, amount of the assessment, when installments are due, etc., on a form prescribed in the statute. This drainage tax record becomes the authority of the collector of taxes to make demand and collection of drainage taxes. These taxes become a lien on each tract to which only State and county taxes are paramount.

**Appeal.**—Section 10779 specifically provides that no appeal shall act as a *supersedeas* or delay any action on the prosecution of any work.

**Dissolution.**—The district may be dissolved at any time before the board of supervisors has formally adopted the plan of reclamation, on petition of the owners of the majority of acres in the district, provided that if the assets of the district will not pay its obligations then a special acreage tax is levied to pay same.

If, during the process of formation, the court shall find the assessed benefits to be less than the estimated cost reported by the board of commissioners, then the court decrees that the corporation be dissolved as soon as all of its debts are paid, and if the uniform tax of 50 cents per acre be not sufficient to pay such cost the court orders the board of supervisors to make an additional uniform per acre tax to pay the same, provided that in estimating the cost, interest on proposed bonds may not be considered.

**Adjacent land.**—The board of supervisors, or the owners of a majority in acres of an adjacent tract of land, may petition for the inclusion of such land in the organized drainage district, and then the proceedings are substantially the same as in the original formation of the district.

**Maintenance.**—The board of supervisors may appoint overseers to maintain the efficiency of the drainage works, and these overseers, during times of emergency, floods or otherwise, may commandeer the services of able bodied men from 16 to 50 years of age to maintain the levees, ditches and other works, there being a penalty for failure to obey the overseers and a compensation of \$1.50 per day for services.

The board of supervisors may levy maintenance taxes to preserve the drainage works and to meet current expenses. Such taxes are apportioned upon the basis of the net assessments of benefits for original construction, and shall not exceed 10 per cent thereof in any one year. They are collected in the same manner as drainage taxes.

**Bonds.**—The board of supervisors may, in their judgment, issue bonds not to exceed 90 per cent of the total amount of taxes levied. Such bonds are in denominations of not less than 100, to mature in 20 years beginning not later than 5 years, and bearing 6 per cent interest. The bonds, when executed, are to be delivered to the treasurer of the district, who shall sell them in such quantities as the board of supervisors may direct, but they may not be sold for less than 95 cents on the dollar, and must show the purpose for which issued and that they are payable out of the drainage taxes. A sufficient amount of the drainage taxes shall be set aside each year to pay said bonds and interest.

Where drainage districts have been organized under proceedings in the circuit court prior to April 8, 1905, the board of supervisors, instead of having commissioners appointed to assess benefits and damages, may, for the cost of constructing drainage works and maintaining same and to pay principal and interest on bonds, levy each year a level rate of taxation not to exceed \$1 per acre in any one year.

In drainage districts making level assessments, the board of supervisors may borrow, with the consent of the owners of not less than three-fifths of the land in the district given at an election held for that purpose, after proper notice, the sum of not to exceed \$6 for each acre in the district. The loan shall not run longer than 20 years nor bear more than 6 per cent interest, and the loan must not net less than 90 cents on the dollar to the district.

**Extension of corporate existence.**—The period for which the district was originally chartered may be extended when the board of supervisors finds it necessary in order to raise funds to liquidate the obligations of the district. The court calls a meeting of the landowners by the same publication of notice as in the original petition, and if the owners of a majority of the acres at such meeting be in favor of the extension a petition is presented to the court in which the district was organized, praying such extension. The proceeding is then substantially the same as in the formation of the district.

#### CONSTRUCTION AND IMPROVEMENT OF DITCHES, WATER COURSES, AND LEVEES BY COUNTY COURTS BY PETITION OF ONE OR MORE LANDOWNERS

Under this article the county courts are given authority to establish drainage districts when found to be conducive to the public health, convenience or welfare, by organizing to straighten, widen or alter any ditch or natural stream when it becomes necessary to protect any land or other property. One or more landowners may file such petition in the county court, which petition sets forth substantially the same facts as required

under Article I. No landowner signing the petition may withdraw from the organization without the written consent of the owners of a majority of the acreage represented by those signing the petition. The court appoints an attorney, with the consent of the majority of the owners signing the petition, to handle the affairs of the district. The court also appoints an engineer and three viewers, who shall not be landowners within the said district. They report in writing the necessary location, description and estimated cost of such district, and then, after notice by publication and hearing of objections, if the court determines that a majority in acres in the proposed district have joined in the petition, the court finds in favor of establishing a district. If less than a majority have signed, the court may still find for the district, if in his judgment the district should be formed. Upon a favorable finding the district becomes a body politic and corporate in the county, with the usual powers of corporation. For the organization expenses the court levies a uniform tax of not more than 50 cents per acre. After organization the court directs the viewers and the engineer previously appointed to select other viewers equally qualified, who shall view the land, and establish the precise location of the improvements and assess the benefits and damages, on the form prescribed in the statute. The report of these viewers is filed with the county clerk and a hearing is had thereon after notice by publication.

Taxes are levied by the court on each tract of land in proportion to the benefits assessed, and are collected in the same manner as other drainage taxes. The county court, however, has the privilege of issuing bonds.

**Maintenance.**—The county court has the management and control of these drainage districts for the purposes of maintenance, and may levy and collect the maintenance taxes. Any construction work for maintenance or enlargement is done by petition to the county court in the same manner.

#### DRAINAGE OF LAND BY INDIVIDUALS FOR AGRICULTURAL AND SANITARY PURPOSES

The owner of any tract of land needing drainage, whether within or without an organized district, has the right to drain or protect such land for agricultural purposes without forming such land into a drainage district, by constructing an open ditch, laying tile or building a levee through or across any tract of land situated between such land to be drained and any depression into which it can be drained, provided the owner has paid for the land taken and actual damages of such construction.

Where the owner of intervening land and the owner desiring to drain can not agree on damages and value, the party desiring to drain may petition the county for a board of commissioners to view the land and report with recommendations. The commissioners, when appointed, report to the court with a plat and the court issues an order in the premises and retains its jurisdiction in the interest of all parties.

### MONTANA

(Revised Code, 1921; Supplement, 1927; and Session Laws)

**Jurisdiction to establish.**—The district court of any county in which a portion of the land is situated may organize a drainage district, upon petition of a majority of the landowners owning one-third of the area, or of the owners of more than one-half of the land. (Sec. 7265.)

**Procedure.**—The petition must show the necessity for the work, a sufficient description of the land, names of the owners, a description of the system to be installed, the name of the district, and must ask for the appointment of commissioners to execute the work.

After due notice and hearing, if the court sustains the petition in its original or amended form, it divides the district into three nearly equal divisions, and appoints a commissioner for each. The commissioners must be actual landowners and residents of a county having land in the district, and if there are two or more counties, not more than two of the commissioners may be from the same county. The commissioners thus appointed constitute the corporate authority of the district, under the supervision of the district court. In districts organized before the passage of this act, the district court, upon petition of 10 per cent of the owners of land, separates the district into divisions and appoints commissioners in the same manner. (Sec. 7280, as amended, 1925; Suppl., p. 853.)

The commissioners organize themselves into a drainage board, elect a president and secretary from their own number, and appoint an engineer to make surveys, plans, and estimates of

costs. They personally examine the land and make a preliminary report to the court showing whether the work is necessary and will promote the public welfare and whether the benefits will exceed the costs of construction and organization, plus damages which will accrue. They fix the boundaries of the district, but may not change the boundaries named in the petition so as to deprive the court of jurisdiction. The court fixes the time and place for a hearing on the preliminary report, after due notice, and hears all objections of interested parties, without the aid of a jury. If the objections are sustained, the petition is dismissed at the cost of the petitioners. If the report is sustained in its original or amended form, the court confirms same and orders the commissioners to proceed with the work. In the order of confirmation the district is declared to be organized by the name in the petition, with the boundaries as fixed, and to be a body corporate with perpetual succession. Interested parties may appeal to the supreme court within 30 days. (Secs. 7292-7315.)

The commissioners then proceed to make final report to the court in detail, with maps, profiles, and specifications. They report in tabulated form the damages to each tract of land; the amount of the benefits assessed to each tract or corporation; the total estimated cost of the work, including damages and incidental expenses; and the probable annual cost of maintenance. (Secs. 7320 to 7325. See amend. session laws, 1929, chap. 169.)

The court orders a hearing on the final report, with notice by publication, and if at such hearing the court finds in favor of the validity of the proceedings, the report is confirmed and the order of confirmation is final and conclusive; but with the right of appeal to the supreme court. (Secs. 7316 to 7324.)

**Financing—Assessments.**—At the time of confirming the final report, the court orders assessments for construction, proportioned on the assessed benefits, to be paid in not more than 15 annual installments, in such amounts and at such times as will be convenient to meet the obligations of the district. The due date of the first installment may not be more than 5 years after the date of the order, and installments bear interest at 7 per cent. From the date of the order the assessments are liens on the property against which assessed, enforceable in the same manner as other taxes. Payment in full cancels the lien. In intercounty districts, assessments are collected in each county and remitted to the treasurer of the county wherein the court having jurisdiction is located. Additional assessments may be made when necessary, under order of court, in the same proportion to benefits assessed, but the total assessments for other than maintenance, operation, and interest may not exceed the total benefits. (Secs. 7325-7326.)

If the first assessment is too small to complete the work or additional sums are necessary in any year to pay the lawful indebtedness of the district, further assessments, in proportion to the last approved assessment of benefits, may be made under order of the court, provided that the total assessment, other than for maintenance, incidental expenses, and interest, may not exceed the total assessment of benefits. Notice of the hearing on additional assessments is given by publication in each county, and the assessments are made in the same manner as the original assessments. (Sec. 7338.)

**Financing—Bonds.**—Commissioners may borrow money, not to exceed the amount of assessments for construction and additional assessments, as provided in section 7338, unpaid at the time of borrowing, for construction or repair or for the payment of any authorized indebtedness, and may issue notes or coupon bonds of the district, with interest at 6 per cent and not running beyond 1 year after the payment of the first installment of the assessment shall fall due. The form of the bonds is provided in the statute. In the event of a surplus remaining from bonds sold for construction purposes after the work is done, it may be used for maintenance before making assessments for such maintenance. (Sec. 7343.) The court may, upon petition of the commissioners, authorize them to refund any lawful indebtedness of the district by issuing new notes or bonds, payable in such longer time as the court may deem proper, not to exceed in the aggregate the sum of all the notes and bonds then outstanding, and interest thereon. (Sec. 7344.)

**Maintenance.**—The commissioners make an annual report to the court of the sum to be assessed against each tract or corporation for that year to pay maintenance charges and interest on outstanding obligations. This assessment is proportioned on the last confirmed assessment of benefits. The court, after due notice and hearing thereon, determines the amount of this assessment and confirms the report, and the commissioners certify the amounts to the county treasurers, and they are collected in the same manner as general taxes.

**Dissolution.**—Upon petition of the owners of more than one-half of the land, the district court will order the commissioners to show cause why the district should not be dissolved. If it appears at the hearing that the owners of more than one-half of the land have signed the petition, it is granted. The court orders the commissioners to furnish a written report of the obligations of the district outstanding, levies an assessment on the lands on the basis of such report, and authorizes the commissioners to pay all obligations and settle the affairs of the district.

**Generally.**—The territory in a district need not be contiguous, provided the public welfare will be promoted by the drainage of each part, the benefits will exceed the costs in each part, and the work can be more economically done in a single district.

Amendments to section 7307 of the code in the session laws of 1929, page 3411, are unusual in that the commissioners are directed to report to the court for assessment: Property, persons, or corporations contributing in any way to the damaged condition of the land to be reclaimed, without the necessity of an assessment of benefits to such property, persons, or corporations.

## NEBRASKA

Chapter 31 of the Compiled Statutes of Nebraska of 1929 divides the drainage laws of the State into five separate articles, each covering a different type of drainage organization. These articles respectively prescribe the method of organizing drainage enterprises by county authorities under the laws of 1881, amended in 1911; by incorporated companies under a statute of 1887; by individual landowners under a law of 1911; by drainage districts organized by proceedings in the district, under a law of 1905, as amended; and by drainage districts organized by vote of the landowners under a law of 1907.

**Jurisdiction to establish.**—The county board of any county may construct drains and improve watercourses, when necessary to drain lands or public roads and when such work will be conducive to the public welfare. Such action is taken upon petition therefor filed with the county clerk and signed by one or more landowners whose lands will be benefited. The petition must state the necessity for the drainage, describe the route and termini of the drains, and must be accompanied by bond for payment of costs. (Secs. 31-101 to 31-104.)

Any number of persons, not less than three, being owners of land which is wet or liable to overflow, may organize a company for the purpose of draining or protecting such land, which company has power to improve watercourses and construct drainage works. Such persons must sign articles of incorporation specifying the name and purpose of the company, and naming not less than three nor more than seven directors. From the date of recording the articles of incorporation in the office of the clerk of each county in which any works will be located, the company becomes a body corporate with the powers incident to corporations. Any person owning lands liable to be affected by the operations of the company may become a member by signing the articles of incorporation. The corporate existence of the company is judicially recognized, and its records are *prima facie* evidence of its acts. (Secs. 31-201 to 31-203.)

Owners of land may drain same in the general course of natural drainage by constructing open ditches or tile drains discharging water into any natural watercourse or depression, and when such drain is wholly on the owner's land, he is not liable in damages therefor. Members of the county board are the drainage supervisors in and for their respective counties and as such are a body politic and corporate and constitute the corporate authority of the drainage districts within their respective counties. Any person desiring to construct a drain or ditch or to maintain same may file a petition with the county board, accompanied by bond to pay costs in the event such ditch is not deemed necessary. The petition must describe the drain, give its location, state that it will empty into a natural watercourse, and that it is necessary for agricultural or sanitary purposes, and will be conducive to the public welfare. (Secs. 31-301 to 31-305.)

The district court of any county may organize drainage districts when a majority in interest of the owners of any contiguous body of swamp or overflowed land situated in one or more counties sign articles of association, giving the name of the district, the number of years the association is to run, the boundaries of the district, which may not be less than 100 acres, a description of the lands which will be benefited and a descrip-

tion of the several parcels of land owned by those signing the articles of association and by those who do not sign such articles. The signers of the articles of association obligate themselves to pay taxes assessed to make the improvement. The articles are filed with the clerk of the district court of the county in which the greater portion of the land is situated, and must pray that the association be declared a drainage district. (Sec. 31-401.)

**Drainage districts may be organized by vote of the landowners,** when it will be conducive to the public health or welfare to drain any wet land or protect any land subject to overflow. When such a proposed district contains real estate owned by less than 20 persons or corporations, one-fourth of such owners may file a petition for the formation of a district. When there are more than 20 owners, 10 or more may file such a petition with the county clerk of the county having the largest area within the proposed district. The county board of such county, with the assistance of the county surveyor, may fix the boundaries of the district and determine the number of directors the district may have. (Secs. 31-501 to 31-504.)

**Procedure—Drainage by county authorities.**—The county board, with the assistance of an engineer, determines by actual view whether the suggested improvements are necessary and will be conducive to the public welfare, and whether the route, as described, is the best route. The board may change the route, as outlined, but may not move it more than 160 rods laterally. If the board finds in favor of the improvement, it directs the county surveyor or some other engineer to make a detailed survey and plat of the works in 100-foot sections, describing each section and making an estimate of the cubic yards of excavation in each. The engineer reports a schedule of the lands and other property which will be benefited and apportions to each a number of linear feet of excavation proportioned to the benefits which each will receive. After notice by personal service on each landowner containing the substance of the petition and a tabulated statement of the apportionments of work by the engineer, a hearing is had on the engineer's report, and the county board, at such hearing, determines whether proper notice has been given and whether the engineer's report is fair and just, and, finding these facts, approves or modifies the report. Applications for damages must be made in writing before the hearing, and failure to make such application is deemed a waiver of damages. The board, on actual view of the premises, fixes compensation for land appropriated and damages accruing from the construction of the work. Parties to the proceedings may file objections to the apportionment or to allowances for compensation and damages, and the decision of the board thereon is entered in their journal. Aggrieved parties may appeal to the district court of the county on the question of whether the improvement will be of public benefit, whether it will be practical, and on the question of compensation or damages allowed. Appeals do not affect progress of construction, if the petitioners furnish bond to protect the appellant in the event the appeal is sustained. (Secs. 31-107 to 31-117.)

**Procedure—Drainage by incorporated companies.**—After the filing of the articles of incorporation for record, the company is a body corporate under the control of its directors who appoint one of their members as president and also appoint a secretary. Thereafter directors are elected annually by vote of the members, after 20 days' notice of the election. Upon application of the directors, the county court of any county in which any of the proposed work is located will appoint three disinterested appraisers to examine the land affected and make out for each of the smallest United States Government subdivisions of same a separate schedule showing the entire amount of benefits it will receive as well as the damages it will sustain. Such assessment is returned to the secretary of the company and recorded in the clerk's office of the county in which the land is situated. From the date of the filing thereof the respective assessments become liens upon the land on which assessed for the amount of the assessment, less the damages. Notice of the assessment is given by posting, and aggrieved parties may appeal to the district court or to the county court of the county in which the improvement is located. Before actual work is begun, a survey and estimate of the cost is made, and if the estimated cost exceeds the aggregate amount of the assessment, the work may not be prosecuted. The company must divide the main line of the work into convenient sections, not exceeding 6 miles in length, and each section forms a division of the work. There must be set aside and held inviolate for each section a proportion of the resources of the company, bearing the same ratio to the whole of the resources applicable to construction as the estimated cost of each division bears to the estimated cost of the entire work. (Secs. 31-204 to 31-208.)

**Procedure—Drainage by individual landowners.**—When any person has filed a petition to drain land and the county board has approved same, the board causes a survey to be made of the ditch and the land affected thereby, with estimates of cost of construction and rights of way. The county board examines the report of such survey and, finding that the benefit derived will exceed or equal the cost of rights of way and construction, gives notice to all landowners affected of a hearing on the report of the surveyor. At such hearing the board considers the question of public utility, if so requested by any party, and may reconsider the advisability of the improvement although it is found to be of public utility. If the construction of the drain is deemed advisable by the board, it appoints three disinterested freeholders, residents of the county, as appraisers to secure the right of way for the ditch by agreement, as far as possible, and failing that, to assess damages sustained and benefits to be received by reason of the work. The appraisers ascertain and report the actual cost of construction; the amount of benefits which will accrue to each tract; the amount of damages sustained by each landowner; and they award the damages and assess to each tract benefited its proportionate share of the total cost. They make their report in tabulated form, showing the name of the owner, a description of the property, the number of acres and the value thereof, the amount of damages allowed and the benefits assessed to each. If no objection is filed to the report of the appraisers, the county board confirms same. If objections be filed, the board, after notice to all interested parties, hears such objections and amends or confirms the appraisers' report. Appeal to the county court may be had within 10 days upon notice and bond to pay costs. If no objections are filed and no appeal perfected, the county board directs the clerk to place the assessment roll on the tax books against the land affected and the assessments are collected in the same manner as other taxes. When the assessments are inadequate to complete the work or when additional funds for maintenance are necessary, the county board assesses each tract in the proportion of the original assessment and in the same manner. (Sees. 31-306 to 31-326.)

**Procedure—Drainage by proceedings within the district.**—When the articles of association have been filed in the office of the clerk of the district court, he issues a summons returnable at the next term to all owners whose lands will be benefited but who have not signed the articles, giving notice of the filing of the articles, the purpose thereof and that real estate of such owners will be affected and liable to taxation or assessment. Such owners may object to the organization, in writing, before the second day of the next term of court. Such objections are heard by the court in a summary manner and if they are overruled, the court declares the drainage district a public corporation of the State. The fact that the district contains 160 acres, or more, of wet, overflowed or swamped land is sufficient cause for declaring the public utility of the improvement. Within 20 days thereafter, the clerk of the district court submits to the Secretary of State a certified copy of the record which is filed in his office as other articles of incorporation are filed. A copy of the record and a plat of the district are filed in the office of the county clerk of each county in which any land is situated. Within 30 days and upon 15 days' notice, the clerk calls a meeting of the landowners for the purpose of electing a board of 5 supervisors who must be owners of real estate in the district, and a majority of whom must be residents of the county or counties in the district. Each acre of land in the district represents one share, and each owner is entitled to one vote for each share owned. The terms of the supervisors are determined by lot and are from 1 to 5 years, respectively, and each year thereafter an election is held for one supervisor for a term of 5 years. Upon petition of the owners of 20 per cent of the land acreage, not oftener than once in 12 months, an election may be called for the purpose of electing a new board. Vacancies are filled by the remaining supervisors for the unexpired term. The supervisors make and publish annual reports of the work done and of receipts and disbursements. They cause a topographic survey, with complete plan of drainage and protection from overflow, to be made by a competent engineer for purposes of estimating benefits and levying assessments. (Sees. 31-402 to 31-409.)

The session laws of 1929 added a section to the article relating to drainage districts organized by proceedings within a district, providing that in all districts now or hereafter organized, the board of directors, after having adopted plans and specifications, estimated the total cost of improvements, and filed the plans and estimates with the clerk of the county having the largest area of land, must then publish notice of an election on the question of proceeding with the work and incurring the

necessary liability. This election is held in the same manner as other elections and if a majority vote in favor of proceeding with the work, the board constructs the improvement, but may not incur indebtedness in a total sum in excess of the estimated cost published. No change in plans may thereafter be made by the board which will in the aggregate cost more than such estimated cost. If a majority vote against proceeding with the work it is abandoned and the board taxes each piece of property in the district, by valuation, a sufficient amount to pay the expenses incurred up to that time.

**Procedure—Drainage by vote of the landowners.**—When the county board has determined the boundaries of the proposed district, the clerk gives notice by publication in each county of the contents of the petition, the proposed boundaries of the district, and that an election will be held at a fixed time and place in the district on the question of the formation of same, and the election of a board of directors therefor. At the election each owner casts one vote for each acre of land owned by him. A majority vote in favor of the formation of the district is conclusive evidence of the public necessity therefor and that it will be a public utility. If the district be intercounty, the clerk of the county having the largest area makes a certified transcript of the proceedings and the elected board of directors files a copy thereof with the clerk of each county. Under an amendment of 1925 the district is thereupon fully organized. A majority of the directors must be residents of the county or counties in which the district is located and must own real estate which will be assessed for benefits. The first directors serve from 1 to 5 years, respectively, and one is elected each year for a term of 5 years.

The directors, with the assistance of an engineer, make a detailed plan for the improvement and apportion the benefits to the several parcels of land on a system of units. The land least benefited is apportioned one unit of assessment and each tract receiving a greater portion is apportioned a greater number of units, according to benefits received. After the apportionment of benefits, the directors, upon due notice, hear objections thereto and make such changes as may be fair and just. Having completed the apportionment, they file a detailed report thereof with the county clerk and publish same for 3 weeks in each county affected. Interested parties may appeal to the district court which determines the appeal in a summary manner and makes such adjustments of the apportionment as may be equitable. The apportionment, when finally adjusted, is the basis of all levies of assessments to pay expenses of every kind, but if there be such changes or enlargements as to make a different apportionment necessary, than it is made by the directors in the same manner. (Sees. 31-501 to 31-506.)

**Financing—Drainage by county authorities.**—When the expenses of construction, location, and compensation and damages have been ascertained, the county board determines at what time and in what manner assessments shall be paid and places such assessments on the duplicate tax list against the lands assessed. In the case of deficiencies appearing after the original assessment, supplemental assessments may be made in the same proportion. When bonds are issued, the annual interest of same may be provided by annual levies on land benefited, in the proportion of the assessments. No assessment may be voided for error in the proceedings and no injunction against the collection of an assessment will lie until the complaining party has paid such assessment into the county treasury.

When, in the judgment of the county board, the assessments are too large for immediate payment, it issues negotiable bonds of the county in not to exceed 10 installments with interest at 6 per cent. Upon determining to issue bonds, the board gives notice thereof by publication. The bonds must be sold at not less than par and remain a first lien upon the property benefited and each tract of land remains under such lien until the amount apportioned to it has been paid. All bonds are registered as provided for municipal bonds. When assessments are paid in cash, the land of such owner is released from the lien of the bonds. The bond issue is limited to the amount actually required after deducting cash payments.

The county board may levy a tax not to exceed 1 mill per dollar of the assessed value of the land sufficient to pay for the location and construction of the ditches located by the board or by a joint board. Completed drains and districts which have been dissolved remain under the control of the county board and may be repaired out of the county ditch fund. Upon dissolution, right of way of a county drainage ditch becomes the property of the county.

The county board, whenever it deems necessary, may create a county ditch fund to consist of taxes collected from county

levies and all balances remaining unexpended from such ditch fund, arising from excess of assessments after the expenses have been fully paid. The county board may, when necessary, borrow from the county general fund, returning same when practicable. (Secs. 31-121 to 31-133.)

**Financing—Drainage by incorporated companies.**—In drainage by incorporated companies, the directors may order payment of assessments in installments not exceeding 10 per cent, but unless the main line of the company's proposed work exceeds 20 miles in length no part of the assessment may be collected until the company gives bond to the State of faithful application of the funds to the legitimate purposes of the district, and any person aggrieved by the action of the company may have action on such bond.

Payment of assessments is enforced by foreclosure of the liens thereof in the same manner as mortgaged liens and the collection of damages awarded enforced by court action.

The company may appropriate lands and materials necessary for rights of way or construction by first paying into the county treasury the amount of damages assessed by the appraisers thereof.

When the work to be done by any company is estimated to cost \$3,000 or more, the company may issue bonds not exceeding the aggregate of the estimated cost, in any denomination and payable at any time and place, with interest at not to exceed 10 per cent. The company may secure the bonds by pledges or mortgages upon the assessments of benefits or any part thereof, and may provide a sinking fund for the retirement of the bonds. Bonds may be sold at a discount not to exceed 10 per cent. If such bonds are negotiable, no action may be instituted nor any defense interposed by the company, or any other person, tending to impair the validity or security of such bonds.

After the expiration of three years from the recording of the appraisers' schedules of assessments in any county, no action may be instituted to foreclose any lien on land situated in such county, unless the assessments secured by such lien shall be pledged as security for one or more bonds then outstanding, and in such case no tract of land, after a lapse of said three years, shall be liable for more than its fair proportion of the assessments pledged as security for bonds of the company, and required for the extinguishment thereof.

**Financing—Drainage by individual owners.**—The proportionate share of the cost of construction, right of way, and other expenses assessed to the individual tracts by the appraisers and confirmed by the county board are placed on the county tax books against the land affected and collected by the county treasurer in the same manner as other taxes. (Secs. 31-311 to 31-326.)

**Financing—Drainage by proceedings within the district.**—The engineer employed by the elected board of supervisors examines all the land and other property in the district and assesses the benefits which will accrue to each tract or parcel. Such assessments may be made only on the principle of benefits derived by reason of the construction of the improvement. Benefits to public streets, railroads, rights of way, and roadbeds must be assessed according to increased efficiency or value added and protection derived from the improvement. The engineer classifies the land and other property according to the benefits which each parcel will receive. The property receiving the greatest percentage of benefit is classified at 100, and that receiving lesser benefits at such less number as the proportion of the benefit may determine. When the engineer files his report, the supervisors call a meeting for a hearing of objections to the assessment of benefits and classification of the lands. The drainage district or any owner of land or other property may object to the report, and all objections are heard by the supervisors and they have power to establish the classification of all land and property and determine the total amount of benefits accruing to each parcel. They amend and equalize the classification and thereupon confirm same. Appeal may be had to the district court and the decision of such court is certified to the board for the necessary order. When the supervisors have established the classification and benefits, after hearing on the engineer's report, they levy a tax on the land and other property equal to the cost of the improvements as estimated and confirmed, plus the actual expenses of organization, administration, and damages, and, in case bonds are to be issued, they add interest thereon. The taxes are apportioned to and levied on each tract of land or other property in proportion to the benefits assessed and not in excess thereof. The supervisors determine whether the taxes shall be collected in one assessment or divided into not more than 20 annual installments. The supervisors make an annual levy of the amount of installment of taxes which will become due during the year

and be collected at the same time as State and county taxes. When bonds are issued, the amount of interest is added to the annual tax. Taxes so levied are certified by the supervisors to the county clerk of each county for record. When previous levies appear inadequate for the payment of costs and improvement, or principal or interest and bonds, the supervisors may by resolution declare the amount of the deficit and make a supplemental levy, apportioning same in accordance with the original assessment and collecting it at the same time and in the same manner. Bonds may be issued by the supervisors, by resolution adopted at a special meeting called for that purpose, in an amount not exceeding the total tax levy certified to the county clerks. Before being issued, bonds must be presented to the State auditor of public accounts for examination, and if satisfied that they have been regularly issued, the auditor records them in his office and certifies on their faces that they have been so registered. Bonds are in denominations of not less than \$100 with interest at 6 per cent and may mature at annual intervals commencing after a period of 5 years, and may run for not more than 25 years. The resolution of the board of supervisors declaring intention to issue bonds must set forth the total amount of tax assessments, the total amount of deductions on account of cash payments, the estimated cost of collection of assessments and the total amount of net tax available for the payment of principal and interest. A bond issue is divided by the board of supervisors into convenient installments with dates of maturity so fixed that the installments of taxes will be sufficient to pay the corresponding installment of bonds and interest.

The supervisors have power to borrow money, upon the credit of the district, not exceeding \$5,000, to pay necessary costs of organization, and it may sell bonds in such necessary amount, but only after passing a resolution of intention to sell and giving notice of the time and place of sale.

