

CHAPTER 442—H. F. No. 722.

An act to provide for the formation of drainage and flood control districts in river basins abutting upon or adjoining boundary waters and providing for the drainage of low and wet lands within said district and for the control of flood waters therein and in boundary waters or water courses and to authorize the governing board of such drainage and flood control districts to construct such ditches, dykes, levys, dams, locks, spillways, or other structure necessary to secure proper drainage and flood control of waters within said district including said boundary waters and to provide for joint action and co-operation between the governing board of such district or other authorities in this state having control of drainage and flood control matters and like authorities in any adjoining state for the purpose of providing flood control in such boundary waters and water courses and in streams and waters flowing into and from such boundary waters: and to provide for the construction of such improvements by assessment upon property benefited within the limits of the states affected in proportion to the benefits received.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. District court judge vested with jurisdiction to establish drainage and flood control districts for various purposes.—Whenever it shall become necessary or expedient in order to facilitate or control drainage into or from any lake, pond or other body of water or any river, stream or water course, which forms to any extent the boundary line between this state and any other state or when it shall become necessary in order to control, to any extent, floodwaters into, through or from any such lake, body of water, stream or water course to raise, lower or otherwise affect the stage or depth of water therein or in any stream, river or water course flowing into this state therefrom or from any drainage basin in another state which drainage or flood control shall cause benefit or damage to or otherwise affect property in this state and to some extent in such other state, the district court of any county in this state or any judge thereof in vacation is hereby vested with jurisdiction, power and authority upon the filing of a petition as specified in section 2, of this act and the conditions stated are found to exist, to establish a drainage and flood control district and define and fix the boundaries thereof which districts shall include territory abutting upon such boundary waters or affected by waters flowing into or from such boundary waters and may include territory within or partly within and partly without any county and may include the whole or any part of one or more counties including the county in which said petition is filed but

shall include territory forming the whole of a natural river or drainage basin and within which the waters directly or through tributaries find their way into and through one common outlet, and said court is hereby vested with jurisdiction, power and authority under the conditions provided in this act, to make all necessary orders providing for the construction of any and all improvements specified in this act, as may be found necessary for any of the following purposes within any such district so organized, or affecting such boundary waters or any river, stream or water course flowing into or from the same within the limits of this state including rivers or bodies of waters affected by the overflow from such boundary waters.

(a) For regulating streams, channels or water courses by changing, widening, deepening, straightening the same or otherwise improving the use and capacity thereof.

(b) For reclaiming by drainage, or filling, dyking, or otherwise protecting lands subject to overflow.

(c) For providing for irrigation where it may be needed.

(d) For regulating the flow of water in streams or water courses.

(e) For regulation and control of flood waters and the prevention of floods, by deepening, widening, straightening or dyking the channels of any stream or water course, and by the construction of reservoirs or other means to hold and control such waters.

(f) For diverting in whole or in part streams or water course and regulating the use thereof, and as incident to and for the purpose of accomplishing and effectuating all the purposes of this act, may make all such orders as may be necessary to authorize and direct the straightening, widening, deepening or changing of the course or terminus of any natural or artificial water course and to build, construct or maintain all necessary dykes, ditches, canals, levys, wall-embankments, bridges, dams, sluice ways, locks and other structures that may be found necessary and advisable, and to create and establish and maintain the necessary reservoirs or other structures; to hold, control and regulate any and all flood waters within said districts, and acquire title to, in the name of said district of all necessary lands and other property to construct and maintain reservoirs, dykes or other structures to secure the proper control of the flood waters within said district. Provided, nothing in this act contained shall be construed to interfere with the operation and use of any drainage law of this state.

Sec. 2. Petition signed by free holders setting forth certain facts necessary before establishment of district.—Before any district court shall establish any drainage and flood control district as outlined in section 1 of this act, a petition shall be filed in the

office of the clerk of the district court in any county containing territory to the extent of five townships included in said proposed district which shall be signed by not less than 25 resident free holders from each county abutting upon the main stream of the district, having more than five townships within the proposed district.

Said petition shall set forth:

1. The proposed name of said district.
2. The necessity for the proposed work; and that it will be conducive to the public health, safety and convenience and promote the welfare of the inhabitants of said district; and aid in the control of flood waters in said boundary waters and streams or rivers flowing into or from the same in this state.
3. A general description of the nature and purposes of the contemplated plan of improvement, explaining the necessity therefor, and shall include, in general terms, a description of the territory proposed to be included in said district. Said description need not be given by metes and bounds or by legal sub-division, but shall be a sufficiently definite and accurate description so that the territory affected may be generally understood, and, unless good reason be shown to the contrary, the same shall include all territory within a given watershed or drainage basin or all territory from which the water from natural or artificial channels find their course through one general stream or channel. The territory to be thus included in any district shall be limited to territory within the natural watershed of the particular basin petitioned to be organized.
4. Said petition shall pray for the organization of the district, the appointment of a governing board therefor and that the boundaries thereof may be specifically fixed and defined by order of said court and said district organized.

No petition containing a requisite number of signatures or petitioners shall be void or dismissed on account of any defects therein but the court shall at any time permit the petition to be amended in form and substance to conform to the facts by correcting any errors in the description of the territory or by supplying any of the defects therein. Several similar petition or duplicate copies of the same petition for the organization of the same district may be filed and all together be regarded as one petition and any withdrawal of any signatures or petitioners from such petition after the same has been filed, shall in no manner affect the jurisdiction of the court, and all petitions filed prior to the hearing hereinafter provided shall be considered by the court as a part of the original petition. Provided; that no district shall be organized under the provisions of this act in any basin consisting of a stream or river wherein waters are flowing from any

lake or body of water constituting the boundary waters where the territory of said district shall extend farther than forty miles in a direct line along said valley from said boundary waters, but may include all tributaries that enter said basin or connect said stream within the limits of said district.

Sec. 3. Petitioners to file bond to pay expenses connected with proceeding.—At the time of filing the petition provided for in section 2, of this act, or before the notice of hearing thereon is given, a bond shall be filed by said petitioners with the clerk, to be approved by said court and in such sum as he shall designate, sufficient to pay all expenses connected with said proceeding, in case the court refuses to organize said district, and, if at any time during the proceeding the court shall be satisfied that an additional bond is needed, he may so order, provided that if the petition is signed by the proper officials of two or more counties, accompanied by a copy of a resolution passed by the board of county commissioners of said counties, that said counties will be responsible for such costs, then, and in that event, no bond shall be necessary.