All assessments are liens against the property assessed for benefits from the first Monday in April of the year in which assessed and draw interest at 10 per cent from the 1st of May of the following year. By an addition to article 4 in 1929, the board of supervisors of any district organized under this article which has issued valid interest bearing bonds which are outstanding, may issue and sell refunding bonds to take up the outstanding obligations in a sum not exceeding the amount so outstanding. When refunding bonds are to be issued, the supervisors, by resolution, state specifically bonds which are to be taken up and give notice by publication and posting of the time and place where objections to the refunding of the indebtedness of the district may be filed. The board hears and determines any objections, subject to the right of appeal by interested parties to the district court, and refunding bonds so issued are paid and taxes collected for their payment in the same manner as for original bonds, and the assessment of benefits and levy of taxes remain binding obligations upon the several tracts of land and other property, but the time of payment of such taxes is extended in the same manner as the time of payment of the bonds refunded. (Secs. 31-425 to 31-454 and 31-471 to 31-474.)

**Financing—Drainage by vote of the landowners.**—Whenever a district so organized shall need the sum of \$5,000 or more, the board of directors may issue bonds for such sum, not exceeding the amount that the engineer of the district shall certify as being required. Such bonds must be payable in not more than 20 installments, may not be sold at less than par and bear 6 per cent interest. The directors give notice by publication for three weeks of their intention to issue bonds. To pay the cost of organization, the board of directors may borrow money for not to exceed 5 years on the note of the district, signed by the directors, with interest at not more than 7 per cent. The amount so borrowed is limited to the cost of the improvement as estimated by the engineer and a sworn statement of the amount, interest and maturity of such notes is recorded in the office of the county clerk. The board of directors each year determines the amount of money necessary to meet the expenses of the district for bonds, interest and otherwise, and apportions same against the tracts of land according to the units of assessment. A list of these is returned to the county clerk, placed on the duplicate tax rolls, and collected in the same manner and at the same time as general taxes.

Before bonds are issued under this article they must be presented to the auditor of public accounts for examination as to the legality of their issuance, registration, and certification. (Secs. 31-417 to 31-535.)

**Maintenance.**—In the case of drainage by county authorities, the county board will, upon petition of 5 per cent of the landowners benefited, cause a survey to be made and estimates furnished of the cost of cleaning and repairing any ditch, and after due notice and hearing, the board will order same to be

done. The proceeding is the same as for original construction. Expenses are paid out of the 1-mill-per-dollar fund, which the board is authorized to levy, so far as same is available, and any additional expense is defrayed by a special tax on the land benefited apportioned according to the original cost of construction. (Secs. 31-135 to 31-138.)

Maintenance of drainage works constructed by incorporated companies under provision of article 2 is done under the control of the board of directors. In the case of drainage by individual landowners established by the county boards, funds for maintenance are raised by assessments by the board on each tract in the same proportion and in the same manner as the original assessment. (Secs. 31-323 to 31-326.)

Drainage districts organized by proceedings in the district under article 4 are maintained by levies by the board of supervisors proportioned on the original assessments and collected in the same manner, and the board may, if it deems it advisable or is ordered to do so by a majority vote of the landowners, levy an annual tax sufficient to pay maintenance and other expenses, to be certified and collected in the same manner as other taxes. The supervisors may appoint not more than three overseers, with terms of office of one year, to police the improvements. (Secs. 31-463 to 31-467.)

In drainage districts organized by vote of the landowners, the directors are empowered to make the rules and regulations for the district and to determine each year the amount of money necessary to meet all the expenses of the district, including maintenance, which amount is placed on the duplicate tax rolls against the land and collected in the same manner as other drainage taxes. (Secs. 31-524 to 31-535.)

**Dissolution.**—In drainage by county authorities, the completed drains remain under the control of the county board and if dissolved the rights of way become the property of the county in which the drainage is located. (Sec. 31-132.)

By an addition to article 4 in the statutes of 1929, in all districts organized thereunder the board of directors may, if a majority of the landowners vote against proceeding with the work, abandon the same and tax each tract in the district by valuation in sufficient amount to pay all the liabilities incurred to the date of abandonment. (Sec. 31-470.)

In drainage districts organized by vote of the landowners, when the organization has been completed and there are no debts outstanding, the board of directors may, on its own motion or on the request in writing of 10 electors, submit at an election called after due notice by publication the question of the dissolution of the organization. If three-fifths of the votes cast at such election be in favor of dissolution, the directors cause a record of the vote to be entered in the office of the county clerk of each county having lands in the district and the drainage district thereupon stands dissolved. (Sec. 31-436.)

**Generally.**—Drainage by county authorities is accomplished in intercounty districts by petition filed with the county court of each county. A majority of the joint boards of all counties is competent to locate and establish the drain. Application for compensation and for damages and appeals from the finding of the joint board are taken direct to the district court having jurisdiction of the land immediately affected. (Sec. 31-131.)

**Overlapping.**—In districts formed by vote of the landowners under article 5, two or more districts, or districts formed under article 5 and a district formed under any other law, may overlap, provided the land in more than one district is assessed by each for the benefit received from each.

## NEVADA

(Compiled Laws, 1929, Vol. 3, Sec. 8089)

The organization and government of drainage districts in Nevada was provided for by an act of 1913 embodied in the compiled statutes as sections 8089 to 8135.

The Nevada irrigation district act of March 19, 1919, provides for drainage within irrigation districts, and the control and development of outlets for such drainage within or without irrigation districts. The following brief synopsis relates to the statutes controlling independent drainage districts.

**Jurisdiction to establish.**—Whenever a majority of the owners of title or evidence of title, within a district proposed to be organized as a drainage district, who own or control not less than one-third in area of the land; or whenever one-third of the owners of title who own or control a major portion in area of the land to be benefited, desire to provide for the drainage of same, they may propose the organization of a drainage district by petition to the board of county commissioners of the county in

which the greater portion of the land is situated, signed by the required number of owners, describing the boundaries of the district, and praying that the same be organized under this act. (Sec. 8099.)

**Procedure.**—The county clerk gives notice of the filing of the petition by publication and posting in each county for three weeks. The notice contains a general description of the petition and the time when it will be heard before the commissioners.

**Procedure—Supervisors.**—The county commissioners hear the petition, and all interested parties may appear and contest the necessity or the utility of the proposed work. The county commissioners must determine whether the petition contains the required number of signers. All deeds made for the purpose of establishing or defeating the petition are void. If the commissioners find the petition properly signed, that finding is conclusive upon the signers that they consent to and accept the provisions of this act. The commissioners may make such change in the boundaries as they deem proper and may define and establish same, provided that they may not so change the boundaries as to exclude any land mentioned in the petition which is susceptible of drainage by the system of works; nor may any lands be included which will not be benefited by the system. Any person whose lands may be drained by the system may have them included upon application.

If it appears to the commissioners that the proposed drainage will be useful for agricultural or sanitary purposes and conducive to the public welfare, they so find. They appoint three competent persons as a board of supervisors with terms of office of three years. The first supervisors hold office for 1, 2, and 3 years, respectively, and thereafter 1 member of the board is appointed each year. The supervisors lay out and construct the work and levy taxes upon the land, subject to the approval of the county board.

When the lands are in different counties, not more than two supervisors may be from one county. If the board of county commissioners finds that the drainage district will be of benefit, it declares the district created and their proclamation is promulgated by posting and publication. The form of the proclamation is set out in the statute. Upon the entering of such order of record, the district becomes a body corporate by the name stated in the petition. From the date of the entry of such order the board of supervisors constitutes the corporate authority of the district. (Sec. 8102 as amended, Stats. of 1919, p. 445.)

Section 8103, as amended by Statutes of 1919, page 447, provides that no action contesting the validity of the organization may be maintained unless instituted within 60 days. The county commissioners cause a certified copy of the order of confirmation to be filed for record with the county recorder of each county and file a copy with the county clerk of each county, and no board of commissioners of any county may permit another district to be formed including any of the land of such district, without the consent of the board of supervisors. From and after the date of said filing, the organization is complete.

Within 30 days after their appointment the supervisors organize as a board and elect a president and secretary and treasurer from their own number. They adopt a code of by-laws and regulations and appoint a competent drainage engineer to advise them. The board has the right to enter upon the land to make necessary surveys and may locate the canals and laterals on any land deemed best. They may acquire all necessary rights of way by purchase or condemnation. Right of way over State lands is granted by the act. (Sec. 8104.) Immediately after organization the board of supervisors views the land and determines if the system is advisable, and if not, what system would be; the probable cost of the work mentioned in the petition, including organization and incidental expenses; the annual cost of maintenance; what land will be damaged and the aggregate amount of all damages; what land will be benefited and whether the aggregate amount of benefits will equal or exceed the cost of construction, including incidental expenses, the cost of the proceedings, and damages; and whether the district as set out in the petition will embrace all land damaged or benefited, and if not, they report what additional land will be so affected. (Sec. 8111.)

**Procedure—Damages.**—By a statute added in 1929 (Stats. 1929, p. 453), it is provided that in the event damages are claimed as the result of drainage of subirrigated lands which have no, or inadequate, water supply for surface irrigation, the supervisors may elect, in lieu of cash damages, to furnish such surface water supply, and for such purpose may appropriate surface water developed by drainage thereof, condemn the necessary right of way, and construct the necessary works to divert the same to such land.

After the examination of said district above provided, the supervisors make a report of their findings to the board of county



commissioners. If the supervisors find, although the district has been formally proclaimed, that the cost of construction, maintenance, and damages accruing are more than equal to the benefits which may inure to the land by reason of the works, they so report, and the proceedings will be dismissed at the cost of the petitioners. But if the supervisors find that the benefits will exceed the costs and damages, they so report and the commissioners confirm such report. (Sec. 8113.)

**Financing—Assessments.**—The supervisors view each tract and assess same in accordance with the benefits to be received by it, making proper allowance for damages, if any. After the assessment list is made up, the secretary of the supervisors transmits it to the county commissioners, and within 15 days the commissioners cause notice to be given by mail to each landowner of the amount of benefits assessed against him, and a statement of when and where the commissioners will meet as a board of equalization of the drainage benefits to be levied. Such assessments immediately attach and become liens upon the lands within the district.

The supervisors, on or before the first Monday in February of each year, prepare a statement and estimate of the amount to be raised by taxation within the district for the purpose of construction and maintenance of works; liquidating drainage district warrants and paying interest thereon; paying the interest and bonded indebtedness; and creating a sinking fund, and after adding 15 per cent for incidental expenses and possible delinquencies, certify the entire amount to the county assessor who levies the same against all the lands in the district according to the equalized assessment of benefits. The taxes so assessed are placed on the regular tax rolls as separate items, and collected the same as other taxes. The county treasurer pays money as received by him to the treasurer of the board of supervisors. (Sec. 8114 as amended in 1919.) All drainage taxes attach and become liens on the real property assessed on the day on which the tax is levied in each year. (Sec. 8115.)

The supervisors have no power to incur indebtedness by issuing bonds or otherwise in excess of the express provisions of this act. Supervisors may, before the collection of the first taxes, cause warrants to be issued for organization purposes, and in case of an emergency may ask permission of the State board of finance to procure a loan. The limit of funds for such purposes shall be the equivalent of an average of \$1.50 per acre throughout the district, and the supervisors in the preparation of the next annual budget must make provision for the payment of all such indebtedness. (Sec. 8119, as amended, 1915-1927.)

**Financing—Bonds.**—Whenever the board of supervisors deems it expedient, it has the power to issue bonds of the district to run not more than 20 years at 6 per cent interest and not to be sold for less than 90 per cent of their face. The proceeds of the bonds may be used only for construction, expenses of organization and administration, and interest; provided, that before such bonds are issued a special election is held, after 45 days' notice, at which all freeholders of not less than 5 acres of land, whether residents of the district or not, shall be entitled to vote. The election shall be as nearly as possible in accordance with the general election laws of the State. Any property owner may pay the full amount of the benefits assessed before the issuance of bonds, releasing his property from the lien of the bonds. Bonds may not exceed in the aggregate the benefits assessed. The terms and times of payment of the bonds is fixed by the board of commissioners. The supervisors, by resolution, provide for the issuance and disposal of bonds and for the creation of a sinking fund to redeem same. (Sec. 8130.)

Bonds issued in accordance with this article are a lien on all the land and the improvements in the district, and the supervisors shall levy from time to time a sufficient tax to pay the annual interest charges on the bonds and provide for a sinking fund which will ultimately redeem said bonds. (Sec. 8131.)

**Maintenance.**—Maintenance is provided in the annual estimate of the supervisors of the amount to be raised by taxation, under section 8114, amended in 1919.

## NEW MEXICO

(Compiled Statutes, 1929, Chapter 40)

Article I of chapter 40 is the principal drainage statute of New Mexico, supplemented by the remaining 4 articles of this chapter relating to districts within Federal reclamation projects, drainage of State lands, drainage in unincorporated towns, and drainage assessments.

**Jurisdiction to establish.**—The district court of any county in which a portion of the land is situated may entertain a petition whenever 25 per cent of the adult owners of land, owning one-fourth of the lands within a district to be reclaimed or benefited, desire to construct one or more drains or ditches or to acquire by purchase or otherwise drains theretofore constructed, or outlets for drains, for the promotion of agriculture, and the drainage of lands; or desire to maintain and keep in repair any such ditch theretofore constructed. (Sec. 40-101.)

The court at all times has supervision of the commissioners and may require a report from them at any time and, after a hearing, may remove any or all of them upon neglect of duty or malfeasance. (Sec. 40-181.)

**Procedure.**—The petition must set forth the name of the district; a description of the necessity for the work; a general description of the ditches theretofore constructed and of the land proposed to be included in the district; the names of the owners of all land within the district, when known; and if the purpose is for enlargement and maintenance of drains already constructed, the petition gives a general description of same, and prays for the organization of the district and the appointment of commissioners (as amended in 1921, ch. 166). The court may at any time permit the amendment of the petition in form and substance to conform to the facts, if the facts justify the organization of a district. (Sec. 40-102.) Territory need not be contiguous, provided that agricultural interests will be promoted by such drainage of each part thereof, and the benefits from the proposed work in each part will exceed the costs, and that the court shall be satisfied that the work can be more cheaply done in one district. (Sec. 40-103.)

On the filing of the petition the judge fixes the time and place of the hearing thereon and the clerk gives 20 days' notice by posting, personal service, and publication. The notice states generally the contents of the petition. Notice to nonresidents is by mail and publication. Interested parties may object in writing as to the contents of the petition, number of signers, the sufficiency of notice, the constitutionality of the law, and the jurisdiction of the court. (Secs. 40-104 to 40-116.)

**Procedure—Commissioners.**—If it appears that the petition is in due form, the judge certifies that fact to the board of county commissioners of each county and the commissioners call an election, under the general election laws, within 30 days, for the election of drainage commissioners. All resident freeholders who are owners of land in the district and who are qualified electors under the general election laws are entitled to vote. The commissioners receiving the highest number of votes are elected. After the first election there is a regular election for commissioners every second year on the first Monday in December. Vacancies are filled by the district court. The removal of a commissioner from the county or counties in which the district is situated renders his office vacant. Commissioners are at all times under the control and direction of the district court. (Secs. 40-117 to 40-119.)

**Procedure—Preliminary report.**—The commissioners within 10 days elect a president and secretary from their number and personally examine the land in the proposed district and make preliminary report to the court showing whether the proposed work is necessary or will be a public utility in carrying out the purposes of the petition; whether it promotes agricultural interests and whether there are lands described in this petition which would not be benefited; and whether the total benefits will exceed the costs, together with the damages. The commissioners fix the boundaries and report same, but the boundaries may not be changed so as to deprive the court of jurisdiction. If the work as proposed in the petition is not feasible, the commissioners may suggest and report another plan to the court. Upon filing the preliminary report the court fixes the time and place of hearing thereon and gives notice by publication, describing the lands included by the report which were not mentioned in the petition. Interested parties may remonstrate at the hearing against any part of the report, such remonstrance to be in writing verified by oath. When land has been added to the district, owners shall be personally served with notice of the hearing. The court tries the issues raised, without a jury, and if it finds for the remonstrants or that the benefits of the work will not equal or exceed costs, the petition is dismissed. If the court finds the benefits will exceed the damages and costs, and that agricultural interests will be promoted, it files such findings, in writing, and makes an order confirming the report and directing the commissioners to proceed with the work. Such findings are final and conclusive in the absence of appeal to the supreme court within 30 days. Upon the entering of such order of confirmation, the drainage district thereby becomes organized by the name mentioned in the petition with the boundaries

fixed by the order, and is a body corporate with perpetual succession. The commissioners of the district become the corporate authority of same and exercise all the functions conferred by law. (Sec. 40-133 to 40-143.)

**Procedure—Eminent domain.**—Any person, firm, corporation, or association, may exercise the right of eminent domain to acquire land for rights of way for the construction, maintenance, and operation of a drainage ditch, which shall be located so as to do the least damage to private property consistent with the proper uses and construction, such land and rights of way to be acquired in the manner provided by law. (Sec. 40-186.)

**Financing—Assessments.**—After the confirmation of the preliminary report, the commissioners employ an engineer and have the necessary surveys made, lay out the proposed work, make maps, profiles, plans, and specifications, and report in writing to the court whether the route is feasible; what land is necessary to be brought into the district and the owners thereof; what land within the district will be damaged and the amount thereof; the land which will be benefited by the proposed work and assessing against same the benefits which will be derived; the total cost of the work including expenses of organization and damages to land, both within and without the district, which is the cost of construction; the sums which would be assessed against any particular tract or corporation, and if any land or corporation would derive special benefits from the whole or any part of the work, the commissioners must assess same (this applies to railroads, private corporations, towns, cities, villages, and other drainage districts). The commissioners apportion and assess the cost of construction, not specially assessed, against the land in proportion to the benefits assessed, reporting same in tabular form. They report the probable cost of maintenance and include maps, plans, and specifications. (Secs. 40-144 and 40-145.) Upon filing of the report the court enters an order fixing the time and place of hearing and notice thereof is given by publication of three weeks in each county and by serving a copy on each person and corporation who will be assessed or whose land is recommended to be included in the district, and who resides in the county. Interested parties may remonstrate against the confirmation of the report. The report may be referred back to the commissioners for report or modification if necessary. If there be no remonstrance, or if the finding of the court be in favor of the validity of the proceeding, or after the report shall have been modified to conform to the finding, the court confirms same and the order of confirmation is final and conclusive, unless there be appeal to the supreme court within 30 days. The order of confirmation may be revised or modified by the court at any subsequent term upon notice to parties adversely affected. At any time prior to making the order confirming the report, or thereafter, the court may permit the commissioners to file a supplemental report or amend the original report, and upon reasonable notice, the court will make such order as the case may require. The petitioners are liable for expenses incurred in the proceedings, if the petition is dismissed.

At the time of confirmation of the assessments, the court may order them paid in not more than 15 installments in such amounts and at such time as will be convenient for the accomplishment of the work or for the payment of such notes and bonds as the court may grant authority to issue. The court may fix the date on which the first installment will become due, not more than five years after the date of the order, and installments bear interest at 8 per cent from the date of the order.

Unless otherwise provided by the order, the assessments are payable at once and from the time of the entry of the order assessments for construction and interest thereon become a lien upon the land until paid. Any owner within 30 days may pay the assessments in cash and thereby relieve the land from the lien. (Secs. 40-148 to 40-159.) If the first assessment be insufficient to complete the work or pay the interest on the lawful indebtedness of the district, additional assessments on the land and corporations, apportioned upon the last confirmed assessment of benefits, may be made by the commissioners upon order of the court, without notice, and such assessments may be made payable in installments and collected in the same manner as the original assessment. (Secs. 40-165 to 40-168.)

Whenever outside lands are receiving benefits from the district by natural or artificial connection with its drains, or are damaging lands in the district, the commissioners may report such fact to the court and ask that such land be brought into the district and assessed for the benefits received by it from the drains of said district, or that damages be inflicted. If, after notice and hearing, the court finds the land benefited, it issues an order annexing said land and assessing benefits against same. The order is final unless appeal is taken to the supreme court within 30 days. The commissioners then assess just and reason-

able benefits against such land and such sum as may be just for construction and repair. (Secs. 40-174 to 40-180.)

The drainage commissioners may at any time certify drainage assessments and interest due to the official whose duty it is to collect county and State taxes and such official shall enter same on the tax rolls as delinquent, but in a separate column thereof, and the same shall be collected in the same manner as State and county taxes, except only that personal property and all lands other than those against which the assessments were made shall not be liable to seizure and sale therefor. (Sec. 40-402.)

**Financing—Bonds.**—Commissioners may borrow money necessary for preliminary expenses and secure same by notes bearing interest not to exceed 8 per cent and not running beyond one year from their date, and may further borrow money not exceeding the amount of the assessment for costs of construction, additional assessment and assessments for repairs, outstanding at the time of borrowing, for the construction or repair of any work authorized or for the payment of any lawful indebtedness, and may secure payment of same by notes or bonds bearing not to exceed 8 per cent interest and not running beyond one year after the last installment of the assessments, on account of which the money is borrowed, shall fall due. Notes and bonds may not be sold for less than 90 per cent of their face value. They constitute a lien upon the assessments for payment of principal and interest. No commissions other than the discount provided shall be allowed for the sale of said bonds and they are not subject to taxation by the State or any subdivision thereof. All sales of bonds must be approved by the court. Any surplus from bonds sold for original construction may be used to pay maintenance charges. (Sec. 40-169.)

The court may, upon petition of the commissioners, order the issuance of new bonds or notes, payable in such longer time as the court may deem proper, not to exceed in the aggregate the amount of all bonds or notes then outstanding, and interest thereon, and to be used only to take up and cancel the old obligations of the district. These bonds may not bear more than 8 per cent interest. (Sec. 40-170.) No bond or obligation issued by a district shall be adversely affected by any subsequent change in the assessment of benefits. (Sec. 40-182.)

**Maintenance.**—Assessments for repairs and maintenance are due on the first Tuesday in September of each year. Commissioners having charge of a completed drain file an annual report with the clerk of the court having jurisdiction, specifying in detail the repairs necessary and the sum to be assessed against each tract to pay the expenses thereof. All such assessments are apportioned on the last confirmed assessment of benefits. (Sec. 40-160.) Within 30 days after the filing of the commissioners' report, the court fixes a time for hearing of objections thereto, examines the report and hears the objections, if any, and fixes and determines the amount of the assessments and causes same to be entered and of record in the court, and a certified copy thereof is delivered to the commissioners. The commissioners have the right of entering upon the lands at all times for construction and maintenance purposes. A district may condemn rights of way over lands and railroads to reach a proper outlet, within or without the district. (Secs. 40-161 to 40-164.)

**Drainage districts upon Federal reclamation projects** (Laws of 1917, ch. 22).—When a majority of the residents owning one-third of the land within the limits of a Federal reclamation project desire to drain same, they may propose the organization of a drainage district. The district may be formed to cooperate with the United States through the construction of drainage works necessary to maintain the irrigability of land within the district; or for the purchase, extension, operation or maintenance of constructed works necessary for that purpose, or for the assumption, as principal or guarantor, of the indebtedness to the United States on account of the drainage of such district lands.

The petition is to the board of county commissioners of the county having the largest acreage in the proposed district. It states the purpose of the district, a general description of its boundaries, its name, and designates a committee of three petitioners to present same. It contains a prayer that the board will establish the boundaries and submit the question of the organization of the same to a vote of the qualified electors resident within the proposed district. The notice is published for four weeks in both English and Spanish, setting the time and place for a hearing on the petition. Upon hearing, if the petition is regular in all respects, the commissioners proceed to fix and define the boundaries of said district; provided, they may not modify the boundaries in the petition so as to change the objects of the petition or so as to exempt any land susceptible of being drained by the same system; nor shall any land which will not be benefited be included, if the owner makes application

for exemption. Contiguous lands not included, may, upon application of the owners thereof, be included. When the boundaries have been fixed, the board enters an order granting the prayer of the petition, giving the district a name, and calling an election on the question of whether the district shall be organized. They submit the names of one or more persons from each division of the district, as hereafter provided, to be voted for as directors. For the purposes of the election they divide the district into divisions, the number of which is determined by the acreage in the proposed district as follows: For districts having 25,000 acres or less, 3 directors; more than 25,000 and less than 50,000 acres, 5 directors; more than 50,000 and less than 75,000 acres, 7 directors; 75,000 acres or more, 9 directors. At the election all resident freeholders who are the owners of land within the district and who are qualified electors are entitled to vote.

The directors having organized, elect a president and appoint a secretary. They manage and conduct the affairs of the district and establish by-laws and regulations for the operation and maintenance of the system. They may also enter into obligation or contract with the United States for the construction, operation, and maintenance of the drainage works and for the purpose of fully carrying into effect the purposes of this act, including the drainage of district lands, or for the assumption, as principals or guarantors, of the indebtedness to the United States on account of the drainage of district lands. In case contracts are made with the United States, bonds of the district may be deposited with the United States at 95 per cent of their face value to the amount to be paid to the United States under any such contract, the interest on such bonds not to exceed 6 per cent per annum and such interest to be provided for by assessment and levy, and regularly paid to the United States to be applied as provided in such contract. If bonds of the district are not so deposited, it shall be the duty of the board of directors to include as part of any levy or assessment provided for by law an amount sufficient to meet each year all payments accruing under the terms of any contract. (Sec. 40-219.)

For the construction of drainage works, or the acquisition of rights of way, or the maintenance of works already constructed, or the enlargement of same, or for the assumption of the indebtedness to the United States for drainage district lands, or for the purpose of paying first year's interest on bonds, the board of directors shall, as soon as possible, estimate the amount necessary to be raised or the amount of indebtedness necessary to be assumed for such purposes and forthwith call a special election on the question of whether or not bonds shall be issued in the amount determined to be necessary. (Sec. 40-223.)

Should bonds be issued, the principal and interest thereof and all payments due or to become due the ensuing year to the United States under any contract shall be paid by revenue derived from an annual assessment upon the real property of the district, and such real property is liable for assessments for such payment. (Sec. 40-224.)

The board of directors files an annual statement of the amount needed for the ensuing year with the board of county commissioners, and the county assessor enters on the tax rolls each year the names of the owners and the description of the land subject to taxation under this act. The county commissioners fix the rate per acre necessary to be assessed on the land to raise the necessary fund and certify this rate to the board of county commissioners of each county having land in the district. The county treasurer of the county where the office of the district is located is ex officio treasurer of the district, and each county treasurer of other counties in the district remits to him monthly the amounts collected in his county for the district. The general revenue laws of the State are applicable to the collection of this tax. (Secs. 40-226 to 40-231.)

**Dissolution.**—When a majority of the freeholders owning one-third in area of the land shall petition the directors to call a special election on the question of dissolution of the district, setting forth in the petition that all obligations of every kind have been fully paid and the necessity for the continuance of the organization no longer exists, the directors, if satisfied with the correctness of the showing, give notice by publication of an election on the question of dissolution. The directors may not entertain such a petition so long as any contract with the United States remains in force, without the written consent of the Secretary of the Interior filed with the county clerk of the county wherein the district is located. If a majority vote in favor of dissolution, the district is declared by the directors to be disorganized and the board forwards to each county clerk a certificate showing the results of the election, which certificate is recorded in the respective counties. (Secs. 40-252 to 40-253.)

**Special judicial proceedings.**—The board of directors must by petition to the district court institute special proceedings to

have judicially examined, approved and confirmed, the validity of the organization of the district and all acts of the directors. In these proceedings all interested persons may appear and file their objections. The final judgment of the court, subject to appeal to the supreme court within 30 days, is *res adjudicata* in all cases arising in connection with the organization of the district and the collection of taxes therein. (Secs. 40-254 to 40-258.)

## NORTH CAROLINA

(Code of 1931, Chapter 94)

**Drainage by individual owners.**—The clerk of the superior court of any county has authority to appoint three commissioners to ascertain the necessity for drainage, the character of the work required, and the compensation to be paid to intervening owners, when the owner of pocosin, swamp or low and overflowed lands files a petition to drain same across the lands of another. (Sec. 5261.)

The commissioners, after notice to each owner of land affected, meet on the premises and view the lands of all parties and determine whether the drainage can be conveniently done except through the intervening lands. If they find that such drainage can not be otherwise conveniently accomplished, they determine the route and terminus of the work and the manner in which it shall be constructed, and assess for each of the other owners such damages as will fully indemnify them for the use of their lands in the manner proposed. In assessing such damages, benefits are deducted. The commissioners report in writing to the court and the court confirms their report unless good cause is shown to the contrary. Upon payment of the damages and costs of the proceeding by the petitioner, the court decrees that he may proceed to construct the works and he thereupon becomes seized in fee simple of the easement. There are certain prohibitions as to stopping necessary flowing springs and streams and creating a nuisance. (Secs. 5262-5263.) Any person has the right to drain into such works so constructed under the same procedure provided for the original construction, but such use must not impair the safety or utility of the works. Any party may appeal to the superior court in term time and have trial by jury. (Sec. 5269.)

A similar procedure is provided in the case of persons owning lands upon a creek, swamp, or other nonnavigable stream subject to overflow, which can not be conveniently drained on account of the water flowing from lands lying above, which higher lands will be benefited and better drained by the construction of a canal or embankment. The commissioners apportion the amount of labor to be done or assess the amount to be paid for the construction by each owner of the lands affected, and their report when confirmed stands as a judgment against each of the owners.