Sec. 4. Court to fix time and place for hearing petition.—Upon the filing of said petition with the clerk of the district court, as provided in section 3 of this act, he shall immediately notify the judge of said court of the filing thereof, who shall within ten days thereafter, by order, fix a time and place for hearing on said petition at some point within the limits of said proposed district, notice of which hearing shall be given by a publication in at least one legal newspaper in each county affected by said petition, for three successive weeks, the last of which publication shall be at least ten days prior to the date set for hearing, provided, that if the territory described in said petition shall include more than one county and territory within two or more judicial districts, then the judge of said court, where said petition is filed, shall arrange with the judge or judges of such other districts for a joint hearing upon such petition, which hearing may be at such time and place, within the territory described in said petition, as said judges shall jointly specify, and the finding by the majority of said judges shall be treated as the finding of said court and at said hearing such districts shall be represented by one judge only; but the district court, in which said petition was originally filed, shall for all other purposes, except for the purpose of said joint hearing, and except as hereinafter otherwise provided, have and retain original jurisdiction; but the absence from said hearing of the judge of one or more of said districts shall not affect the judgment or decree then entered providing two or more judges are present.

Sec. 5. Court to file findings and decree on petition for flood control district with clerk of court and secretary of state.—

At the time and place set for hearing on said petition, all parties interested may appear and be heard for and against the granting of said petition, but no delay shall be granted at said hearing except when necessary and as the court may order, and if upon said hearing it shall appear that the purpose of this act would be subserved by the creation of a drainage and flood control district, comprising the whole or certain portions of the territory outlined in the petition, and the court shall so determine, then said court shall immediately make and file its findings of all matters involved in said petition, and shall by order, direct and declare said district organized, designating in said order the name by which it shall thereafter be known, and upon the filing of said order with the clerk of the court, where said petition was filed, and a certified copy thereof in the office of secretary of state, said district shall be and become for all purposes of this act, a body corporate endowed with all the rights, privileges and authorities herein designated, with power to sue and be sued, to incur debts and obligations and to do and perform and exercise all the rights and privileges in this act enumerated.

Said order or decree shall designate the place where the office or principal place of business of the district shall be located, which, unless special reasons arise to the contrary, shall be where the petition is filed; shall designate the number of directors or officers who shall constitute the first board of directors of said district, who shall be no less than three or more than five, and, there shall be one director resident of each county having more than 5 townships within said district.

If upon said hearing the court finds that any portion of the territory named in said petition should not be included in said district the same may be excluded, but any territory not included in said petition within the forty mile limit hereinbefore defined may at said hearing or any subsequent hearing ordered by the court upon petition of twenty-five freeholders of said territory to be included be added to said district, and the boundaries thereof fixed accordingly, and if upon full hearing the court determine that the territory described in said petition or some part thereof should not be organized in said district, then said petition may be dismissed and the cost incurred be taxed against the petitioners. After an order is entered, establishing the district, the same shall be deemed final and binding upon all persons and property within said district, and the organization of said district shall not be collaterally questioned in any suit or action in any court in this state.

AUTHORITIES OF THE BOARD.

Sec. 6. Authorities of the board of directors and procedure of board.—Within ten days after the filing of the order organizing said district, in the office of the secretary of state, the parties named therein as the first board of directors shall meet at the office of the clerk of the district court, where said petition was filed, each take and severally subscribe the oath provided by statute, to be taken by public officials, and shall severally file with the clerk of said court a bond in the sum of five thousand (\$5,000.00) dollars, furnished by a proper surety company, the cost to be paid by the District conditioned for the faithful performance of their duties, and shall thereupon organize, by electing one of their number as President, and one of their number or a third party as secretary or clerk of said board, and shall provide the necessary books and records, and if the place designated in said order, as the general offices for said district, shall be a county seat said board shall have the authority to elect the clerk of the district court of such county as clerk of said board, and thereupon and thereafter all papers filed with said clerk shall be and constitute a filing with said board, and the office of said clerk shall be the general office of said board, and it shall be the duty of said clerk to keep and preserve the record of said board in his office and to do and perform such duties as shall be designated and required by said board, who shall have authority to fix his compensation. If said board shall consist of more than five members they shall elect an executive committee of three of their members consisting of the president and two other members, who shall have active charge of all work and improvements under the direction of the board.

Said board shall meet at least semi-annually and at such other times as they may designate or as occasion may require, and at all such meetings a majority of the members thereof shall constitute a quorum and a legal meeting thereof may at any time be called upon eight (8) days notice by mail, given by the clerk or any member of the board.

Sec. 7. Selection of treasurer and engineer.—Said Board shall have full authority to elect or appoint a treasurer, who shall be a resident of said district and may be one of their members, who, before entering upon his duties as such, shall subscribe the oath required by statute, in the case of public officials, and shall be required to give bonds in such sum as the board shall direct, which shall be not less than the total sum that shall at any time be in his hands or under his control belonging to said district which bond shall be by a surety company, to be approved by said board, and the duties of said treasurer shall be such as the board may from time to time designate, and among

other things, it shall be his duty to receive all moneys belonging to said district and deposit the same in such bank or banks as the board shall designate, and it shall be the duty of said treasurer to require such banks to give a proper surety bond for the care and accounting for such moneys, and said treasurer shall pay out said money only on proper orders signed by the president and secretary of said board.

Said board may also employ a chief engineer and an attorney and such other engineers and attorneys or agents or assistants as may from time to time be needful and necessary and provide for their compensation, all of which expense shall be taken and treated as a part of the cost of each particular improvement. The chief engineer shall be superintendent of all the works and improvements and shall have general charge of all work pertaining to flood control within the limits of said district.

Sec. 8. Terms of members of board.—The members of the board of directors of said district shall hold their office, where their number does not exceed three (3), one for a period of 2 years, two for 4 years, and where their number shall consist of five (5) members, two of said board shall hold their office for the period of two years; three for the period of four years, and in all other cases where the total number is divisible by two then one-half shall be appointed for (and hold their office for two years and the other one-half for four years), and if there is an odd number then the extra member shall hold his office for four years, and thereafter all shall be appointed for four years, and the judge of the district wherein the county is located shall have authority to and shall fill vacancies that occur in said board from any cause in the counties in his district; and each member of said board shall hold his office until his successor is elected and qualified. And said board when organized shall for all purposes of this act be and constitute a commission for the purpose of carrying into effect any and all orders, judgments, decrees or directions made by the district court relative to any improvement authorized by this act, within the limits of said district.

Sec. 9. Board of directors to cause to be made surveys, maps, plats, etc., covering improvements in flood control district.—After the organization of the board of directors of any drainage and flood control district organized under the provisions of this act, said board of directors shall upon the filing with them of a petition signed by not less than 25 freeholders of said district, or by the board of county commissioners of any county or council of any village or city likely to be affected by the proposed improvement therein asking for the construction of any of the improvements authorized by the provisions of this act relative to

drainage or flood control of any waters or any lake, pond, marsh or body of water or river, stream or water course within said district, therein describing the nature of the proposed improvement, the extent thereof and describing the bodies of water, stream or water course proposed to be improved or reservoir or other improvement constructed and if the construction of a ditch or drain as a part of the proposed improvement, a description of the starting place, the general course and terminus thereof and setting forth the reasons and necessity for such improvement and that the same will affect the public health and general welfare and said petition is accompanied by a bond signed by said petitioners, or any number of them or other parties in their behalf in such sum as the board of directors of said district may specify conditioned for the payment of all costs and expenses in the event said petition is not granted, it shall be the duty of said board of directors of said district to cause to be made at the earliest date possible by its engineer all necessary surveys, maps, plats, profiles, and plans covering said proposed improvement and said board of directors or not less than 3 of them shall upon receipt of the report of their engineer proceed to personally inspect and examine all lands, highways or other property likely to be affected by such improvement or that may be used or taken for the construction or maintenance thereof and make and file in their office with said plans and specifications a detailed statement showing the benefits and damages that will result to all individuals, property of corporation from the construction of said improvement and a list of the land claimed to be benefited and damaged and the amount thereof and of all land subject to assessment for the construction and maintenance of such improvement and if said improvement relates to any lake, body of water, stream or water course forming the boundary between this state and any other state and bordering on said district and is of such a nature as to call for, or render necessary the deepening, widening, straightening of the channel of any stream or water course forming the boundary line between this state and any other state or the dyking, and raising, lowering, or fixing the stage of water in any lake or body of water forming such boundary line or the deepening, straightening or dyking of any stream or river flowing into or from and materially affecting such boundary waters or the use or control thereof then and in that event the board of directors of said district are hereby authorized to confer with and enter into all necessary contracts and arrangements with the governing board of drainage district or other tribunal in charge of drainage and flood control in such adjoining state or states, affected by said proposed improvement, for the purpose agreeing upon a joint plan for the making of said improvements and the nature and extent

thereof, and shall have full authority, together with the representatives of said other state or states to employ one or more engineers to make a joint survey of such boundary waters and water courses and to report to said joint contracting parties all such information as they may require to enable them to determine and agree upon a joint plan for the construction of the proposed improvement and may make all necessary arrangements for all expense that will be incurred in connection with the making of said survey and report by said engineers and adoption of said joint plan.

Sec. 10. Procedure of join contracting parties.—Upon the filing of the report of the engineers appointed as provided in section 9 of this act, with the commissioners or board of directors of said drainage district in this state and with the commissioners or tribunals representing drainage in such other state, said joint contracting parties shall proceed to consider such report and to adopt such joint plan for the construction of the proposed improvement and said joint contracting parties may give notice of a hearing of the time and place for the consideration of said report and adoption of said joint plan if deemed advisable but upon the adoption of said plan said joint contracting parties shall have authority to and shall appoint three (3) disinterested parties to act as viewers, at least one of each shall be resident of each state and who shall, after taking the oath for the faithful performance of their duties, proceed together with said engineer to examine all the property affected or that is likely to be affected by the construction of the proposed improvement and shall make such report as shall be required and among other things shall give a full description of all property and corporations affected by said improvement together with a statement of benefits and damages that will result thereto; and it shall be their duty to assess the benefits and damages upon the property in the various states upon the same basis so that each will be charged and credited with their proper proportion of the benefits received and damages sustained and shall include in said report a statement of the total cost of the proposed improvement including damages and all costs and expenses and shall make such report in duplicate or triplicate as the case may require and file one copy with the representative of each state and upon the filing of said reports, said board of directors of the drainage district in this state and the representative of such other state or states shall fix a time and place in the vicinity of the proposed improvement or some part thereof convenient of access to all parties interested, for a hearing upon said report of the viewers and engineers of which hearing notice shall be given by publication for two (2) successive weeks in at least one weekly newspaper published in each county containing

property affected by said improvement the last of which publication shall be at least eight (8) days prior to the date set for hearing; at which hearing the representatives of the several states shall attend in joint session and all parties interested shall be given a hearing for or against any matters contained in the report of said viewers and engineers including joint plan and benefits and damages and the said representatives of the drainage and flood control district in this state and representatives from such other state or states shall have full authority to consider and modify said report and after full hearing to adopt or reject the same; and if it shall then appear that the amount assessable against the property and corporations benefited shall be greater than the benefits received, then said petition shall be dismissed but if it shall appear that the total benefits are greater than the total sums assessable against the property and corporations benefited and that such improvement will be of great public benefit same shall be adopted; and in that event, it shall be the duty of said joint contracting parties then in session to divide the total cost of said improvement including all expenses in any manner connected therewith, among the several states in proportion to the benefits received as shown by said reports as finally adopted and the joint plans as thus adopted and the division of the total costs so assigned to the several states shall be binding upon all parties to said joint arrangement in all subsequent proceedings relating thereto and the findings and order so made by the parties to said joint arrangement shall be executed in duplicate or in triplicate as the case may require and filed with the proper representatives of the several states.