When a majority of the landowners or the owners of three-fifths of the land in any well defined swamp or lowland, who have agreed in writing to give a part of said land to a person or corporation who will cut a main drainway through such swamp, file with the clerk of the superior court a description of the proposed work and the names of the owners of lands affected who have not entered into such written agreement, the clerk has authority, after due notice, to appoint three disinterested commissioners to assess the damages and benefits to any owner not signing the written agreement. (Sec. 5284.)

The commissioners, after viewing the lands, estimate the damages and report to the clerk, who forthwith requires of the contractor for the drainway a bond for twice the sum of the total estimated amount of damages, conditioned upon the payment to the landowners of the amount of damages that may thereafter be assessed. Thereupon the contractor is authorized to proceed to construct the improvement, whether the owners have consented or not. After the drainway is completed, the person constructing same is entitled to recover from such landowners an amount equal to the benefits to accrue to them, by reason of the drainway, and is also required to pay the amount of damages in excess of the benefits. The recovery from any owner is limited to the benefits to accrue to the specific land situated in such swamp or lowland or adjacent thereto. The amount so recovered constitutes a lien upon the land regardless of who may be the owner at the date of such recovery.

In case of petition by an individual to drain swamp or flat lands through the lands of another, the original work is financed by the petitioner. In the case of petition by a servient owner against a dominant owner who will likewise be benefited, the commissioners apportion the work to be done or the amount to be paid by each. When the proceeding is for the drainage of a well defined swamp under agreement for construction, the pro-

portionate cost of the drainway to be paid by the owners not signing the agreement is assessed by the commissioners appointed by the clerk.

**Drainage of creeks, swamps, and branches.**—The county commissioners of any county upon petition of 3 citizens for the draining of any creek, swamp, or branch, upon the plea of health or to promote agricultural interests, have authority to order the county surveyor to summon three disinterested freeholders to constitute a board, of which the surveyor is chairman, to determine and report the necessity and public utility of the drainage and the character of the works required. (Sec. 5290.) The petitioners must deposit with the county treasurer the sum of \$25 for the payment of current expenses.

The board inspects the lands, hears evidence from interested parties and determines whether such land should be drained, either on the plea of health or for the benefit of agricultural lands. If the board decides in the affirmative, it locates a drain, determines its dimensions, and assigns to the landowners the amount of labor to be performed, and the amount of money to be paid for the purposes of construction, in proportion to the amount of land drained or the pro rata benefits received. No owner is required to commence the work which he is to do until the person next below him shall have completed his work according to the specifications. Any person refusing to comply with the requirements of the board is guilty of a misdemeanor and subject to fine and imprisonment. (Sec. 5291.) After construction, each person whose lands are drained is required to keep the ditch open and free of obstruction on his land. (Sec. 5293.)

**Drainage by corporations.**—Upon the application of any owner in fee of swamp lands which can not be drained except through the lands of another proprietor in fee, situated at a lower level, who will also be benefited, the superior court of any county has authority to appoint 3 commissioners to ascertain and report the necessity, practicability and character of works required, and, upon confirming such report, to declare the owners of such land to constitute a body corporate for the purpose of drainage. (Sec. 5295, et seq.) The petition must show ownership in fee; the like title of the owner or owners of lands at a lower level through which it is desired to construct the works; that such lower land will be benefited; that the lower owners desire the construction; and that the land can not otherwise be drained. (Sec. 5295.)

Upon the establishment by the petitioner of his allegations, the superior court appoints 3 commissioners who inquire and report: Whether the land can be conveniently drained otherwise than through the land of some other person; through what land the drainage canal should properly pass; a description of such land and the value of such portions thereof as would be benefited; the dimensions of the canal and its probable cost, with a road on its bank; and the proportion of benefits after deducting all damages which each proprietor would receive from the canal and the road, if the latter is deemed necessary. (Sec. 5296.)

If it appears that the land in the lower levels will be increased in value 25 per cent or more within one year after the completion of the canal, and that the cost of the improvement will not exceed three-fourths of the present estimated value of the land to be benefited; and that the proprietors of at least one-half in value of the land to be affected consent to the improvement, the court will confirm the report with such modifications as may be just and equitable. (Sec. 5298.)

Upon final confirmation of the report of the commissioners, the proprietors of the several pieces of land adjudged to be benefited are declared to be a corporation, of which the capital stock is double the estimated cost of the improvement, and in which the several owners of land benefited are incorporators, holding shares of stock in the proportion in which they are judged liable for the expense of constructing and maintaining the improvement. (Sec. 5299.)

The ownership of stock in the corporation is indissolubly annexed to the ownership of the parcels of land adjudged to be benefited, and the shares run with the land in any conveyance or descent for longer than three years, even though such shares be not mentioned in the instrument of conveyance. (Sec. 5302.)

#### DRAINAGE DISTRICTS

**Jurisdiction to establish.**—The clerk of any superior court of any county has authority to establish levee or drainage districts, either wholly or partly located in his county, upon petition of a majority of the resident landowners in the proposed district or of the owners of three-fifths of all the land which will be affected or assessed.

**Petition.**—The petition must give a description of the land; state that it is subject to overflow or too wet for cultivation; that the public health and welfare will be promoted by drainage; and must set forth the character of the proposed improvements. The petition must also show whether or not the proposed drainage is for the reclamation of land not then fit for cultivation, or for the improvement of lands already under cultivation; and that, if for reclamation, the land reclaimed will be of sufficient value to justify the undertaking. A bond in the amount of \$50 per mile for each mile of the works, conditioned to pay the costs of the proceeding in the event of dismissal, must accompany the petition.

**Procedure.**—After due notice of the filing of the petition, the clerk appoints a disinterested engineer and two resident freeholders of the county or counties as a board of viewers. The engineer is appointed upon the recommendation of the State geologist, and no member of the board may own land within the boundaries of the district. The clerk makes an estimate of the expenses incident to the work of the viewers, embracing the period up to the establishment of the district and appointment of a board of drainage commissioners, and the board does not enter upon its duties until the amount so estimated and assessed by the clerk is paid to him in cash as a court fund. After the district is established and a board of drainage commissioners appointed, this assessment is refunded out of the first money received from the sale of bonds or otherwise. (Secs. 5315-5319.)

The board of viewers examines the land, determines the boundaries of the district by survey, if necessary, and reports to the clerk within 30 days whether the drainage is practicable and whether it will improve a public highway or be of public benefit; whether it will benefit the land; and whether the proposed district is a reclamation or an improvement district. If it is a reclamation district, the viewers report whether the drainage is justified by the additional value given to the land. They file a map of the district showing the location of the improvement and lands that will be affected thereby. (Sec. 5320.)

If the viewers report adversely to the drainage and the commissioners confirm the report, the petition is dismissed at the cost of the petitioners. It will also be dismissed if it is a reclamation district and the benefit will not be justified by the cost. If the viewers report the drainage practicable and conducive to the public benefit, and the court so finds, then the court fixes a time for further hearing on the report, after 15 days notice by publication and posting. (Sec. 5321.)

At the time set the court hears any objections to the report of the viewers which may be presented. If there are lands included in the boundaries of the district which will not be benefited, they will be excluded and lands not in the boundaries but benefited will be added, after proper notice and hearing. The court having determined the boundaries of the proposed district, declares the same established, giving it a name or number. If it is necessary that the outer boundaries include land which has been excluded, such land is not assessed for any drainage tax, but rights of way may be acquired where necessary. If the proposed district be for reclamation, the court determines whether the increased value justifies the expense. Any interested party may appeal to the superior court in term time, giving bond not to exceed \$200 to pay costs. The power of eminent domain is conferred in the acquisition of rights of way where they cannot be obtained by agreement, and compensation therefor is paid by the drainage commissioners out of the first funds coming to their hands from the sale of bonds or otherwise.

After the district is established, the court refers the report back to the board of viewers for a complete detailed survey and maps of the district, and to assess the damages accruing by reason of the construction of the improvement, apart from any benefits which the land will receive from such work, which damages are paid by the drainage commissioners when funds come into their hands. The viewers classify the lands in the district with reference to the benefits they will receive from the improvement. The degree of wetness of the land, its proximity to the drain, and the fertility of the soil are considered in determining the amount of benefit it will receive. The land is divided into five classes marked from "A" to "E" respectively. The whole of the land of any one owner need not be all in one class. The total number of acres owned by each person in each class, and the total number benefited, are determined. The total number of acres in each class in the entire district is determined and reported in tabular form. Lands may be included which are not benefited for agriculture, but which will receive benefit in health condition, and such land may be assessed, without regard to the ratio, at such sum per acre as will fairly represent the benefits. Villages and towns and small tracts of land located outside thereof may be included in the district and where it is impracticable to

classify the benefit by the ratio provided, the viewers may assess each parcel without regard to the ratio and at a higher rate per acre. If the streets or other property of an incorporated town are benefited, the corporation may be assessed in proportion to such benefit. (Sec. 5329.)

When the viewers' report is accepted by the court, a final hearing is had thereon after due notice by posting and publication. After such hearing, if the court is of the opinion that the cost of construction together with the damages assessed is not greater than the benefit which will accrue to the land affected, the report is confirmed. Aggrieved parties may appeal to the superior court within 10 days and the appeal has precedence in consideration. (Sec. 5332.)

After the district is established, the court appoints three drainage commissioners who must first be elected by the owners of land within the district. The clerk appoints one of the commissioners as chairman and their terms begin to run immediately for 1, 2, and 3 years, respectively, as determined by lot or by the clerk in his discretion. Thereafter one commissioner is elected each year. (Sec. 5339.)

The drainage commissioners, with the approval of the State geologist, appoint an engineer as superintendent of construction and thereupon let contracts for the work on competitive bids. The clerk provides a suitable drainage record book in which is kept the complete record of every drainage transaction in his county.

**Financing.**—When the classification of the land and the ratio of the assessments to be made on the different classes is confirmed by the court, the board of drainage commissioners ascertain the total cost of the improvement, including damages awarded and all incidental expenses, together with an amount, not exceeding 10 per cent of the estimated actual cost of construction, sufficient to pay maintenance charges for three years after completion. They certify to the clerk the total cost so ascertained, and if such cost is less than an average of 25 cents per acre on all the land, the commissioners forthwith assess the land therefor, in accordance with the classification, and such assessment is collected in one installment in the same manner as State and county taxes. If the total cost exceeds an average of 25 cents per acre, the drainage board gives notice by publication and posting of their intent to issue bonds for the payment of the total costs of the improvement. Any landowner may pay his assessment in cash and have his lands relieved of liability, except for future assessments. Failure to pay the assessment in cash is deemed consent to the issuance of bonds. (Sec. 5352.)

After the expiration of 15 days the drainage board may issue bonds of the drainage district for an amount equal to the total cost of the improvement, less such amount as has been paid in cash. It is optional with the board to issue serial bonds in denominations of \$100 to \$1,000 and at not more than 6 per cent interest payable semiannually. The first installment must mature in not less than 3 years or more than 6 years. Each annual installment shall not be less than 5 per cent nor more than 10 per cent of the total bonds issued. (Sec. 5354.)

The bonds must show on their face whether they are for a reclamation or an improvement district. Assessments are levied each year to yield 10 per cent more than the total of principal and interest due in such year. When the excess accumulates until the aggregate surplus amounts to more than 15 per cent of the total principal of outstanding bonds, then such surplus above 15 per cent may be available for maintenance. After all assessments have been collected, except the last, if the surplus accumulated amounts to more than 5 per cent of the total issue, then the drainage commissioner may apply such excess to the reduction of the total amount of the last assessment. The first and second semiannual installments of interest may be paid by the treasurer of the district out of the fund in his hands for maintaining the district for the period of three years after the completion of the work. This payment is reimbursed to the maintenance fund from the accumulated annual additional assessment of 10 per cent when it exceeds for any one year 15 per cent of the total principal of bonds outstanding. Thereafter separate accounts of the two funds must be kept. (Sec. 5355.)

If bonds be in default for 6 months, the holders have right of action against the district or the board wherein the court may issue a writ of mandamus against the district and its officers including the tax collector and the treasurer, directing the levy of a special assessment in such sum as may be necessary to cover the principal and interest of the overdue bonds. Right of action is vested in holders of bonds in default to institute action against officials under their official bonds for failure to perform any duty imposed by the provisions of this chapter. (Sec. 5356.)

When it develops that the payment of bonds at maturity would constitute an unreasonable burden or that the welfare

of the district and the owners would be promoted, the drainage board has power to refund outstanding bonds or any part thereof and issue new bonds therefor. The refunding bonds are divided into installments not exceeding 10 per cent nor less than 5 per cent of the outstanding bonds so refunded. The first installment of principal may be made payable not to exceed six years from the date of the refunding bonds and in the meantime annual assessments are made for the payment of interest.

After the issuance of bonds, the drainage board immediately prepares an assessment to provide money sufficient to pay the interest on the bonds for one year. A second assessment makes like provision for the payment of interest for the next year. During the year previous to the maturity of any installment of bonds, the assessment provides funds for the payment of principal and interest for one year. Thereafter, the annual assessment provides for the payment of principal and interest until the outstanding bonds are paid. The assessments are collected like State and county taxes. (Sec. 5361.)

Only the land assessed in the drainage proceeding shall be liable for drainage taxes or assessments and no other property of an owner may be sold therefor. (Sec. 5362.)

**Maintenance and repair.**—The improvements in a drainage district when completed are under the control of the drainage commissioners, and it is their duty to keep same in repair. For this purpose they may levy assessments on the land in the same manner and in like proportion as the original assessment. (Sec. 5349.)

The board may sell bonds for maintenance and improvement, after petition to the clerk of the superior court alleging that the cost would be more than \$1 per acre for all the land, and the levying of one assessment would be unreasonable. The same proceeding as for organization is had and if the viewers favor a bond issue, it is made. (Sec. 5373.)

If the drainage board is of the opinion that it would aid the sale of maintenance and improvement bonds, or if it is necessary under the provisions relating to the issuance of refunding bonds, they may, with approval of the clerk, add to the amount estimated a sufficient amount to pay all outstanding obligations of the district, leaving this the only bond issue. The proceeding is then the same as for an original bond issue.

**Subdistricts.**—Subdistricts may be formed by owners of land in main districts in the same manner provided for the organization of the main district. Such formation of a subdistrict does not operate or release the land therein from any of its obligations to the main district, nor from any assessments subsequently made for the completion and maintenance of the main district. Drainage commissioners in the subdistricts have control of all drainage matters within that subdistrict, except such as belong exclusively to the main district.

**Intercounty drains.**—Where any drainage district contains land located in a county other than the one in which it was established, the clerk of the superior court having jurisdiction prepares tax bills each year covering all the land located in such other county or counties. He transmits same to the sheriff or tax collector of such other county with an order for their collection, on a prescribed form. Thereupon such drainage assessments are valid in such other counties and have the force and effect of a judgment against the land so assessed.

## NORTH DAKOTA

Drainage of agricultural lands in North Dakota is accomplished by county drains established by boards of county commissioners and controlled by a board of drain commissioners appointed by the county board; by drains wholly within a township established by and under the control of the township supervisors; and drains constructed wholly at the cost of individuals or corporations. The following synopsis of the drainage laws of North Dakota is taken from the Compiled Laws of 1913 and the Supplement of 1925, chapter 37. The only important addition to the drainage statutes since 1925 is a law of 1927 relating to drains which have been established, but the construction of which has been abandoned or postponed for two years or more.

**Drain commissioners.**—The board of county commissioners of any organized county in the State is, by majority vote of all of its members, authorized to appoint three freeholders of the county as a board of drain commissioners. The county board may take this action on its own motion or on petition of any interested person. The three drain commissioners are appointed

for 1, 2, and 3 years, respectively, and thereafter for a term of 3 years and until their successors qualify. (Laws of 1921, ch. 58.) No person holding a State or county office is eligible to be drain commissioner, and the office of any commissioner accepting such State or county office is automatically vacated thereby. (Revised Code of 1905, sec. 1847.)

**County drains—Procedure.**—A petition for the construction of a drain, signed by at least six freeholders whose property will be affected, is filed with the drain commissioners of the county and sets out the starting point, terminus, and route of the proposed drain. If the leading purpose of the drain is sanitation, the petition must be signed by a number of citizens affected sufficient to satisfy the drain board that there is a public demand for the improvement. The board requires bond from the petitioners, conditioned on the payment of costs of the proceedings and survey in the event that it is determined that the cost of the improvement would be more than the benefits to be derived, or if a majority of the owners of land which would be subject to assessment ask for the discontinuance of the proceedings. The drain commissioners examine the line of the proposed improvement, and if of the opinion that it is necessary for the public good, enter a resolution to that effect on their journal and designate a competent engineer to survey the proposed route and determine the proper dimensions of the drain. The surveyor prepares maps, profiles, specifications and estimates of cost and files a copy of his report with the county auditor as well as with the drain board. The drain commissioners may alter the suggested line of the drain or extend it to secure a better outlet. So far as practicable, the drains must be located on the dividing line of sections or subdivisions thereof. When the surveyor's report is filed and upon 10 days' notice by posting and registered mail, a hearing is had by the drain commissioners at which interested parties may present objections to the report and introduce evidence relative thereto. If at this hearing a majority of the owners of land which will be subject to assessment present a petition asking that the proceeding be discontinued, the drain commissioners must by resolution terminate the proceeding. (Laws of 1925, ch. 131; laws of 1921, ch. 58.)

If upon examination of the surveyor's report or upon the hearing, or upon a subsequent trial on appeal to the district court, it appears that there was not sufficient ground for the petition or that the drain will cost more than the benefits to be derived, the drain commissioners must deny the petition at the cost of the petitioners who are jointly and severally liable therefor. If the contrary appears, however, the drain commissioners make an order establishing the drain, describing it, and giving it a name which is recorded. This action is subject to appeal to the district court within 30 days, upon notice and bond to pay costs in the event of failure. The appeal is heard by the district court without a jury and even at this stage, if the court determines that there was not sufficient reason for the petition or that the cost of the improvement would exceed the benefits to be derived, it will dismiss the proceeding. (Laws of 1915, ch. 123.)

The drain commissioners may acquire rights of way when they are not conveyed by the owner, in the manner prescribed by law for condemnation proceedings, and where assessed lands are not contiguous to the drain, rights of way over the intervening lands may be acquired in the same way. (Laws of 1921, ch. 58.)

When the damages to which owners of land to be used for rights of way are entitled have been ascertained, the drain commissioners may issue warrants for same upon the proper county treasurer, payable out of any funds in his hands for the construction of the drain, and may negotiate such warrants at not less than par and pay the money received therefrom into court for the benefit of the owners of rights of way. If the warrants can not be negotiated, the drain board must assess the per cent of cost of acquiring the right of way in the manner provided in section 2469, and no further steps may be taken until a special tax is levied to pay for the same and is collected and paid into court. (R. S. 1905, ch. 1824.)

**County drains—Financing.**—Upon acquiring the rights of way, the drain commissioners assess the percentage of the cost of constructing and maintaining the drain, and of the cost of the rights of way therefor, which any political subdivision of the State must pay by reason of the benefits of such drain to the public health, convenience and welfare. The commissioners likewise assess the amount which each parcel of land or other property must pay by reason of the benefits accruing either directly or indirectly from the construction of the drain, whether such lands are immediately drained thereby or can be drained only after constructing connecting laterals. (R. S. 1905, sec. 1826.) The drain commissioners give 10 days notice

by publication, posting and registered mail of a hearing to review such assessment of benefits, at which hearing all complaints may be presented and the assessments are confirmed as corrected or as originally made. Should a majority of the landowners subject to assessment believe that the assessments have not been fairly or justly made, or that the drain is not properly located or designed, they may petition the State engineer to review the case. Upon receipt of such petition, the State engineer reviews the assessments and the location and design of the drain. If it appears to him that the assessments are not equitable, he may correct same and his decision is final. If it appears to him that the drain is improperly located or designed, he orders a new location and design which must be followed in constructing the drain. (Laws of 1925, ch. 131.)

After the assessment of benefits has been made and confirmed upon the hearing, and the specific amount of each assessment has been ascertained as subsequently provided, the drain commissioners make return of such list to the county auditor who records it in a book provided for that purpose. Such return contains the petition for the drain, the minutes of the survey signed by the surveyor, a copy of the order establishing the drain, conveyances of rights of way, and the assessment of benefits. (Law of 1907, ch. 93.)

The drain commissioners thereupon divide the work into convenient divisions for construction and give notice of a meeting at which contracts for construction will be let. After the contracts are let, the drain commissioners make a computation of the entire cost of the drain including location, establishment, rights of way, surveys, interest, cost of construction and all other expenses. The sum so computed is the cost of the drain upon which the specific amount which each piece of property benefited is to pay is determined. (R. C. 1925, sec. 2473.)

After so fixing the cost of construction, the drain board carries out upon the assessment list the specific amount which each municipality and lot or tract of land or other property benefited is liable to pay on account of procuring rights of way or construction, or both, according to the percentage which the board has already fixed. A copy of this list is served on the clerk or auditor of each municipality against which taxes are to be assessed. Such list is then filed with the county auditor of the county in which the municipality or the land to be affected is situated, and the auditor extends same upon the tax lists as a special tax, specifying in such lists the particular drain for which the tax is assessed and this tax is collected in the same manner as general taxes. When such special tax is for the right of way, it is paid into court by the county treasurer for the benefit of owners of rights of way, and the taxing authority of each municipality against which assessments are made must include in the first general tax levy thereafter the amount assessed against it by the drain commissioners. (Laws of 1907, ch. 93; R. C. 1905, sec. 1831.)

In case the amount realized is not sufficient to pay for the rights of way or to complete the construction of the drain or to pay all expenses, or to retire any bonds issued for construction, or in case an enlargement or extension of the drain becomes necessary, a further assessment may be made to meet the deficit, and the amount so assessed is levied and collected in the same manner. (Laws of 1911, ch. 124.)

**County drains—Financing—Bonds.**—The county commissioners may issue bonds to be known as drainage bonds, in such sum as may be necessary to defray the expenses of obtaining rights of way and of locating and constructing drains. The word "expenses" is considered to cover every item of cost from the inception to the completion of the drain. Bonds may not have a longer maturity than 15 years; they bear 7 per cent interest; and they are paid from the revenues derived from taxes levied on property benefits. Bonds may not be sold for less than par. (Laws of 1907, ch. 93.)

Separate sinking funds are provided for each drain for the construction of which bonds have been issued. Each year the county commissioners at the time of levying general taxes levy upon the property assessed on account of the construction of any drain, a tax sufficient to pay the annual installment of principal and interest on any bonds which may have been issued, except in cases where the owners of the land have paid the full amount of assessments in cash. The sum so collected constitutes the sinking fund and may not be applied to any other purpose than the payment of bonds for which the fund was created, and interest thereon. No county is liable for the payment of any bonds issued under the provisions of this law, but such bonds are payable only out of the sinking fund. (Laws of 1921, ch. 59.)

**County drains—Maintenance.**—In the original assessment of the percentage of the cost of the improvement which each party

benefited must pay, the drain commissioners may include the estimated cost of maintenance under section 2469. (R. C. 1905, sec. 1826.) All drains constructed in the State are under the control of the board of county commissioners and they must keep same open and in repair. When a drain is in more than one county, the respective boards maintain the portion in their counties. The cost of maintenance is assessed, levied, and collected in the same manner as the cost of construction, and in cases where no assessment for maintenance has been made, the board of county commissioners must make such assessment when needed. Any repairs not in excess of \$150 in any one year may be done by day work or contract without advertising, and the expense is paid out of the county road and bridge fund. (Laws of 1925, ch. 130.) By acts of 1919, chapter 113, the power was conferred on drain commissioners to deepen and widen drains already constructed where necessary and to alter the channels of streams, construct laterals and to extend drains to secure proper outlets. The proceeding in each instance is the same as for original construction. (Laws of 1919, ch. 113.)

**Township drains—Procedure.**—Any six resident freeholders of an organized township may file a petition in writing with the board of supervisors of such township, asking for the construction of a drain within the township for the drainage of agricultural lands. The petition must show the general course of the drain. The board of supervisors will call a special township meeting for the purpose of considering the advisability of the improvement. (Laws of 1919, ch. 114; laws of 1915, ch. 124.) If it appears that the ditch is necessary and desirable and will not cost more than \$3,000, the question is submitted to a vote of the eligible voters upon whether such ditch shall be constructed by the township, and if the vote is favorable, the supervisors proceed to have the same constructed and the cost is paid out of the township funds. If the drain will cost more than \$3,000, or if a majority does not vote in favor of its construction, then the supervisors require the petitioners to enter into a bond to pay all costs of survey and preliminary examination, in the event that the supervisors determine that the cost of the drain will be greater than the benefits to be derived therefrom. Upon the filing of such bond, the supervisors proceed to inspect the route of the proposed drain and procure a competent person to estimate the cost of construction. They determine whether the benefits will exceed the cost and if they so determine, then they ascertain what lands will be benefited and the percentage of such benefit to the several pieces. A list of the lands benefited and the amount of such benefit to each is posted, together with notice that after 10 days the board will review the fixing of such benefits at a hearing at which any interested person may appear and present evidence as to the reduction of such benefits to any parcel of land. After hearing, the supervisors make such corrections of the benefits as seem warranted, and the proceeding is entered in the minutes of the township meeting. The records so entered must show the amount charged against each piece of land affected and the amount so shown becomes a lien upon such parcel. The amount is certified by the township clerk to the county auditor and spread as a special assessment against the lands shown. (Laws of 1919, ch. 114; laws of 1915, ch. 124.) The board of supervisors thereupon proceeds to construct the drain either by contract or day labor, but no drain may be constructed which will cost more than \$3,000, and the supervisors have authority, if in their opinion there is a general benefit to the property and roads in the township as well as to the land assessed, to appropriate from the general funds of the township an amount not in excess of \$500 for use in constructing the drain. (Laws of 1919, ch. 114.)

**Intercounty drains.**—In the case of a drain in more than one county, petitions are presented to the commissioners of each county asking for the establishment of such drain in their county, and each board determines the necessity or expediency for establishing such drain. The boards meet in joint session and agree on the proportion of damages and benefits accruing to the land in each county, considering the drain as a whole. They apportion the cost of establishing and constructing the entire drain ratably and equitably upon the lands in each county in proportion to the benefits to accrue. Written reports of such apportionment, signed by the drain commissioners of all the counties, are furnished to each county auditor. Upon the filing of such reports, the several boards of drain commissioners meet and assess an amount sufficient to pay the portion of the cost of such drain in their respective counties. (R. C. 1905, sec. 1836.)

**Abandonment.**—Practically all drains being either county or township, no specific provision seems to have been made for the dissolution or abandonment of drains; however, a statute of 1927 (laws of 1927, ch. 133) provides that where a petition has been presented to the drain commissioners of any county having

among its purposes the drainage of agricultural lands and the drain has been established and the construction thereof has been abandoned or discontinued for a period of two years or more and no levy has been made to provide a fund to pay the expenses of establishment, survey and other expenses, the drain commissioners apportion the amount of outstanding warrants for such expenses to the lands and municipalities that would be benefited by the proposed drain, and such sums so apportioned are levied and assessed against such property and the fund so derived is used to pay the outstanding warrants.

**Individual drains.**—Any person, firm or corporation may petition the drain board for a drain and deposit a bond with the board conditioned to pay all the costs thereof. Then the drain board proceeds in accordance with chapter 37 of the compiled laws of 1913 to establish a drain. No person or corporation may construct a lateral to connect with the main drain so constructed without first petitioning the drain commissioners to be permitted to do so. The commissioners ascertain the proportionate share of the cost of the main or original drain which the petitioners should pay. When this sum is paid into the county treasury, they may construct the lateral. The money so received is pro rated among the persons who paid for the original drain. (Laws of 1911, ch. 125.)

**Generally.**—Article 111 of chapter 27 specifically empowers drain commissioners to cooperate with drainage authorities of adjoining States in establishing drainage areas and systems on boundary-line waters. By the laws of 1907, chapter 87, a boundary drainage commissioner was established for a period of two years to assist in organizing drainage and flood control districts and to accomplish uniform methods of drainage and reclamation in boundary-line waters.

## OHIO

The drainage laws of Ohio are compiled and codified in the Complete Ohio General Code, effective January 1, 1931. A comprehensive system for the establishment of drainage enterprises in aid of agriculture is provided for single county ditches and is adapted, with very slight variations, to joint county ditches, interstate county ditches and township drains. These are all public enterprises and under the control of the boards of trustees of the several counties or of the township trustees. The conservancy act of February 17, 1914, provides for conservancy districts as corporate bodies under the control of directors, but the main purpose of this act was flood prevention and drainage is incidental. No reports were received from conservancy districts.

Among the provisions of the Ohio law the following are noteworthy: (1) Bonds issued to raise funds for the construction of an improvement are the general bonds of the county, guaranteed by its full faith, credit, and resources. Bonds are redeemed out of the general ditch improvement fund, into which all drainage taxes are paid. (2) It is a universal provision of drainage laws that a prerequisite to the establishment of a drainage enterprise is that it shall be of public utility and benefit. In Ohio the law provides that the part of the assessment that is for benefit to the general public by reason of the improvement being conducive to the public welfare shall be paid by the public and be assessed against the county. (3) When a drainage improvement has become the outlet for agricultural drainage and has been established and used for seven years or more, it is deemed to be a public watercourse and the public has therein the rights and privileges which pertain to natural watercourses. Such drain is, however, subject to improvement upon petition and in the manner provided for other drains.