Sec. 11. **Board to petition district court for authority to construct or proceed with improvements.**—The board of directors of such drainage and flood control district in this state upon the filing in their office of the report required to be made by them under the provisions of section 9, where the proposed improvement relates to streams or bodies of water lying wholly within this state, or upon filing in their office where the proposed improvement relates to boundary waters or water courses, of the engineers and viewers report and the report and findings of said joint conference including the findings as to joint plans and division of the total cost of construction among the several states as provided in section 10, of this act, said board shall cause to be made a petition to the district court in the county where the proposed improvement or some part thereof is located, therein petitioning said court for authority to construct said improvement as shown in the original petition filed with said board or as subsequently modified by them and the finding and reports filed in their office relating to said improvement therein setting forth the necessity for such improvement and

fully describing the nature and purpose thereof and setting forth the facts required to be alleged in case of petitions to the district court in judicial ditch proceedings required by the laws of this state and the engineers and viewers report where the same relates to boundary waters and in all other cases the engineers report and the report of said board as to the benefits and damages shall be referred to or attached and made a part of said petition and asking that the time and place be fixed by said court for a hearing upon said petition and reports and requiring all parties interested to appear and show cause why the reports accompanying said petition should not be adopted and the rights of all parties interested fixed and determined and said improvement ordered constructed in accordance with said report and said petition. Upon the filing of such petitions and such reports with the clerk of said court, he shall immediately notify the judge thereof who shall within ten days fix a time and place for hearing upon said petition and report which may be in any county most convenient for the parties interested, due notice of which shall be given by publication for two (2) weeks in one newspaper published in each county affected by the proposed improvement, which notice shall contain a description of the property affected and the names of the owners thereof as appears in the office of the county treasurer on the last assessment roll of said county together with the names of all corporations affected by such proceedings, a copy of which notice shall also be mailed by the clerk to each property owner, at least two weeks before the date set for hearing at his last known address or if not known, as shown by the records in the county treasurer's office where the property is located and requiring all parties in any manner interested to appear before said court at the time and place specified in said notice to show cause why the reports accompanying said petition should not be confirmed and the prayer of said petition granted and said improvement ordered constructed in accordance with the plans and specifications and the report of the engineer and viewers or directors accompanying said petition. Upon the filing of said petition and reports and the publication and mailing of said notice, said court shall have full jurisdiction of all parties, corporations, property and matters named and referred to in said petition and said reports and the holders of all mortgages and liens against all lands therein described.

Sec. 12. Hearing on petition.—At the time and place specified in the notice of hearing provided for in the last section, the judge of said court or the judge of any other district court upon his request, shall appear and hear all parties for and against the matters set forth in said petition and reports accompanying the same and may amend or modify the same, provided, he shall

have no authority to modify the order adopting the joint plan or the order dividing the total cost among the several states and, if upon full hearing it shall appear that the total benefits resulting from said improvement together with the total sum assessable against property not directly benefited as reported by the board of said district shall exceed the total cost of said improvement including the damages and that said improvement will be of great public benefit and utility, then the said court shall make its findings accordingly and shall by order confirm the report of the engineer and viewers or the report of the board of said district as found and fixed by him, and shall order the construction of said improvement accordingly and such findings and order of said court shall fix and determine the rights of all parties affected in accordance therewith subject only to the right of appeal as provided in this act.

Sec. 13. Appeal to supreme court.—Any parties or corporations interested or affected by the order of the court directing the construction of any improvement as provided in section 12. of this act, may within twenty (20) days from the date of said order appeal therefrom upon the grounds and upon like notice as now provided for appeals in county or judicial ditch proceedings by section 5534 of General Statutes of 1913, and the provisions of said section shall apply to and govern appeals under this act, and the board of directors of said drainage district shall have a like right of appeal and shall also have the right of appeal from the order of the court denying their petition for the construction of said improvement and any appellant in their notice of appeal may demand a hearing before another judge or before a jury and in the event of a demand for hearing before another judge the judge of said court shall provide for the trial of said appeals before another judge but no appeal shall be granted from an order granting the petition of said board and ordering the construction of said improvement, provided further, that no appeal taken on the question of benefits and damages shall delay further proceedings towards the construction of said improvement.

Sec. 14. Assessment of lands outside of district.—Whenever the board of directors of any district shall ascertain that any improvement will benefit lands outside the district they shall assess such lands for such benefit as though within the district and report such facts to the court, together with their findings and recommendation; and thereupon notice of the filing of such assessment and recommendation shall be served upon the parties interested and they shall be given the same notice of hearing upon said petition and for assessment as provided for in case all parties affected by said proceedings are

within the district, and said assessments considered modified or confirmed as in other cases and at any time upon filing with the district court, where the original petition was filed, a petition by the board of directors of any district or any parties in interest outside the district asking for a change of the boundary lines of said district, either adding to or taking from said district any territory, the court shall upon the filing of said petition, cause notice thereof to be given and hearing had thereupon in the same manner, and with like effect as in the original hearing for the formation of the district, except the notice to be published, shall be only in such counties as shall be directly affected by such change. Provided no assessments shall be levied under the provisions of this section upon lands directly benefited in excess of ten miles outside of the boundary of the district as fixed by the forty mile limitation provided for in this act.

Sec. 15. Authority to let contracts for construction.—The board of directors of any district organized under the provisions of this act shall have full authority to let contracts for the construction of and cause to be constructed any and all works of improvement, in accordance with the order of the court and the plans and specifications referred to in such order, said contract to be let only on three weeks' published notice calling for bids at such time and place as the board shall designate, and may employ and use men and equipment under the supervision of the chief engineer or other agents, of all portions of said works not let by contract, and may cause to be repaired any and all works of improvement by this act authorized to be constructed and to employ men therefor; said work to be done under the direction of the chief engineer or his assistants and the cost of all such work except those of repair shall be treated and considered as part of the construction. Provided: No money shall be expended in the construction of said work except those in the preparation of the necessary surveys and plans including the work of viewing and estimating the amount of benefits and damages or connected therewith until after a petition for such construction has been filed and the same ordered constructed as provided in this act, and in the event that the said improvement relates to boundary waters or water courses then said board of such district shall have full authority to enter into and make all necessary contracts and arrangements with the board, commission or other tribunal of any adjoining state or states interested in such improvement for the letting of the contract for such improvement and the said board together with the representatives of said other states shall have full authority to advertise and call for bids for the construction of such improvements, giving such notice of the time and place of opening bids as said parties may provide and shall have full authority

to make all necessary arrangements relative to the making of said contracts, the form of the contracts and the supervision of the work and payment therefor but said contract shall provide for the completion of said work in accordance with the plans and specifications within a given time and shall require sufficient bonds to secure the performance of said contract and shall further provide that the said drainage district or authorities in this state shall not be responsible except for the furnishing of the funds provided to be furnished by this state and the completion of so much of the improvement as lies within the limits of this state and may contain like provisions relative to the rights of the authorities representing such other state or states. The board of directors of such district shall also have authority to enter into such contracts or arrangements as may be deemed advisable with the authorities of such other state or states relative to the cost of repair, improvements and upkeep of all parts of said improvement connected with such boundary waters or water courses and provide the funds therefor and also for a proper division of any income that may be realized from use of such waters.

Sec. 16. Board given power to enter upon lands for surveys and examinations.—The board of directors of any district organized under this act and their agents and employees, including contractors, may enter upon lands within or without the district in order to make surveys and examinations to accomplish all necessary preliminary purposes, the district being liable only for any actual damage done, and any person or corporation preventing such entrance shall be guilty of a misdemeanor.

Sec. 17. Estimated value of property in connection with the reservoir to be contained in petition.—Said board shall also have the authority to condemn, for the use of the district, any land or property within said district when the same shall become necessary to protect the property of the district and to carry out the purpose of this act, and when it shall appear that in any proceedings to establish any improvement including reservoirs or holding basins or other similar improvements, that sufficient land was not acquired, in said proceedings to properly handle and control the waters in said reservoir or protect adjoining property from such waters or the waters of any stream, ditch or watercourse, or when the board shall determine that it is necessary and advisable to increase the size of any lake, basin or reservoir previously established and desire further lands to properly create and utilize the same, the said board may acquire title thereto for the benefit of the district, by filing a petition with the district court of any county in said district wherein said

reservoir or other improvements or some parts thereof is located, accompanied by proper plats, plans and specifications, as provided in section 11 of this act, and thereupon after hearing as therein provided for, the court may by order provide for the appropriation of such land, if it shall be shown that the same is necessary and advisable, and assess the damages resulting therefrom as in other cases providing for the construction of improvements for flood control.

In all cases where a reservoir is created, either in a natural basin or otherwise, and said board shall conclude that the creation of said reservoir will create a waterpower or establish conditions whereby waterpower can profitably be constructed in connection with said reservoir, said board either in the original petition provided for the creation of said reservoir, or at any subsequent time may petition the court, presenting maps and details therewith and ask that such additional land and other rights or privileges as may be deemed necessary be condemned and title acquired in connection with said reservoir property, to enable said board to improve the same and use the waters of said reservoir and other waters in any manner connected therewith for waterpower purposes, to the end that the waters of said reservoir or holding basins together with all streams connected therewith may be utilized and produce income for the benefit of said district and to aid in the general expense thereof, and in the upkeep of all drainage and flood control improvements within said district.

Said board may also include in said petition a statement giving the reasonable value of said property owned by the district in connection with said reservoir and proposed water power and a detailed estimate of the amount of water power likely to be produced by the proposed improvement and the probable income to be derived therefrom annually; and may in said petition ask the court to fix and determine the amount of bonds that the board may issue against the property of the district in connection with said reservoir together with the income therefrom and the court shall have authority to authorize said board to issue the bonds of said district in such sum as such improvement may require not to exceed 60% of the reasonable value of the proposed water power, and not to exceed such sum as the income from said water power may reasonably be expected to pay the interest on; and upon the making of said order, the board of directors are hereby authorized to issue the bonds of said district not to exceed such sum as specified in the order of the court in such denomination and in such form as the board may determine, payable in not less than 10 or not more than 20 years from date with interest not to exceed 6% per annum payable annually, which bonds shall be signed by the clerk

and president of said board and registered in the same manner as county bonds under the laws of this state and upon the issuance of said bonds it shall be the duty of said board to create an interest fund and provide for the accumulation of the necessary sum to pay the interest on said bonds promptly when due.

If, at the time of the filing of the petition for the establishment of any reservoir or holding basin or at any time thereafter it shall appear that the waters of such reservoir or holding basin can be utilized for the purpose of irrigation or for any other purpose and the board of such district shall, after examination, so determine, it may cause to be made all necessary plats, plans and specifications and upon filing the same, together with a petition with the clerk of the district court of any county affected and by such proposed improvements or use, a hearing shall be had thereon upon like notice, as provided in section 11 of this act, at which hearing the court, after due consideration of the showing made, shall have authority to make such order as may be necessary to authorize said board to acquire title to all necessary rights of way, ditches or property to enable it to utilize waters of any such reservoir for irrigation purposes and to hold, keep and control the same and all property so acquired in any such proceeding shall be and become the property of said district.

Sec. 18. To enter into contracts with United States government.—The board of directors shall also have the right and authority to enter into contracts or other arrangements with the United States Government or any department thereof, with persons, railroads or other corporations, with public corporations, and state government of this or other states, with drainage, flood control, conservation, conservancy, or other improvement districts, in this or other states, for co-operation or assistance in constructing, maintaining, using and operating the works of the district or the waters thereof, or for making surveys and investigations or reports thereon; and may purchase, lease or acquire land in other property in adjoining states in order to secure outlets to construct and maintain dykes or dams, or for other purposes of this act, and may let contracts or spend money for securing such outlets or other works in adjoining states. Provided, that no board of directors of any drainage district organized under the provisions of this act shall have the right, power, or authority to connect by artificial means boundary waters having different natural outlets so that the waters of one may be discharged into the other. Provided that nothing herein contained shall interfere with any action by the Congress of the United States.

Sec. 19. Rights of various parties to waters in flood control districts.—The rights of land owners, municipalities, cor-

porations, and other users of water to the waters of the district for domestic use, water supply, industrial purposes, for water power, or for any other purposes shall extend only to such rights as were owned by them prior to the organization of the district. Wherever the organization of, or the improvements made by the district make possible a greater, better or more convenient use of, or benefit from, the waters of the district for any purpose, the right of such greater, better, or more convenient use of, or benefit from, such waters shall be the property of the district; and such rights may be leased, or assigned by the district in return for reasonable compensation; but the appraisal of benefits made by the board or any appraisers in any proceeding for the establishment of any improvement under the provisions of this act shall not be construed to in any manner include benefits for such greater, better or more convenient use of or benefit from the waters of the district, unless so specified in the petition or report of the board, but the compensation for such benefits shall be made in accordance with the provisions of this section except as hereinafter provided.