**Authority to organize.**—The board of county commissioners of any county may cause to be constructed any drain or levee, may improve any natural watercourse, or may vacate any drain, when, upon petition therefor from any owner of any lands they find the drainage of such lands to be necessary; that the construction of the work will be conducive to the public welfare; and that the cost will be less than the benefits conferred.

**Petition.**—Any owner may file a petition with the auditor of the county in which a part of the lands to be benefited are situated. The petition alleges that the improvement is neces-

sary and will promote the public welfare; indicates the nature of the work required and asks that it be done; gives the names and addresses of the owners of land which will be benefited or damaged; and is accompanied by bond of \$200, plus \$50 per mile of the estimated length of the work, conditioned to pay the costs in the event that the petition is denied.

**Procedure.**—The auditor notifies the county commissioners of the filing of the petition and they fix a time between 20 and 30 days thereafter for a view of the land beginning at the upper terminus of the improvement, and also fix a date within 2 weeks after the view for the first hearing on the petition. A written notice of the substance of the petition and the date for the view and hearing is served on each owner of land affected. Nonresidents are served by publication and mail.

The commissioners meet at the upper terminus of the improvement at the time set, hear any evidence offered for or against the improvement, and go over the line of the work and each lateral. If they find in the affirmative on the above requirements, they enter an order in their journal granting the petition and determining the route, branches, and method of construction of the improvement, and in doing this they may or may not adhere strictly to the petition. The route and branches so fixed may not thereafter be changed except upon application of an owner and notice to all owners and hearing thereon.

A copy of the order of the commissioners is certified by the auditor to the county surveyor who makes a survey of the proposed improvement, with maps showing the location of the lands proposed to be assessed; profiles showing the necessary excavations; and an estimate of the cost of construction. The physical relations of the improvement to the land of each separate owner is indicated on the maps. The surveyor takes necessary levels for contour purposes to determine the entire area subject to drainage by the one system, and the land that will be specially benefited thereby. He establishes permanent bench marks at intervals of not less than 1 mile and indicates the relation thereof to fixed United States Geological Survey elevations. He prepares a schedule of the names of each owner of land which will be affected, the number of acres to be benefited by the improvement, and the amount that such land ought to be assessed. He makes working specifications for the construction, dividing it into such sections as may be expedient, and makes estimates of costs, including inspection while the work is in progress, and the costs of his survey.

Upon the filing of the surveyor's report, interested parties are notified by publication and mail of the date set for final hearing, and that claims for damages and compensation must be filed by that date. At the final hearing, the commissioners consider all the evidence presented and determine the damages and the value of the land taken for the improvements, entering their findings in their journal, and authorizing the auditor to draw warrants on the county treasurer payable from the general ditch improvement fund for the amounts awarded. These warrants must be paid before any work is done. The commissioners make such changes in the character and extent of the improvement as they deem proper to better accomplish its purposes, after hearing all persons affected by such changes. At this final hearing the commissioners may, upon consideration of all the evidence as to costs, damages, compensation for land taken, public benefit, and sufficiency of outlet, set aside their former order and dismiss the petition at the cost of the petitioners, except surveyor's costs. If the petition is not dismissed, the commissioners then hear competent evidence presented by any owner, against any assessment; view the land again, if necessary; and confirm the assessments as reported by the surveyor, or as corrected or amended. They order the surveyor to let contracts for construction of the improvement and determine when the assessment shall be paid, and whether bonds shall be issued. That part of the assessments which is apportioned for benefit to the general public by reason of the improvement being conducive to the public welfare, is assessed against the county as a whole. The apportionment against State and county roads is assessed against the county.

When a part of the cost of construction is apportioned to a township by the commissioners, trustees of such township make an annual levy upon the grand duplicate of the township sufficient to pay said apportionment, but not in excess of five-tenths of 1 mill per dollar. School boards holding lands for school purposes which have been assessed pay the assessment out of the contingent fund of the school district and if necessary increase the levy for that fund.

When lands owned by a county, or highways, need drainage, and such drainage will also benefit other lands, the commissioners may file a petition for the improvement with the court of common pleas, and the procedure is the same as in county

drains, with the clerk of the court performing the duties of the auditor.

Any party of interest may appeal to the court of common pleas from any final order of the commissioners, and any appeal on the questions of compensation or of damages awarded has the right to trial by jury. Proceedings in error may be had to the State court of appeals. Transcripts of judgments on appeals are certified to the county auditor and entered by the commissioners in their journal and thereupon, if the judgment be in favor of the improvement, the commissioners proceed therewith from the point at which the proceedings were terminated by the appeal.

**Financing—General ditch improvement fund—Bonds.**—The surveyor in making his estimates of assessments against each tract, and the commissioners in modifying or confirming same, must levy such assessments in the proportion that the land is specifically benefited and not otherwise. Upon the approval of contracts for construction the commissioners order the auditor to make a pro rata reduction of the confirmed assessments by the difference between the estimated cost of construction and the contract price. The assessments so reduced, but with the cost of location included, are levied upon each parcel of land as of the date of the commissioners' approval of the contracts for construction. These assessments are placed on the duplicate tax roll by the auditor and thereupon become liens on the respective lands. At the final hearing, the commissioners determine when the assessments are to be paid in semiannual installments. They also determine whether bonds will be issued in anticipation of such payment, and the rate of interest thereon. If the cost of the improvement does not exceed \$500 not more than two semiannual installments are permitted. If the cost exceeds \$500, the commissioners determine the number of installments. When assessments are made payable in installments and bonds are sold to pay for the improvement, interest is added to the installments at a rate corresponding to the interest rate of the bonds. Any owner may pay his assessment in cash within 30 days without interest.

The commissioners of each county establish a general ditch improvement fund which is used as a sinking fund for all bonds issued. It consists of all funds in any ditch fund at the time of the passage of this act, not specially appropriated; any taxes thereafter collected for drainage purposes under county levies; the proceeds of all bonds issued and sold; and the collections from all special assessments for benefits. All costs and expenses of drainage improvements under this law, including construction and cost of location, are paid from the general ditch fund, but no warrant may be drawn thereon unless the fund contains sufficient money to pay same, not specifically appropriated. Approval of a contract for construction is deemed a specific appropriation of the amount of such obligation and must be set apart and charged against said fund. If the fund contains the proceeds of bonds issued, it may not be depleted below the obligations incurred by such bond issue, unless assessments or levies have been made sufficient to redeem the bonds as they mature. If at any time the obligations legally incurred exceed the amount of the ditch improvement fund, an amount of general revenue funds in the county treasury may be transferred to the ditch fund by resolution of the board of commissioners. The commissioners, if necessary, levy an annual tax upon the grand tax duplicates of the county not to exceed five-tenths of 1 mill on the dollar, sufficient to pay for the location and construction of drainage improvements authorized by them, which tax when collected is credited to the general ditch improvement fund.

The authority to issue bonds is contained in the general laws of Ohio (sec. 2203-24, Code of 1931), which authorizes subdivisions of the State to issue bonds in anticipation of the collection of special assessments for public improvements, in sufficient amounts to pay that portion of the estimated cost for which the assessments are levied. Such bonds are a general obligation of the county issuing them and pledge its full faith, credit and revenues. The proceeds of the sale of the bonds are placed in the general ditch improvement fund to the credit of the particular enterprise and used for the establishment and construction of such system. Installments of assessments when levied and collected are placed in the same fund to meet maturing bonds and interest.

**Cleaning and repairing.**—The county commissioners may direct the surveyor to clean and repair ditches or may employ a ditch supervisor for one or more townships, who must be a resident of the county. The supervisor then has charge of the cleaning and repairing of ditches. In the case of a ditch in two or more townships or counties, the supervisors in all the townships constitute a joint board with the same duties as a single supervisor. The ditch is divided into sections and the work apportioned to each owner in accordance with the benefits



which will be received from such cleaning and repairing. If any owner neglects or refuses to perform the work, the supervisor sells the same at public outcry to the lowest bidder, and the cost is paid out of the general ditch improvement fund and assessed against the land benefited. When the owners of two-thirds in amount of the apportioned work file a petition therefor, the supervisor, with the approval of the commissioners, will cause the work to be done by contract as one unit. In such case payment is made out of the general ditch improvement fund and the cost assessed to the owners, after identical procedure provided for original construction. The supervisor certifies the cost to the commissioners who correct and confirm same and order the auditor to place the corrected amount on the duplicate tax lists to be collected as other taxes and assessments, and credited to the general ditch fund. Such costs so assessed are a lien on the lands affected from the date of the filing of the supervisor's certificate with the auditor.

**Joint-county ditches.**—When the improvement is located in, or benefits, or damages land in two or more counties, proceedings are conducted by a joint board of county commissioners and the petition may be filed with the auditor of any county affected. The board meets in the county in which the petition is filed and the auditor of that county performs all the duties as in the case of a single county improvement. The board may select the surveyor of either county, or failing to agree, the surveyor of the county where the petition was filed does the field work, and reports must be signed by surveyors of all the counties. If they do not concur, separate reports are filed. Awards of compensation and damages are paid by the county in which the land is located, and appeals to the court of common pleas of the county in which such land is located are heard by one judge from each county sitting in banc. They also hear appeals from the joint board of commissioners when they are unable to agree on the amounts to be assessed in each county. In all other respects, the proceedings are identical with those in the case of a single county drain.

**Interstate county ditches.**—Where the improvement will affect land located outside of the State of Ohio, the commissioners of the Ohio counties affected are authorized to form a joint board with the commissioners in the other State and the proceedings closely follow the formation of an intercounty drain wholly in Ohio. The division of costs between States is made by two engineers, one from each State, and the commissioners of the counties affected employ an engineer to make a division of the costs apportioned to Ohio, among the landowners affected.

**Township ditches.**—When a drain is located wholly within a township, the clerk and board of trustees occupy the positions of the auditor and board of county commissioners respectively, and the proceedings are identical with those for the establishment of a county drain. The commissioners have a right to construct a county drain in the route of a township ditch but the township trustees have no such right in the case of a county ditch.

**Underground drains.**—When an owner of land whose only practical and natural outlet for drainage crosses the land of another and the two owners are unable to agree on the details of such drain, the upper owner, after notice to the lower, may file with the trustees of the township in which the lands of the lower owner are located, a statement of his proposal to construct a drain. The trustees thereupon act as arbiters between the owners and finding that such drain will be conducive to the public welfare, they fix and determine the location, size of tile, and amount that the upper owner shall pay for the right to construct such drain. The lower owner may appeal to the court of common pleas.

**Public watercourse.**—When an improvement consisting of a ditch, drain, or watercourse has become the outlet of agricultural drainage and has been established and used for seven years, it is deemed a public watercourse and the public has therein the rights and privileges which pertain to a natural watercourse.

Two or more owners whose lands are adjacent desiring to construct at their own cost a drain which will improve their lands, may enter into a written agreement to do so and record same with the auditor of the county. When so recorded such agreement is deemed to establish the drain as a public watercourse.

**Dissolution.**—The county commissioners upon the same proceeding as in the case of organization and construction of a drainage improvement, may determine whether a ditch has ceased to be of public utility and whether its vacation will be to the advantage of the public welfare. If the commissioners find in the affirmative they may declare the drain vacated and abandoned. Private rights of persons acquired by the establishment of such ditch may not be interfered with without due compensation, which compensation may be assessed against property benefited by the abandonment.

## OKLAHOMA

[Statutes of 1921 (Bunn) Chapter 38, and Supplement, 1926]

The Constitution of Oklahoma, article 16, section 3, provides that the legislature shall have power to provide systems of drainage and to tax lands which are benefited, and the crops produced thereon, for the necessary cost of such improvement. Article 2, section 23, provides that no private property may be taken for private use, with or without compensation, unless by consent of the owner, except for private ways of necessity or for drains and ditches across the lands of others for agricultural, mining, or sanitary purposes.

The following is a brief synopsis of the drainage statutes contained in the compiled Oklahoma Statutes of 1921 (Bunn), Volume II, Chapter 38, and the Supplement of 1926. The session laws since 1926 show no important changes. Section 6039 declares that this statute shall be known as the Oklahoma State drainage act and applies to all structures of any kind used in carrying off surface or flood waters from any lands or out of the subsoil thereof, or for the prevention of floods.

**Jurisdiction to establish.**—The county commissioners of any county have authority, at any regular meeting, when they deem it to be conducive to the public welfare or of benefit to agricultural lands, to cause drains and ditches to be constructed, or to improve ditches already constructed and natural watercourses, and to form drainage districts in their county, designating same by name. The commissioners have exclusive jurisdiction to hear and determine all matters pertaining to the establishment and construction of such districts and of all subsequent proceedings, except as subsequently provided. (Sec. 6040.) All the rights of eminent domain are conferred on each drainage district or the commissioners of such district for the purposes of acquiring rights of way, except through incorporated towns, in which case the consent of the municipal authorities is necessary. (Sec. 6042.) Before the county commissioners may establish a district, there must be filed with the county clerk a petition therefor. If the petition is signed by five or more residents of the county who will be affected and assessed, setting forth the necessity for the improvement and stating whether it is desired to issue bonds to meet the expenses, and the commissioners find that the lands will be benefited and the improvement will be of public utility, then they have power to order the improvement without any additional petition. Otherwise the petition must be signed by 50 per cent of the owners or by the resident owners of 50 per cent of the aggregate acreage to be affected. A bond of not less than \$50 for each mile in length of the proposed works, conditioned on the payment of costs, must be filed with the petition. (Sec. 6043.)

**Procedure.**—Upon receiving the petition and approving the bond, the county commissioners appoint three resident freeholders of the county not interested in the proposed district nor kin to any person interested, as viewers, who, with the assistance of the county surveyor, proceed to personally view the line of the proposed improvement and to report to the court whether it is practicable and necessary or of public benefit. If they find in the affirmative, they recommend the best route for the drain and whether the construction should be by allotment to the several interested parties or by contract. (Sec. 6044.) Upon the filing of the viewers' report, the commissioners or the county clerk fix a hearing on the petition and the report, giving notice to all interested parties by publication. At the hearing, the commissioners either rule against the improvement and dismiss the petition at the cost of the petitioners or they find in favor of the improvement and confirm the viewers' report and release the petitioners from their bond. (Secs. 6045 and 6046.) When the commissioners find in favor of making the improvement, the statute provides that the land which will be benefited shall constitute a drainage district which must be designated by name and number.

The commissioners, having established a district, enter their finding in their records and certify same to the judge of the district court of the county, with the request that he appoint three disinterested freeholders from the regular jury list, who are not interested in the improvement and not kin to any parties, as appraisers (called viewers). The judge of the district court, after 10 days' notice by publication of the application for the appointment of the appraisers, appoints same and certifies their names to the board of county commissioners. The commissioners thereupon enter an order on their record directing the appraisers and the county surveyor or a competent engineer to go upon the line of the improvement and establish the precise location of the drain where it will be most efficient, and survey

same and establish markers at 100-foot intervals and mark the intersection of the work with the boundaries of the different tracts of land and subdivision lines, and file a report with plats, profiles and schedules of all lands and property that will be benefited or damaged, with names of the owners thereof. They must report the damage or benefit to each tract of 40 acres or less and make a separate estimate of the cost of location and construction and apportion the same to each tract in accordance with the benefits or damages which it will receive. (Sec. 6048.) In locating the improvement, the appraisers may vary from the line described in the petition, and when the proposed line is not sufficient in length, then they extend it below the outlet named, but not exceeding 1 mile, for the purpose of obtaining a sufficient outlet. (Sec. 6049.)

When the report of the appraisers is filed, the county clerk sets a hearing thereon at some time during the next regular meeting of the county commissioners and directs a notice by name and in the name of the State, to every person named in the appraisers' report, directing them to appear and show cause why the report should not be confirmed. (Sec. 6040.) If the commissioners at the hearing find that due notice has been given, they examine the appraisers' report and if it appears that the assessment of the cost of location and construction against each tract is correct and that apportionment of the costs in proportion to the benefits or damages is fair and just, they approve and confirm the report. But if 50 per cent of the resident landowners or owners of 50 per cent of the acreage file a written protest against the improvement, the proceeding will be dismissed. The commissioners, upon a similar petition similarly signed, at any time before the completion of the drain, make such changes and acquire such additional rights of way as they may think proper. (Sec. 6051.)

All lands benefited by the improvement are assessed for the construction thereof in proportion to such benefits, whether the works pass through such lands or not, and the appraisers, in showing the benefits to lands not traversed by the drain, may not consider what benefits will be derived after some other drain is constructed, but only the benefits of the public drain in question and the value to such lands of the outlet thereby afforded. If the amount assessed becomes insufficient to pay the estimated cost by reason of increase in the damages or reduction of assessments on appeal, or because the actual cost of construction exceeds the estimate, the commissioners then appoint appraisers of the same qualifications to reassess the cost of the improvement and to file a report showing the changed assessment to be charged against each piece of property. The report of these appraisers has the same force and effect as an original report and supersedes such original report, and the proceeding thereon is identical. The legality of warrants or bonds issued under the original proceeding is not affected and additional evidences of indebtedness may be issued for the additional assessments. (Sec. 6052.)

**Financing—Assessments.**—Assessments made by the appraisers and confirmed by the commissioners constitute a lien from the date of such confirmation, to which lien only State, county, and municipal taxes have priority. The lien is upon the land and the crops produced by the owner, or on the land and profits due the owner from the land, and is collected in the same manner as State, county, and school taxes on real estate and personal property. The taxes become delinquent on the same day as general taxes and bear the same interest and penalty. All costs except for construction and collection of delinquent assessments are paid out of the county treasury and refunded from the first money received from assessments or bonds. After such costs are refunded, the damages which have been paid to landowners are next refunded. When there is any nontaxable land within the district, the county commissioners may prorate the assessment thereon among the other owners or pay same out of county funds, or divide payment thereof until such land may be taxed. All public lands belonging to the State are subject to assessment and allowances for damages in the same manner as land owned by individuals, and the assessment constitutes a lien upon all crops produced upon such land, and also upon the land, subject to the State interest and to State, county, and municipal taxes. The State or any lessee or purchaser of public land, or any person affected by any assessment thereon, may file exceptions to the viewers' report in the same manner as private owners. The lien is collected in the same manner as State and county taxes upon personal and real property. The leasehold rights, preference rights to purchase, and all improvements of any lessee, and the title and interest of any purchaser and subsequent holder of such land, may be sold for such assessment. Where such proceedings are insufficient, the commissioner of the land office and the district attorney of the county in which such land is situated may

exercise such jurisdiction as may be essential to accomplish the enforcement of such lien. (Sec. 6065.)

When contract for construction has been let and the entire cost of the work including damages has been ascertained, the commissioners determine in what number of installments they will require the assessments to be paid and the rate of interest thereon. (Sec. 6068.) The assessments and interest are entered in the drainage assessment book. The installments and interest, when collected, must be applied first to the payment of the principal and interest of bonds if any have been issued. (Sec. 6069.)

**Financing—Bonds.**—The commissioners may, if prayed for in the petition, issue bonds. At any time after the assessment roll is confirmed, the commissioners may enter an order that within a limited time any owner may pay the assessment levied on his land, in cash, and the clerk gives notice thereof by publication in a form prescribed in the statute, stating that the commissioners will on the date mentioned in the notice or as soon thereafter as practicable issue bonds of the district to pay the cost of the improvement. At the expiration of the time stated in the notice, the treasurer reports the total amount of assessments remaining unpaid and the board divides such amount into convenient annual installments, not more than 10 in number, specifying the amount of each installment and the year in which it must be paid. The first installment is payable in not more than four years after the fiscal year in which the order is entered, and the rest of the installments are payable at annual intervals thereafter. The commissioners then, by order, issue the bonds of the county for the account of the drainage district. No annual installment of bonds may exceed the corresponding installment of assessments and the bonds so issued are a first and prior appropriation of such assessments. In fixing the maturity of the bonds, consideration is had for the time when taxes are paid and available to retire such bonds. While the bonds are issued by the county, they recite on their faces that they are payable solely out of the proceeds of the special assessments for benefits on the lands and property of the respective drainage districts. The money received from the bonds is paid to the county treasurer to the credit of the district. No bonds may be issued in anticipation of the collection of any assessment against any political subdivision for public benefits nor against the real estate of any school district, but only in anticipation of the collection of assessments levied against property privately owned and the property of public service corporations. The amounts for which political subdivisions of the State are assessed is paid in cash or in time warrants as such subdivisions may elect. Bonds are registered by the county clerk in a book kept for that purpose and a certificate of registration is indorsed by him on each bond. (Sec. 6070.)

**Maintenance.**—Every person through whose lands a drain is constructed is required to keep the same free from obstruction on his land. (Sec. 6073.)

A drainage commissioner is appointed by the county commissioners who from time to time inspects the drains with the view of keeping them in repair. His appointment is upon the recommendation of the assessed owners whose power of recommendation is in proportion to their acreage affected or benefited. The commissioner must have in any event the indorsement of at least 20 per cent of the resident owners. All suits for or against the drainage district are brought in the name of the drainage commissioner. (Sec. 6055.)

When any drain needs to be repaired or cleaned out, any owner of land originally assessed may file a statement with the county commissioners setting forth the necessity, and they will instruct the drainage commissioner to examine the drain and report an estimate of the work required and the cost thereof. Such amount so reported, if found reasonable by the commissioners, is prorated against the lands according to the original assessment. (Sec. 6076.) After a hearing on the report of the drain commissioner, the county commissioners make the apportionment of the cost of repairs and place same on the tax books against the land and crops or land and profits and the sums so levied are collected as other taxes. The actual repair work is performed in the same manner as original construction.

**Intercounty drains.**—When the territory involved in a drainage district is in two or more counties, it is necessary to file a petition for each of said counties with the county commissioners of each. In determining whether the district shall be established, the county commissioners of each county must first authorize same, independently. If the district is ordered, the commissioners meet jointly and prorate to the different counties their proportionate share of the costs and expenses. They appoint freeholders of any of the counties as viewers, and the viewers report to the county commissioners of each county, embracing in their report all their work in all the counties. Thereafter their several reports are to the commissioners of

each county and limited to the work in such county. (Sec. 6089.) Procedure is the same in intercounty districts as for the formation of a district in a single county and the bonds and other indebtedness, assessments, and other proceedings are conducted in each of the respective counties as if that portion of the district therein constituted a drainage district wholly within a single county. (Sec. 6090.)

**Appeals.**—Any aggrieved person may appeal from any of the principal orders of the board of county commissioners as to damages, benefits, and assessments. Their appeal is to the district court and the judgment of that court on the appeal is certified to the county clerk for entry in the drainage record and such order as the commissioners may find necessary to give effect to the judgment. (Secs. 6058 and 6059.)

## OREGON

(Code of 1930)

Practically all drainage reported from Oregon is accomplished by means of drainage districts organized by the county courts of the respective counties. A law of 1868, amended from time to time and appearing as chapter 1 under the title Drains and Dikes makes provision for drainage by persons or municipalities through intervening lands by application to the county court for rights of way over such lands. The court proceeds, after due notice and hearing, to appoint commissioners to locate the right of way, adopt a plan of drainage and assess damages and the benefits to the intervening lands. Upon payment of the costs and the excess of damages over benefits by the petitioner, the court records an order authorizing such petitioner to proceed to construct drainage works at his own expense. The order is subject to appeal to the circuit court.

**Drainage districts—Jurisdiction to establish.**—The county court of the county having the largest acreage in a proposed district has jurisdiction to establish a drainage district upon the filing of a petition with the clerk signed by persons shown by the records to be the owners of 50 per cent of the acreage in any contiguous body of swamp, wet, or overflowed lands, or irrigated lands situated in one or more counties of the State, praying for the formation of a district for sanitary or agricultural purposes, when the same will be conducive to the public welfare. (Sec. 34-201.)

The petition must state the name of the district; the boundary lines, with an allegation that the land constitutes a contiguous body of land needing drainage; the number of acres in the district as a whole and in each county; the names of the owners of the land and the number of acres owned by each; a statement that the proposed improvement is for sanitary or agricultural purposes and will be conducive to the public welfare; that the benefits will exceed the costs of improvement; and an agreement to pay all expenses and taxes levied against the land. (Sec. 34-201.)

Upon the filing of such petition and the publication by the clerk of a notice of a hearing thereon, the county court thereafter has and maintains original and exclusive jurisdiction, coextensive with the boundaries of the district without respect to county lines. (Sec. 34-202.)

**Procedure.**—The clerk of the county court fixes the time for hearing on the petition and gives notice thereof by publication for four consecutive weeks substantially in the form set out in the statute. The notice contains the petition in full, including the signatures thereto. (Sec. 34-202.) Any interested person may file in writing before the date of the hearing his specific objections to the formation of the district and at the hearing the court will consider any evidence presented for or against the petition or any objection thereto. The court makes findings upon the facts presented or any other necessary facts, which findings are entered upon its record. If the court be of the opinion that the petition should be granted, it will issue a decree organizing the district. Otherwise it will dismiss the petition at the cost of the petitioners, proportioned to the acreage represented by each. Appeal from this order may be taken to the circuit court as in equity cases. Drainage districts which the landowners have attempted to establish in good faith, after statutory publication of the notice, and the organization of which is being maintained and the business of a district being carried on at the time of the filing of this act with the secretary of State, are validated. (Sec. 34-203.)

Within 30 days after organization the county clerk calls a meeting of the landowners for the purpose of electing a board of three supervisors. The landowners organize by electing a chairman and secretary and proceed to ballot, casting one vote for each acre of land owned, and the three persons receiving the highest votes are elected supervisors. The supervisors must be owners of land in the district. They immediately by lot determine their terms of office which are from one to three years respectively. A majority in acreage is necessary to constitute a quorum at this meeting. (Sec. 34-204.) Annually thereafter in the same month a meeting of the landowners, called in the same way, elects one supervisor for a term of three years, provided that after the confirmation by the court of the report of the commissioners hereafter provided for only the owners of land having benefits assessed against it are entitled to vote for supervisors. (Sec. 34-205.)

Immediately after election the board of supervisors chooses one of its number president and appoints a secretary who may or may not be a member of the board. The supervisors adopt a seal and keep a record of all their proceedings which is open for inspection. They report on the work done in the district at each annual meeting of the landowners. (Sec. 34-207.) Within 30 days the supervisors appoint a chief engineer who has control of the engineering work in the district. He makes surveys of the land in the district and that outside which will be affected by the works and reports in writing to the supervisors with maps, profiles, and plans for the improvement. (Sec. 34-208.) The engineer reports to the board whenever required and upon receipt of his final report with the completed plans, the board adopts same with any modification approved by the engineer and such adopted report becomes the plan of reclamation which is copied into the record of the district. Any land which will not be benefited may be excluded from the district by order of the county court and any levy thereon will be refunded but any irrigated land, the seepage water of which will be disposed of through the works of the district, is deemed to be benefited. (Sec. 34-209.)

The board of supervisors may change the plan of reclamation up to the time that the board of appraisers files its report, thereafter the board of supervisors may petition the court to amend the plan of reclamation or correct errors on descriptions of boundaries of land within the district. They may ask that the boundary lines be extended so as to include land not described in the petition and the decree incorporating the district, provided that in no case may such land be included unless persons shown by the record to be the owners of not less than 60 per cent thereof first sign a petition to be included. The subsequent proceedings are the same as in the original instance. (Sec. 34-223, laws of 1925, ch. 156; 1927, ch. 430.)

**Financing.**—As soon as elected the supervisors levy a uniform tax of not more than \$1 per acre for the purpose of paying the expenses of organization and survey and all other expenses of the district until the board is authorized to provide funds to pay the costs of construction. If the boundary lines of the district are extended, this tax is levied upon the annexed lands as soon as they are included. The tax is due as soon as assessed and becomes delinquent in 60 days. It is a lien on the land and is collected in the same manner as other drainage taxes. If there be a surplus in the amount so collected after paying preliminary costs, it is placed in the general fund to pay costs of construction, and if the district should be dissolved, the surplus is prorated and refunded to the owners paying same. (Sec. 34-210.)

Thereupon the county judge by order appoints three commissioners not landowners of the district nor kin to interested parties, one of whom must be a civil engineer and the other two freeholders residing in the State, to constitute a board to appraise the lands and assess benefits and damages. They view the premises and determine the value of all land within and without the district to be acquired for rights of way and they assess the amount of benefits and damages which will accrue to each parcel of land, including irrigated land and irrigation ditches and canals contributing to the wet condition of the land, as well as public roads and railroads. For the purpose of determining the benefits, all irrigated lands adjacent to and on a higher level than the land within the district and which fall naturally within the same watershed are deemed to contribute to the wet condition of the land within the district and to be benefited by the construction of the improvement. The commissioners have no power to change the plan of reclamation. They file their findings with the clerk of the county court of the county in which the district was organized. (Secs. 34-211 to 34-213.)