Persons, corporations, municipalities, or other parties desiring to secure such use of the waters or water courses of the district or of the district rights therein, may make application to the board of directors for lease or permission for such use. Such application shall state the purpose and character of such use, the period and degree of continuity and of the amount of water desired. In case any party makes greater, better or more convenient use of the waters of the district without formal application the fact of such use shall serve all purposes of an application, and the board may proceed to determine a reasonable rate of compensation the same as though formal application had been made. Where it is not possible nor reasonable to grant all applications, preference shall be given to the greatest need and to the most reasonable use, as may be determined by the board of directors, subject to the approval of the court. Preference shall be given, first to domestic and municipal water supply, and no charge shall be made for the use of water taken by private persons for home and farm yard use, or for watering stock.

The board of directors shall not permanently sell, lease, assign or grant any permit or otherwise part with permanent control by the district of the use of the waters thereof and the rates for light, power or other services charged by vendees, assignees, lessees or licensees of such district, but such leases, assignments or permits of any kind or other contracts for the use of water shall be entered into only after a report has been made by the board of such district to the court setting forth the terms and conditions of said lease, permit or other contract

relative to the use of any property of the district, whereupon, the clerk of said court shall give due notice to all parties interested by mail, and shall cause to be published notice of said application stating therein the purpose of said application and the time and place of hearing thereof, at which time the court may hear all showing made for and against such proposed contract and make its order accordingly; but subject to revision and control by the state law and such conditions and restrictions as may be necessary at all times to protect the interests of said district and of the public; said leases or permits may be made for periods not to exceed ten (10) years but subject to said conditions and subject to the right of renewal for further reasonable period not to exceed ten (10) years on condition that a new determination may be made as to the reasonable charge therefor.

The board of directors may make regulations for the determination and measurement of the increased, or better, or more convenient use of, or benefit from the water supply of the district, for the purpose of determining rates of compensation, and for the purpose of securing to all parties interested the greatest and best use of the water thereof. The board shall have power to determine the rates of compensation for such greater, better, or more convenient use of, or benefit from the water supply of the district, which rates of compensation shall be reasonable, and may require bond to be given to secure the payment for such use. Upon the determination of any rate, or rates, the board shall make a report of its determination to the court. The court shall thereupon cause personal notice by summons to be given to the parties interested, stating that such determination of rate, has been made, that a hearing before the court will be had thereon on a certain day, and that objection may be made at such time to such determination of rates. A hearing may be made before the court, objections may be made and appeals taken in the same manner as in case of the appraisal of benefits, but the rate as fixed by the court shall control until modified on appeal. In case no appeal is made within the time provided, or upon the final determination of the matter by the court, the determination of such rates of compensation shall be conclusive and binding for the term and under the conditions specified in the lease or other agreement. The right of the district, its successors, assigns and lessees, and of land owners, municipalities, corporations and all other users of the waters of the district to use such water for water power purposes, shall ever be subordinate to the right of the state, to acquire such water powers; and the state may at any time acquire such water power rights by paying to the governing boards of such drainage and flood control district for the use of such district and of persons, firms

and corporations claiming under such district, the excess of the cost of improvements made pursuant to this act and damages therefrom, over the benefits to lands affected.

FINANCIAL PROVISIONS.

Sec. 20. Financial provisions.—The moneys of any drainage and flood control district organized under the provisions of this act shall consist of three (3) separate funds:

1. A preliminary fund, which shall consist of funds to be provided as hereinafter specified, and can be used for preliminary work and general expenses.

2. A bond fund, which is the proceeds of bonds issued by said district, as herein provided, upon property of the district that is producing or likely to produce a regular income and to be used for the payments of the purchase price of said property of the value thereof, fixed by the court in proceeding, as herein provided, and for the improvement and development of such property.

3. A maintenance fund, which shall be supplied by special assessments to be levied from time to time as occasion may require to supply funds for the upkeep of the property and improvement of the districts including the reservoirs, ditches, dykes, canals and other improvements, together with the expenses incident to, and connected therewith.

Sec. 21. Payment of expenses.—After the filing of a petition under this act for the formation of a district, and the furnishing and filing of the bond, as provided in section 2 of this act, the costs of publication and other official costs of such proceedings shall be paid out of the general funds of the county in which the petition is pending. Such payment shall be made on the warrant of the auditor, on the order of the court. In case the district is organized, such costs shall be repaid to the county out of the first funds received by the district, through the levying of taxes or assessments or selling of bonds, or the borrowing of money. If the district is not organized, then the costs shall be collected from the petitioners or their bondsmen; upon the organization of the district the court shall make an order dividing the preliminary expenses between the counties included in the district in proportion to the interests of the various counties as may be estimated by the court; and the court shall issue an order to the auditor of each county to issue his warrant upon the treasurer, for the proportion of the preliminary expenses assigned to that county by order of the court.

As soon as the district shall have been organized under the provisions of this act, and a board of directors shall have been appointed and qualified; said board may file a petition with the

district court in the county where said original petition was filed, asking that an order be made creating a preliminary fund for said district, which shall be of a size in proportion to the size of said district, and in the event said district shall include a number of counties, said funds shall not exceed the sum of \$10,000 and may be of such less amount as the court may order, and the court, upon said hearing, may designate the amount of said funds and fix the proportionate amount that each county affected by said district shall pay in proportion to the area within said district, and thereupon the court shall order each of said several counties to advance from its general fund, the sum there named to constitute a preliminary fund for said district, and thereupon the auditors of said several counties shall draw their warrant upon the treasury of their county for the payment of the amount specified in the court's order payable to the treasurer of said district, and the sum so advanced by each county shall be charged to said district and shall be repaid to each of said several counties as soon as said district has funds for that purpose, and the funds so provided shall be used by the board of said district for preliminary work, and when said board shall incur expense for surveys or other preliminary work, on any proposed improvement, all expense including time, salaries or otherwise connected with such work shall be kept track of and figured in as the cost of construction in any such proposed improvement, and upon said improvement being ordered by the court and funds being provided for the construction thereof, as hereinafter specified, all sums advanced out of said preliminary funds shall be repaid and said funds replaced for further similar use on other improvements.

Sec. 22. **Court to apportion amount of total costs.**—At the time set for hearing on the report and petition of the board of directors of any district and the report of the engineer asking for the establishment of any improvement under the provisions of this act or at any time subsequent thereto, upon 5 days notice in writing to the auditors of the several counties affected by such improvement, the court shall apportion the amount of the total costs of the construction of said improvements among the several counties affected in proportion to the benefits received and shall fix and determine the amount to be paid by each and upon similar notice to said county auditors, said judge of the district court may at any time modify said order as justice may require, or make additional orders covering additional expense. The word "expense" as used in this section shall be construed to mean every item of cost of said improvement from its inception to its completion and all fees and expenses paid or incurred, including all damages awarded, and upon the filing of said order with the clerk of the court where said proceedings are pending,

it shall be the duty of said clerk to make and file certified copies of said order with the auditors of the respective counties affected, together with certified copies of the order confirming the report of the board of viewers and the engineer and directing the construction of said improvement a list of all property affected in said counties and a statement of all benefits and damages affecting the same, and such other information as the court by order may direct, it shall be the duty of the county commissioners of said counties to provide the necessary funds to meet their proportionate share of said improvement in the same manner as now provided in the case of judicial ditch proceedings. That immediately or at the earliest date possible, following the letting of a contract or contracts for the construction of any improvement, by the board of directors of said district, they shall cause to be made and filed with the clerk of said court where said proceedings are pending an itemized statement of all expenses incurred in the construction of said improvement including the amount for which said ditch was sold, the estimate cost of supervision, fees and all other ascertainable expense in connection therewith, and thereupon it shall be the duty of the clerk of said court to make out a statement and summary or tabular statement as required by section 5543, General Statutes 1913, and show all such expense connected with the construction of said improvement and the total estimated benefits to be derived therefrom and shall ascertain the rate or cost of each dollar of benefits that said improvement will cost as provided in said section and shall include in said statement as provided in said section the amount that each tract of land, municipal, or public or corporate road is chargeable with, and shall file said statement in his office and shall make and file certified copies thereof with the county auditor of each county affected by said improvement and shall have attached hereto a list of all property roads or corporations assessed for benefits or allowed damages within such county with the amounts assessed or allowed to each; and thereupon it shall become the duty of the county auditor of the respective counties to make and file a statement and lien and proceed to levy and assess against the property benefited and the property subject to assessment within his county, the amount to be paid by said county, in accordance with the provisions of section 5544 of the General Statutes of 1913. And it shall be the duty of the county commissioners of said several counties to provide the funds to meet the proportionate share of the total cost of said improvement, as shown by the report of the board in said drainage and flood control district and they are hereby authorized to exercise all rights and authority in so doing, now granting to county boards or boards of county commissioners under the provisions of section 5542, of the General

Statutes of 1913, and other provisions of the General Statutes, relating to county and judicial ditch proceedings, and the said board of county commissioners and the said county auditor and county treasurer and register of deeds are hereby authorized and directed to exercise the authority and perform the several duties assigned to such officials or any of them under the provisions of section 5544 and section 5548 of the General Statutes of 1913 relative to the establishment of liens, and the assessment and collection by installments of all sums levied against property within their respective counties for benefits resulting from the construction of said improvement and to exercise such other authority and perform such other duties relative to the establishment of liens, filing of statements or additional statements and liens as now provided by the laws of this state relating to county and judicial ditches, and the county board is authorized to make the necessary order specifying the period and times of payment of said assessment and the rate of interest. And all moneys received by the county treasurer of any county from the sale of bonds, assessment or otherwise for the benefit of the district shall be by the treasurer of each county accounted for and paid over to the treasurer of said district, and it shall be the duty of the board of said district to pay all damages before entering upon the land, except in case of appeal.

Sec. 23. Assessments to be split by county auditor.—Upon the filing by the board of directors of a drainage and flood control district, with the county auditor of any county, of a statement, as provided in section 22 of this act, giving a list of the property and corporations benefited or damaged or otherwise affected by any proposed improvement, it shall be the duty of the county auditor to assess, the amount specified in such list against the municipalities or other corporations, as therein specified, in accordance with the provisions of section 5551 of the General Statutes of 1913; and said county auditors respectively shall proceed to levy and collect the sums specified in said list against the several corporations in accordance with the provisions of said section, and in the event that any improvement reported in said list shall be for improvements or benefits to any county or state road, then, and in that event, the sum so reported shall become a direct charge against said county and may be paid by said county out of its road and bridge fund or otherwise, as its board of county commissioners may direct, and may be paid in whole or in installments, as may be specified by the board of county commissioners of each county. Provided, that no assessment shall be levied against any property or corporation benefited under the provisions of this act in excess of the amount of benefit received, as fixed by the order of court di-

recting the construction of said improvement, or as subsequently determined on appeal.

Sec. 24. Directors authorized to issue orders for payment of contracts.—The board of directors of any drainage and flood control district is hereby authorized to issue the orders of said district on payment for any contract for the construction of any improvement, and also for all ordinary general expenses, and for all expenses incurred by contract or otherwise in making reports and when sufficient funds are not available to pay the same, said order shall after presentation to the treasurer of the district, draw interest at the rate of 6% per annum until paid or until notice shall be given by the district that such funds are available.

Sec. 25. Directors authorized to levy such sums as court may direct for, upkeep and repairs.—The board of directors of any drainage and flood control district, organized under this act, are hereby authorized after the construction of any improvement, to levy from time to time as occasion may require upon the land benefited by such improvement, such sum as the court may order or direct upon application by the board, for the purpose of providing funds for the upkeep and repairs of such improvement, and upon filing a copy of said order and levy with the county auditor of each county affected by said improvement accompanied by a list of the property within the limits of said county affected by said levy it shall be the duty of said county auditor to extend said levy against said property within the limits of his county as provided in other cases for the levy, assessment and collection of taxes ordered, levied and collected by the board of county commissioners in ditch proceedings, and upon like application the board of directors of any drainage and flood control district are hereby authorized to levy upon the property of the district such sum as the court may authorize and direct to cover the general expenses of the board, not to exceed, however, in any one district the sum of five thousand (\$5,000) dollars, and the court shall by such order, apportion the amount of such levy among the several counties, according to the area or valuations of the portion of each county within said district, and upon the filing of a copy of said order, showing the amount to be levied upon the property of said district, within the limits of each county, the auditor of such county shall levy the same upon that portion of the property of said county within the limits of said district in the same manner and with like effect as in the levy of other taxes by municipal corporations in this state; and all sums collected and received by the county treasurer of such county shall be accounted for to the treasurer of said drainage and flood control district; and the same shall be placed in the fund as provided in this act and

used for the purposes for which said assessment was made.