The county clerk gives three weeks' notice by publication in each of the counties affected of the filing of the report of the commissioners and of the date when exceptions thereto will be heard. (Sec. 34-213.) The district or any landowner may file exception to said report or to any assessment of either benefits or damages within 10 days. Exceptions are heard by the court and such amendments or modifications of the report are made as to the court may seem equitable, and after hearing all the exceptions and it appearing to the satisfaction of the court that the estimated cost of the improvement set out in the plan of reclamation is less than the benefits to be derived therefrom, it will approve and confirm the commissioners' report as amended or modified. The clerk transmits a certified copy of the decree and of the report, as confirmed, to the board of supervisors and to the recorder of each county having land in the district or affected, and the same becomes a permanent record in those offices. (Sec. 34-215.) The board of supervisors then have full power to carry out the plan of reclamation in the name of the district and to make any necessary water filings and appropriations of water for subsequent irrigation of land within the district, and to maintain the irrigation works. They make contracts for construction attaching thereto complete plans prepared by the engineer and approved by the State engineer for drainage or irrigation of the district. The chief engineer is superintendent of the work and reports in full at least once a year to the board of supervisors as to the work done. (Sec. 34-216.)

**Financing—Assessments.**—The supervisors each year make a computation of the whole amount of money to be raised through assessments for the ensuing year for all purposes whatever, including estimated delinquencies in assessment, and said amount constitutes an assessment upon all the land and property in the district and is apportioned by the board in accordance with the report of the commissioners as confirmed by the court. State lands are assessed in the same manner as other lands. When the supervisors deem it necessary to drain any lake, entailing additional work in excess of that required in the drainage of higher elevation, and where the cost of maintaining pumps in the drainage of such lake will be in excess of that necessary for the maintenance of the drainage of other land in the district, extra assessments for such additional work or a higher rate of assessment for such pumping and maintenance may be made against the land covered by such lake, to the extent of the respective additional benefits to such land over lands of a higher elevation in such district and benefited thereby. The supervisors prepare a list of the assessments and apportionments, giving a description of the ownership of each person, firm or corporation assessed and certify same not later than December 1 of each year to the county assessor of each county having land in the district where they are entered on the assessment rolls against the designated property in the same manner as other taxes. The collection of these assessments is made at the same time and in the same manner as general taxes, and the county treasurer pays over such taxes collected quarterly to the treasurer of the district. (Sec. 34-217, Laws of 1925, ch. 156.) The secretary of the board of supervisors is ex officio treasurer of the district. (Sec. 34-218.)

All claims against the district are paid by warrant on the district treasurer signed by the president and secretary of the board of supervisors. Any warrant presented and not paid for lack of funds has that fact indorsed on it and bears interest at 6 per cent thereafter until paid. No interest is allowed when there are sufficient funds in the treasury to pay warrants, of which fact the secretary of the board gives notice by publication. The board makes an annual levy sufficient to pay warrants outstanding to the extent that they are permitted by the constitutional limitation. (Sec. 34-220.)

**Financing—Bonds.**—The supervisors may, if in their judgment it seems best, issue bonds of the district for any purpose necessary or convenient in carrying out the work, including the refunding of outstanding bonds, in denominations not less than \$100, bearing interest at not to exceed 6 per cent and to mature at annual intervals within 40 years, commencing not later than 5 years after issuance. The amount for which bonds are issued may include a sum to pay the first four years' interest to accrue on same. Before selling the bonds the supervisors give 30 days' notice by publication of their intent. They may not be sold for less than 90 per cent of the face value. Nothing in this act shall inhibit the district from providing for the drainage of land within its boundaries in units or portions from time to time. Such bonds and interest thereon and all obligations for the payment of money incurred by the district shall be paid by the revenue derived from the annual assessments of land and other real property within the district or on lands remaining liable to

be assessed for such payment. (Sec. 34-244.) The treasurer must keep a bond fund into which is paid all proceeds of refunding bonds and sufficient money from assessments and levies to meet the next installment of maturing bonds with interest. Money received from bonds other than refunding bonds and all money whatsoever of the district is placed in the general fund from which expenses of the district, except bonds and interest, are paid. (Sec. 34-244.)

After five years the supervisors may direct the treasurer to pay such amount of outstanding bonds as the surplus money in the general fund will redeem at the lowest value at which they are offered, or he may call bonds at a premium of 3 per cent. Notice of intention to call bonds is given by publication. Bonds must be retired in numerical order and only on a day when interest is payable and after the date named in the notice. Interest on the bonds named in the public notice ceases if funds are available to pay same.

**Dissolution.**—If, after determining the objections made to the commissioners' report, the court finds that the estimated cost exceeds the benefits, it will then issue a decree declaring the incorporation of the district to be dissolved as soon as all costs incurred shall have been paid. If the uniform tax of \$1 per acre be insufficient to pay the expenses incurred up to that time, the supervisors make such additional uniform levy as may be necessary. (Sec. 34-222.)

**Eminent domain.**—Officers and employees of the drainage districts have the right to enter upon land to locate same, and they may also acquire by lease, purchase, condemnation, or otherwise all lands, rights of way, and other property necessary for the construction and maintenance of any drainage or irrigation works. They may make water filings and appropriations of water for the irrigation of lands within the district. Property already used for public purposes, which purposes are of less necessity than drainage, may be condemned for drainage. The right to construct drainage and irrigation works over the property of the State is set apart and dedicated by the statute. (Sec. 34-231.)

**Generally.**—Where the works called for in the plan of reclamation are found insufficient, the supervisors may formulate new or amended plans containing new work and make additional assessments in proportion to the benefits derived from the additional work. If the amount of the total taxes levied is insufficient to pay for the work set out in the plan of reclamation the supervisors may make additional levies to provide funds to complete the work. In no case, however, may the total levy of taxes exceed the total amount of benefits assessed. (Secs. 34-213, 34-217, and 34-225.)

A drainage district may connect with any existing drain or watercourse within such district, if necessary, to carry out the plan of reclamation, but no such existing drain may be connected with the works of the district without the consent of the board of supervisors, in writing. No person may connect with the work of the district without the consent of the supervisors or by proceeding under petition to the circuit court. (Sec. 34-227.)

When necessary the supervisors may irrigate land within a district and construct works therefor to the same extent as for drainage, but any bonds issued to pay for same must be known as irrigation bonds of the district. (Sec. 34-229.)

No action may be brought affecting the validity of the organization or questioning the boundaries of the drainage district after the lapse of nine months from the date of the organization of same by the county court or the date of the fixing of such boundaries. (Sec. 34-230.)

**Districts west of the Cascades.**—Chapter 3, sections 34-301 to 34-304, provides that the board of supervisors of any drainage district lying west of the Cascade Mountains, whether organized under this act or acts amendatory and supplementary thereto, has supervision and control of all works within the boundaries of such districts and may prescribe the width and grade thereof. It also has power to force the landowners to keep drainage ditches free of obstruction.

## SOUTH CAROLINA

The regulation by law of drainage in South Carolina appears to date back to 1744 when statutes were enacted relating to the drainage of lands flooded during the winter months for the planting of rice and prohibiting the obstruction of the drainage of surplus water from rice lands between March and December of each year. There were amendments and additions to these statutes in 1784, 1786, 1799, and 1870.

A statute was enacted in 1891 (statutes of 1891, p. 1050) providing for rights of way for drainage over intervening lands upon the payment of damages found by a board of 3 referees, 1 appointed by each owner and the other by the first 2 referees.

A general statute providing for drainage by organized districts was enacted February 18, 1911 (laws of 1911, p. 93), giving jurisdiction to the courts of common pleas of the different counties to organize districts by proceedings which are substantially similar to the provisions of a later act of 1920. Twenty-one counties of the State, mostly in the western part, were excepted from the provisions of this statute and a number of other counties were excepted from the operation of specific sections of this law. This act differed from the later one principally in the classification of the land and the assessment of a flat rate per acre in each class and in the control of the district by a board of drainage commissioners appointed by the clerk of the court of common pleas after being elected by the landowners. In a later act the control of the district is in a board of supervisors elected by the landowners casting one vote for each acre owned, and the organization of the district may be initiated by the sinking fund commission of the State as well as by a majority in number or ownership.

On March 17, 1920, the legislature enacted a comprehensive statute (Code of 1922, sec. 6157 et seq.) providing for the creation, organization, and maintenance of drainage districts for the reclamation of wet lands, or for sanitary or agricultural purposes or when the same will be conducive to the public welfare. This act specifically declared that it should not be construed as repealing any other law relating to drainage districts but should be held as cumulative thereto, and authorized districts already organized or in process of organization to come under the provisions of this act. The following is a brief synopsis of the law of 1920 with amendments and additions.

**Authority to establish.**—Under article 4, section 6157, Code of South Carolina, 1932, the sinking fund commission of the State, or a majority either in number or in acreage of the holders of any contiguous body of wet, swamp, or overflowed lands situated in one or more counties of the State, may form a drainage district for the purpose of having such lands reclaimed and protected from the effects of water, for sanitary or agricultural purposes, or when the same may be conducive to the public welfare, by drainage or otherwise. For this purpose the sinking fund commission or a majority of the owners or the owners of a majority in acreage may make and sign a petition stating the name of the proposed district, the number of years it is to run, the names of the owners, and that the owners signing the petition are willing to and do obligate the lands owned by them to pay the drainage taxes which may be assessed. The petition is filed in the office of the clerk of the court of common pleas of the county in which such lands or a greater part thereof are located. (Sec. 6157.) Immediately after filing of such petition, the clerk gives notice, by publication for four weeks in each county affected, to all interested parties to appear on a day certain and show cause why the petition should not be granted. The court of common pleas of the county in which the petition is filed thereafter has original and exclusive jurisdiction coincident with the boundaries of the district without regard to county lines. (Sec. 6158.)

**Procedure.**—After notice of the filing of the petition any owner of land affected may appear for or against the formation of the district and must file his objections in writing. All objections are heard by the judge of the court of common pleas in a summary manner and if the court shall be of the opinion the formation of the district will be conducive to the public welfare or beneficial to the land therein, he overrules all objections and by order duly entered of record decrees the drainage district to be a public corporation of the State for a term not to exceed the time mentioned in the petition. If the court finds that the land should not be incorporated into a drainage district it dismisses the petition at the cost of the petitioners in proportion to the acreage reported by each. Any person signing the petition may not have it dismissed as to him without the written consent of the majority in acres of the owners who sign the petition.

Immediately after the district is declared a corporation, the court clerk transmits to the secretary of state a certified copy of the decree of incorporation for filing and also transmits a copy of the decree, with a plat of the land in the district showing the outside boundary lines, to the clerk of the court of common pleas in each county having land in the district, for permanent record. (Sec. 6159.)

**Election of supervisors.**—Within 20 days after the organization and incorporation of a drainage district the court clerk gives notice by publication of a meeting of the landowners in the district for the purpose of electing a board of three supervisors to be composed of the owners of land in the district, at least two of whom shall be residents of some county in the district or an adjoining county. At this meeting each acre of land represents a share and each owner is entitled to cast one vote for every share owned by him. The three persons receiving the highest vote are declared to be elected supervisors and the voters determine the length of the term of each supervisor which must be 1, 2, and 3 years and until their successors have qualified. The sinking fund commission represents the State at this meeting and has the right to vote on any matter to the extent of the acreage owned by the State in the district. The owners of a majority in acreage are necessary for a quorum at this meeting and if they are not present, any interested party may notify the sinking fund commission and that commission will appoint three persons owning land in the district as supervisors. (Sec. 6160.) An annual election of one supervisor is held in the same month of each year thereafter. (Sec. 6161.) The supervisors organize by electing one of their number president and elect a secretary who may also be a member of the board. (Sec. 6153.) Within 30 days the supervisors appoint an engineer who has control of the construction work. The engineer makes all necessary surveys and reports to the supervisors with maps, profiles, and complete plan of drainage and estimates of the cost thereof. (Sec. 6164.) When the final report of the engineer is filed, the supervisors adopt same or any modification thereof approved by the engineer and such adopted report is the plan of reclamation. (Sec. 6165.)

The supervisors may at any time before the adoption of the plan of reclamation levy a uniform assessment not exceeding 50 cents per acre upon the land in the district to pay the expenses of organization, survey, and assessment of benefits and damages before the funds to pay construction costs become available. This tax is due when assessed and becomes delinquent in 90 days. Any surplus from this fund goes into the general funds of the district, or, if the district be dissolved, it is returned pro rata to the owners. If funds become necessary before they can be realized from this uniform tax, the supervisors may borrow same, issuing notes at not more than 8 per cent, pledging the assessment as security. (Sec. 6166.)

Within 20 days after adoption of the plan of reclamation a certified copy is transmitted to the court clerk with a petition from the supervisors asking the court to appoint three commissioners to appraise the lands within and without the district to be acquired for rights of way and other purposes of construction, and to assess benefits and damages accruing to all land by reason of the improvement. The court appoints three appraisers who must be freeholders residing in the State, not landowners in the district nor kin to any owner. (Sec. 6167.) After organizing and selecting one of their number as chairman, the appraisers view the land and determine the value of all land to be acquired for rights of way or work of the district. They assess the benefits and damages to each tract of land, public highway, and other rights of way. They consider only the benefits which will be derived by the carrying out of the plan of reclamation without regard to any benefits which may be derived after the construction of some other improvement. The appraisers have no power to change the plan of reclamation. They report their findings in tabulated form, showing the names of the owners, description of the property, number of acres assessed, benefits and damages assessed and the number of acres taken for rights of way or other works, and the value thereof. They estimate the cost of the improvements set out in the plan of reclamation including therein all the expenses of organization. Their report is filed with the clerk of the court of common pleas organizing the district. (Sec. 6169.)

After notice by publication of the time and place where the report may be examined and exceptions filed, such exceptions are heard by the court in a summary manner so as to liberally carry out the needs and purposes of the district. If it is shown upon the hearing of all the exceptions that the estimated cost of the improvement is less than the benefits assessed, the court will approve and confirm the appraisers' report, but if the

court finds that any of the exceptions should be sustained, it will order the report changed and will confirm the report as amended. The court will condemn any land or material in or outside of the district needed for the improvement, the procedure being the same as in the condemnation of property for railroad rights of way. Any owner not presenting his objections in writing as to assessments of benefits or damages, is presumed to acquiesce to the appraisers' report. Appeal from the court's order may be taken to the supreme court, but under section 6190 it is provided that no appeal shall act as a *supersedeas* or delay the prosecution of the work begun under the provisions of this law. (Sec. 6171.) The court clerk transmits a certified copy of the confirmed report to the board of supervisors and a copy of that part of it affecting each county is transmitted to the clerk of the court of common pleas of that county for permanent record. (Sec. 6171.) The board of supervisors has complete authority to construct and maintain the improvement as set out in the plan of reclamation. The chief engineer is superintendent of all work and makes yearly report to the supervisors on all work done.

**Financing—Assessments.**—After the list of the lands with the benefits assessed thereon and the decree of the court has been filed with the supervisors, they levy an assessment of such portion of the benefits assessed as may be necessary to pay the costs of the completion of the improvement and 10 per cent additional for emergencies. The tax is apportioned to each tract of land in proportion to the benefits assessed and not in excess thereof, and in case bonds are issued, the amount of interest which will accrue is added to the tax assessed, but the interest to accrue on account of bonds may not be construed as a part of the cost of construction in determining whether or not the expenses of the improvement are equal or greater than the benefits. All lands belonging to the State are assessed the same as other lands. The secretary of the supervisors, as soon as the total tax is levied, prepares a list of all taxes in a well-bound book known as the tax record which is signed by the president and secretary, attested by the seal and becomes a permanent record in the office of the supervisors. (Sec. 6173.) The supervisors each year thereafter determine and levy the amount of the annual installments of the total taxes levied which shall become due and be collected during that year, and they are due and collected at the same time as State and county taxes. This annual installment, when levied, is certified to the county treasurer before October 1 of each year on a form provided in the statute. (Sec. 6174.) The drainage tax is collected by the county treasurer and turned over to the treasurer of the district immediately after the 31st of December of each year. The secretary of the district then certifies to the treasurer a drainage tax book showing the delinquent taxes which the treasurer proceeds to collect in the same manner as provided for the collection of other general taxes when delinquent. All delinquent taxes bear a penalty of 2 per cent per month. (Sec. 6175-6.)

All delinquents, including penalties and costs, are liens on the lands against which assessed to which only the lien of general taxes is paramount, but if any district organized under this article shall be within the boundaries of a district heretofore established under any law, the last organized district must be designated as a subdistrict and its lien for taxes is subject to the prior lien of the district first established for taxes assessed by it. The lien of taxes is evidenced by certificate on a form prescribed in the statute, and the certificates are bound in a permanent book known as the drainage tax record. (Sec. 6178.) Provision is made in detail for the sale and redemption of delinquent lands and for permitting bond holders to sue within 90 days after delinquency.

**Financing—Bonds.**—The supervisors may issue bonds not in excess of 90 per cent of the total amount of taxes levied in denominations not less than \$100 and bearing 6 per cent interest. Bonds mature at annual intervals within 30 years, commencing after a period of not longer than 10 years. They may not be sold for less than 95 cents on the dollar and must show on their faces the purposes for which issued and that they are payable out of money derived from drainage taxes. A special amount of drainage taxes is set aside as a separate fund for the purpose of paying bonds maturing each year and for no other purpose. All bonds and coupons not paid at maturity bear interest at 6 per cent from maturity until paid, or until sufficient funds have been deposited at the place of payment to pay same. The interest is apportioned by the supervisors out of penalties and interest collected on delinquent taxes or any other available funds. In making the annual tax levy, the supervisors take into account the maturing bonds and interest on all bonds and make provision for the payment thereof. If the proceeds of the

original tax levy are insufficient to pay the principal and interest on all bonds issued, the supervisors may make additional levies upon benefits assessed as may be necessary, and under no circumstances shall any taxes be made that will in any manner, to any extent, impair the security of the bonds or the fund available for the payment of principal and interest of same. (Sec. 6196.)

**Maintenance.**—Whenever the owners of 25 per cent or more of the acreage file a petition with the court clerk organizing a district, stating that there has been a material change in value of the property in the district since the last previous assessment of benefits and praying for readjustment of the previous assessment for the purpose of making a more equitable basis for the levying of maintenance taxes, the clerk gives notice of a hearing on such petition in the manner proscribed in the statute. If the court finds that the allegations of the petition are correct, it will order a readjustment of the benefits to provide a basis for the levying of maintenance taxes. The procedure is the same as in the original assessment of benefits. In making the readjustments, the appraisers are not limited to the aggregate amount of the original or any previous assessment of benefits. After making readjusted assessments, the limitation of the statute that annual maintenance taxes may not exceed 10 per cent of the assessment of benefits still applies to the readjusted benefits. There may not be such readjustment of benefits more frequently than once in 5 years. (Sec. 6198.)

The supervisors have authority to appoint an overseer or overseers for the district whose duty it is to keep the improvement in good repair. (Sec. 6195.) To maintain and preserve the improvement and to repair and restore same and to defray the current expenses of the district, the supervisors may, on the 1st of October in each year, levy a maintenance tax. This tax is apportioned on the basis of the net assessment of benefits accruing from the original construction and may not exceed 10 per cent thereof in any one year. (Sec. 6197.)

**Consolidation of districts.**—Any two or more adjacent districts established under this article, whether incorporated in the same or different counties, may be united and consolidated in one district, and such new district and the board of supervisors thereof have all the rights and privileges of any other district organized under this article. In order to effect the consolidation the board of supervisors of each district calls an election in the same manner as an election for supervisors. If a majority of the acreage voting in each district votes in favor of consolidation, the supervisors of each district present a petition to the court of common pleas of the county in which the greatest amount of the land is located, accompanied by complete returns of said election and stating the names of the original districts and a description of ownership and boundaries. The court clerk gives notice of the petition and interested owners in either district may file objections. If the objections are overruled, the court orders a consolidation of the districts into one district. The land included in the new district is subject to all the liens, liabilities, and obligations of the original districts. A new board of supervisors is elected and all orders regarding the extension of time or boundaries are spread on the records of the court of common pleas and a certified copy thereof filed with the clerk of each county and with the secretary of state. (Sec. 6199.)

**Extension of duration of districts.**—Whenever the board of supervisors finds in order to raise funds to complete the plan of reclamation, to pay outstanding bonds, or restore the works or construct new works, or for any other cause, the time for which the district was incorporated should be extended, they call a meeting of the landowners in the same manner as for the election of supervisors, and state in the notice that if a majority vote to do so a petition will be filed asking the court to extend the corporate existence of the district. If the vote is in the affirmative, the supervisors file such petition and the same proceedings are had thereon as in the incorporation of a district. If the petition is granted by the court, the court clerk transmits a copy of the decree to the board of supervisors and to the secretary of state and to each court clerk of any county having land in the district. If the court finds against the extension of the time, the petition is dismissed at the cost of the district.

**Dissolution.**—No provision is made for the dissolution of drainage districts the works of which have been actually constructed, but after the report of the appraisers, if the court, having determined all the exceptions thereto, finds that the estimated cost will exceed the benefits, it will dissolve the incorporation. If the uniform tax levied is not sufficient to pay all costs up to that time, then an additional uniform tax may be levied to pay same. (Sec. 6191.)

## SOUTH DAKOTA

The drainage laws of South Dakota are separated in the compiled statutes of 1929 into two divisions, namely, those relating to drainage wholly within the State and those relating to drainage partly in another State.

## INTRASTATE

**Jurisdiction to establish.**—The board of county commissioners, at any regular or special session, is authorized to establish and cause to be constructed levees or drains, or they may provide for the alteration and maintenance of natural watercourses and drains previously established, whenever the same may be conducive to the public welfare, or may drain agricultural lands and prevent overflow. The term "drainage" includes all the works of a drainage district as well as natural watercourses. (Sec. 8458.)

**Procedure.**—The county commissioners may act only upon written petition filed with them, signed by a majority of the owners of land liable to be affected, setting forth the necessity for the drainage and a description of the works and of the territory liable to be affected, and accompanied by bond conditioned to pay the costs in the event that the drainage is not established. The petition is first filed with the auditor and he transmits a copy to the State engineer who, with the county commissioners, inspects the proposed drainage and causes a survey of the district to be made. The survey must show the character of the works in detail and their relation to the land in the district, the number of acres which will be appropriated for construction purposes, the names of the owners with the number of acres owned by each, and an estimate of the cost of the system. The auditor promptly furnishes the State engineer with the survey, maps, and estimates, and no district may be established and no district may be repaired to the extent of more than \$1,000 without the approval of the State engineer. The report of the surveyor is forwarded to the county board and filed with the petition, and the auditor immediately fixes the time and place for a hearing on the petition and report after due notice by publication and posting. Any interested person may show cause why the drainage should not be established, or make claim for compensation or damages.

After such hearing, the county commissioners may establish the drain as set out in the surveyor's report, if same has been approved by the State engineer, or may establish an amended form of drainage subject to the approval of the State engineer. If it appears that additional lands should be included in the system, the hearing is adjourned in order to serve notice on the owners of such additional land as in the original instance. If at the hearing the board finds that the drainage is not conducive to the public welfare or not needed or not practical for the drainage of agricultural lands, it will dismiss the petition at the cost of the petitioners. On a contrary finding, however, and if the plan has been approved by the State engineer, the board establishes the drainage and assesses the damages which will be sustained by each tract of land or other property by reason of construction or maintenance. Damages to growing crops during construction are considered later as a part of the costs of construction. Any interested person may be heard on the question of damages or compensation and the determination of the board is final in the absence of appeal. Failure to appear or to appeal is conclusively a waiver of damages or compensation and the right to have same assessed by jury. The system is given a name and all proceedings are recorded in a book provided for that purpose in the office of the auditor.

After the establishment of the drainage and the fixing of damages, the county commissioners fix the proportion of benefits among the lands affected and appoint a time and place for the equalization of benefits after due notice by publication and posting. Upon the equalization hearing the commissioners finally fix the proportion of benefits which will be received by each tract. Benefits to political subdivisions and to railroads are fixed at the same time. Indirect benefits because of the drainage being an outlet for connecting drains previously or subsequently constructed or due to improving the public health, convenience or welfare, may be assessed against any drainage district, county or political subdivision affected as a whole, at the option of the county commissioners. (Secs. 8462 and 8463.) Appeals lie from any final order of determination of the county commissioners. Notice of appeal with bond to cover cost in the event it is not sustained must be given to the commissioners. No appeal operates as a stay of the proceedings but the court may, upon good cause shown, issue an

order staying the proceedings until the appeal is determined. Before issuing such order the court requires bond from the appellant conditioned to pay all damages arising from the stay of proceedings in the event that the appeal is not sustained. (Sec. 8469.)

**Financing—Assessment certificates.**—All expenses incurred prior to the formation of the district are paid from the general funds of the county and reimbursed from the assessments if the district is established or from the bond of the petitioners if it is not organized. (Sec. 8459.) After the equalization of the proportion of benefits the board assesses each tract or other property affected in proportion to the equalized benefits for the purpose of paying the damages and costs of establishment thus far incurred. Notice of such assessment is given to each owner by publication and posting and the notice contains the date when the assessment will become delinquent and the penalty for delinquency. A certified copy of the assessment is filed by the auditor with the county treasurer at the expiration of 30 days, and from the date of such filing the assessment is due and payable and constitutes a perpetual lien upon the property assessed and if not paid within 10 days a penalty of 5 per cent attaches. The assessments are paid to the county treasurer and disbursed by him to the holders of assessment certificates or upon order of the county commissioners. The commissioners may issue separate assessment certificates against each tract for the amount of the assessment thereon and may sell such certificates at not less than par with accrued interest, or they may contract for the construction of the system and pay for same with such certificates. These certificates transfer to the holder all interest, claim or right in or to the particular assessment and the certificates bear the same rate of interest as the assessments, carry the lien of such assessment, and are enforceable by the county treasurer by sale of the property assessed at the annual tax sale, provided that they were delinquent on or before August 1 of that year. Whenever an assessment has been made and confirmed against any political subdivision, the officials of such subdivision at the next annual tax levy add thereto as drainage taxes the amount necessary to pay such assessment. It is optional with the county commissioners, instead of making an annual assessment to pay damages and costs of construction, to issue warrants payable only out of the assessments to be subsequently made and to sell such warrants at not less than face value and with the proceeds pay damages and costs of construction. The warrants bear 8 per cent interest. (Secs. 8464 and 8465.)

At any time after the damages and compensation for land taken have been paid, assessments may be made for further cost of construction. If contractors for construction have agreed to take assessment certificates in payment for their services, further assessments need not be made until the completion of the work. At that time they must be made for the entire balance of the cost and incidental expenses, together with interest on bonds issued or to be issued and all expenses of every kind whatever, and notice of such assessment is given in the same manner as for the first assessment. These additional assessments and certificates issued thereon are in like manner perpetual liens upon the property assessed, bear interest and are enforceable in the same way.

**Financing—Installments.**—Any owner, filing an agreement in writing to the effect that in consideration of the right to pay his assessment in installments he will make no objection to the legality of the assessments and will pay same with interest as fixed by the board, shall have the privilege of paying the assessments in 10 annual installments. A period of 30 days is allowed for the filing of such statements and assessment certificates may not issue until after such period has lapsed, and when issued, all assessments to be paid in installments may be in coupon form. The first installment of assessments is payable 10 days after the certified copy thereof is filed with the auditor and subsequent assessments in from one to nine years from that date. Whenever bonds have been issued for construction assessments must be made payable in installments sufficient in amount to meet the payment on the bonds as they become due.

Assessments may be paid at any time and full discharge thereof given by the county treasurer to any property owner. Except in cases where bonds have been issued, such payment of assessments does not operate as a discharge of the land from its liability in favor of such bonds until the entire principal and interest have been paid. (Sec. 8471.)

**Financing—Bonds.**—If the board of commissioners determines that the estimated cost of the improvement is greater than should be levied in a single year upon the lands benefited, they may fix the amount to be collected each year and by resolution provide for the issuance of bonds in an amount not to exceed the sum of the unpaid assessments. Bonds bear 7 per

cent interest and mature in the proportions and at the times when assessments are to be collected but not to run longer than 20 years from the date of issuance. Bonds state on their face that they are charges upon the land in the particular district and are to be paid out of the funds obtained under the provisions of this article. Should the cost of the drainage exceed the estimate, a new apportionment of the assessments may be made and other bonds issued and sold in like manner; and should the proceeds of the assessment be insufficient to pay the principal and interest of bonds sold, a new apportionment of assessments may be made to meet such shortage. No county is liable on bonds issued under this act but they are to be paid out of the assessments provided for. (Sec. 8472.)

**Maintenance.**—Assessments for maintenance may be made in the same proportion as for drainage, at any time, upon petition of a majority of the owners of land affected, setting forth the necessity and after due inspection, consideration, and public hearing by the commissioners, provided that the estimated expense of maintenance and repairs does not exceed 20 per cent of the original cost or the estimated cost of repairs in any one year does not exceed 1 per cent of the original cost, the board may in its discretion cause same to be made upon the petition of any person directly affected after due notice and hearing. Maintenance assessments are made in the same manner and by the same procedure as those for construction and all the provisions for the enforcement of the assessments are the same. (Sec. 8470.)

All drains are under the control of the county commissioners and they have charge of keeping the same in repair. In inter-county drains repairs are made by the boards of county commissioners of the respective counties for the proportion of the drain in such county. (Sec. 8477.) The county commissioners may make rules and regulations for clearing out the channels of streams with reference to their capacity for drainage.