Sec. 26. Directors to have charge and control of public waters in district.—The board of directors of all drainage and flood control districts shall have charge and control of the public waters of said district and especially all bodies of water used as reservoirs and streams flowing into and from the same, and may cause said reservoirs, when deemed practicable, to be stocked with fish and shall have full charge and control of all fish caught in said waters for sale or other commercial purposes, and shall have the sole right and authority to make all contracts or issue all licenses therefor and in all cases such contracts shall provide for the payment of the reasonable value of such fish into the treasury of said district and said district shall receive all benefits and income therefrom, but said board shall have no authority to authorize the catching of any game fish for commercial purposes or to grant any authority relative to fishing in violation of the laws of this state nor interfere with private individuals fishing with hook and line or in such other manner as the laws of this state shall provide during the seasons when such fishing is permitted.

Sec. 27. Definition of terms.—Whenever the term “person” is used in this act and not otherwise specified, it shall be taken to mean and include person, firm, co-partnership, association or corporation, other than public or political subdivision, and whenever the term “public corporation” or “municipal corporation” shall be used, the same shall be taken to mean counties, townships, school districts, road districts, or other political divisions or subdivisions.

Whenever the term “court” is used it shall be taken to mean the district court or the judge thereof, and to apply to the district court wherein the petition for the organization of the district was filed and granted unless otherwise specified.

Whenever the term “Board” or “Board of Directors” or “Commissioners” is used in this act and not otherwise specified it shall be construed to mean the board of managers of the drainage district in this state in charge of the improvement; and whenever the term “joint contracting parties,” is used, it shall be construed to mean the parties representing the board of directors of the drainage district or districts in his state in charge of the improvement and the board, commission or authorities representing such other state or states.

Sec. 28. Classification of lands for assessment purposes.—In all proceedings by the board of directors under the provisions of this act to assess benefits to any land resulting from any improvements said board shall as near as practicable divide said lands for the purpose of assessments into three (3) classes;

In Class No. 1, shall include all lands or corporations receiving direct benefits such as drainage or protection from overflow by flood control improvements.

In Class No. 2, shall include all lands or corporations to which are furnished a drainage outlet by the construction or improvement of any artificial or natural drain or water course.

In Class No. 3, shall include all lands that are now receiving or that need drainage and that are furnishing waters that will be handled or controlled by the proposed improvement.

Class 1 and 2 shall be treated as a direct assessment.

Class No. 3, may be treated as a secondary assessment to aid in the control of the waters furnished by said lands and all lands within or without the limits of said district falling within the classes 1 and 2 are hereby declared assessable for the construction of such improvement under the provisions of this act as lands directly benefited and all lands falling within the provisions designated as Class 3, are hereby declared assessable as lands receiving benefits from the general plan of drainage and flood control provided for by this act and assessable.

Sec. 29. Directors given authority to co-operate with board of adjoining districts.—The board of directors of any drainage and flood control district organized under this act shall have authority to enter into all necessary contracts to enable them to co-operate with the managing board of any adjoining district whether organized under this act or any other act authorized by the laws of this state relative to any matters connected with drainage or flood control or other matters connected with or relating to the management of affairs connected with said district and in the event that the formation of districts should be authorized by any other law of this state, enacted prior or subsequent to this act for the purpose of having charge of drainage and flood control matters and any such district should be formed bordering upon streams or bodies of water forming the boundary of this state, the governing board of such district shall have and may exercise all the authority granted by this act.

Sec. 30. Board to make annual report to court.—At least once a year or oftener, if the court shall so order, the board of directors shall make a report to the court of its proceedings and an accounting of its receipts and disbursements to that date, which shall be filed with the clerk of said court, and it shall be the duty of said board from time to time to make such report as may be demanded by the public examiner, and it shall be the duty of the public examiner of this state to check up and report to the court not less than once a year and at such time as the court may direct, the financial condition of said district.

Sec. 31. **Court not to lose jurisdiction by reason of failure to give notice.**—In any and every case where a notice is provided for in this act, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void: but the court shall in that case order due notice to be given, and shall continue the hearing until such time as such notice shall be properly given, and thereupon shall proceed as though notice had been properly given in the first instance.

In case any individual appraisal or appraisals, assessment or assessments, or levy or levies, shall be held void for want of legal notice, or in case the board may determine that any notice with reference to any land or lands may be faulty, then the board may file a motion in the original cause asking that the court order notice to the owner of such land or lands given and set a time for hearing, as provided in this act. And in case the original notice as a whole was sufficient, and was faulty only with reference to publication as to certain tracts, only the owners of and persons interested in those particular tracts need be notified by subsequent notice. And if the publication of any notice in any county was defective or not made in time, republication of the defective notice need be had only in the county in which the defect occurred.

Sec. 32. **Act to be liberally construed.**—This act being necessary for securing the public health safety, convenience, or welfare; and being necessary for its prevention of great loss of life and for the security of public and private property from floods and other uncontrolled waters, it shall be liberally construed to effect the control and conservation and drainage of the waters of this state.

Sec. 33. **In case any section is declared unconstitutional, remainder to be unaffected.**—In case any section or sections or parts of any sections of this act shall be found to be unconstitutional, the remainder of the act shall not thereby be invalidated, but shall remain in full force and effect.

Sec. 34. This act shall take effect and be in force from and after its passage and approval.

Approved April 23, 1917.

CHAPTER 443—H. F. No. 1116.

An act to authorize the Boards of County Commissioners of any two adjoining counties of this state to issue and sell county bonds for the purpose of constructing or improving, or aiding in the construction or improvement of, roads therein; to authorize such boards to act jointly or concurrently therein,