**Intercounty drains.**—When drainage runs into two or more counties, the commissioners of the several counties require in each county a petition setting forth the entire drainage and the signatures of the owners of lands in each of the several counties, accompanied by a bond to be filed with each county auditor. The respective boards act jointly in considering the petition and a majority of each board is required for determination. In all other respects the procedure is the same as for drainage in a single county, but the engineer's report and the record of the proceedings must be made in each county. Assessments are payable to the treasurer of the county in which the land is located. Bonds may be issued by the joint boards, payable out of the assessments for the drainage, signed by the chairman of each board and countersigned by the auditor of each county, and may be issued for any portion of the expenses of the drainage. If the boards of the respective counties are unable to agree on any matter, any interested person may bring the determination thereof into the circuit court of the county in which the land is located where the matter is determined as an original action, and the decision of the court is binding upon the boards, provided that when the greater portion of the drainage area is in one county and not more than 3,000 acres are within the limits of any adjoining county a petition, signed by one or more owners of property which will be affected, must be filed with the auditor of the county in which the greater area is situated and the board of commissioners of the county where the petition is filed has jurisdiction to hear and allow the petition and construct such drainage as if it were all in one county. If the commissioners of the county where the petition is filed find at the time of the hearing that the greater portion of the drainage area is in another county and not to exceed 3,000 acres is situated in the county where the petition is filed, they must certify the proceeding to such other county and the board of commissioners of that county must assume full jurisdiction. If, at the time of the hearing, the commissioners find that more than 3,000 acres are in another county, the board of that county must be notified and thereafter the two or more boards of the counties having lands affected have joint jurisdiction of the matter. In case of appeals from proceedings for intercounty drains the same must be taken to the circuit court of the county in which the proceeding is pending, but when appeals are from a joint decision of two or more county boards they are taken to the circuit court of the county in which the appellant's land is situated. Assessments on lands in another county are paid to the treasurer of the county having charge of the drainage, but when assessments become delinquent, the treasurer of the county having charge of the drainage certifies the delinquency to the treasurer of the county in which the land is situated who collects same and transmits the sum collected to the treasurer of the first county. All provisions relating to maintenance and assessments therefor are carried

out by the board of commissioners of the county having charge of the drainage. (Sec. 8484.)

**Dissolution.**—If any proceeding has been enjoined, dismissed, or voluntarily abandoned because of any defect or want of jurisdiction, or for any cause, the commissioners may nevertheless proceed to locate the drain under the same or different name in the same or different location. If any new proceeding results in a drain in the same or substantial location as in the abandoned proceeding, the commissioners ascertain the right value of the work done under the old proceeding and the extent to which it will contribute to the new drain and when such value is fixed at a hearing thereon it becomes a part of the cost of the new drain. (Sec. 8489.)

#### INTERSTATE

Upon the filing of the circuit court of any county bordering upon any body of water or stream forming the boundary line between this State and any other State, or having territory included in a natural drainage basin along or extending across the boundary line of this State, a petition signed by not less than 50 residents and freeholders or by the county commissioners of any county partly within such territory adjoining such boundary waters, or included in a natural drainage basin extending along or across the State boundary line, the court, by order, fixes a hearing within the territory named and gives notice thereof by publication. Upon a filing of such petition and the giving of such notice the circuit court acquires full jurisdiction in the premises. Upon the hearing the court has full authority to fix and determine the boundaries of such district, which boundaries must as far as possible include territory in one drainage basin and that can properly be united in one drainage enterprise. Such district becomes a public corporation under the laws of this State with all the powers of corporations.

After the formation of the district, a governing commission of three members is chosen by the county commissioners, if the territory is in one county, or by the joint action of the county commissioners of all the counties when there is more than one. The governing body consists of three resident freeholders of the State who are electors in the proposed drainage district, and they are known as the commissioners of the district.

The commissioners of the district are vested with authority to enter into contracts or arrangements with the governing body of the adjoining State having authority of the drainage matters for the joint construction of drainage improvements. (Secs. 8492-8495.)

The interstate drainage commissioners have authority to act upon the filing with them of a petition signed by not less than 25 freeholders, residents within such district. The proceeding thereafter is in substantial accordance with that following in the establishment of intrastate districts. The representatives of the two States by joint action exercise the functions of the board of county commissioners in a single county drain. The board of drain commissioners exercise the same authority in that portion of the improvement in South Dakota that the county commissioners exercise in a district wholly within one county. Maintenance and repair are provided for by proceedings similar to those for the original establishment and construction of the interstate district. (Secs. 8492-8497.)

#### TENNESSEE

(Code of 1932, Chapter 9)

Article I of the code, section 4187, declares the drainage of swamp lands a public improvement conducive to the health of the inhabitants and wealth of the State and that whenever such land owned by one person is surrounded by the lands of others, the owner may petition the court for a jury to mark out a drain and assess damages. The court, if satisfied that the proceeding is regular, will take such action.

Article IV relates to levee and drainage districts for reclamation of swamp and overflowed lands, and the following is a brief synopsis of its provisions.

**Jurisdiction to establish.**—The county court of any county has jurisdiction to establish a drainage district and to locate and establish levees and to alter the beds of watercourses whenever the same will be conducive to the public health or welfare. The county court referred to is the court presided over by the county judge and not the quarterly county court. (Secs. 4216-4217.)



**Procedure.**—There must first be presented a petition signed by a majority of the landowners and also a majority of the owners of a majority of the number of acres of land that will be affected or liable to be assessed. It must describe the land generally, state that it is subject to overflow or too wet for profitable cultivation, allege that the public health or welfare will be promoted by draining same, describe the works to be constructed, and be accompanied by bond to pay costs in the event that the district is not established. The petition must be sworn to by one or more petitioners and must show that 51 per cent in acres in the proposed district is owned by the petitioners, and must be accompanied by a plat and general description of the district, with the names of the owners of the surrounding and adjacent land sought to be included, who do not sign the petition. There is also a prayer for the establishment of a preliminary fund to pay the expenses. The court after notice by publication sets a time and place for hearing on the petition. (Sec. 4219.) Landowners may appear and file objections and the court proceeds to hear and determine the matter of making an assessment for preliminary costs, and determines from the evidence the approximate amount necessary to cover the expenses. If the court is of the opinion that it is expedient it will assess the amount on the basis of acreage on the land set out in the petition. (Sec. 4220.) Aggrieved parties may appeal. (Sec. 4221.) The clerk of the court makes out a list of the assessments and they are collected by the trustee of the county. If the district be intercounty, certified copies of the assessments are sent to and collected by the trustee of each of the counties and paid over to the clerk of the court in the county where the petition was filed. (Sec. 4223.) The court next appoints a disinterested engineer to examine the land described in the petition and any other land to be benefited or necessary to the improvement, and survey and locate the drainage works. (Sec. 4228.) The engineer reports with plats and profiles of the improvements and a description of same, and also a description of each tract as shown on the tax books, with the names of the owners and an estimate of the cost of the entire improvement. (Sec. 4229.) The court examines the engineer's report and may call for an additional report by the same or another engineer and may disapprove the proposed improvement if it is not deemed expedient. (Sec. 4224.) If the plan is approved by the court, the clerk issues summonses to the persons interested notifying them of the time of the hearing on the engineer's report. Non-residents are served by publication. If it appears to the court at the time of the hearing that any interested party has not been served with notice, proceedings are adjourned until such service is had. (Sec. 4237.) After the engineer's report is filed, the court has power to make a special assessment on all the lands in the district sufficient to pay the cost of the proceeding and of collecting such assessment, but this assessment may be made only on a sworn petition praying that funds be provided to pay the preliminary costs, and after hearing on this question, after proper notice to landowners not signing the petition to show cause why the assessment should not be made. (Sec. 4241.) Claims for damages must be filed three days before the hearing and failure to file same is a waiver of the right to damages. (Sec. 4248.)

At the hearing the court determines the sufficiency of the petition in form and substance and if it finds that the improvement will not be to the public benefit, it will dismiss the proceeding. Finding to the contrary, the court then determines and adjudges the necessity for the improvement. If no claims for damages have been filed, the court may locate and establish the district or it may order a further examination by the same or another engineer. If claims for damages have been filed, the court may not establish the district until viewers have been appointed and reported, and the court proceeds to appoint three viewers, disinterested and not kin to the landowners nor interested in a like improvement, and they fix the damages to which each claimant is entitled and report same to court. In assessing damages the viewers ascertain the value of the land taken, without deduction, but incidental benefits which may accrue to the owner may be considered. (Sec. 4254.) The court then considers the damages which have been awarded, and decides whether the district should be established, and if in its judgment the cost of construction is not a greater burden than should be borne by the land benefited, and the improvement is conducive to the public welfare, the court will locate and establish it by judgment of record, and proceeds to determine the damages, increasing or diminishing the awards of the viewers as it sees fit. Appeal may be had within five days upon filing of proper bond. (Sec. 4257.) When appeal is taken from the judgment for damages it will not prevent proceeding with the improvement if the district or the petitioners

will give bond to the appellant in double the amount of the damages appealed from. (Sec. 4259.) The circuit court hears the appeal *de novo* and the amount of the damages found is entered on record but no judgment is entered therefor. The amount is certified to the county court and allowed by it to the claimant. If the appeal is from the establishment of the district, the order of the circuit court is certified to, and followed by, the county court. Trial in the circuit court may be either with or without jury as that court may determine. Damages finally fixed must be paid in the first instance by the parties benefited by the improvement, or secured to be paid. After such damages have been so paid, the county court enters an order of condemnation showing such lands appropriated for the use of the district. (Secs. 4259-4266.)

**Procedure.**—After the district is established the county court appoints two directors who must be landowners and one of whom must be one of the petitioners. These two, together with the judge or the chairman of the county court, constitute the board of directors of the district and have general control and management of carrying out the improvements. Contacts are let by the directors to the lowest bidder and they may employ an engineer to superintend the construction. After the main improvement is completed, they may employ an overseer. (Secs. 4302-4315.)

**Procedure—Intercounty districts.**—When the improvements are located in more than one county application by petition must be made to the county court of each county in the same manner as in single county districts, and the county court of the county in which the larger or largest per cent of the land to be affected is located appoints a competent engineer who makes the same report as required in a single county district. A copy of his report is filed with the county court of each county. Thereafter the procedure is the same as in single county districts until the point is reached where the viewers are appointed to assess damages. Then the court of the county having the largest area appoints two viewers and one viewer is appointed by the county court of each of the other counties affected. The viewers then furnish a copy of their report to the court of each county. (Sec. 4345.) When commissioners are appointed the county having the largest area appoints two, one of whom must be an engineer and the other counties appoint one each. Thereafter the procedure is the same as in a single county district. (Sec. 4346.) The board of directors of an intercounty district consists of one member from each county appointed by the court, and the judge, or chairman, of the county court of each county is a member of such board. The qualifications, powers, and duties of the directors are the same as in single-county districts. By amendment of 1915, section 4398, when the improvement requires that it be located in more than one county, the petition may, in the alternative, be made to the county court of any one of the counties and the court in which it is filed will have jurisdiction, and it is not necessary to file a petition in any other county. The statute declares that it is the intention of this section to provide for an additional method of proceeding in intercounty districts and to leave the parties to their option whether they will proceed under one or the other alternative method in creating districts where the lands are in more than one county.

**Procedure—Mutual agreement.**—The owners of land which will require combined drainage may provide for the establishing of a district or the location and construction of drains on their own lands by mutual agreement in writing, signed, acknowledged, and filed with the county clerk. The county court has full jurisdiction over such districts and may establish same and order such proceeding as may be required. The preliminary expenses may be advanced by the county by order of the quarterly court, to be refunded out of the assessments collected from the land. The quarterly court has the power to contribute out of the general county fund such amount as it sees fit for the payment of preliminary assessments without requiring refund. (Secs. 4381-4385.)

**Procedure—Subdistricts.**—Any person desiring to establish a subdistrict within the limits of a district, for the purpose of securing more complete drainage, may petition the court for same, and the proceeding is the same as for the establishment of the original district. When constructed the subdistrict becomes a part of the system under the control of the board of directors, provided, however, that such subdistrict may be established only when conducive to the public welfare, and any special assessment for the benefit of such district is secondary in lien and in right to the assessment for the original district. (Sec. 4334.)

**Financing—Assessments.**—If the district is established by the county court and the damages are paid or secured, the court may, if it thinks proper, have a further and more complete

report from the engineer or some other engineer, giving a definite estimate as to the cost, and dividing the work into convenient sections for the letting of contracts. When the improvement has been located and established, the county court appoints 3 commissioners, 1 of whom must be a competent civil engineer and the other 2 freeholders, not interested nor related to any owner in the district. These commissioners classify the lands benefited in a graduated scale, and make an equitable apportionment and assessment of all costs, and report same in writing to the county court. They may divide the lands of one owner and classify the subdivisions when different portions of such tract will receive different benefits. (Secs. 4268-4284.) A hearing is held on the assessment so made, after notice by publication, to which interested parties may present their objections to the report. The court determines same and may increase, diminish, or affirm the assessments made, but in no case is it competent to show that the land assessed would not be benefited by the improvement. The court assesses such apportionments so fixed by it on the land within the district. (Sec. 4287.) Assessments are collected by the county trustee in the same manner as county taxes, and the proceeds are kept in a separate fund for the use of the district. No personal property of a landowner is liable for such assessment. (Sec. 4332.) The assessments are entered upon a drainage assessment book, made out by the county court clerk, and become due and payable at the same time and are collected in the same manner as county taxes. They are valid liens on the land against which assessed and have the same dignity as state and county taxes. (Sec. 4354.)

If the first assessment is insufficient to complete the work, the court may make further assessments in the same ratio. After the district has been created and the commissioners report confirmed and the time for appeal has expired and no appeal has been taken, the court may make a special assessment to pay the expenses up to that time if it is necessary. (Sec. 4291.) Appeals must be accompanied by bond for costs and the pauper's oath will not relieve the appellant from this necessity. (Sec. 4298.) Appeals will not stay the proceedings if bond is posted by the district or any petitioner to hold the appellant harmless. (Sec. 4298.)

**Financing—Bonds.**—If the court determines that the estimated cost of the improvement is greater than should be levied in one year on the lands benefited, it may fix the amount to be levied and collected each year and issue drainage bonds bearing no more than 6 per cent interest and devote such bonds at par to the payment of the expenses of the work as it progresses, or may sell such bonds and devote the proceeds to such payment. In no case may the bonds run longer than 20 years. Should the cost exceed the estimate a new apportionment of the assessments may be made and levied and other bonds issued and sold in like manner. (Sec. 4335.) Landowners may pay the assessment in full before the issuance of bonds and be relieved of such assessment. The terms of the bonds are fixed by the directors; they are issued for the benefit of a certain district by number; and recorded in the drainage record, with a description of the lands upon which assessments have not been paid in full. Each bond shows expressly on its face that it is to be paid only by assessments levied and collected on the lands in the district, and no assessment may be collected on property, real or personal, outside of the district to pay such bond. (Secs. 4336-4338.)

When the district is in more than one county the county court of each county determines whether bonds shall be issued to pay the expenses of the improvement so far as the lands lying in that county are concerned and when bonds are issued they are payable only out of assessments levied on the land in that county. (Sec. 4340.)

If the directors in their judgment contract with the purchaser to that effect, payment for bonds may be made in installments, provided payment of such installments is amply secured by bond in double the amount of the deferred installments. Such bonds and a copy of the resolution of the board approving same must be spread upon the drainage record. (Sec. 4341.) If the board of directors deem best, instead of issuing bonds, they may direct that warrants be issued or drawn on such district by the judge or chairman of the county court to be paid out of the funds of the district only and at such times as assessments may be due. (Sec. 4343.)

When on account of delinquent assessments and delay in enforcing same the funds of the district are insufficient to pay the bonds and interest maturing in any year, the directors may borrow the necessary money to pay the deficiency on the notes of the district and may pledge the delinquent or unpaid assessments for the same. The delinquent assessments when paid constitute a fund for the payment of such notes.

(Sec. 4366.) When any bonds or interest coupons have been past due for two years and payment has been demanded by the holders thereof, such holders have the right to apply to any court of competent jurisdiction within the county for the appointment of a receiver for the district, and it is the duty of the court, upon proper verification of the petition, to appoint such receiver to collect the assessments and taxes due in any such district. The receiver proceeds to make such collection by process of law and may give deeds and pass good title to any lands sold for delinquent taxes, subject to the right of redemption. (Secs. 4369-4370.)

**Maintenance.**—At any time after the improvement is completed, upon petition of the board of directors, it appearing to the county court that a special fund is required for the purpose of maintaining any district or to keep the same effective for the purposes for which created, the court has the power to make and collect a special assessment for that purpose, but the amount so assessed must not exceed 10 cents per acre in any one year. This assessment is based upon the apportionment of benefits and is collected at the same time and in the same manner as other assessments. The assessment is a lien on the land of the district enforced in the same manner as the liens of other assessments. (Secs. 4389-4390.)

## TEXAS

(Complete Statutes of Texas, 1928, Title 128, Sec. III, Art. 8097)

The Texas constitution of 1876, section 52, article 3, provides that the legislatures shall not have any power to authorize any political subdivision of the State to lend its credit, or grant public money to any individual association or corporation whatever, or to become a stockholder therein.

The amendment of November 8, 1904, quoted the above provision and then provided: That any county or political subdivision of a county or of the State, upon legislative authority and upon a vote of two-thirds of the resident property taxpayers voting thereon, who are qualified electors, may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such district, and levy and collect taxes to pay such indebtedness for the following purposes: (a) Improvement of rivers for navigation and irrigation; (b) construction of lakes, pools, etc., for navigation, irrigation and drainage; and (c) construction of roads.

Section 59 of article 16 of the constitution (amendment adopted in 1926) declares the conservation and development of all natural resources, including \* \* \* reclamation and drainage of overflowed lands and other lands needing drainage \* \* \* to be a public right and duty, and the legislature is authorized to pass all such laws as may be appropriate thereto. This article provides that there may be created such number of conservation and reclamation districts as may be determined to be essential, which shall be bodies politic and corporate. The article then provides further that the legislature shall authorize such indebtedness as may be necessary to provide for the improvement and maintenance of such districts, provided the proposal is first approved by a majority of the qualified property taxpaying voters of such district.

**Jurisdiction to establish.**—The commissioners' court of each county may establish drainage districts in that county and may, or may not, include towns, villages and municipal corporations, but no land shall be in more than one district at the same time. When established, the commissioners' court may make drainage improvements and issue bonds in payment therefor.

**Procedure.**—A petition must first be presented to the court, signed by 25 of the freehold resident taxpayers in the proposed district. If there are less than 75 of such citizens, then the petition must be signed by one-third of the number whose land will be affected. The petition sets forth the necessity, public utility, feasibility and the proposed boundaries of the district, and designates a name, which shall include the name of the county. The petition must be accompanied by \$200 in cash to be held by the clerk until after an election is had to determine whether the district shall be established, and to be

used for the cost in the event that the election is against the establishment of the district. If the district is established, the deposit is returned to the petitioners. The court sets the petition down for hearing not less than 30 nor more than 60 days after filing, and the clerk gives notice by posting on the courthouse door and four conspicuous places in the district. Any person in interest may appear and present evidence for or against the establishment of the district. (Sec. 8098.)

A two-thirds vote of the resident freeholders in the boundaries of the proposed district is necessary for its establishment. Only resident property taxpayers who are qualified voters may vote at the election.

If the proposal to establish the district is carried the judge so declares and enters the result in the minutes of the court. All drainage districts must bear the name of the county in which located as a part of their name and be numbered consecutively as created by the court.

**Procedure—Commissioners.**—When a district is so established and unless commissioners are elected as provided in the succeeding article the court appoints three drainage commissioners who shall be residents of the county or adjoining county, and shall be freehold taxpayers of the district, and legal voters of the county, or adjoining county. (Sec. 8118.)

After a district is established the court, upon petition of a majority of the landowners, praying for the election of three drainage commissioners, orders such election at the earliest possible date and declares the three persons receiving the highest number of votes to be elected. Such commissioners so elected are the rightful drainage commissioners for such district and hold office until the next regular election of State and county officers, and thereafter they are elected every two years at such general election.

The commissioners appoint an engineer who makes a map of the district showing the boundary lines thereof and the original surveys therein, and if the boundary lines cross the original surveys, the map must show how many acres of the original survey are included in the district. The engineer also makes maps and profiles of all ditches, drains, canals, and levees, and shows the relation which each bears to each tract of land through which it passes, and the shape into which it divides each tract. When the drainage works cut off any tract containing less than 20 acres, the maps must show the number of acres so divided therefrom, the number of acres in the whole tract, and the shape of the smaller tract and its relation to the drainage works. The profile may also show the number of cubic yards necessary to be excavated and an estimate of the cost. When maps, profiles and estimates have been completed, the engineer files same with the clerk of the court.

**Financing—Bonds.**—When the engineer's report has been filed, the commissioners' court makes an order directing the issuance of drainage bonds for such district in amounts sufficient to pay for the proposed improvements and necessary incidental expenses. Bonds may not exceed in amount one-fourth of the assessed valuation of the real property in the district as shown by the last annual assessment thereof, nor exceed the amount specified in the order and notice of election (but see art. 8194, conservation and reclamation districts).

After the issuance of bonds is authorized, commissioners may make changes in the district which will be of advantage, but may not increase the cost beyond the amount of bonds authorized, such change being made by entering notice on the minutes of the board with accompanying maps and profiles, and publication for two weeks. When it appears to the commissioners that changes in the first report of the engineer will be advantageous but will require the issuance of more bonds, they certify this fact to the court with maps and profiles, and the court orders an election on the change, and if two-thirds of the property taxpayers favor the change the court enters such change of record and orders additional bonds issued.

The court provides a book in which a record of all bonds must be kept as well as the annual rate of assessment necessary to provide a sinking fund to pay bonds and interest. This bond record is open at all times to inspection of interested parties and the payment of all bonds is entered thereon.

Bonds are issued in the name of the district, signed by the county judge, attested by the clerk and the seal of the court affixed. The denominations are from \$100 to \$1,000, interest at 6 per cent, place of payment determined by the court, and no bond may mature more than 40 years after its date. Before bonds are offered for sale the commissioners must forward to the attorney general of the State a copy of the bonds to be issued, a certified copy of the order of the court levying taxes to pay the same, a statement of the total bonded indebtedness of the district, including the proposed issue, and the assessed value of all property in the district as shown by the last assessment of the

county. The attorney general must examine the bonds, and if he finds them to conform to the constitution and laws, he must so certify. When said bonds are so approved, they are registered by the comptroller of the State in a book kept for that purpose, and the certificate of approval recorded. Thereafter the bonds are *prima facie* valid and binding obligations in every proceeding in which their validity is questioned, and the only defense which may be offered against the validity of such bonds is forgery or fraud.

When bonds have been voted the court must annually levy and cause to be collected taxes on all property in the district, whether real, personal or otherwise, sufficient in amount to pay the interest on the bonds as they fall due and redeem such bonds at maturity. Such taxes will be placed in the interest and sinking fund. (Sec. 8136.)

**Maintenance.**—Annually, before the 1st day of July, the commissioners file with the court a full detailed report of the condition of the improvements in the district, with an estimate of the probable cost of maintenance and repair during the ensuing year, together with an inventory of the property of the district and the obligation charged against it.

At the same time that taxes are levied to meet the bonded indebtedness, the court shall cause to be assessed upon all property, real, personal and otherwise in the district, a tax sufficient to preserve, repair and maintain the improvements and to pay all lawful debts and demands against the district, but such levy shall not in any one year exceed one-half of 1 per cent of the total assessed valuation of said district for such year. Such taxes when so collected are placed in the construction and maintenance fund.

The drainage commissioners are charged with the duty of keeping the improvements in repair and have general authority to supervise and control the construction and maintenance of same. (Sec. 8154.)

**Collection of taxes.**—Tax assessors and collectors have the same power and are governed by the same regulations in the collection of drainage taxes as in the collection of State and county taxes. The court appoints a board of equalization for each district with the same powers as equalization boards in State and county taxation. After the establishment of a district and upon the petition of 25 resident freeholders therein the court will order an election to determine whether the district shall have a separate tax assessor and collector and a separate board of equalization. Notice of the election is given in the same way as the original notice, and if the proposition is carried, the court appoints an assessor and collector with the same powers as the same officers of the county, and the commissioners exercise all of the powers of a county board of equalization.

**Conservation and reclamation district.**—Any district may become a conservation and reclamation district under chapter 8 of title 128, Texas Statutes, by making the necessary deposit, presenting a petition and giving the required notice, after which the court by order entered of record, declares said district to be a conservation district. (Sec. 8176.)

**Dissolution.**—Any district may voluntarily abolish its corporate existence by an election for that purpose, provided that should the proposition to dissolve be defeated then no other election may be had for two years thereafter. A petition must be presented, signed by 50 freeholders, or if there be less than 100 freeholders in a district, then by one-third thereof, asking for dissolution. The court orders an election after due notice. The petition must be accompanied by \$200 in cash, which is returned if the election is successful, and otherwise is used to pay the expenses thereof. The election is held in the same manner as the election to establish the district, and a two-thirds vote is necessary to carry the proposition. If dissolution carries, the court enters an order declaring the district to be dissolved.

Upon dissolution the court orders all debts settled and may assess taxes in the same manner as other taxes, in an amount necessary to pay all valid obligations of the district except bonds issued and held by purchasers. Such bonds are paid in accordance with their terms by the levy and collection of an annual tax, as heretofore provided. If the bond holders are willing, the court may levy a tax sufficient to retire the bonds at one time or in annual installments.

The court provides for the disposition and sale of all district property, and the treasurer of the county becomes trustee of the defunct organization to close up its affairs. When all established claims have been paid, and costs satisfied, the trustee files an accounting and final settlement with the court, and the remaining funds are disposed of on the order of the court.

**Water improvement districts, title 128 (Water), chapter 2, article 7622.**—The county commissioners' court of any county

may establish one or more water improvement districts to provide for the irrigation of lands and the construction of irrigation works, including drainage works, necessary to maintain the irrigability of the land. The method of forming a water improvement district is substantially the same as for forming a drainage district.

**Water control and improvement districts, chapter 3-A.**—Water control and improvement districts may be organized within the terms and provisions of section 52 of article 3 of the Texas Constitution, and section 59 of article 16 of said constitution. The petition must state the section under which it is to be organized. (Arts. 7880-7881.)

The purposes for which it may be organized are: (a) Improvement of rivers, streams, etc., to prevent overflow or to improve navigation or irrigation, and (b) the construction and maintenance of pools, reservoirs, dams, canals and waterways for the purposes of irrigation, drainage, or navigation, or in aid thereof.

Under section 59, article 16 of the constitution, districts may be organized for: "Control and distribution of water for irrigation and other useful purposes \* \* \* the reclamation and drainage of overflowed lands and other lands needing drainage \* \* \*."

The method of formation of these districts is substantially the same as of drainage districts. The commissioners' court receives the petition and 5 directors are elected who become the board of directors of the district and control all of its affairs. (Arts. 7880-7883.)

**Levee improvement districts, chapter 6.**—Levee improvement districts may be created for the purpose of maintaining levees to reclaim land from overflow and for the proper drainage and other improvement for such land as contemplated by section 59, article 16, of the constitution. The commissioners' court of the county, or the county judge, when the commissioners' court is not in session, receives the petition and establishes these districts. When the levee improvement district is created, the court creating the same, by a majority vote, appoints three supervisors for such district, to be known as district supervisors. The supervisors appoint an engineer and have other general control over the affairs of the district. (Art. 7972.)

**Conservation and reclamation districts, chapter 8.**—Conservation and reclamation districts may be organized in any manner that water improvement, drainage, or levee improvement districts are authorized to be created, and for the same purposes.

Any water improvement, drainage, or levee improvement district organized as a defined district under section 52, article 3, of the constitution, may avail itself of the benefits of section 59 of article 16 of the constitution and thereby become a conservation and reclamation district, without change of name, or impairment of obligation.

Any such district may incur indebtedness, levy taxes to fully carry out the purposes of its organization, and for maintenance and operation under the provisions of the law under which it was organized.

All limitations of indebtedness authorized to be incurred and taxes to be levied, imposed by section 52 of article 3 of the constitution, and all laws under which any such district is organized are removed as to all conservation and reclamation districts. (Acts 4 C. S. 1918, p. 40.)

## UTAH

(Compiled Laws, 1917; Session Laws)

The drainage statutes contained in the compiled laws of Utah of 1917 (sec. 204 et seq.), were amended as to a majority of the sections by chapter 41 in the session laws of 1919, and a number of sections were added. In turn the session laws of 1921 (ch. 47) amended the remaining sections of the compiled laws of 1917, as well as eight sections of the amendments of 1919. Three sections of the 1921 statutes were again amended by chapter 48, session laws of 1923, and in 1925 (ch. 109) additional amendments were made to two of the same sections and seven additional sections were added. In 1929 (ch. 32) there was an additional enactment permitting the payment of equalized drainage assessments of benefits and taxes with bonds of the district and making further provision for the redemption of lands sold for delinquent drainage taxes. The following synopsis relates to the drainage laws as amended down to 1925,

since which time the amendments have not materially changed the jurisdiction, procedure to establish, or the financing of drainage districts.

**Jurisdiction to establish.**—The board of county commissioners of the county having the greatest area in the proposed district is authorized to receive a petition when presented by a majority of the owners of title or evidence of title who own or control not less than one-third in area of the land to be benefited, or when presented by the owners of title to a major portion in area of the land to be benefited. (Sec. 2040, 1921.) The petition must be accompanied by bond in the sum of 2 per cent of the estimated cost of the improvement, conditioned to pay the costs of the proceeding in the event the district is not established. (Sec. 2401, 1919.)

**Procedure.**—Upon the filing of the petition the clerk of the county gives three weeks' notice thereof by posting and publication in each county affected, and fixes the time and place for hearing thereon. Nonresidents are served by mail and publication. (Sec. 2040, 1919.)

The county commissioners hear the petition and they adjourn from time to time, not exceeding four weeks in all. Any interested party may contest the necessity or utility of the work and offer evidence in regard thereto. The commissioners determine the sufficiency of the petition as to signatures and if it is not properly signed, the procedure is dismissed at the cost of the petitioners. If the commissioners find the petition in due form, they enter an order to that effect which is conclusive upon the landowners that they have assented to and accepted the provisions of this act. The commissioners make proper changes in the boundaries of the district and establish and define same, but may not exclude land which will be benefited by the one system of drainage. Upon application of the owner, they may extend the district to include land or may exclude land not benefited. If it appears to the commissioners that the proposed system of drainage will be beneficial for agricultural or sanitary purposes and will be conducive to the public health or welfare, they so find, and appoint a board of supervisors of the district consisting of three members with terms of office from one to three years respectively. In districts in two or more counties, not more than two supervisors may come from one county. The supervisors lay out and construct the work and levy taxes on the lands, subject to the approval of the county commissioners. Within 10 days thereafter the county board issues, in the form set out in the statute, a proclamation establishing the district. Upon the proclamation being entered on record the district becomes a body corporate and politic by the name stated in the proclamation, has perpetual succession, and the board of supervisors constitutes the corporate authority. (Sec. 2044, 1921.) Any interested party may appeal to the district court of the county where such appeal is advanced for hearing. Separate appeals are consolidated and the procedure conforms to the civil code. No action affecting the validity of the organization may be maintained after the expiration of 6 months from the entering of the order establishing the district, or after proceedings for confirmation provided by section 2054-x4. (Sec. 2045, 1921.) A certified copy of the order establishing the district is recorded in the county clerk's office of each county and the commissioners of such counties may not thereafter allow the formation of another drainage district embracing any of the land of the prior district, without the written consent of the supervisors. (Sec. 2045, 1921.)

Within 30 days the supervisors organize as a board by electing a president, a secretary, and a treasurer. They appoint an engineer, adopt by-laws, and conduct the business of the district as a corporation. The supervisors have power to enter into contract with the United States for the operation and maintenance of a drainage system or the assumption as principal or guarantor of the indebtedness incurred by the United States on account of such district. (Sec. 2047, 1923.) The supervisors make surveys, locate the necessary works, and acquire rights of way, by condemnation if necessary. They appropriate water for useful purposes, regulate and control for the benefit of the district all water developed or owned by it, and may acquire and dispose of water and water rights. (Sec. 2047, 1923.)

Upon the petition of a majority of the owners who are the owners of title to a major portion of the area, the county commissioners must remove any supervisor at any time. In filling a vacancy in the board of supervisors, the commissioners must appoint any person recommended by a majority of the owners. (Sec. 2065, 1923.)

Immediately after their appointment the supervisors examine the land in the district; determine whether the work is feasible;

estimate the cost thereof and the probable annual cost of maintenance; determine what land will be damaged and the probable annual amount thereof; ascertain the land which will be benefited and the aggregate amount of benefits; determine whether the aggregate benefits will exceed the costs; and find what additional land, if any, will be benefited. (Sec. 2053, 1921.) They make report of their findings to the county commissioners. If they find that the cost will exceed benefits, the proceeding is dismissed, even though the district has been proclaimed. The commissioners exclude the land recommended by the supervisors to be excluded, and if additional land is reported as benefited, the commissioners will annex same after notice to the owners and hearing as in the first instance. If by such inclusion there would be the necessary majority in ownership or area in favor of organization of the district with the new boundaries, the commissioners will by order confirm the report and publish the boundaries of the district as finally fixed. The supervisors then proceed with the construction of the system. (Sec. 2054, 1921.)

**Procedure—Special proceedings.**—The board of supervisors may bring an action in the district court for the confirmation of the proceedings had to establish the district and for the issuance of bonds. (Sec. 2054-x, 1919.) The code of civil procedure governs and the court finds and determines the legality and validity of the proceedings. A copy of the decree of the court is recorded in each county affected. (Secs. 2054-x1 to 2054-x4, 1919.)

**Financing—Assessments.**—The supervisors view each tract of land and consider all the damages and benefits which each tract will receive from the construction and maintenance of the system. They assess each tract according to benefits and make proper allowances for damages. After the assessment is made it is transmitted to the county board and within 15 days notice is mailed to each landowner of the amount of benefits assessed against his land, stating the time and place when the board will meet as a board of equalization to hear complaints against such assessment. The county board, sitting as a board of equalization, finally determines the benefits to be assessed and taxes to be levied upon each tract. Such assessments of benefits are the basis of liens upon the land for all district indebtedness. (Sec. 2054-x5, 1919.)

On or before the first Monday in March the supervisors prepare a statement and estimate of the amount of money to be received by taxation within the district for construction and maintenance; liquidation of the district warrants, notes and interest; interest on the bonded indebtedness; and to create a sinking fund for the payment of bonds. They also include maintenance and repair of the works and cost of management and control. The amount so estimated is levied each year against the land in proportion to the equalized benefits, after adding 15 per cent to provide for incidentals and possible delinquencies. This amount is certified to the county assessor. (Sec. 2055, 1919.) The assessor places the drainage tax certified by the supervisors on the assessment roll and it is collected by the treasurer in the same manner and at the same time as county taxes and paid over by the treasurer to the board of supervisors. The county treasurer reports before the end of each calendar year the taxes paid and delinquent taxes in the district. (Sec. 2057, 1921.) Drainage taxes become a lien upon the land assessed on and after the second Monday in March of each year. They are delinquent at the same time and collected in the same manner as State and county taxes. The general revenue laws of the State are applicable to the enforcement of drainage levies but land sold for drainage taxes must be sold separately. The statute sets out in detail the proceedings for the sale of delinquent lands and the redemption of same upon payment of taxes, penalties and costs. (Sec. 2059, 1921, 1925.)

For purposes of organization the supervisors may issue district warrants bearing 8 per cent interest, before the collection of annual taxes, for an amount not to exceed the equivalent of an average of \$1.50 per acre. In anticipation of the collection of taxes the supervisors may borrow money not exceeding the taxes for the current year and issue warrants payable in not more than one year. (Sec. 2060, 1921.)

**Financing—Bonds.**—Whenever the supervisors deem it expedient for the purposes of constructing the system or conserving the public health or welfare, they may, when authorized by a special election in the district, contract with the United States and provide for the payment of any sums due thereunder at such times as may be agreed upon, or they may issue drainage district bonds to run not less than 5 years nor more than 40 years, bearing 6 per cent interest. These bonds may not be sold at less than 90 per cent of their face value, and the

proceeds may not be used for any purpose except the construction of the system. (Sec. 2071, 1919.)

Whenever any bonds are issued or contract made with the United States, such bonds or contract constitutes a lien upon all the lands in the district and the improvements thereon to the extent of the total equalized benefits, and the supervisors must from time to time levy a sufficient tax to pay the interest on such bonds and provide a sinking fund which will liquidate same, or, in case of contract with the United States, levy a sufficient tax to meet all payments due thereon. (Sec. 2072, 1921.)

**Maintenance.**—Maintenance is provided in the annual estimate of the supervisors of the amount to be collected in the district for the succeeding year. (Sec. 2055, 1919.)

**Generally**—State lands are subject to all the provisions of the law relating to assessment of drainage taxes on lands individually owned. (Sec. 2073-x3, 1925.) Drainage taxes may be assessed and enforced against unentered or unsold State lands or against lands covered by an unpatented entry or held under contract of purchase from the State, and such lands may be sold for delinquency under proceedings similar to those for the sale of land held in private ownership. (Sec. 2073 x3, 1925.)

## VIRGINIA

(Code of 1924, Chapter 73, as amended by Act of March 24, 1926; Laws of 1926, p. 604.)

**Jurisdiction to establish.**—The circuit courts of several counties have jurisdiction to establish levee or drainage districts in their counties, and to locate and construct the necessary works for the purpose of reclaiming wet, swampy, or overflowed lands. The drainage of swamps and of surface waters from agricultural lands is declared to be a public benefit and conducive to the public welfare. (Sec. 1737.) An amendment of 1926 further declares that the preliminary work of establishing a drainage district is a public improvement and it is the duty of the county board of supervisors to cooperate in the promotion of such development and the value of the indirect benefit accruing to the county is full compensation for the performance of such duty; that the preliminary payment of the costs and the expenses of survey and the assumption of responsibility for necessary bond issues is construed as a revenue producing investment for the county for which it receives full potential value. (Laws of 1926, p. 604.)

**Procedure.**—A petition signed by 51 per cent or more of the owners of land, irrespective of area, is filed with the clerk of the circuit court of any county in which a part of the land is located, describing the land, stating that it is in need of drainage and that the public welfare will be promoted thereby. The petition must be accompanied by bond for the amount or product of \$70 multiplied by the square root of the estimated number of acres within the boundaries of the proposed district. (Laws of 1926, p. 604.) The clerk issues a summons to be served on all the defendant landowners, including railroads, who have not joined in the petition, which summons is returnable at the next term of court. The court appoints two disinterested freeholders of the county or counties and a drainage engineer recommended by the petitioners as a board of viewers. (Sec. 1738.) By the amendment of 1926 the engineer must be a land surveyor and civil engineer certified by the State board of examiners, and if the engineer recommended by the petitioners is not appointed within 10 days by the court, the clerk or the attorney for the petitioners may appoint him, provided he is qualified under this section; but the appointment must be confirmed by the court. By the same amendment a supplementary petition may be filed by any owner asking that tile be used in the drainage of his land, and in such event the viewers make an additional special assessment on such land.

The viewers examine the land described in the petition and any other land which will be benefited and report to the court whether the proposed drainage is practical and will benefit the public and the land sought to be improved; whether all the land which will be benefited is included; and the names of the owners and the number of acres belonging to each which will be affected. They file maps and surveys showing the location of the respective tracts of land with relation to the proposed work. (Sec. 1743.) If the report of viewers is against the practicability or public utility of the drainage, the petition will be dismissed at the cost of the petitioners apportioned among them according to their respective ownership of land in the proposed district. (Amendment of 1926, p. 604.) The petitioners may, however, file another petition after six months upon allegations that conditions have changed or that material

facts were omitted from the first petition. If the viewers report affirmatively on the questions of practicability and public benefit, the court, after due notice, fixes the time and place for a hearing on the report. (Secs. 1744-1745.) At the hearing the court determines all objections. Land shown not to be affected will be excluded and additional land benefited will be included after service of notice on the owners as in the first instance. The sufficiency of the petition is then determined by the court and any necessary changes made in the plans. The approximate boundaries of the district are fixed and the court declares the preliminary establishment of the district, designating it by name. Lands excluded because not benefited but lying within the outer boundaries of the district are not assessed but the districts may acquire rights of way across same. (Sec. 1746.) Drainage districts have the right of eminent domain and may condemn land for rights of way by the procedure provided in the general statutes. (Laws of 1926.) Any interested person has the right of appeal to the supreme court within 60 days under the general appeals statutes, section 1748, as amended.

After the preliminary establishment of the district, the viewers report is referred back to them and if no survey of the land included in the district has been made by the State or the United States, they make a complete survey with plans, specifications, estimates of cost, and the value of land to be taken for rights of way. (Secs. 1749-1750.) They assess damages separate and apart from any benefits which will be received. They classify the land with reference to the benefits it will receive and the degree of wetness, the proximity to the main drain, the fertility of the soil, and the protection from floods, are considered in determining the amount of benefits. The land is divided into seven classes, class A being that which receives the highest benefits and the other classes embracing lands which receive benefits in lesser proportion. A landowner may have land in several classes and the number of acres in each class belonging to each owner is reported in tabulated form, together with the total number of acres in each class in the entire district. (Secs. 1751-1754.)

When the final report of the viewers is received and examined by the court, lands will be added or excluded, depending on whether they are benefited or not, and additional parties are brought into the proceedings by the same notice given in the original instance and have the same rights. The court determines any objections filed and makes such changes as are necessary to do substantial justice to all. If it is found that the cost of construction plus the damages assessed is not greater than the benefits to accrue, the court will confirm the final report and declare the district finally established. Finding to the contrary, the court will dismiss the proceeding at the cost of the petitioners. All parties have the right to appeal within 60 days. (Sec. 1756 as amended.) The clerk of the court provides a drainage record in which a complete record of the entire proceeding is kept.

**Procedure—Drainage commissioners.**—After the final establishment of the district, the court appoints a county board of drainage commissioners for the county in which the petition was filed, if such board does not then exist, and this board administers the affairs of the district, and all subsequent districts established in that county. (Sec. 1759 as amended by act of March 24, 1926.) The county board of drainage commissioners appoints a superintendent of construction and gives notice by publication of the time and place of the letting of contracts for construction.

**Financing.**—The preliminary expenses are paid by the county treasurer upon certificate of the circuit judge, to be refunded when drainage funds are subsequently provided or out of the bond of the petitioners if the district is not established. (Sec. 1738.) The court may from time to time direct the petitioners to pay into court such amount as may be necessary to pay the costs and expenses, at a flat rate per acre according to the area owned by each, such amount to be refunded when drainage funds are provided, and such order has the force and effect of a judgment. (Sec. 1756 as amended.)

**Financing—Assessments.**—After the contract for construction is let the county board of drainage commissioners determines the total cost of the improvement, including damages and all costs of establishment and an amount sufficient to pay maintenance charges for three years after completion. They deduct therefrom any special assessments against railroads and highways, and certify to the clerk of the circuit court the total cost so arrived at. The certificate is recorded in the drainage record and is open to public inspection. The county drainage commissioners immediately prepare assessment rolls or drainage tax rolls, giving the name of each owner, the land assessed, and the amount of the assessment. The first assessment roll provides funds sufficient to pay interest on any bonds which may

be issued to accrue the third year after their issuance, together with the cost of handling same. The second assessment roll makes like provision for the fourth year and the roll is made up in like manner for each succeeding year. In each year, commencing with the maturity of the bonds, the tax levied is 110 per cent of the maturing principal and interest of bonds, in this manner providing one year in advance for the payment of bonds and interest. If the sum actually collected on any assessment is more than sufficient to pay the installments of bonds for the succeeding year, a proper allowance for the surplus is made in the following year. The amount assessed against the several tracts must be in proportion to the benefits received as shown by the classification. A copy of the assessment roll is recorded and filed with each county treasurer with an order directing the collection of the assessments. Such assessments have the full force and effect of a judgment as in the case of State and county taxes and constitute a lien on the land assessed, second only to general taxes. Land may be sold for delinquency under the general laws for the collection of taxes and may be bought by the county drainage commissioners for the district if no sufficient bid has been received after the third attempt to sell such land. (Sec. 1771 as amended.) An addition to the drainage law by act of April 11, 1927, Laws of 1927, page 16, gives the detailed procedure for the sale of lands for delinquent drainage taxes and the method of redeeming same.

**Financing—Bonds.**—The county drainage commissioners give notice, by publication and posting, of their intention to issue bonds for the total cost of the improvement. Any owner may, within 15 days, pay in cash the total amount for which his land is liable and be released from the assessments, but his land continues liable for future assessments for maintenance or for any increased assessments authorized. (Sec. 1772.) Every owner failing to pay in cash is deemed to consent to the issuance of drainage bonds, and in consideration of the right to pay in installments waives his rights of defense, because of any defect in the proceedings, to the payment of any assessment levied to pay such bonds.

After the expiration of 15 days from the public notice of intent to issue bonds, the drainage commissioners may issue same for an amount equal to the total cost of the improvement, less cash payments, plus an amount sufficient to pay interest on the bonds for three years next following. Bonds bear 6 per cent interest, and must be paid within 30 years, the first installment of principal falling due at the expiration of three years from the date of issuance. The board sells bonds at such price as may be approved by the court. If bonds become in default for six months the holders may, by mandamus, compel the levying of a special assessment to meet the unpaid installment of principal and interest. Bondholders may also institute suits against officers of the district for failure to perform the duties assigned to them. The bonds and coupons issued under this chapter are exempt from all county and municipal taxation or assessment, direct or indirect, general or specific, whether imposed for purposes of general revenue or otherwise, and the interest thereon is not subject to taxation for income. Such bonds are not subject to taxation when they constitute a part of the surplus of any bank or trust company or other corporation. (Sec. 1774.)

**Maintenance.**—Maintenance for the first three years is provided for in the commissioners' estimate of the total cost of the improvement for which the lands are assessed and bonds are issued. (Sec. 1771.)

Completed improvements are under the control and management of the county board of drainage commissioners and it is the duty of such board to keep the same in good repair, and for this purpose they may levy an assessment on the land benefited in the same manner and in the same proportion as the original assessment and the fund so collected is used for repair and maintaining the system. (Sec. 1769.)

## WASHINGTON

(Pierce's Code of Washington of 1929)

This code is a compilation of the statutes of Washington, under the certificate of the secretary of state, and it contains the various drainage statutes under the headings Dikes and Ditches (secs. 1945-1 to 1945-129); Dikes (secs. 1946-1 to 1946-84); and Ditches (secs. 1947-1 to 1947-93). Under each heading are a number of statutes passed at various times amending or adding to the original statutes or treating of collateral matters. The enactments are so voluminous that space compels the following

estimate the cost thereof and the probable annual cost of maintenance; determine what land will be damaged and the probable annual amount thereof; ascertain the land which will be benefited and the aggregate amount of benefits; determine whether the aggregate benefits will exceed the costs; and find what additional land, if any, will be benefited. (Sec. 2053, 1921.) They make report of their findings to the county commissioners. If they find that the cost will exceed benefits, the proceeding is dismissed, even though the district has been proclaimed. The commissioners exclude the land recommended by the supervisors to be excluded, and if additional land is reported as benefited, the commissioners will annex same after notice to the owners and hearing as in the first instance. If by such inclusion there would be the necessary majority in ownership or area in favor of organization of the district with the new boundaries, the commissioners will by order confirm the report and publish the boundaries of the district as finally fixed. The supervisors then proceed with the construction of the system. (Sec. 2054, 1921.)

**Procedure—Special proceedings.**—The board of supervisors may bring an action in the district court for the confirmation of the proceedings had to establish the district and for the issuance of bonds. (Sec. 2054-x, 1919.) The code of civil procedure governs and the court finds and determines the legality and validity of the proceedings. A copy of the decree of the court is recorded in each county affected. (Secs. 2054-x1 to 2054-x4, 1919.)

**Financing—Assessments.**—The supervisors view each tract land and consider all the damages and benefits which each tract will receive from the construction and maintenance of system. They assess each tract according to benefits and proper allowances for damages. After the assessment is made it is transmitted to the county board and within 15 days is mailed to each landowner of the amount of benefits due against his land, stating the time and place when the owner will meet as a board of equalization to hear complaints against such assessment. The county board, sitting as a board of equalization, finally determines the benefits to be levied and taxes to be levied upon each tract. Such assessments are the basis of liens upon the land for all indebtedness. (Sec. 2054-x5, 1919.)

Before the first Monday in March the supervisors prepare a statement and estimate of the amount of money to be levied within the district for construction and maintenance; liquidation of the district warrants, notes and interest on the bonded indebtedness; and to create a fund for the payment of bonds. They also include the cost of repair of the works and cost of management.

The amount so estimated is levied each year upon land in proportion to the equalized benefits, after deducting for interest, contingents and possible contingents to the county assessor.

The drainage tax is levied upon the assessment roll and it is levied on the same day as the other taxes and at the same time as the other taxes. The treasurer to the county reports before the first Monday in the year and delinquent taxes and drainage taxes become a lien upon the land on the second Monday in the year. The drainage tax is levied at the same time as the other taxes. State and county taxes. State are applicable to the land sold for drainage taxes. The statute sets out in detail the procedure for the redemption of lands and the redemption of taxes, penalties and costs. (Sec.

tion the supervisors may issue a warrant for interest, before the collection of the tax, amount not to exceed the equivalent per acre. In anticipation of the collection the supervisors may borrow money not to exceed the amount of the current year and issue warrants for the same. (Sec. 2060, 1921.)

Whenever the supervisors deem it expedient to construct the system or to improve the same for the welfare of the district, they may, when authorized by the board of supervisors, contract with the United States for the payment of any sums due thereunder and may borrow money thereupon, or they may issue drainage bonds for a term not less than 5 years nor more than 10 years, at an interest not more than 6 per cent of their face value, and the

proceeds may not be used for any purpose except the construction of the system. (Sec. 2071, 1919.)

Whenever any bonds are issued or contract made with the United States, such bonds or contract constitutes a lien upon all the lands in the district and the improvements thereon to the extent of the total equalized benefits, and the supervisors must from time to time levy a sufficient tax to pay the interest on such bonds and provide a sinking fund which will liquidate same, or, in case of contract with the United States, levy a sufficient tax to meet all payments due thereon. (Sec. 2072, 1921.)

**Maintenance.**—Maintenance is provided in the annual estimate of the supervisors of the amount to be collected in the district for the succeeding year. (Sec. 2055, 1919.)

**Generally.**—State lands are subject to all the provisions of the law relating to assessment of drainage taxes on lands individually owned. (Sec. 2073-x3, 1925.) Drainage taxes may be assessed and enforced against unentered or unsold State lands or against lands covered by an unpatented entry or held under contract of purchase from the State, and such lands may be sold for delinquency under proceedings similar to those for the sale of land held in private ownership. (Sec. 2073-x3, 1925.)

## VIRGINIA

(Code of 1924, Chapter 78, as amended by Act of March 24, 1926; Laws of 1926, p. 604)

**Jurisdiction to establish.**—The circuit courts of several counties have jurisdiction to establish levee or drainage districts in their counties, and to locate and construct the necessary works for the purpose of reclaiming wet, swampy, or overflowed lands. The drainage of swamps and of surface waters from agricultural lands is declared to be a public benefit and conducive to the public welfare. (Sec. 1737.) An amendment of 1926 further declares that the preliminary work of establishing a drainage district is a public improvement and it is the duty of the county board of supervisors to cooperate in the promotion of such development and the value of the indirect benefit accruing to the county is full compensation for the performance of such duty; that the preliminary payment of the costs and the expenses of survey and the assumption of responsibility for necessary bond issues is construed as a revenue producing investment for the county for which it receives full potential value. (Laws of 1926, p. 604.)

**Procedure.**—A petition signed by 51 per cent or more of the owners of land, irrespective of area, is filed with the clerk of the circuit court of any county in which a part of the land is located, describing the land, stating that it is in need of drainage and that the public welfare will be promoted thereby. The petition must be accompanied by bond for the amount or product of \$70 multiplied by the square root of the estimated number of acres within the boundaries of the proposed district. (Laws of 1926, p. 604.) The clerk issues a summons to be served on all the defendant landowners, including railroads, who have not joined in the petition, which summons is returnable at the next term of court. The court appoints two disinterested freeholders of the county or counties and a drainage engineer recommended by the petitioners as a board of viewers. (Sec. 1738.) By the amendment of 1926 the engineer must be a land surveyor and civil engineer certified by the State board of examiners, and if the engineer recommended by the petitioners is not appointed within 10 days by the court, the clerk or the attorney for the petitioners may appoint him, provided he is qualified under this section; but the appointment must be confirmed by the court. By the same amendment a supplementary petition may be filed by any owner asking that he be used in the drainage of his land, and in such event the viewers make an additional special assessment on such land.

The viewers examine the land described in the petition and any other land which will be benefited and report to the court whether the proposed drainage is practical and will benefit the public and the land sought to be improved; whether all the land which will be benefited is included; and the names of the owners and the number of acres belonging to each which will be affected. They file maps and surveys showing the location of the respective tracts of land with relation to the proposed work. (Sec. 1743.) If the report of viewers is against the practicability or public utility of the drainage, the petition will be dismissed at the cost of the petitioners apportioned among them according to their respective ownership of land in the proposed district. (Amendment of 1926, p. 604.) The petitioners may, however, file another petition after six months upon allegations that conditions have changed or that material

synopsis to be confined to the title Ditches, under which title drainage districts are authorized.

**Authority to establish.**—Section 1 of the act of March 20, 1895 (code of 1929, sec. 1947-1), provides that any portion of a county which requires drainage and which contains 5 or more inhabitants and freeholders may be organized into a drainage district designated by number and name of the county, under the control and management of a board of commissioners, with perpetual succession and the usual powers of corporations. For the purposes of the formation of such a district a petition must be presented to the board of county commissioners of the county in which the proposed district is located, stating in detail the objects sought and the proposed methods of accomplishing them and alleging that the establishment of such district will be conducive to the public welfare and increase the public revenue. The petition must be signed by the owners of at least a majority of the acreage in the proposed district and they must file bond in the sum of \$500 to pay the costs if the district is not established.

**Procedure.**—The petition is presented at any meeting of the county commissioners and is published for two weeks with a notice of the time and place of a hearing. At the hearing any interested party may offer objections to the establishment of the district or to the boundaries thereof. After determining all objections, the commissioners establish the district, fix the boundaries, ascertain the number of acres which will be benefited and the number of freeholders residing within the boundaries, and determine whether the proposed system will benefit the public and increase the revenue. The commissioners may not include lands outside of the boundaries described in the petition, except upon the application of owners thereof and like proceedings as to the additional territory. (Sec. 1947-3.)

The county board, after establishing the district, gives notice of an election for the purpose of determining whether the district shall be organized and for the selection of 3 drainage commissioners to control the district. (Sec. 1947-4.) Only qualified electors of the county who have resided in the district for more than 30 days may vote. The commissioners canvass the votes and if a majority be for the organization of the district, they declare same duly organized and the three persons receiving the greatest number of votes are declared to be the drainage commissioners. (Sec. 1947-5.)

The drainage commissioners file a petition in the superior court of the county with plans and description of the proposed drainage system, the name of each owner and the number of acres owned, the maximum amount of benefits per acre to be derived by each owner, and alleging that the system will be conducive to the public welfare and increase the public revenue. The petition also sets out the amount of land necessary for rights of way and the value thereof and the damages which will be sustained by any person. It makes defendant thereto all the parties who will be benefited or damaged or whose lands will be taken. (Sec. 1947-9.) Service is had on all the defendants as in civil cases, and by publication in the case of nonresidents. (Sec. 1947-11.) At the trial all defendants may plead, and the judge, having satisfactory proof that the proposed improvement will be conducive to the public welfare, will increase the public revenue, will benefit the land, and that the contemplated use is really a public use, will impanel a jury to assess the damages and benefits. The jury makes a separate assessment of benefits, damages, or compensation to each owner. Upon return of the verdict the court enters a decree in accordance therewith and directs the commissioners to draw their warrants on the county treasurer for the amount awarded for damages, payable out of the funds of the drainage district. (Sec. 1947-12.)

If at any time it appears to the drainage commissioners that lands outside the district are being benefited or that lands in the district are receiving additional or different benefits from those originally foreseen, or that the assessments within the district should be equalized in order to be properly in proportion to benefits, or that the land should be assessed for maintenance, they file a petition with the court in the original cause, asking for further proceedings therein for the purposes indicated. Service is obtained as in the original instance and if any of the lands sought to be included lie within another drainage district, service is had upon the commissioners of such district. The drainage commissioners of another district may intervene if they believe that their system of drainage is benefiting the first district and ask that such benefits be assessed against the lands so benefited. The same action may be taken by an owner outside of the first district whose lands are assessed in another district by filing a cross petition in the proceeding. Upon the issues being joined, the court impanels a jury to determine same and to assess the benefits which the respective

tracts of land are receiving or will receive from the construction and maintenance of the system. Upon the return of the verdict the court enters judgment in accordance therewith and thereafter all assessments and levies are made in accordance with such judgment. Appeal lies directly to the supreme court, without bond. The statute declares that nothing therein is to prevent the consolidation of districts. (Sec. 1947-13.) In case the damages and compensation, plus the estimated cost, amount to more than the benefits which will be derived, the court will dismiss the proceedings and dissolve the organization. (Sec. 1947-14.)

**Procedure—Changes.**—After the work is begun the commissioners have no power to change the system of improvement without the written consent of all the landowners to be benefited or damaged thereby. In the event that a substantial change is deemed necessary the commissioners file petition therefor in the superior court on which the same service and procedure is had, and if any property rights will be affected the case is heard by a jury in the same manner as for the original establishment and the court enters decree readjusting the benefits and damages. (Sec. 1947-19.)

**Procedure—Servient districts.**—When the proceeding is for the establishment of a drainage district lying above another system already constructed, with which lower system the new district desires to connect for outlet, the lower district must be made party to the proceedings. If it is necessary to enlarge the lower system, the new plan must include specifications for such enlargement and the procedure is then the same, but the jury shall first find the additional fact as to whether the lower system when enlarged will afford sufficient outlet for both. A negative finding on this terminates the proceeding, but the new district may present another petition with a new outlet contemplated. The costs of enlarging the lower system are assessed to the landowners of the new district and no additional cost may be charged to the lower district. Any injury to the lower district is determined by the jury and judgment rendered in its favor, including increased cost of maintenance. (Sec. 1947-22.)

**Financing—Assessments.**—Damages and compensation for land taken are paid by order of court to the holder of title. (Sec. 1947-15.) Upon the entry of judgment on the verdict of the jury, the court clerk certifies a transcript thereof, showing the amount of benefits to each owner, to the auditor of the county and he enters same on the tax rolls against the lands so certified. Such taxes are subject to the same interest and penalty, and collected in the same manner as general taxes. They become due and payable at the times certified by the drainage commissioners, but no one call by the commissioners may exceed 25 per cent of the estimated total cost of the system. When the original assessment is insufficient to complete the work, additional assessments may be made but not to exceed the maximum benefits. (Sec. 1947-16.) In the event the dismissal of the proceedings for any of the reasons stated in section 1947-14, the costs are paid by the levying of the tax upon all the real estate in the district on the basis of the last equalized assessment of real estate for county purposes. (Sec. 1947-17.)

Land belonging to the State, county, and school districts may be assessed the same as the land of individuals and the assessment is paid by the proper authority in the same manner. (Sec. 1947-36.)

**Financing—Warrants.**—The commissioners organize by electing one of their number president and one secretary. They may issue warrants of the district signed by these officials in payment of all indebtedness.

**Financing—Bonds.**—Upon the establishment of the system, the drainage commissioners may, upon petition of a majority of all the landowners benefited, issue bonds for the total amount of the costs of construction and establishment, including damages and compensation for lands taken. Bonds are payable not less than 5, nor more than 10 years from their date. Upon the sale of bonds all outstanding warrants become immediately due and payable and cease to draw interest at the end of 30 days thereafter. Bonds may not be sold for less than par. (Sec. 1947-26.) Bonds may be exchanged at par for outstanding warrants of the district. (Sec. 1947-28.) Five years before bonds are due the drainage commissioners are required to levy annually an assessment sufficient to liquidate said bonds at maturity and such assessments are kept in a separate fund by the county treasurer for the sole purpose of liquidating the bonds. (Sec. 1947-29.) Whenever the treasurer has accumulated \$2,000 in such fund, he calls bonds in numerical order by advertisement. Thirty days after such advertisement the bonds called cease to bear interest. (Sec. 1947-30.)



The drainage commissioners annually levy assessments sufficient to pay the maturing coupons of interest. Coupons are for all purposes the same as warrants issued against the funds of the district, and when presented and not paid bear interest at the same rate as county warrants. (Sec. 1947-31.) Bonds must be registered by the county treasurer. (Sec. 1947-32.)

**Financing—Refunding bonds.**—By the acts of 1927, chapter 174, when default has occurred in the payment of bonds of a district and the commissioners find that any considerable number of owners of assessed lands will not be able to pay assessments sufficient to meet the bonds outstanding, they may, with the consent of the holders of all outstanding bonds not yet called for payment, issue refunding bonds, and use the proceeds thereof and money derived from assessments to pay the outstanding bonds. The maturity of the refunding bonds is either 12 or 17 years from their date, as the commissioners may decide, but they may be paid before maturity. Refunding bonds bear 7 per cent interest evidenced by coupons. (Sec. 1947-32-a.)

Before issuing refunding bonds the drainage commissioners must levy on the benefited lands such amount of the unexhausted maximum benefits as will be sufficient to enable the district to retire the outstanding bonds and pay the principal and interest and refunding bonds. The assessment is collected in the same manner and is enforceable in the same way as assessments for general taxes. (Sec. 1947-32-b.) After the refunding assessment, notice is given by publication that the whole or any part of such assessment may be paid within 30 days, without interest, and that the assessments remaining unpaid at the end of that period, plus any unpaid prior assessments, will be payable in equal annual installments, either 10 or 15, according to whether the refunding bonds are to mature in 12 or 17 years. (Sec. 1947-32-c.) Installments are collected with and as a part of general taxes falling due at the same time. (Sec. 1947-32-d.) The money collected in cash at the end of 30 days is used to pay outstanding bonds, and refunding bonds are issued for the remainder of the assessment installments and exchanged for, or sold and the proceeds used to retire, outstanding bonds. (Sec. 1947-32-e.) If refunding bonds have been issued all moneys derived from assessments are held by the treasurer in a separate fund which may be used only to pay the principal and interest of such bonds. On each interest date the treasurer calls as many bonds as he has funds to pay and interest ceases on such called bonds at the expiration of 30 days. (Sec. 1947-32-f.)

**Maintenance.**—The drainage commissioners before the first Monday of October in each year make an estimate of the cost of the maintenance of the system for the succeeding year, including repairs. The amount so estimated is certified to the auditor of the county and is levied against and apportioned to the land in the district in proportion to the benefits originally assessed and is added to the general taxes against such land, and collected therewith. In case of emergencies, the commissioners may issue warrants in excess of such estimate and they will be valid obligations of the district. (Sec. 1947-24.)

When all obligations of a district have been paid, any money remaining in the treasury of the county to the credit of the district, as well as money thereafter collected from assessments previously levied, is transferred to the maintenance fund of the district to be used for maintenance purposes. (Sec. 1947-32-i.)

**Dissolution.**—Districts established by the county commissioners, and the organization thereof having been voted at an election of the landowners, have perpetual succession, but when the proceedings in the superior court to assess benefits and damages and construct a system, disclose to the court that the improvement is not practical, will not be conducive to the public welfare nor increase the public revenue, or that the costs will exceed the benefits, the court will dissolve the organization by decree. (Sec. 1949-14.)

## WISCONSIN

(Statutes of 1929)

The drainage laws of Wisconsin are divided into two principal statutes; the drainage district law (ch. 89, secs. 89.1 to 89.96) and the farm drainage law (ch. 88, secs. 88.1 to 88.41).

**Jurisdiction—Drainage District Law.**—The circuit courts have jurisdiction of drainage districts and the proceedings under this law are equitable in nature. The court at all times has supervision over the commissioners. Plans and proceedings

may be modified or amended by the court at any time (Sec. 89.03). All orders fixing the time and place of hearing shall be made by the court or the presiding judge thereof.

**Procedure.**—A majority of the owners of land who represent one-third of the area, or the owner or owners of more than one-half of the land, provided that no owner be counted for more than 320 acres, may file with the circuit court of any county in which the lands, or a part of them, are located, a petition setting forth the name of the district; the necessity of the work and a description of it; a general description of the location, character and plan of the proposed drainage works; a general description of the land intended to be included in the district; that the public health or public welfare will be promoted and that the benefits will exceed the cost of construction; the name and address of all the owners and mortgagees of all of the land so far as known; a prayer for the organization of a drainage district; and if the purpose is the enlargement, repair or maintenance of a district previously constructed the petition shall give the description of that district with such particulars as may be deemed important. (Sec. 89.10.)

The territory of the district need not be all in one body and if it will be a public benefit and the court is satisfied that the drainage may be done more economically, or be maintained more cheaply if separated bodies of land are organized into a single district, it will so order. (Sec. 89.10.)

Before any petition may be filed in the circuit court of any county having a population of less than 50 persons per square mile, according to the last official census, and where the drainage area included in the boundary of said district is more than 5,000 acres, such petition must include the assessed valuation of each parcel of land in the proposed district; the name of the petitioners residing in, or adjacent to, the proposed district; and plans for bringing the drained lands promptly into agricultural use. Such petition must be submitted to and approved by a majority of the members of the board of county supervisors in the county in which the greater part of the proposed district is situated, on the question of whether or not the public welfare will be promoted by such district. (Sec. 89.18.)

Upon filing the petition the presiding judge fixes the time and place of hearing and orders 20 days notice thereof by posting, publication and service on each landowner. Copy of the notice is mailed to each nonresident owner or mortgagee. (Sec. 89.20.)

**Procedure—Commissioners.**—If the petition is signed by the required number of landowners and all necessary amendments to the proceeding have been made, the court appoints three competent persons as commissioners of the district.

The commissioners must organize within 10 days after the appointment by electing from their number a president and secretary and treasurer. As soon as practicable the commissioners employ a district engineer, who must be approved by the chief engineer of the State. They must personally examine the land and request the chief engineer for a report with reference to the district. The district engineer, under the supervision of the chief engineer, must make a survey of the district and assist the chief engineer in his report to the commissioners. After the receipt of the chief engineer's report the commissioners make a preliminary report to the court showing whether the proposed work is necessary or will be a public utility; whether it will promote the public welfare; whether the total benefits will exceed the cost of construction plus the damages both within and without the district; whether it will be necessary to construct works in waters that are navigable or may become navigable; and the boundaries of the district according to government subdistricts where possible, or fractions thereof, but such boundaries shall not be so changed as to deprive the court of jurisdiction.

The commissioners must file with this preliminary report the report of the chief engineer, showing the feasibility of the proposed drainage; a preliminary plan of drainage; and the probable cost of the necessary work. The report of the chief engineer shall also include a joint report of the College of Agriculture of the University of Wisconsin and of the commissioner of agriculture on the quality and character of the soil and subsoil; the present agricultural value of the land; the kind of crops to which such land will be adapted after drainage; and a recommendation either for or against the organization of the district.

Such report of the commissioners and the report of the chief engineer shall be *prima facie* evidence of the facts therein contained. If the recommendation of one or more of the State departments be against the organization of the district the petition must be dismissed.

Upon the filing of the preliminary report the court fixes the time and place of hearing at some general term of court, not less than 30 nor more than 60 days from the filing of the report.

Notice is given in the same manner as on the original petition. Where additional land is sought to be included, the same notice is given to the owners thereof. Any interested party may file objections and remonstrances. If the court finds that the cost of such drainage is more than 75 per cent of the fair market value of good, tillable, agricultural land in the township or townships in which the district lies, the petition shall be dismissed. If the preliminary report be that the benefits will exceed the damages and cost of construction and that the public welfare will be promoted, and no remonstrance is filed, or if, on the trial of the issue, the court finds these facts, it will confirm the report and order the commissioners to proceed with the work. Upon confirmation of the preliminary report the district becomes fully organized as a body corporate with all the powers given by the act. (Sec. 89.27.) The order of the court is final unless appeal is taken within 30 days.

The commissioners then make a full and complete report assessing damages and benefits and estimating the cost of construction and maintenance. Before filing this report the commissioners shall present it to the chief engineer of the State who shall return it within 30 days with his approval or disapproval. If he disapproves, the report shall not be filed until altered to meet his requirements.

Notice of the hearing on the report of the commissioners is given in the same manner as on the original petition. When all remonstrances relating to the validity of the proceedings as a whole, or the feasibility or practicability of the general plan have been determined, the court may confirm the assessment against, and the awards of damages to, all land and corporations as to which no remonstrance remains undetermined, and confirm the report as to all matters not in contest, and direct the commissioner to proceed with the work; provided, that the court may not confirm until satisfied that the cost of construction of the work under such order will not exceed the assessment of benefits. (Sec. 89.34.)

**Financing—Assessments.**—At any time before bonds or notes, which are liens on the assessments, have been issued, the court may order assessments for construction against both lands and corporations, to be paid in not more than 15 annual installments, and assessments for repairs in not more than 3 annual installments, of such amounts and at such time as will be convenient for the accomplishment of the proposed work, or for the payment of notes or bonds that the court shall grant authority to issue. The court fixes the date on which the first installment of assessments for construction becomes due, which shall be September 1, not more than 5 years after the date of the order. Each installment draws interest at 6 per cent payable annually.

Assessments for construction, additional assessments, and assessments for repairs are first liens upon the lands assessed from the time of the recording of the deed of confirmation in the office of the register of deeds in the county in which the lands are situated, and take precedence over all other liens and mortgages, whether accrued prior to the time of filing the petition under the drainage district law or not, except only liens for general taxes.

Any owner may at any time before the commissioners have entered into a contract to borrow money upon notes or bonds, based on the assessments, pay into court the amount of the assessments. (Sec. 89.35.)

Immediately after the entry of an order confirming the assessments for construction or additional assessments, or assessments for repairs, the clerk of the court certifies to the register of deeds in each county a description of the land and the amount of the assessment, and the register records same in his office. (Sec. 89.38.)

If the first assessment for construction, original or supplemental work, is insufficient, or an additional sum is necessary in any one year to pay the principal and interest on the lawful indebtedness of the district, additional assessments on the land and corporations benefited, proportioned upon the sum of all benefits which have been confirmed by the court and are in force, shall be made under the order of the court. Such additional assessments and the total prior assessments for construction shall not exceed the total amount of benefits then in force. Such additional assessments may be made without notice and may be payable in installments and are treated and collected in the same manner as original assessments for construction. (Sec. 89.44.)

**Financing—Notes—Bonds.**—The commissioners may, upon order of the court, borrow money not exceeding the amount of the assessment for construction, additional assessments, and assessments for repairs unpaid at the time of borrowing, for the construction or repair of any work which they may be ordered to construct or repair, or for the payment of

any indebtedness they may have lawfully incurred, and may secure the same by notes or bonds of the district, not to run longer than one year after the last installment of the assessment shall fall due. These bonds constitute a lien upon the assessments for construction and repair.

If the commissioners find they will not be able to pay bonds, notes, or other lawful indebtedness of the district when they become due, or in the event of an emergency, the court, upon proof of the facts, will authorize the district to borrow money to pay such indebtedness. If the amount is more than \$3,000 and runs more than one year, the loan must be made upon notice given in accordance with section 89.06. When necessary, additional assessments to pay such loan may be made under section 89.44.

The commissioners may borrow from the county treasurer, drainage assessment certificates, covering lands in the district, and use them as collateral security for the payment of such loans.

The court may, upon petition of the commissioners or of the holders of bonds, notes, or other indebtedness of the district, order the commissioners to refund the present indebtedness and in lieu thereof issue new notes or bonds, payable in such longer time as the court may deem proper, not to exceed in the aggregate the total of all notes and bonds of the district then outstanding, and the unpaid accrued interest thereon.

When the indebtedness of the district is refunded or about to be refunded, the court may, upon petition of one or more land-owners, or of the commissioners, extend the time within which to pay assessments for construction to September 1 next, before a like portion of refunding bonds which are liens thereon become due; in which event the past due assessment so extended together with any or all charges shall be a lien on the land against which the assessments were originally made, and the court may do all things necessary to carry out the extension of time.

Except in the case of refunding bonds authorized by the court, no note, bond, or other evidence of indebtedness of the district running for more than one year shall be valid unless approved by the commissioner of banking, the commissioner of agriculture, the State chief engineer, and the attorney general, and when so approved, bear a statement showing such approval. (Sec. 89.47.)

**Maintenance.**—The commissioners file an itemized report in July of each year showing the financial condition of the district, giving a statement of the work done and to be done and the cost thereof. They also report the sum necessary for incidental expenses during the next year, and such assessments as will be necessary for repairs and maintenance. This fund is known as assessments for repairs. Remonstrances may be made to this report with the same notice and hearing as herein provided. The court hears all remonstrances on the third Tuesday of August and fixes and determines the amount of such assessments. (Sec. 89.35.)

**Overlapping.**—The boundaries of no district shall in any manner conflict with the boundaries of any other district, and if in the construction of a higher district a lower district is damaged, the higher district must pay such damages. (Sec. 89.54.)

**Subdistricts.**—A majority of the owners of land in a part of a drainage district, desiring a more thorough or different drainage than the drainage of such district as then constructed or planned will give, may petition the commissioners to grant such different drainage. The commissioners examine the land and report the facts to the court. If the court be satisfied that the public health or welfare will be promoted and that the benefits will exceed the damages and costs of construction, the court will order a subdistrict formed, give it a name, fix its boundaries, and order the commissioners to proceed in the case of a subdistrict as in section 89.28. (Sec. 89.59.)

**Consolidation.**—When the owners of at least 10 per cent of the land in each of two or more districts under the jurisdiction of the court of the same circuit, petition that such district be consolidated, any such court having jurisdiction of one or more of such districts, may consolidate 2 or more of such districts and give a name to the consolidated district, and appoint commissioners therefor.

When such districts are under the jurisdiction of courts of different circuits, such petitions shall be addressed to the court having under its jurisdiction the largest area. The liens of assessments are not affected by the consolidation. After such consolidation the benefits may be reassessed to render them just and equitable as a basis for future assessments, but such reassessment shall not render more difficult of collection any obligation of either of the districts. Bonds and other obligations remain liens on the same assessment on which they were liens when they were issued. (Sec. 89.60.)

**Dissolution.**—The owners of more than one-half of the land in the district which has been assessed for benefits may file in the court having jurisdiction a petition asking for the dissolution of the districts. No district may be disorganized until all of its debts are paid, or funds to pay same and interest are deposited with the treasurer of the district, or the land in such district has been assessed to the full amount of the confirmed assessed benefits and a sale of all delinquent land has been had. The court gives notice of the hearing on the petition and if satisfied that the petition is properly signed and that the public welfare will be promoted by the dissolution, enters an order dissolving such district. If there are any funds remaining in the hands of the treasurer, they are distributed among the then landowners in proportion to the last confirmed assessment of benefits, provided that the drains that have been constructed shall forever remain common waterways for the use of all owners in the dissolved district. (Sec. 89.65.)

**Jurisdiction.—Farm drainage.**—The county courts have jurisdiction to establish farm drainage, upon petition therefor, and upon the filing of the first petition the county court appoints a farm drainage board. This board consists of 3 members, residents of the county, 1 of whom shall preferably be an experienced farmer familiar with drainage, and 1 to some extent familiar with drainage engineering, if such there be available. The members are appointed for terms of 1, 2, and 3 years respectively, and reappointments are by the court for a term of 3 years. The court makes removals and fills vacancies. Ownership of land in the district does not disqualify any person for appointment, but the judge will appoint some other person in his place to act on the particular drainage in which he is interested. A majority of the board constitutes a quorum. Such board, when sworn and qualified, becomes a permanent body corporate and has charge of all drainage thereafter constructed except drainage district drains, and drains being constructed under the town drain act, which may be continued under that law. The board elects one of its members president and another secretary. The board may borrow money in the name of the drainage to defray the expenses of organization.

**Procedure.—Farm drainage.**—Whenever land will be improved and the public health and welfare will be promoted the owners of a majority of such land or a majority of the owners owning one-third in area, or a majority of the county board of the county in which the land is situated, or a majority of the town board of the town in which a part of such land is situated, may file in the county court a petition stating the description of the land; that the public health and welfare will be promoted by drainage; that maps of the area showing the proposed drainage accompany the petition; that the benefits of the proposed work will exceed the cost of construction; the name of the drainage; and a prayer for its establishment. Petitioners may omit the statement that the benefits will exceed the cost upon agreeing to pay any excess in costs over benefits. Upon filing, the petition is referred by the county court to the drainage board for report. (Sec. 88.05.)

The procedure thereafter is very similar to that to establish drainage districts, with the farm drainage board, under the control of the county court, functioning as the drainage commissioners.

When the drainage is established, the drainage board assesses the property benefited for costs of construction, and assessments are payable in installments over not more than 15 years. They may borrow money and issue bonds to run not longer than 1 year beyond the time for payment of assessments on which the bonds are based. (Secs. 88.10 to 88.11.)

Drainages may be dissolved on petition of a majority of the owners owning one-third of the land and upon payment of all debts. (Sec. 88.07.)

## WYOMING

(Compiled Statutes of Wyoming, 1920, Chapter 76, and Session Laws)

**Jurisdiction to establish.**—The district court of the county in which any portion of the land sought to be organized into a drainage district is situated has jurisdiction to establish the district and has at all times supervision over the board of commissioners of such district. (Sec. 997.) By act of February 15, 1920, when the legality of the organization of drainage districts previously established has not been questioned within one year from the date of this act, or, in the case of districts hereafter organized, within two years from the date of organization, there is a conclusive presumption that the districts have been legally established, and their lawful organization may not be questioned in any subsequent proceeding whatever.

**Procedure.**—Whenever a majority of the landowners representing one-third in area, or the owners of more than one-half of the land, in a proposed drainage district desire to construct a system of drainage across the lands of others for the promotion of the public health and welfare and the drainage of said lands, or desire to maintain and repair any such system previously constructed under any law, they may file a petition in the district court of the county in which any part of the land is situated. The petition must show the name of the proposed district, a general description of the drainage works and of the land to be drained, and the names of the owners, and must pray for the organization of the district and the appointment of commissioners for the execution of the proposed work. If the purpose is the enlargement and repair of a system already constructed, a general description of same must be given. Lands of the State of Wyoming may be included in the proposed district and assessed as other lands. (Sec. 997.) No petition having the required number of signers may be declared void, but the court may at any time permit the petition to be amended in form and substance if the facts justify the organization of a district. (Sec. 998.) Lands need not be contiguous provided that they are so situated that the public health and welfare will be promoted by the drainage of each part and the benefits of the work in each part will exceed the damages and the costs, and provided further that the work can be done more economically in a single district. (Sec. 999.) Upon the filing of a petition notice of a hearing thereon is given by posting, personal service, and publication, and the notice describes generally the petition and the proposed district. The certificate of the clerk or the affidavit of an interested party having knowledge of the facts is sufficient evidence of service. Personal service on the landowners gives the court jurisdiction without posting and publication. (Secs. 1000-1003.)

At the time set for the hearing all interested parties may contest the sufficiency of the petition, of the notice, of the constitutionality of the act, and of the jurisdiction of the court, and may offer competent evidence in regard thereto. All protests must be in writing stating the grounds thereof. (Sec. 1007.) The court determines whether the petition is in proper form and may adjourn the proceedings and take evidence in regard to its sufficiency. Conveyances made for the purpose of establishing or defeating the petition are void. If the petition is found defective for want of proper signatures, it is dismissed at the cost of the petitioners and judgment is entered against them for such costs. (Secs. 1008-1010.) If it appears that the petition is properly signed, the court makes a finding to that effect, makes any necessary amendments thereto and appoints three commissioners for the district. If the district is in two or more counties, not more than two commissioners may reside in any one county. The commissioners may be landowners in the district. After the appointment of the first board of commissioners a majority of the owners owning one-third of the land may present a petition to the court asking that the commissioners be elected by vote of the owners of land assessed, and the court must order an election at which each owner casts one vote for each acre owned by him and assessed for benefits. One commissioner is elected for one year and two for two years and thereafter the term is two years. (As amended February 23, 1923, laws of 1923, p. 12.)

The commissioners organize by electing one of their number secretary. They personally examine the land in the district and report to the court whether the proposed work is necessary, will promote the public health and welfare, and whether the total benefits will exceed the costs plus the damages. The commissioners fix as nearly as may be the boundaries of the district, but the boundaries may not be so changed as to deprive the court of jurisdiction. They also report any better plan for drainage than that set out in the petition. (Secs. 1022-1023.)

Upon the filing of this preliminary report of the commissioners the court fixes a hearing thereon after due notice to all interested parties. Any party may remonstrate against the report in writing, under oath, setting forth facts upon which the remonstrance is based. If additional lands have been included in the commissioners' report the owners are served with notice as in the original instance. (Secs. 1024-1027.) All issues on the preliminary report are tried by the court without jury. If the court finds that the proposed improvement will not promote the public health or welfare or that the benefits will not exceed the costs, the petition is dismissed at the cost of the petitioners. Finding in the affirmative on these questions the court makes an order in writing confirming the report as filed or as amended and directs the commissioners to proceed with the work. Such finding and order are conclusive unless appeal is taken to the supreme court within 30 days. Upon the issuance of such order the district becomes a body corporate by the name fixed and

with perpetual succession. The commissioners become the corporate authority and manage and control the district. All prior proceedings are jurisdictional and necessary to the formation of such body corporate. (Secs. 1024-1033.)

After the confirmation of the preliminary report, the commissioners proceed to have the necessary surveys made and then make final report to the court on the feasibility of the plan; any proposed change in the boundaries; the amount of benefits which each tract of land should be assessed; and the total cost of the improvement, including expenses of organization, damages, and such sum as the commissioners may deem necessary to provide for delinquency in the payment of assessments. (Secs. 1034-1039 as amended by laws of 1923, p. 12.) The commissioners also report whether any particular part of the cost should be specially assessed against any particular tract and the amount thereof. Benefits must be assessed against railroads, private corporations, municipalities and other drainage districts. The total cost not specially assessed is apportioned among the different tracts in the district according to the benefits which each will receive. (Secs. 1040-1046.)

The court orders a hearing on the final report, after due notice in each county affected, and if there is no remonstrance or if the finding be in favor of the validity of the proceeding and the report, the court confirms same, approves the assessments, authorizes the work, and its findings are conclusive unless appeal is taken to the supreme court within thirty days. If the proceeding is dismissed at any time, or the district is discontinued for any cause, a judgment for the cost up to that time is issued against the owners of the land, after proper hearing, in proportion to the number of acres owned by each. (Secs. 1048-1057.) If lands outside of the district receive benefits from its system of drainage the commissioners may petition the court to assess same for such benefits and after a proceeding similar to that for the original establishment of the district such land will be brought in and assessed. (Secs. 1080-1086.)

**Procedure—Division of district.**—By an act of February 23, 1927 (laws of 1927, p. 55), any drainage district may be divided into two or more districts when a majority of the owners within any one portion, who represent more than one-half of the area in such portion, file a petition with the court having jurisdiction of the district requesting such division, setting out the reasons therefor and a detailed statement of the existing indebtedness of the original district and the proposed apportionment of same between such original district and the new district when formed. The court, after the usual hearing and notice, finding the petition in due form and that the best interests of all parties will be served by the division, enters an order creating a new district, appoints commissioners therefor and apportions the indebtedness, but no such apportionment is valid unless the holders of evidences of indebtedness against the original district file their written consent to the apportionment.

**Financing—Assessments.**—After the assessments are confirmed, the court may order them paid in installments convenient for the accomplishment of the work and for the payment of any notes or bonds which the court may authorize to be issued. Such installments become delinquent at the same time that general taxes are delinquent and they draw interest from the date of any note or bond issued by the district for the payment of which the installments are pledged. (Laws of 1923, p. 13.)

The commissioners prepare an assessment roll containing the names of the owners and a description of each tract or easement and the aggregate benefit confirmed by the court against same. The roll shows the amount assessed for the current expenses and maturing indebtedness in the current year, and is proportioned to the aggregate amount of the assessments last confirmed by the court. The assessment roll is certified to the assessor of each county affected, and is extended upon the tax rolls of the county. (Laws of 1923, p. 14.)

The revenue laws of the State are applied to drainage taxes, with all penalties for delinquencies. The district may purchase delinquent lands but may not sell same for less than the amount paid, plus interest, without special authority from the court. (Laws of 1923, p. 15.) All assessments are perpetual liens in amounts not exceeding the benefits assessed, to which only general taxes are paramount. No sale of property to enforce

general taxes extinguishes the lien for drainage taxes. (Laws of 1923, p. 16.)

**Financing—Bonds.**—The commissioners may borrow money not exceeding the amount of the assessments for construction, additional assessments and assessments for repairs unpaid at the time of the borrowing, for the payment of any indebtedness lawfully incurred, and may secure same by notes or bonds with interest at 6 per cent and running not longer than one year after the last installment of the assessments on account of which such bonds are issued shall fall due. Bonds may not be sold for less than 90 per cent of their face value, are negotiable, and constitute a lien upon the assessments. Any residue of money from the sale of bonds for the original construction remaining on hand after the work is paid for, and not collected for the payment of damages, may be used for maintenance and repair before making any assessment for such purposes. (Sec. 1074.)

**Financing—Refunding Bonds.**—The court may upon the petition of the commissioners authorize them to refund any lawful indebtedness of the district by new notes and bonds of the district payable in such longer time as the court may deem proper, in an amount sufficient to retire the outstanding indebtedness, plus an amount which the commissioners may deem necessary to provide for possible further default and delinquency in the payment of assessments. For the purpose of providing funds to pay such refunding bonds and interest the commissioners may levy assessments against the land in the district but not in excess of the benefits assessed. In the alternative the commissioners may issue refunding bonds to pay only the outstanding notes and bonds of the district, and provide a fund to pay possible defaulted and delinquent assessments by levying from year to year an assessment for such purpose, but not in excess of the benefits assessed. (Act of February 13, 1923, p. 15.)

**Maintenance.**—Assessments to meet the expenses of a drainage district in any current year become delinquent at the time fixed by law for general taxes to become delinquent. The commissioners annually, before the first Tuesday of June, file with the court clerk an estimate of the amount required to maintain and repair the works of the district during the ensuing year. They add an estimated sum to provide for possible delinquencies. The judge examines the report, hears objections if any, and fixes the amount to be raised for that year, causing same to be recorded and certified to the commissioners of the district. The commissioners add thereto the necessary amount to meet principal and interest on maturing indebtedness during the same year, plus the estimated amount for possible delinquencies, and this total sum is known as the budget of the district. (Laws of 1923, p. 13.)

The commissioners may not incur indebtedness for current expenses in excess of the amount required in the budget except upon petition to the court and upon its order, after notice and hearing. If such additional sum can not be added to the assessment roll for that year, it may be added to the budget of ensuing years. (Laws of 1923, p. 15.)

By act of February 28, 1925, two or more drainage districts may cooperate in the operation and maintenance of their respective systems. Upon written request of not less than 10 landowners the commissioners of the district submit to the qualified voters the question of cooperating with some other named district in the operation and maintenance of their respective systems. Two or more districts having voted to cooperate, the respective commissioners file certified copies of the minutes of election in the office of the clerk of court. Thereafter the operation and maintenance of such districts is under the exclusive management and control of a board of district managers composed of as many members as there are districts to be represented. The commissioner of each district who has had the longest service in that capacity is the member of the board of management for that district. The board of managers, with relation to operation and maintenance, have all the powers of the commissioners of the several districts represented.

**Dissolution.**—Drainage districts have perpetual succession and no special provision is made in the Wyoming laws for dissolution except in the case of invalid proceedings for their establishment. (Sec. 1052.)